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WORKSHOP ON CODES, CONTRABAND AND COOPERATION: WORKING WITH CUSTOMS AUTHORITIES TO IMPLEMENT ENVIRONMENTAL TREATIES
Geneva, 28 and 29 June 2001

REPORT OF THE WORKSHOP ON CODES, CONTRABAND AND COOPERATION: WORKING WITH CUSTOMS AUTHORITIES TO IMPLEMENT ENVIRONMENTAL TREATIES

I. OPENING OF THE WORKSHOP

1. The workshop was opened by its Chair, Mr. John Hilborn, Chief, Chemical Conventions Branch, Division of Environmental Conventions of the United Nations Environment Programme (UNEP), who welcomed the participants to Geneva on behalf of the UNEP Division of Environmental Conventions, which had convened the workshop. He gave a brief overview of the work of the Division, including his own role in it.

2. He said that the purpose of the workshop was to address problems concerning illegal trade and to formulate recommendations on how to assist the secretariats of multilateral environmental agreements (MEAs) in their efforts to combat illegal trade, using the Harmonized Commodity and Coding System, generally referred to as "Harmonized System" or simply "HS", developed by the World Customs Organization (WCO). He said he was also hopeful that the workshop would help to clarify the misconception that it was necessary to develop a new coding system, and also help to reaffirm that the existing system could be adapted to commodities of environmental concern. It was clear that there had been problems in using the WCO systems, concerning the coding of some commodities such as mixtures, and specimens, such as those of interest to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

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II. ORGANIZATION OF THE WORKSHOP

A. Adoption of the agenda

3. Introducing the provisional agenda, the Chair noted that he would be guided by the participants as to whether they wished to work in plenary during the following day, or in break-out groups, as had originally been planned, and he would welcome suggestions on the questions to be dealt with. The provisional agenda was adopted as follows:

1. Opening of the workshop.

2. Organization of the workshop.

3. Presentations:

   (a) The World Customs Organization's Harmonized System of Customs Codes;

   (b) Customs codes requirements of multilateral environmental agreements;

   (c) Practical problems in applying Harmonized System codes to commodities of environmental concern;

   (d) Nature and extent of illegal trade in commodities of environmental concern; effectiveness of customs codes in flagging shipments for inspection; international cooperation and exchange of intelligence information in controlling illegal trade; important players in ensuring WCO's success;

   (e) Role of import/export licensing systems in controlling illegal trade.

4. Discussions by break-out groups.

5. Report of break-out groups.

6. Recommendations of the workshop.

7. Closure of the workshop.

B. Attendance

4. Representatives of the secretariats of the following international environmental organizations participated in the workshop: the Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention), the Basel Convention on Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention), the Convention on Biological Diversity, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Organization for the Prohibition of Chemical Weapons (OPCW), the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol). Also attending were invited experts from the Environmental Investigation Agency, the Industrial Chemical Research Institute (Poland), Her Majesty's Customs and Excise (United Kingdom), the National Academy of Customs, Excise and Narcotics Complex (India), the OzonAction Programme of the UNEP Division of Technology, Industry and Economics (Paris), the Tax Administration Services Department (Jamaica) and the World Customs Organization (WCO). A complete list of participants is contained in document UNEP/(DEC)/WCO/GVA/2.

III. PRESENTATIONS

A. The World Customs Organization's Harmonized System of Customs Codes

5. Mr. Izaak Wind, Senior Technical Officer of WCO, gave a detailed presentation on the Harmonized System (HS) of customs codes. The full presentation by the WCO representative was included in the present report in annex I**.** Mr. Wind began by discussing the relationship between environmental agreements and the Harmonized System. He stated that controlling or monitoring international trade in certain substances was one way to meet the objectives of environmental agreements. In addition, he felt that HS was the most appropriate instrument to control and monitor international trade. It was also a systematic classification system by which all movable goods could be classified. Without it, the application of various import and export control programmes would not be possible.

6, He then gave a general overview of WCO. He said that WCO was an intergovernmental, independent body with worldwide membership (156 members), whose mission was to enhance the effectiveness and efficiency of customs administrations in the areas of compliance with trade regulations, protection of society and revenue collection. WCO had developed or was responsible for the administration of four fundamental international trade instruments:

(a) The Harmonized System of Tariff Nomenclature;

(b) The World Trade Organization (WTO) Agreement on Customs Valuation;

(c) The Kyoto Convention on Customs Procedures;

(d) The Harmonized Rules of Origin (being developed jointly with the World Trade Organization).

7. Mr. Wind had been invited to discuss the "The International Convention on the Harmonized Commodity and Coding System", which was used as the basis for the collection of customs duties and international trade statistics by almost all countries in the world. Among the most important uses of HS were the following:

(a) Basis for customs tariffs;

(b) Basis for the collection of international trade statistics;

(c) Basis for rules of origin;

(d) Collection of internal taxes;

(e) Basis for trade negotiations (e.g., the WTO schedules of tariff concessions);

(f) Transport tariffs and statistics;

(g) Monitoring of controlled goods (e.g., hazardous wastes, narcotics, chemical weapons, ozone depleting substances, endangered species);

(h) Vital element of core customs process in areas of customs controls and procedures, including risk assessment, information technology and compliance.

8. He discussed the Harmonized System Convention, which contained a number of basic provisions, ranging from definitions of various terms to obligations and rights of Contracting Parties. Amendments could be made to keep pace with economic and technological developments, and he described the mechanism that was followed:

(a) Contracting Parties had six months, starting from the date on which the Secretary-General of the Council notified the Contracting Parties of the recommended amendment, to indicate any objection to the amendment;

(b) If no objections were outstanding at the end of this period, the amendment was deemed to have been accepted;

(c) Accepted amendments would enter into force on 1 January of the second year following the date of notification, where the latter fell between 1 January and 31 March; or on 1 January of the third year following the date of notification, where the latter fell between 1 April and 31 December.

9. In addition, he described in great detail the HS found in the annex to the Convention, which contained the HS nomenclature, the general interpretative rules, the section and chapter notes, and the subheading notes. The HS nomenclature was a structured nomenclature comprising a series of four-digit headings, most of which were further subdivided into subheadings. The headings were grouped in 96 chapters, the latter being arranged in 21 sections. HS contained approximately 5,225 separate categories of goods identified by six-digit codes (HS 2002).

10. To support HS users, a number of complementary publications were available. The main publications concerned the explanatory notes and the compendium of classification opinions. The latter contained the descriptions of specific products, together with their appropriate HS code, classified by the HS Committee. Both publications were also available in electronic format on CD-ROM. This CD-ROM also contained a commodity classification database of about 200,000 products. He informed the participants that a new CD-ROM called “Harmonise” had recently been released and was available through WCO. It contained interactive, computer-based training in the Harmonized System, teaching the Harmonized System’s background and scope, its structure, the section and chapter notes, and the general interpretative rules.

11. The first general review of HS, which had entered into force on 1 January 1996, resulted in 393 sets of amendments, mainly in the machinery (75), chemical (70), textile (56) and agricultural (55) sectors. Although the larger part of the amendments related to technical developments, some other amendments were related to the environmental field, e.g., the creation of new subheadings to facilitate the monitoring and control of substances that depleted the ozone layer (Montreal Protocol); specific categories of hazardous waste (spent cells and batteries); and forest resources (recycling of paper, tropical wood).

12. The second major set of amendments, which had been approved by the Council in 1999, also included amendments related to the environmental field, e.g. certain species covered by the Convention on International Trade in Endangered Species of Fauna and Flora (CITES); fish falling under the International Convention for the Conservation of Atlantic Tuna (ICCAT); and specific categories of waste controlled by the Basel Convention. Mr. Wind pointed out that to implement the amendments to HS, national legislation was necessary. Because of the complexity of the instrument and the national agencies to be consulted, timely preparation and publication was needed. Training of and technical assistance to the customs officers and other people dealing with customs classification was indispensable. International organizations should be aware of that and should take the appropriate steps to have their respective agreements adapted as well.

13. He added that the HS Committee prepared recommendations when it considered that the intended measures should be introduced as soon as possible. The Committee, at the request of other international organizations, would prepare a Council recommendation, with a view to requesting WCO member administrations and HS contracting parties to insert in their national statistical nomenclatures additional subdivisions to control or monitor certain commodities. With respect to commodities falling within the environmental agreements, there were currently two WCO recommendations, on chemical weapons and ozone-depleting substances (ODS). The WCO recommendation concerning ODS referred to only some of the chemicals controlled under the Montreal Protocol, since a number of others had been separately

identified in the HS 1996 amendments. The HS 2002 amendments comprised a number of provisions related to waste referred to in the Basel Convention.

14. One of the roles of the WCO secretariat's Nomenclature Sub-directorate was to assist the Committee in its work, by preparing draft classification opinions, for example, with respect to certain commodities. It also gave advice to international organizations with respect to the HS classification of commodities falling within agreements administered by those organizations.

15. In conclusion, Mr. Wind said that the use of HS and its related measures were the most appropriate tool to control and monitor the international movement of goods, thereby complementing the provisions laid down in multilateral environmental agreements. A total of 179 countries were using the system for their customs tariff and statistical nomenclatures. The HS Committee, together with HS-related publications, played an important part in achieving a high degree of worldwide uniform and consistent application. The first step for classification was the proper identification of the products, taking into account any requirements arising from the HS structure. Regular updates of the nomenclature guaranteed a modern instrument which fulfilled the needs of its users. The development of new technologies, such as genetically modified foods, was likely to ensure that environmental issues would remain high on the agenda of international policy makers in the foreseeable future, thus placing more emphasis on HS.

16. A discussion took place at the end of the presentation. One participant asked if goods in transit showed up in the statistical data. Mr. Wind responded that commodities in transit did not show up in tariffs because transit had not been included in terms of export-import. Some exceptions were steel and agricultural products, or cases where there was a need for a specific description of high risk in terms of taxes. In response to another question, he confirmed that chlorofluorocarbons (CFCs) were listed as chemicals generically. Rather than use "imports and exports" to control transit shipments, he suggested consideration could be given to using "bringing into or out of the country", which included transit.

17. There was a question about the reuse of code numbers and the existence of empty positions in the system, for example, in the phase-out of ozone-depleting substances. The current version of HS would include a number of ODS but not all; others were in the recommendations. However, Mr. Wind said, at some point the trade in ODS should be zero. In order to review the need for the continued existence of customs codes, international trade had to fall below thresholds of either US$ 50 million or US$ 100 million, depending on the coding level, but the thresholds did not apply when commodities were coded for environmental reasons. A solution could be to delete the subheading if completely empty for 50 years, but that problem had not been encountered yet. The year 2010 was the deadline for CFC phase-out in all countries, and so in 2012 the thresholds would be met, but for 2017 it was difficult to tell at the present time.

18. Another participant asked what happened if a code was no longer used; could such codes be used for another commodity? Mr. Wind responded that code numbers deleted in 1992 could be used again in 12 years' time. That meant that a code number that had been discontinued in 1992 might reappear in 2004.

B. Customs codes requirements of multilateral environmental agreements

19. Under agenda item 3 (b), representatives of the secretariats of multilateral environmental agreements made short presentations, as the basis for a discussion of their needs.

1. Ozone Secretariat

20. Mr. Gilbert Bankobeza of the Ozone Secretariat informed the participants that the Montreal Protocol had a long list of chemicals (196) which were controlled, and the list kept growing. The Montreal Protocol required customs codes for all substances listed and subject to either import or export from one country to another. All were traded across borders, as a large number of countries used the substances, but not all countries produced them. Only some substances had been classified, and the major groups of chemicals coded were CFCs. He noted that initially there had been some resistance from WCO to coding those substances because it had been requested to allocate codes to substances that would soon be phased out.

However, customs codes had been accorded to some ODS in 1995, and in 1999 the coding of hydrochlorofluorocarbons (HCFCs) had assisted the process of monitoring the import and export of these substances. Coding was necessary to help Parties to monitor illegal trade, as the ozone-depleting substances phase-out schedule became tighter. The previous presentation had clarified why HS was time-consuming to apply; nevertheless the Parties would like to move faster, ideally assigning a code within one year. One problem was that of mixtures containing some ODS in combination with other chemicals that were not ozone-depleting. The Parties to the Protocol felt there should be monitoring of those substances as well, and a halt to the use of any chemical that had a potential to deplete the ozone layer. WCO might be helpful in assisting the Parties to know how to address such mixtures of chemicals (refrigerants, fire extinguishing substances, pesticides, etc.). There was a need for WCO to allocate code numbers to monitor import and export of those mixtures, and thus help Parties to move towards phasing them out. He noted that eventually it would be difficult for the Parties to say whether the chemicals were completely phased out.

2. Secretariat of the Basel Convention

21. Mr. Ibrahim Shafii of the secretariat of the Basel Convention stated that hazardous waste would be included in the 2002 WCO amendments and that his secretariat had been taking part in the most recent WCO cycle since the previous year. A report by the secretariat on the WCO Third Review Cycle had been presented to the eighteenth session of the Basel Convention Technical Working Group on 18 June 2001. The secretariat had offered ideas on ways to code substances that had not been proposed for inclusion under the system. By August 2001 the secretariat intended to send a new list for consideration by the HS Committee. However, if the timing was not right, the new list might not be discussed until March 2002. The representative of WCO had clarified some of the problems faced by the Basel Convention in the presentation, but there remained a need for more precision concerning coding for some waste not precisely described. Because of the rigid requirements of WCO it had not been possible to code that waste under HS. Furthermore, Mr. Shafii stated that some chemical products had the same code numbers as wastes, and that had resulted in problems in some countries implementing the system. The secretariat felt that those wastes had high significance as they were widely traded and therefore needed to be controlled.

22. In the discussion that followed one participant asked if it made any difference to WCO if the item to be coded was a waste. The WCO representative answered that that depended on the definition of waste. In the 2002 edition, several new provisions based on the ideas of the Basel Convention secretariat had been inserted. It was possible that in certain cases commodities considered to be waste under the Basel Convention could be classified as a normal commodity rather than waste. Another participant said that to have different definitions of waste was a problem and a separate classification of types of waste would be helpful. Another participant asked whether, if goods could be reused, they would be considered to be commodities rather than wastes, e.g. used refrigerators and recycled refrigerants, which were not controlled under the Montreal Protocol. The WCO representative stated that there was no single description of waste in HS. For example there were provisions for municipal waste, household waste and other types of waste. HS considered an item as waste when it could no longer be used as a good. What mattered was how the item had been presented to WCO. If it was presented as a refrigerator, then it was a refrigerator, and not a waste. A question was asked about refrigerants that had been recycled, were they wastes? The WCO representative said that there was no provision that the chemicals should no longer be used as such. When a chemical had been contaminated and one could not use it as a coolant, there was no provision that said it should no longer be usable. It was as presented; if presented as a contaminated chemical, it was a waste.

3. Organization for the Prohibition of Chemical Weapons

23. Mr. Carlos Trentadue of the Organization for the Prohibition of Chemical Weapons (OPCW), stated that OPCW had worked with WCO in 1996 and had prepared a list of weapons that should be coded for customs control. Some of the products that had been listed had never been traded. There were 12 families of products that were dangerous and were in stockpiles in the world. Only 70g had been traded around the world, some of which was for medical purposes, although there were 70,000 tons of those chemicals in existence. There were 14 families of products where it was thought that about 200 compounds could be traded and only 36 had been traded (7,000 tons). There was a chemical used in the dye industry, for

example, that was innocuous when used in that industry, but was dangerous if used in the production of a chemical weapon. There was another category of products (36 compounds) that were traded widely and highly (400,000 tons), which had in the past been used in chemical weapons production, and for which trade could not be forbidden. When the list had been prepared, WCO had assigned certain subheadings, and several chemical products had been grouped under the four subheadings—not individually but in packages. The Parties were required to report on the trading of those products but there were problems in getting that information. Customs officials could not, therefore, identify when a transfer of the specific chemical took place.

24. Free trade areas (the North American Free Trade Agreement (NAFTA) countries, the European Union, and the Southern Common Market (MERCOSUR) countries were a problem for OPCW, since within them no customs declaration was required. Free ports gave rise to another problem, because the origin and destination were unknown. One participant suggested using import-export licensing systems to determine if codes were being used. Mr. Trentadue said that Chemical Abstracts Service Codes would be useful, but not all countries had the procedures in place to do that. He stated that there was an approved bilateral letter of agreement between WCO and OPCW, under which WCO would give the HS classification of OPCW chemicals. An import licensing system gave better figures, but customs coding was necessary to ensure that the importers had applied for a licence.

25. In the ensuing discussion Mr. Bankobeza stated that free trade areas had been a problem for the Ozone Secretariat as well. Mr. Wind stated that his organization depended on the statistical information received from the Parties. However, some countries lacking such a system had not been able to provide information and had a problem when commodities were miscoded. But he agreed that there was a serious problem with free ports and free trade areas.

4. Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora

26. Mr. John Sellar of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) secretariat informed the meeting that there had been a long and close cooperation with WCO, including the conclusion of a formal memorandum of understanding. WCO and CITES held regular meetings of a WCO/CITES working group (to be renamed the Organized Crime Working group). Unfortunately, in the case of the CITES area of interest, there existed a transnational organized criminal group. The situation was more complicated with CITES because there were some 30,000 species under the convention and the majority could be traded in various ways, e.g. tiger skin in clothing, tiger parts in a medicinal product—just one species could appear under various subheadings. Furthermore, nowhere in HS was there any reference to a tiger or an elephant, although they were at high risk. The CITES secretariat was grateful that HS committee was looking at the matter, but there were practical difficulties and it was unlikely that the secretariat would continue to work in that area as it felt it had already done what it could. The use of the code did not give a genuine idea of the trade in the CITES specimens. In other words, HS was a good system for legal trade, but what concerned CITES was illegal trade that was not declared. Customs codes were of limited use, therefore, in combating illegal trade, particularly trade in specimens of high value that had no customs code, or a false code. Mr. Sellar explained further that species listed in appendix I of CITES could not be traded commercially and were the ones being smuggled. Specimens listed in appendices II and III could be traded internationally as long as they had the appropriate CITES documentation. He added that the only time a shipment would definitely be inspected was when it contained a live specimen.

5. Secretariat of the Convention on Biological Diversity

27. Ms. Valerie Normande of the Convention on Biological Diversity secretariat explained that the Biosafety Protocol was at its very early stages and currently imposed no customs requirements. The purpose of the Protocol was to protect biodiversity from the genetically modified organisms (GMOs) produced by biotechnology. The goal was to provide countries with the capacity to make informed decisions on the import of GMOs. The issues related to trade that were currently of importance to the Biosafety Protocol were handling, transport, packaging and identification (article 18). The Parties were still in the process of deciding how to identify GMOs, and from there would consider how to control trade. Recently, an expert

meeting had been held in Paris to discuss those issues, but the Protocol was at a very early stage of implementation. The points discussed included the nature of documentation, the objective of documentation, establishing modalities for documentation, coverage of living modified organisms (LMOs) under existing agreements, and gaps where LMOs were not being covered by current agreements. The major issues were whether the identification could be done under existing systems, and whether specific documentation needed to be designed. The secretariat recommended that WCO provide advice on its ability to assist in meeting the requirements of article 18 of the Biosafety Protocol.

6. Secretariat of the Barcelona Convention (Regional Coordinating Unit for the Mediterranean Action Plan)

28. Mr. Fouad Abousamra of the secretariat of the Barcelona Convention stated that there were six protocols under the Barcelona Convention. Two future protocols could have articles on trade and related activities dealing with customs and HS. The Specially Protected Areas for Wildlife (SPAW) Protocol, which had entered into force in 1999, contained two articles dealing with trade in animals, parts of animals, plants and parts of plants. There was control at the national level in the field of commercial trade in species of fauna and flora. Problems had arisen with customs and CITES regulations when sending specimens to laboratories for inter-calibration exercises. The other protocol that might be of relevance was the Suez Protocol, which had four articles dealing with transboundary movement, re-import, illegal traffic and verification. That Protocol had not entered into force, but some activities would start the following year and the secretariat was preparing an assessment study of hazardous waste management in the Mediterranean region. Mr. Abousamra stated that Mediterranean Action Plan activities were coordinated closely with the activities of the Basel Convention Secretariat to identify the gaps and the needs in dealing with customs officials and trade in waste. The Barcelona Convention also had a Hazardous Waste Protocol, and radioactive material, including radioactive medical waste, was included under the protocol. The secretariat expected it would have problems classifying all of the waste.

29. The WCO representative said that revisions could be made to HS, but only by means of an amendment, which would require support from the member States in order to make changes. He agreed to send a list of contact points for HS to the Chair for distribution to participants.

C. Practical problems in applying Harmonized System codes to commodities of environmental concern

30. Mr. Wind of WCO gave a presentation on practical problems in applying HS. The full presentation by the WCO representative was included in the present report in annex II**.** When the nomenclature of HS was applied to control or monitor international trade in commodities of environmental concern, a number of problems might occur. The origin of those problems might be the structure of HS, or might be related to the preconceptions of the MEAs involved.

31. Identification was a very important starting point in the classification of a commodity. It was necessary to provide a proper description, which took into account all necessary information needed to establish the appropriate HS code number. In several cases, HS provided for commodities according to constituent material, specific ingredients, dimensions, etc. A number of secretariats administering MEAs had requested the WCO secretariat to indicate the appropriate HS code number for the commodities covered by the respective agreements. In many cases, however, the information provided had not been sufficient to assign an HS code to them, or it was difficult to recognize the goods at the moment of import or export, and consequently the proper measures might not be taken. The descriptions should be unambiguous.

32. In the case of CITES, it was very difficult to allocate codes to the products containing parts or derivatives of the species listed. Although the WCO secretariat had published a list of HS codes for species that were at high risk under CITES, the classification of goods containing parts or products derived from those species under other codes was not excluded. Integration and identification problems would also occur in the case of monitoring the international trade in goods produced with, but not containing, certain chemicals (e.g. CFCs). Identification was possible only by controlling the production process, which could not be done at the point of import or export. Practical problems in the application of environmental

agreements at the point of import or export might arise in cases of insufficient description of the commodity or the impossibility of integrating descriptions into a customs tariff.

D. Nature and extent of illegal trade in commodities of environmental concern; the effectiveness of customs codes in flagging shipments for inspection; international cooperation and the exchange of intelligence information in controlling illegal trade; important players in ensuring WCO's success

33. Mr. Charles Mackay, Customs Officer (CITES Team), London Airports, made a presentation to stimulate discussion among workshop participants with related experience of other commodities. He presented graphic examples of CITES specimens recovered at the airport as an example of the extent of illegal trade, and described the importance of intelligence, a network of contacts and innovative techniques used as tools by customs officials to target suspect shipments. The presentation illustrated the needs and shortcomings of countries in curbing illegal trade.

34. He said that international trade in wildlife was worth US$ 20 billion a year, and illegal trade in wildlife was worth US$ 5 billion a year. The problem facing CITES customs officers was that there were some 30,000 species that could be traded in a variety of ways, which meant that several HS codes could be used for CITES specimens. The main markets were in the United States of America, Japan and Europe. For example, the European Union was the world's largest importer of parrots, including many species not listed in CITES, with only a few under CITES control. Wildlife was traded to zoos and collectors, for scientific research, to circuses, and as personal possessions. Trade in CITES specimens was only a fraction of the total global wildlife trade, but they were in high demand and the most expensive items. Some of the most highly traded species of fauna were monkeys, birds, reptiles, fishes, and invertebrates. Some of the most highly traded species of flora were snowdrops, orchids, cacti, carnivorous plants, ginseng, and some tree species. Wild animals could be used for captive breeding and wild plants could be artificially propagated. There was also trade both in parts of wildlife that were not processed and in derivatives (processed parts).

35. More specifically, there was illegal trade in parrots, primates, tortoises, birds of prey, tarantulas, poison arrow frogs, chameleons, orchids and cacti. Parts and derivatives trade consisted mainly of shahtoosh, ivory, mahogany, rhino horn, musk, tiger bone, agar wood, skins and caviar. The major exporting areas were Central and South America, Africa and Asia. The major importing areas were North America, Europe, the Middle East and East Asia. Both import and export activities occurred in Singapore, Honk Kong, South Africa and Eastern Europe.

36. CITES had had a long association with WCO, and that in his view the HS system had been applied to the maximum extent possible to CITES specimens, but at best it could only flag a commodity as possibly containing a CITES specimen. Illegal trade occurred when items had not been coded, when false codes had been used, or when CITES specimens had been mixed in with other specimens. Specimens listed in appendix 1 to CITES would never be declared, since international trade was not allowed.

37. In response to questions regarding his experience in the United Kingdom, Mr. Mackay said that the United Kingdom had been responsible for prosecuting those involved in illegal shipping activities when a shipment had been intercepted in the United Kingdom. The press had been helpful in publicizing those incidents. The CITES team was made up of former drug control officers.

E. Role of import/export licensing systems in controlling illegal trade

38. Mr. Halvert Köppen of the UNEP OzonAction programme of the UNEP Division of Technology, Industry and Economics (DTIE) made a presentation on cooperation with the Multilateral Fund for the Implementation of the Montreal Protocol and developing countries on ozone-depleting substances (ODS). The programme included activities such as training and capacity-building, dissemination of information (publications and training manuals) and network meetings. Those activities might involve the ozone officer from each country on an individual basis or might bring together ozone officers from several countries. He stated that import-export licensing systems for ODS had been a milestone in developing countries, which required a regulatory framework to implement them. A permit was necessary for importing ODS and in that

way the amount that was imported was controlled in accordance with the phase-out schedule. Controlling those substances fitted into the concept of licensing; once imports were restricted, however, an illegal market was created, potentially of the same magnitude as drug smuggling. He added that seizures of controlled substances could be a problem where customs officers did not know what to do with the ODS. The programme had been helping to build capacity to control illegal trade in developing countries, but that took time and required the training of inspectors. Mr. Köppen felt that the use of customs codes was one among many screening methods. He also stressed the need for harmonization of customs legislation, coordination of environmental agreements and the development of integrated training materials, as well as joint training exercises, to take advantage of the common areas of concern for the various multilateral environmental agreements (MEA). He felt that the experience obtained by the OzonAction programme was applicable to other areas.

IV. DISCUSSION

39. The Chair invited the participants to hold a general discussion of relevant issues under items 3 and 4 of the agenda.

40. The Chair introduced the work on international environmental governance being carried out by UNEP and the secretariats of the MEAs, to provide a context for the workshop's recommendations. He agreed to provide participants with a copy of a report, entitled "International environmental governance – multilateral environmental agreements" (UNEP/IGM/1/INF/3), which identified the prevention and combating of illegal trade in commodities controlled by MEAs as one of the issues not being addressed effectively by MEAs. He suggested that there were opportunities for synergies among the MEAs, such as in the use of custom codes, where secretariats of conventions could work together, as with harmonization of reporting (also identified by the MEA secretariats as an issue to be addressed in the programme of work of the UNEP Division of Environmental Conventions). He proposed that the conclusions resulting from the workshop on collaboration between MEAs on customs codes and illegal trade issues could be presented at the forthcoming consultation between the Division of Environmental Conventions and the MEA secretariats.

41. One participant said he believed that to focus solely on customs codes was too narrow an approach and the meeting should try to broaden the discussion to include issues of enforcement. Mr. Sellar of the CITES secretariat stated that it was useful to have people with a background in enforcement within the secretariat. Furthermore, it was important to establish personal contacts through both informal (e-mail, for example) and formal communications. In practical terms that was represented by a confidential bulletin prepared by the CITES secretariat which provided targeted advice for enforcement officials at the national level. He added that customs codes were important for the monitoring of legal trade. However, illegal trade existed, including concealment, and that was one of the limitations of the harmonized system. Mr. Sellar believed there were benefits in finding synergies for both awareness and training. The CITES secretariat had experience in the gathering and use of intelligence and he believed that the CBD, Basel and Ozone secretariats did not have such experience. The use of intelligence was important given the low percentage of inspection of shipments—for example, of 16.9 million shipments only 2 per cent were inspected and of that 2 per cent only 1 per cent were found to contain illegal goods.

42. He continued by stating that customs officers and police officers were rarely part of a specialized team and would come across environmental issues less frequently. There was a detailed training package for officers from CITES; perhaps it was not necessary to go through the whole course but rather instead raise the awareness of officials who already knew about profiling. Airport personnel could be trained to spot items in X-ray machines, for example, and that also applied for the other conventions. Licensing systems were important, but it was necessary to remember that the interesting cases were those that did not bother with the requirements.

43. Mr. Köppen said that UNEP/DTIE had been establishing networks and should create linkages with other environmental agreements. He suggested that a communication platform such as a Web site should be organized, to provide information on the activities of the various conventions. It would be helpful to share

information and training facilities. It might also be useful to invite representatives of other secretariats to make presentations to customs officials about other MEAs with the assistance of integrated training packages. Those training packages would have information on ozone-depleting substances, CITES specimens, GMOs, etc. There should be an integration of efforts, given the resources available.

44. Ms. Kökeritz of the Stockholm Environment Institute asked what kind of recommendations it would be necessary or useful to get from meetings and conferences of parties to conventions. She wondered if such recommendations would assist in providing funding for secretariats to engage in the work being suggested. A representative of UNEP responded that in many cases it was useful and sometimes necessary for the conferences of the parties to conventions to take decisions on funding or to approve relevant activities. Mr. Bankobeza of the Ozone Secretariat stated that he did not feel it was necessary to go to the conference of the parties because much could be done within the secretariats' existing mandates, particularly to take advantage of synergies, if there was an existing budget. He suggested running joint programmes and coordinated training programmes with other MEAs. He believed that enforcement was critical in order to succeed, and that it was possible to pool efforts and develop joint enforcement mechanisms. However, the issues involved in HS were too specific to each MEA and did not provide an opportunity for synergies.

45. Mr. Wind identified three important issues from the discussion so far:

(a) Strengthening the capabilities of MEA secretariats or the parties to those conventions to monitor enforcement. He agreed with Mr. Sellar that some actions should be carried out to get the secretariats to enhance those capabilities. One possibility was to recruit an enforcement officer in the secretariat and create a task force to monitor trade in ODS;

(b) The role of customs codes in enforcement. He stressed that customs codes had other uses besides monitoring legal trade. For example, the classification of ODS would eliminate technical smuggling, i.e. false customs codes and taking advantage of the difficulty of the ODS nomenclature. A classification under a customs code could help to eliminate illegal trade.

(c) Customs officer training, which was necessary to raise awareness among related officers in the country and to explain what were sometimes very difficult issues and problems connected with the enforcement of regulations of conventions. He supported joint customs training by the various conventions, but believed that it would be difficult from the technical point of view.

46. Ms. Normand pointed out that the Conference of the Parties to the Convention on Biological Diversity provided policy guidance, so it always helped to get guidance from the Conference to encourage further collaboration with MEAs. It would be useful to have a recommendation from the present workshop on national coordination, rather than on international coordination, e.g. on the training of customs officers, which should emphasize the links between customs officers and management authorities at the national level.

47. Mr. Wind noted that the various conventions had different objectives. It was therefore difficult to define the role of customs authorities with respect to enforcement and monitoring of the various agreements. The expertise required was different. In some countries, customs existed to collect fines, and, in others, to control the movement of goods from one country to another. He stressed the importance of customs codes particularly for the monitoring of commodities at the global level, so that countries did not interpret legal texts differently. It was important, however, to recognize that the customs officer was often the first point of contact and needed to have some awareness about international agreements. CITES enjoyed close cooperation with WCO, and other secretariats should also seek the opportunity of working with customs officials. MEAs should explore synergies with WCO with regard to the training of customs officers.

48. Mr. Köppen agreed that there might not be opportunities for synergies between MEAs with respect to coding, but there were potential synergies on outreach and training. He suggested that, although other MEAs could not use Montreal Protocol Multilateral Fund funding, it was possible, for example, to add an additional day of training on other agreements to an ozone workshop and take advantage of the fact that the group had already assembled.

49. Ms. Rookwood of the Tax Administration Services Department of Jamaica stated that customs codes were critical to be able to determine duties and penalties. She noted that while there was general agreement among participants on integrated training, she would like to see a statement from them on the need for an integrated approach, as it was of particular importance for small states. She viewed training as potentially expensive and disruptive, especially in countries with limited resources. Jamaica, for example, had about 20 ports, each with only two officers; some ports might have only one officer and have to close down when he or she went to a training course. It was preferable to cover three conventions during a low-traffic period and spend three days on general issues and one day for each MEA, amounting to six days of training rather than nine. For very small countries, she proposed the holding of regional workshops that would deal with all MEAs at one time.

50. Ms. Kökeritz thought that bringing up that issue at a meeting of parties might be counter-productive if resistance was met, but on the other hand, encouragement from parties was helpful. She suggested the recommendations should be in language that was non-committal and informed the parties of what the group was doing to "encourage further cooperation"; they should be brought to high-level meetings to avoid resistance from some parties. Regarding the HS codes, the most common way of illegally importing, better known as smuggling, was by using the wrong customs codes. Whether it was intentional or not, customs officers might not notice the miscoding. She agreed with a previous remark that to a large extent specific technicalities differed from one MEA to another, but there were some issues of greater common interest with regard to customs codes. It was necessary to apply the general structure of HS, but to find ways to see how the controlled substances fitted into the general structure, by creating, for example, a specific code for mixtures which contained ODS and therefore bypassing HS to open new doors and new possibilities. The question was to what extent to use the HS codes and to what extent to bypass them. The other issue that seemed to be common to all MEAs was that of free ports and free trade zones. She wished to know if barriers existed that could not be overcome, since they constituted a large loophole for unaccounted-for trade.

51. Mr. Shafii advised participants that, since the holding of the Third Conference of the Parties to the Basel Convention, a dozen regional centres had been established to serve as a linking mechanism for the training of people involved in hazardous waste management. A shift in policy was under way, towards more involvement in cooperative training with other conventions, e.g. the Stockholm Convention on Persistent Organic Pollutants (POPs), and CITES in Hong Kong, and formalization of the centres, as they were now operating on an ad hoc basis. Establishment of the centres depended on donor contributions and host country agreements. The secretariat of the Basel Convention was working with the Global Environment Facility (GEF) to obtain its cooperation to fund the regional centres in a more sustainable way. The secretariat of the Stockholm Convention was looking at the need for new regional centres, and had agreed that an integrated package for the training of customs officers and environmental officers and ministries at the national level would be useful.

52. The WCO representative noted that discussions within the Basel Convention Technical Committee on HS had been quite protracted, and he encouraged other MEAs to start consultations early. With regard to coordination of training, he noted that WCO had contacts with all the heads of customs authorities at the national level, and could be helpful in getting training under way.

53. The Chair then encouraged the participants to begin to consolidate the key points that had been raised during the presentations and discussions of the previous two days, as a basis for formulating recommendations to MEAs, which should be grouped under two main themes: working with WCO, and synergies on enforcement issues.

54 Regarding working with WCO, the key points discussed had been:

(a) The usefulness of codes;

(b) A coordinated approach to WCO by MEAs;

(c) Free ports and free trade zones;

(d) National and regional training (regional centres).

55. Regarding synergies on enforcement issues, the key points discussed had been:

(a) Establishing links between MEAs, e.g. Web links;

(b) Enforcement units within MEAs;

(c) Joint enforcement exercises;

(d) Networks and contacts.

56. The synopsis by the Chair stimulated further discussion and ideas on specific recommendations and how to formulate them.

57. Mr. Trentadue, commenting on the need for a mandate for linkages between organizations, pointed out that every organization had a different scope, and a specific mandate was not needed from the conferences of parties, unless significant resources were involved that had not already been assigned. Some training activities had already taken place, and he suggested the holding of five seminars for the Caribbean region. MEAs could act fast and produce results because the training could be easily implemented and the contacts had already been established. He pointed out that information-sharing could be implemented almost immediately. Almost every organization had a Web site already set up, and in each organization linkages could be established between Web pages. Countries could then be made aware that the links existed.

58. Enforcement, he said, rested with States, and depended on national legislation for implementing conventions. In some States customs officials were heavily involved, in others they were not. He was not so concerned with legal trade, as it was the intention of the final user that mattered, which HS could not detect. For MEAs, the final customers were individuals or companies in general, but for WCO they were Governments. Mr. Trentadue described free ports as a problem of legal trade, because free port trade was not registered or traceable. Free ports should be made to require the involvement of customs and to use the HS system of the countries concerned, to make sure that the declarations matched. He supported the coordination of training activities since it would not require great effort or financing.

59. Mr. Mathur of the National Academy of Customs, Excise and Narcotics Complex of India indicated that he had taken note of the problems of training for small countries, but there were difficulties as well in India, with four levels of customs officers. In customs and excise there were about 18,000 officers. A large number of inspectors handled both customs and excise work (4,000-5,000 superintendents, and 2,000 officers in customs and excise) and there was a policy of rotation of officers. Because of that dual role, retaining the expertise learned was not a simple matter. An officer might have forgotten what he had learned with regard to CITES training by the time he was called to do customs duties, but at least he had been made aware of the issues. Customs officers were not trained as trainers, however, which he believed was an important issue. Access to training was an issue for India. Many officers were unable to attend training college, and so only about half of them were trained. The trainers were customs officers with a posting to training college and were also subject to rotation. As a result, there was very little expertise available and continuity was lost. At the field level one might find a good training officer, but he or she would resist

staying at the training college. Despite the difficulties, however, India was going ahead with training programmes on environmental issues. There was only a two-week training programme in ozone-depleting substances, and to take trainees to the site where all the relevant products were available involved a 250-kilometre journey. Mr. Mathur added that there were problems associated with teaching so many different courses in just a few days, and integrated training might not work in his country's situation.

60. Ms. Rookwood suggested a need to adopt special approaches for special situations: for example, there was little need for in-depth CITES training in the smaller countries in the Caribbean. Different situations required separate training methodologies, not just one model. Where a single officer operated at a port, a half-day of training at any one time might be all that was practicable. Most other participants supported the notion that "no one size fitted all".

61. Mr. Sellar pointed out that the Caribbean area did have a CITES problem, and was important to his secretariat. One recommendation would be that if politicians were really serious about environmental crime, and wanted something done about it, they must make it a priority for their agencies, as opposed to concentrating on luxury items.

62. Mr. Newman of the Environmental Investigation Agency said that CITES could be used as a model for enforcement issues, and was an important contact for his organization, which provided CITES with intelligence information. The Montreal Protocol secretariat worked with his Agency on enforcement matters, so it might be useful to have an enforcement officer in the secretariat. He agreed that there was a need to strengthen the enforcement factor in the MEA secretariats. It was the role of specialist teams to disseminate best practices and, with some training, to increase customs officers' efficiency. Such teams could identify areas where good work was being done, and they should be encouraged to share their experience with others.

63. Mr. Sellar informed the group that the CITES Tiger Enforcement Task Force had prepared guidelines on the reporting of crime incidents and crime intelligence, on the analysis and use of intelligence and on the creation of specialized wildlife law enforcement units. Those guidelines had been distributed by his secretariat in a notification to the Parties. Although prepared by the Tiger Enforcement Task Force, the guidelines were not restricted to tiger-related issues and could be used in combating all forms of wildlife crime.

V. RECOMMENDATIONS OF THE WORKSHOP

64. The participants reviewed the key points that had been raised in the presentations and discussions, and on that basis formulated the following recommendations to MEA secretariats:

(a) The workshop acknowledged the many benefits that could be gained through strengthening the capacity of multilateral environmental agreement (MEA) secretariats by including persons with operational enforcement and compliance experience in their staff, and recommended that this practice should become more widespread, taking into account the particular area of each agreement;

(b) The contracting parties to the MEAs should be encouraged to set the combating of environmental crime as a priority for their national enforcement agencies;

(c) The workshop acknowledged the many benefits of the World Customs Organization (WCO) Harmonized Commodity Description and Coding System (Harmonized System) and encouraged close working relationships between MEA secretariats and WCO in that respect;

(d) The workshop recognized the benefits of a coordinated approach between MEA secretariats, and between MEA secretariats, implementing agencies and the WCO secretariat in areas such as training, enforcement, exchange of information and experience and awareness-raising. Some activities suggested during the workshop were:

(i) National and regional integrated training workshops when possible;

(ii) Preparation of integrated training materials where appropriate;

(iii) The development of links between existing MEA Web sites;

(e) The workshop recognized the special requirements of individual States, in particular in the area of training and noted the need to ensure the most efficient use of human and financial resources through an integrated approach to training;

(f) The workshop acknowledged the importance of formal and informal networking and the establishment of contact points to facilitate timely exchange of information;

(g) The workshop suggested further exploration of modalities to address the problems of monitoring and control of the goods covered by MEAs in free trade zones and free ports;

(h) The workshop recognized the value of profiling and risk analysis, in particular by means of automated systems, for targeting illegal trade and encouraged the exchange of experience between the MEA secretariats and between States on this issue.

65. One participant expressed his view that the workshop should not evolve into a committee, but rather that the next step should be for UNEP to help to ensure that the recommendations were acted upon.

VI. CLOSURE OF THE WORKSHOP

66. In closing the workshop on 29 June 2001, the Chair thanked the participants for taking the time to attend the workshop, for their serious approach and valuable contributions to the discussion, and hoped that they would use the network of contacts established at the workshop to continue the dialogue of the previous two days. The Chair undertook to provide participants with a detailed record of the workshop, and asked presenters to provide copies of their speaking notes, overheads, slides, etc. to append to the record.

Annex I

ENVIRONMENTAL AGREEMENTS AND THE HARMONIZED SYSTEM
(Geneva, 28 and 29 June 2001)
(Izaak WIND, Senior Technical Officer, World Customs Organization)

Introduction

Environmental agreements and the Harmonized System : Can they go together?

Controlling or monitoring the international trade in certain substances is one of the possibilities to meet the objectives of environmental programmes. The Harmonized System is the most appropriate instrument to support the control and monitor activities when it comes to international trade. Remember that the Harmonized System, being the basis for Customs tariff and statistical nomenclatures, is the spine of import and export operations. It is also a systematic classification system by which all movable goods can be classified. Without it, the application of various import and export control programmes would not be possible.

A uniform application and a consistent description of the commodities involved at world level would without any doubt highly facilitate the controlling and the monitoring purposes.

In this presentation, I will touch upon the following issues:
- WCO;
- The Harmonized System – Background;
- The Harmonized System Convention;
- The amendments to the Harmonized System;
- The Harmonized System Committee; and
- The Secretariat.

WCO

The World Customs Organization (WCO) is the inter-governmental organization uniquely competent in Customs matters. It is an independent body with world-wide membership (156 Members) whose mission is to enhance the effectiveness and efficiency of Customs administrations in the areas of compliance with:
- trade regulations
- protection of society, and
- revenue collection,

thereby contributing to the economic and social well-being of nations.

This mission is fulfilled, among others, by establishing, maintaining, supporting and promoting international instruments for the harmonization and uniform application of simplified and effective Customs systems and procedures governing the movement of commodities, people and conveyances across Customs frontiers. To that effect, it has developed or is responsible for the administration of four of the most fundamental international trade instruments:

- The Harmonized System of tariff nomenclature;
- The World Trade Organization (WTO) agreement on Customs valuation;
- The Kyoto Convention on Customs procedures; and
- The Harmonized Rules of Origin (being developed jointly with the WTO).

Today I will speak about the Harmonized System only.

The Harmonized System – Background

The Harmonized System (or HS) of tariff nomenclature is recognised as the most successful instrument ever developed by WCO. Its official name is "The International Convention on the Harmonized Commodity and Coding System" and it was introduced in 1988. It is used as the basis for the collection of Customs duties and international trade statistics by almost all countries in the world. In fact, there are 179 countries using the HS, 103 of them being a Contracting Party to the HS Convention. They represent more than 98 % of world trade (June 2001).

The HS is therefore not only an important instrument for the WCO but, more importantly, one of the most essential instruments in international world trade. While today the main use of the Harmonized System is still as a tool for revenue collection, it should be stressed that it was developed during the 70's and 80's as a trade facilitative measure. The Harmonized System is surely that – since it is, in fact, the "language" of international trade.

The Harmonized System was developed as a multipurpose nomenclature and it has also achieved that goal. Among the most important uses of the HS are the following:

- Basis for Customs tariffs
- Basis for the collection of international trade statistics
- Basis for rules of origin
- Collection of internal taxes
- Basis for trade negotiations (e.g., the WTO schedules of tariff concessions)
- Transport tariffs and statistics
- Monitoring of controlled goods (e.g., hazardous wastes, narcotics, chemical weapons, ozone layer depleting substances, endangered species)
- Vital element of core Customs process areas of Customs controls and procedures, including risk assessment, information technology and compliance.

Harmonized System – The Convention

The Harmonized System Convention consists of two parts: the Convention itself (comprising the Preamble and 20 articles) and the Annex, which contains the Nomenclature and related provisions.

The Convention

The Convention contains a number of basic provisions, ranging from definitions of various terms, to obligations and rights of Contracting Parties. I will elucidate some of the more important ones in the context of controlling and monitoring certain commodities.

(i) Definitions

From the definitions given in Article 1, we can conclude that the Harmonized System is restricted to (i) "goods" and (ii) "imports and exports".

(ii) Obligations

Contracting Parties have a number of obligations (Article 3), as follows:

- Texts and codes of the HS may not be amended in any way which would change the scope or order of the headings or subheadings;
- Amendments (textual adaptations) permitted are those necessary to give effect to the Harmonized System in the Contracting Party's domestic law, but they should also not change the scope of the headings or subheadings;

- A Contracting Party may establish additional subdivisions in its nomenclature to identify certain goods which could not be given separate status in the HS Nomenclature to reflect tariff policy provisions or international trade developments relating to specific products. Additional subdivisions may only distinguish goods beyond the level of the existing HS subheadings, any code ascribed to them taking the form of an addition to the six-digits HS code (for example, a 7th (or 7th and 8th) digit;
- Contracting Parties are obliged to make publicly available their import and export trade statistics in conformity with the six-digits HS codes, but they may publish statistics beyond that level if they wish; and
- Publication of import or export statistics is not precluded for exceptional reasons such as commercial confidentiality or national security.

(iii) Recommendations

The Committee may prepare recommendations to secure uniformity in the interpretation and application of the HS, which are to be adopted by the WCO Council (Article 7).

(iv) Contracting Party

Three categories are eligible to become a contracting party (Article 11) :

- Member States of the Council;
- Customs or Economic Unions to which competence has been transferred to enter into treaties in respect of some or all matters governed by the Convention; and
- Any other State invited by the WCO Secretary General at the direction of the Council.

So far, the European Community is the only Customs or Economic Union which is a Contracting Party. Chad is the sole country which is Contracting Party, without being WCO Member.

(v) Amendments

If the HS is to survive as a universal commodity nomenclature, it must keep pace with economic and technological developments. Therefore, its amendment from time to time is anticipated in Article 16. This article lays down the procedure for giving legal effect to amendments to the Convention proposed by the Harmonized System Committee and recommended to Contracting Parties by the Customs Co-operation Council.

The article stipulates, in particular, that:

- Contracting Parties have six months, starting from the date on which the Secretary General of the Council notifies the Contracting Parties of the recommended amendment, to indicate any objection to the amendment;
- If no objections are outstanding at the end of this period, the amendment is deemed to have been accepted;
- Accepted amendments will enter into force on 1 January of the second year following the date of notification where the latter falls between 1 January and 31 March, or on 1 January of the third year following the date of notification where the latter falls between 1 April and 31 December.

Example: On 1 July 1999, the Secretary General notified Contracting Parties concerning amendments to the HS recommended by the Council at its June 1999 Sessions. The latest date for objections was 1 January 2000. At that date one objection was notified and the relevant parts of the amendments were deleted from the list. Since there were no other objections, the other recommended amendments are deemed to be accepted and will enter into force on 1 January 2002.

The Annex (Harmonized System or "HS")

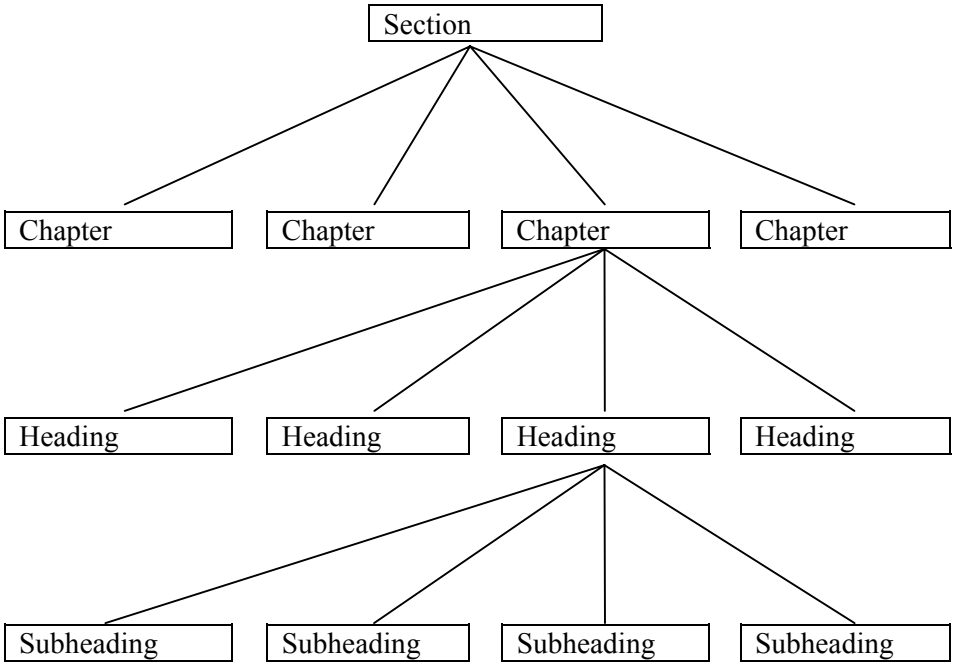
The Annex to the Convention contains:

- the HS Nomenclature (headings and subheadings with their related code numbers);
- the General Interpretative Rules;
- the Section and Chapters Notes; and
- the Subheading Notes.

HS Nomenclature

The HS Nomenclature is a structured nomenclature comprising a series of 4-digit headings, most of which are further subdivided into subheadings. The headings are grouped in 96 Chapters, the latter being themselves arranged in 21 Sections. It is to be noted that Chapters 98 and 99 do not form part of the HS and can be used (and sometimes are used) by Customs Administrations for national purposes.

Basically, the structure can be shown as follows:



The diagram reflects the layout of the structure of the Harmonized System. The number of Chapters within a particular Section may, however, vary. Some Sections contain only one or two Chapters, whereas other Sections may contain as many as 14 Chapters. The same applies to the number of headings within a particular Chapter or the number of subheadings within a particular heading. The same can be said for the headings and subheadings. The HS contains approximately 5,225 separate groups of goods identified by a 6-digit code (HS 2002).

Unfamiliarity with this structure may indeed lead to the incorrect classification of goods. It is, therefore, of vital importance that people dealing with HS classification are familiar with that system.

Sections and Sub-Chapters have Roman numerals, whereas Chapters, headings and subheadings have Arabic numerals. Each of the levels referred to above represents and describes a collection of goods : titles of Sections refer usually to a very broad range of goods, whereas a subheading describes the goods in the most detailed way. For example, live animals and animal products are referred to in the title of Section I, whereas live turkeys of a particular weight are referred to in subheading 0105.12. The various levels of detail within the Sections, Chapters, headings and subheadings concerned are illustrated below.

Level	*Numeral*	*Title / Description*	
Section	I	Live animals; animal products	Broad range
Chapter	1	Live animals	Narrow range
Heading	01.05	Live poultry, that is to say, fowls of the species Gallus domesticus, ducks, geese, turkeys and guinea fowls.	More specific
Subheading	0105.12	Turkeys weighing not more than 185 g	Very specific

The first two digits of a heading always indicate the Chapter number (e.g., 01). The third and fourth digits (e.g., 05) represent the position of that heading within the Chapter. So, heading 01.05, for example, is the fifth heading in Chapter 1. This numbering system is consistent throughout the tariff. It is to be noted that in some cases, the continuity in the systematic order of the heading (or subheading) numbers has been disrupted, due to the fact that the same number cannot be used for a description having a different scope.

A heading may be further subdivided into two or more subheadings, where deemed appropriate, individualizing narrower categories of commodities. These subcategories, which are preceded with one or two dashes as the case may be, are identified with an additional two-digits numerical code. In the case that a heading is not further subdivided, two zeros are added to the four-digits code number. When a heading appears on its own, the period falls between the second and third digits (e.g., 01.05). When it is written as part of the complete classification number (indicating subheading at six-digit level), the period follows the fourth digit.

The following example will help to illustrate the presentation of a heading which is undivided. Heading 84.44 is not subdivided and has, therefore, two zeros added to the first four digits. It is indicated in the Harmonized System as follows :

Heading	*H.S. Code*	*Description*
84.44	8444.00	Machines for extruding, drawing, texturing or cutting man-made textile materials.

There are, however, many headings in the HS which have been divided into one or more subdivisions. Heading 84.64 for example, is further subdivided and contains subcategories at one-dash level only (i.e., subheadings 8464.10, 8464.20 and 8464.90). The heading and its subheadings are referred to in the Harmonized System as follows:

Heading	*H.S. Code*	*Description*
84.64		Machine-tools for working stone, ceramics, concrete, asbestos-cement or like mineral materials or for cold working glass.
	8464.10	- Sawing machines
	8464.20	- Grinding or polishing machines
	8464.90	- Other

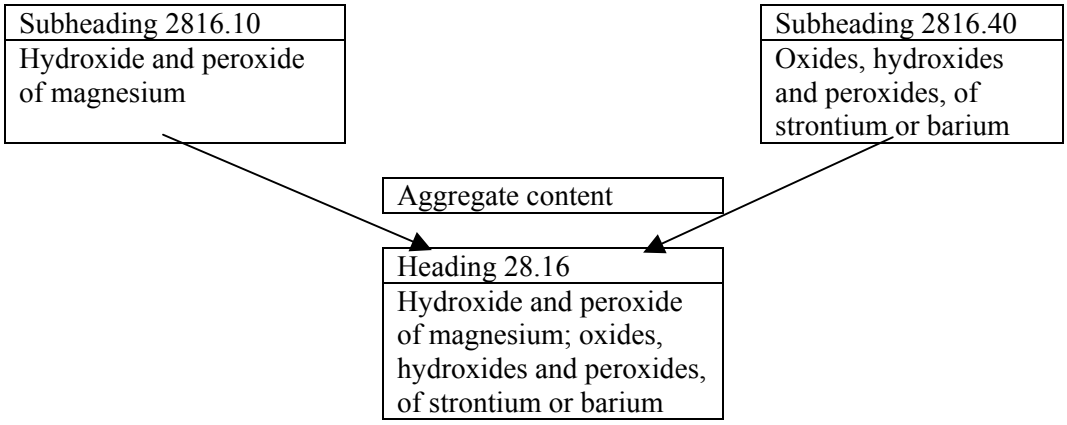
The following is an example of a heading with two one-dash subheadings, each of them being further subdivided into two-dash subheadings.

Heading	*H.S. Code*	*Description*
15.12		Sunflower-seed, safflower or cotton-seed oil and fractions thereof, whether or not refined, but not chemically modified.
		- Sunflower-seed or safflower oil and fractions thereof :
	1512.11	- - Crude oil
	1512.19	- - Other
		- Cotton-seed oil and its fractions :
	1512.21	- - Crude oil, whether or not gossypol has been removed
	1512.29	- - Other

The six digits apply only at the international level. The national tariff may be having eight or ten digits and may therefore be divided into three or four groups.

The aggregate contents of the subheadings of a heading represent the content of that heading. Similarly, the aggregate contents of the headings of a Chapter represent the content of a Chapter, and the aggregate contents of the Chapters of a Section represent the content of that Section. Let us look at the following example:

Subheading 2816.10 covers "hydroxide and peroxide of magnesium" and subheading 2816.40 covers "oxides, hydroxides and peroxides, of strontium or barium". Together, they form heading 28.16, which reads : "hydroxide and peroxide of magnesium; oxides, hydroxides and peroxides, of strontium or barium". This also presented in a diagrammatic format below.



It is important to know the following about the hierarchy of the HS.

- As part of the hierarchy of the HS, sections and chapters are usually arranged in order of degree of manufacture or in terms of the technological complexity of the product. For example, certain agricultural products are classified in Sections I and II while more complex goods such as machinery and precision instruments are classified in the later sections of the HS. Copper ore is classified in heading 26.03 (Section V), copper plates in heading 74.09 (Section XV) and electrical apparatus for making connection in electrical circuits in heading 85.35 or 85.36 (Section XVI).

- Chapters within the individual sections are also usually arranged in a similar order, i.e., by degree of manufacture or complexity. For example, within Section VIII, Chapter 41 deals with raw hides and skins, and leather, while Chapter 42 covers articles of leather.

- Finally, the headings within individual Chapters are similarly structured. For example, Chapter 50 provides for silk products. The first heading in the Chapter provides for silk worm cocoons while articles made of silk are covered by the later headings of the Chapter. Similarly, synthetic filament yarn is classified in heading 54.02, a woven fabric made of this yarn in heading 54.07 and a woman's blouse made of this fabric in heading 62.06.

General Interpretative Rules

To be completely sound, a classification system must associate each individual product with a single heading (and, as the case may be, subheading), to which that product can be simply and unequivocally assigned. Hence it must contain rules designed to ensure that a given product is always classified in one and the same heading (and subheading), to the exclusion of any others which might appear to merit consideration.

The text of the HS therefore incorporates a series of preliminary provisions codifying the principles on which the System is based and laying down general rules to ensure uniform legal interpretation.

There are six of these rules, known as the General Rules for Interpretation which are applied in hierarchical fashion, i.e., Rule 1 takes precedence over Rule 2, Rule 2 over Rule 3, etc.

The General Interpretative Rules thus establish classification principles which, unless the texts of headings, subheadings or Section of Chapter Notes otherwise require, are applicable throughout the Harmonized System Nomenclature.

Moreover, the General Interpretative Rules clearly provide a step-by-step basis for the classification of goods within the HS, so that in every case a product must first be classified to its appropriate 4-digit heading, then to its appropriate 1-dash subdivision within that heading and only thereafter to its appropriate 2-dash subheading within the predetermined 1-dash subdivision, at each step no account being taken of the terms of any lower-level subdivisions. This principle applies without exception throughout the Harmonized System.

Notes

To ensure the uniform application, certain Sections or Chapters are preceded by Notes which, like the General Interpretative Rules, form an integral part of the HS and have the same legal force. Some of these Notes, grouped under the title "Subheading Notes", refer solely to the interpretation at subheading level.

The function of these Notes is to define the precise scope and limits of each subheading, heading (or group of headings), Chapter or Section. This has been achieved, depending on the circumstances, by means of:

General definitions delimiting the scope of a subheading or heading, or the meaning of particular terms. For example, for the purposes of heading 34.02 the term "organic surface-active agents" is defined in Note 3 to Chapter 34, while for the purposes of the whole Nomenclature, the term "plastics" is defined in Note 1 to Chapter 39;
Non-exhaustive list of typical examples. Note 3 to Chapter 86 (railway vehicles) specifies the "railway and tramway track fixtures and fittings" covered by heading 86.08;
Exhaustive list of the goods covered by a heading or subheading. For example, Note 4 to Chapter 30 lists the products which are classified in heading 30.06; and
Exclusions, which list certain articles which should not be classified in a particular Section, Chapter or heading.

From the foregoing it will be clear that the terms of a heading or subheading should be read in conjunction with any relevant Section or Chapter Note, which may, however, not necessarily be located in the same Section or Chapter.

Identification

The first step in classifying a product is to identify it and to describe it in the terms of the classification system, in this case the HS. In other words, when the HS terms at issue differentiate, e.g., according to the degree of purity, the product description should include a reference to its purity, or when the system differentiates between uncooked products and cooked products, one should investigate whether the product has been cooked or not.

Another principle of the HS is that the goods are to be classified as presented. This means that no account is to be taken of whatever may happen afterwards. For example, if someone wants to disassemble a vehicle of heading 87.03 after importation, in order to sell the parts (classified in heading 87.08) separately, he/she still has to declare and to classify the merchandise as presented, i.e., as a vehicle of heading 87.03 and not as a collection of parts.

With a few exceptions (e.g., integrated circuits as described in Note 5 to Chapter 85), the production method is not of importance. In the chemical area, in particular, identification problems may be caused if there is no accompanying qualification which describes the actual product by its name or structure. And without a proper and adequate description, a correct HS classification may be at stake.

Integration at the national level

At the national level, nomenclatures may be used, into which import or export provisions for specific commodities have been integrated (i.e., "integrated Customs tariff"). These provisions may relate to economic measures, environmental measures, etc. It will be clear that misinterpretation of the nomenclature descriptions or of the legal provisions will lead to misclassification of the commodity at issue, which has severe implications with respect to the measures allocated to the correct classification.

Complementary publications

To support the user of the HS, a number of complementary publications are available. The main publications concern the Explanatory Notes and the Compendium of Classification Opinions. The latter contains the descriptions of specific products, together with their appropriate HS code, classified by the HS Committee. Both publications are also available in electronic format on CD-ROM. This CD-ROM also contains a commodity classification data base of about 200,000 products.

A new CD-ROM called "Harmonizer" has recently been released and is available through WCO. This CD-ROM contains an interactive, computer-based training in the Harmonized System, teaching the Harmonized System's background and scope, its structure, the Section and Chapter notes, and the General Interpretative Rules.

HS Amendments

As indicated before, a commodity nomenclature with some 5,200 categories of merchandises cannot be an absolutely rigid instrument. Users of the system request regular updates, which have resulted, so far, in amendments which came into force on 1 January 1992 and on 1 January 1996. The third set of amendments will come into force soon (i.e., on 1 January 2002), while discussions for the next review have started recently. The foreseen implementation date is 1 January 2007.

The Preamble to the HS Convention emphasizes the importance of ensuring that the Harmonized System is kept up to date in the light of e.g., changes in technology. When in the HS a reference is made to a particular technology, further development of that technology or new technologies may cause classification problems or classification anomalies.

Patterns of international trade are also taken into account when considering whether or not a certain reference is still valid. Thresholds have been set for headings and subheadings : USD 100 million and USD 50 million, respectively. When the annual trade volume at world level is lower than the thresholds set, deletion of the heading or subheading concerned may be considered.

The first general review, which came into force on 1 January 1996, resulted in 393 sets of amendments, mainly in the machinery (75), the chemical (70), the textile (56) and the agricultural (55) sectors. Although the larger part of the amendments related to technical developments, some other amendments were related to the social and environmental fields, i.e., the creation of new subheadings to facilitate the monitoring and control of:

- Narcotic drugs and psychotropic substances falling within the Single Convention on Narcotic Drugs (1961), as amended by the 1972 Protocol, and the 1971 Convention on Psychotropic Substances);
- Substances that deplete the ozone layer (Montreal Protocol);
- Specific categories of hazardous waste (spent cells and batteries); and
- Forest resources (recycling of paper, tropical wood).

The second major set of amendments, which was approved by the Council in 1999, also includes amendments related to the social and environmental fields, i.e.,

- Certain species covered by the Convention on International Trade in Endangered Species of Fauna and Flora (CITES);
- Fish falling under the International Conference for the Conservation of Atlantic Tuna (ICCAT);
- Specific categories of waste controlled by the Basel Convention; and
- Narcotic drugs and psychotropic substances falling within the Single Convention on Narcotic Drugs (1961), as amended by the 1972 Protocol, and the 1971 Convention on Psychotropic Substances.

To implement the amendments to the Harmonized System, national legislation is necessary. Due to the complexity of the instrument and the national agencies to be consulted, a timely preparation and publication is needed. Training and technical assistance of the Customs officers and other people dealing with Customs classification, is indispensable. And finally, other (international) organizations should be aware and should take the appropriate steps to have their instruments adapted as well.

The Harmonized System Committee

It is the responsibility of the Harmonized System Committee to take all necessary measures or to make any necessary proposals to the Customs Co-operation Council to ensure the uniform interpretation and application of the System. The basic powers and functions of the Committee are set out in Articles 6 and 7 of the Convention.

Contracting Parties may raise classification questions, although the Committee may also be called upon to deal with questions submitted by other countries or by organizations (e.g., intergovernmental or non-governmental international organizations representing particular trades or industries). In addition, the Committee may be invited to consider classification questions submitted by the WCO Secretariat, which have been raised by national or international governmental or non-governmental organizations.

Where classification divergences are brought directly to the attention of the Secretariat, the facts are to be confirmed by consulting the Contracting Parties concerned. If it is found that there is a real divergence of opinion, the matter is referred to the Committee in accordance with the normal procedure.

Form of decisions taken by the Harmonized System Committee in classification matters

The action taken by the Committee following the examination of a classification question is likely to vary according to the type of case:

(i) Where the classification is already clearly established by the Harmonized System text or the Explanatory Notes and hence does not raise any new or unusual difficulties, the Committee may simply mention the classification decision in the Report on the Committee session at which the question was examined;
(ii) In cases where, although classification can be established under the terms of the Harmonized System or the Explanatory Notes, the question raises new or unusual difficulties, the Committee may issue a Classification Opinion;
(iii) If it is found that the Explanatory Notes do not provide specifically for the resolution of the problem, the Committee may amend or amplify the Explanatory Notes;
(iv) If the classification decision necessitated by the existing Harmonized System texts is not considered by the Committee to be the most appropriate for the goods concerned, the Committee may then propose to the Council that the Nomenclature be amended, corresponding amendments, if necessary, being made to the Explanatory Notes.

WCO Recommendations

Recommendations are prepared by the HS Committee when this Committee considers that the intended measures should be introduced as soon as possible. Remember that amendments to the HS Nomenclature may not be possible within a reasonable period of time. In that case, the Committee, at the request of other international organisations, may prepare a Council Recommendation, with a view to

requesting WCO Member administrations and HS Contracting Parties to insert in their national statistical nomenclatures additional subdivisions to control or monitor certain commodities.

With respect to commodities falling within the environmental agreements, there are currently three WCO Recommendations, i.e., :

- Narcotic drugs;
- Chemical weapons; and
- Ozone layer depleting substances.

The Recommendation concerning narcotic drugs will be revoked from 1 January 2002, given the fact that all but one of the substances listed will be separately identified in the HS.

The WCO Recommendation concerning ozone layer depleting substances refers to part only of the chemicals falling within the Montreal Protocol, since a number of them were separately identified in the HS 1996 amendments.

Remember that the HS 2002 amendments comprise a fair number of provisions related to waste referred to in the Basel Convention.

The Secretariat

One of the roles of the WCO Secretariat (Nomenclature Sub-directorate) is to assist the Committee in its work, by, for example, preparing draft classification opinions with respect to certain commodities. It also gives advice to international organisations with respect to the HS classification of commodities falling within agreements administered by these organisations.

Conclusions

In conclusion, the use of the Harmonized System and its related measures are the most appropriate tool to control and monitor the international movement of goods, thereby complementing the provisions laid down in the Environmental Agreements. 179 countries are using this system for their Customs tariff and statistical nomenclatures.

The HS Committee, together with the HS related publications, play an important part in achieving a high degree of world-wide uniform and consistent application.

The first step for classification is the proper identification of the products, taking into account any particularities arriving from the HS structure.

And finally, regular updates of the Nomenclature guarantee a modern instrument which fulfils the needs of its users. The development of new technologies such as genetically modified foods, are likely to ensure that environmental issues will remain high on the agenda of international policy makers in the foreseeable future, thus placing more emphasis on the Harmonized System for the necessary information.

Thank you for your attention.

Annex II

PRACTICAL PROBLEMS IN APPLYING THE HARMONIZED SYSTEM
(Geneva, 28 and 29 June 2001)
(Izaak WIND, Senior Technical Officer, World Customs Organization)

Introduction

When the Nomenclature of the Harmonized System is used to control or monitor the international trade in commodities of environmental concern, a number of problems may occur. The origin of these problems may be due to the structure of the HS, or may be caused by the different concepts, the different starting points of the instruments involved. Let us try to identify some of them.

Identification

The first step in the classification of a commodity, is to provide a proper description, which takes into account all particulars needed to arrive at the appropriate HS code number. The appropriate heading or subheading for each individual commodity has to be determined on the basis of available information on the goods in question and by application of the texts of the headings or subheadings, the Section, Chapter or any Subheading Notes, the General Interpretative Rules and the relevant Explanatory Notes.

However, there is always the need to pose certain questions to guide you in the process of classifying a given product. Such questions include:

- What do I see?
- What is it?
- How does it look like?
- What is it made of?
- How was it made?
- What is its use/purpose?
- Is there any other information?

What the above information is trying to portray is that classification of a commodity starts with its identification, or in other words: what are its constituent materials; does it contain certain ingredients; what are its dimensions; what is the function of the commodity; etc. In brief: what is it. Without such identification it is not possible to classify goods appropriately, as in several cases the Harmonized System provides for commodities according to constituent material, specific ingredients, dimensions, etc.

A number of secretariats administering environmental agreements have requested the WCO Secretariat to indicate the appropriate HS code number for the commodities covered by the respective agreements. In many cases, however, the information provided was not sufficient to assign an HS code to them.

The following descriptions have been extracted from the Basel Convention list:

(i) Mixed non-ferrous metal, heavy fraction scrap, not containing Annex I materials in concentrations sufficient to exhibit Annex III characteristics;
(ii) Wastes from production, formulation and use of resins, latex, plasticizers, glues/adhesives, not listed in list A, free of solvents and other contaminants to an extent that they do not exhibit Annex II characteristics.

Although it might be possible to assign one or more potential HS code numbers to these descriptions, it might be very difficult to recognise the goods at the moment of import or export, and, consequently, the proper measures may not be taken.

From the foregoing, it will be clear that a proper identification of the commodity is of vital importance to arrive at the correct classification. This means that, in order to classify the commodities of environmental concern appropriately, their descriptions should be unambiguous.

Integration

Many Customs administrations are using integrated nomenclatures, i.e., a combination of the Customs tariff, the national statistical nomenclature and all measures with respect to the import or export of commodities. These integrated nomenclatures may be in the form of an electronic programme.

For example, to monitor the international trade in triethanolamine, the following structure could be used:

Level	*Code number*	*Description*
HS	2922.13	- - Triethanolamine and its salts
National	2922.13	- - Triethanolamine and its salts :
	2922.13.10	- - - Triethanolamine
	2922.13.20	- - - Salts of triethanolamine

If, however, mixtures of triethanolamine with other chemical substances should also be monitored, the separate identification of these mixtures should be provided for in (one or more) other headings, since heading 29.22 does not cover mixtures.

In the case of CITES, it is very difficult to allocate the products containing any parts or derivatives of the species listed. Although the WCO Secretariat has published a list of HS codes which are high risk for CITES, classification in other places is not excluded. Consequently, integration into an automated system of all the possible classifications becomes cumbersome and one must rely on the classification officer, whether or not he or she will notice the possibility of having a commodity falling under CITES.

Finally, integration and identification problems will also occur in the case of monitoring the international trade in goods produced with, but not containing certain chemicals (e.g., CFC's). Identification is only possible by controlling the production process, which is not possible at the point of import or export.

Conclusions

In conclusion, practical problems vis-à-vis the application of environmental agreements at the import or export point, may arise in cases of:

- insufficient description of the commodity; or
- Impossibility of integrating descriptions into a Customs tariff.

Thank you for your attention.
