



BASEL CONVENTION

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**Open-ended Working Group of the Basel Convention
on the Control of Transboundary Movements of
Hazardous Wastes and Their Disposal
Twelfth meeting**

Geneva (online), 22–25 June 2020*

Item 3 (d) (ii) of the provisional agenda**

**Matters related to the work programme of the
Open-ended Working Group for the biennium
2020–2021: international cooperation and coordination:
cooperation with the World Customs Organization on the
Harmonized Commodity Description and Coding System**

**Report on the status of the work of the World Customs
Organization on the Harmonized Commodity Description and
Coding System in relation to the Basel Convention**

Note by the Secretariat

As is mentioned in the note by the Secretariat on Cooperation with the World Customs Organization on the Harmonized Commodity Description and Coding System (UNEP/CHW/OEWG.12/13), annex I to the present note sets out the progress in the work of the World Customs Organization on the Harmonized System related to the Basel Convention; annex II sets out the proposal for amendment to the Harmonized Commodity Description and Coding System with respect to waste oils containing polychlorinated biphenyls (PCBs) at a specific concentration level, which has been submitted to the World Customs Organization by the Secretariat; and annex III sets out a draft proposal on amendments to the Harmonized Commodity Description and Coding system with respect to plastic waste, taking into consideration the amendments to annexes to the Basel Convention adopted by decision BC-14/12. The present note, including its annexes, has not been formally edited.

* Owing to the electronic correspondence procedure to be applied during the twelfth meeting of the Open-ended Working Group, the meeting may run beyond 25 June (but no later than 5 July 2020).

** UNEP/CHW/OEWG.12/1.

Annex I

Progress in the work of the World Customs Organization on the Harmonized System related to the Basel Convention

1. As explained in document UNEP/CHW/OEWG.12/13, amendments to the Harmonized Commodity Description and Coding System (Harmonized System) in respect of electrical and electronic waste and scrap were adopted by the World Customs Organization Council at its 133rd and 134th in June 2019 and will enter into force on 1 January 2022.¹ At its fifty-sixth session, held in November 2019, the Harmonized System Review Subcommittee (RSC) considered proposed amendments to the Explanatory Notes to the new heading for electrical and electronic waste and scrap. Deliberations of that session are summarised below. The fifty-seventh session of the RSC that was scheduled for 25 to 29 May 2020 has been postponed due to the global sanitary situation.

2. The RSC considered a proposal on amendments to the Explanatory Notes to new heading 85.49 for electrical and electronic waste and scrap that had been submitted by a national administration. Deliberations revolved around proposed text for explaining the scope of the new heading and the categories of goods that would fall within that scope upon becoming waste. Delegates also exchanged views about the definition of some key terms in the proposed amendments. Elements that could not be resolved, as well as the entire text of the proposed amendments, were placed in square brackets. The RSC agreed to continue discussion of the draft amendments, as set out in section I of the appendix to the present annex, at its next session.

3. To support these discussions, the Secretariat submitted a note to the Secretariat of the World Customs Organization providing suggestions regarding the draft amendments to the Explanatory Notes to the new heading for electrical and electronic waste and scrap, for consideration by the RSC. The suggestions draw upon related information contained in relevant documents prepared under the Basel Convention namely the technical guidelines on transboundary movements of electrical and electronic waste and used electrical and electronic equipment, in particular regarding the distinction between waste and non-waste under the Basel Convention, the Basel Convention glossary of terms and the practical guidance for the development of inventories of waste electrical and electronic equipment. The note is set out in section II of the appendix to the present annex.

¹ <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/nomenclature/instruments-and-tools/hs-nomenclature-2022/ng0262b1.pdf?la=en>

Appendix

I. Draft amendments to the Explanatory Notes (HS 2022) in respect of heading 85.49 for electrical and electronic waste and scrap

CHAPTER 85.

New page XVI-8549-1. New Explanatory Note to new heading 85.49.

Insert the following new Explanatory Note to new heading 85.49 :

85.49 - Electrical and electronic waste and scrap (+).

- Waste and scrap of primary cells, primary batteries and electric accumulators; spent primary cells, spent primary batteries and spent electric accumulators :

8549.11 - - Waste and scrap of lead-acid accumulators; spent lead-acid accumulators

8549.12 - - Other, containing lead, cadmium or mercury

8549.13 - - Sorted by chemical type and not containing lead, cadmium or mercury

8549.14 - - Unsorted and not containing lead, cadmium or mercury

8549.19 - - Other

- Of a kind used principally for the recovery of precious metal :

8549.21 - - Containing primary cells, primary batteries, electric accumulators, mercury-switches, glass from cathode-ray tubes or other activated glass, or electrical or electronic components containing cadmium, mercury, lead or polychlorinated biphenyls (PCBs)

8549.29 - - Other

- Other electrical and electronic assemblies and printed circuit boards :

8549.31 - - Containing primary cells, primary batteries, electric accumulators, mercury-switches, glass from cathode-ray tubes or other activated glass, or electrical or electronic components containing cadmium, mercury, lead or polychlorinated biphenyls (PCBs)

8549.39 - - Other

- Other :

8549.91 - - Containing primary cells, primary batteries, electric accumulators, mercury-switches, glass from cathode-ray tubes or other activated glass, or electrical or electronic components containing cadmium, mercury, lead or polychlorinated biphenyls (PCBs)

8549.99 - - Other.”

[Electrical and electronic waste and scrap (“e-waste”) of this heading covers a wide range of goods, and any good that has a plug or requires a battery will generally be e-waste at the end of its life cycle.

E-waste for the purposes of this heading are goods suitable only for recovery, recycling or disposal, and not for repair, refurbishment, renovation, reuse or repurposing to render them fit either for their original

purpose or for subsequent trade. Simply being used goods is not sufficient to render goods e-waste. E-waste goods may be physically intact (but non-functional) or in a scrapped condition, for example, broken, cut-up, or otherwise worn or destructed.

E-waste includes, but is not limited to :

- waste, scrap, or spent primary cells, primary batteries or electric accumulators;
- consumer electronics;
- office, information and communications technology devices;
- household appliances;
- power tools;
- electrical or electronic parts, including printed circuit boards.

[Goods that have been broken down to the extent that they meet the definition of Note 8 (a) to Section XV are not included in this Section.]

As goods of this heading are not intended to be reused as individual articles, they are generally shipped in bulk and normally traded by weight rather than unit quantity. Packaging of goods to prevent damage to the individual articles normally indicates that they are not intended for recovery, recycling or disposal and goods presented in such a manner are not classified as e-waste. For example, televisions, cellular phones or batteries individually wrapped in protective wrappings and boxed are not considered to be a shipment of e-waste.

[Mixed consignments of electronic waste and other waste and scrap are classified in the present heading.]

Subheading Explanatory Notes.

Subheadings 8549.11 to 8549.19

[These subheadings cover waste and scrap of primary cells, primary batteries, and electric accumulators of heading 85.06 and 85.07, including spent primary cells and batteries as well as spent electric accumulators as described in Subheading Note 5 to this Chapter.]

For the purposes of these subheadings, the terms “spent primary cells”, “spent primary batteries”, and “spent electric accumulators” mean articles, whether physically intact or in a scrapped condition, for example, broken, cut-up, or otherwise worn or destructed, that are suitable only for recovery, recycling or disposal or, in the case of spent electric accumulators, not capable of being recharged or holding a charge.

These products generally come from : manufacturers of primary cells, primary batteries, and electric accumulators; scrap merchants who buy waste and scrap from manufacturers or merchants who collect and dismantle electric accumulators or collect primary cells and primary batteries.

Consignments from battery manufacturers may consist of positive and negative plates in various proportions or half-assembled elements (e.g., reels made up of a negative plate and a positive plate separated by a fabric “separator” and coiled). The reels may also be pre-assembled inside the container or mixed with unusable defective finished batteries.

Consignments from the dismantling or reclamation of old batteries may contain a mixture of positive and negative plates, with or without separator, as packs, plates or reels.

Spent primary cells, spent primary batteries, and spent electric accumulators are generally intended for processing to recover metals (lead, nickel, cadmium, cobalt, etc.), metal compounds, or slag.

Subheadings 8549.21 and 8549.29

[These subheadings cover electronic waste that [contain] precious metals or precious metal compounds and of the type which are used principally for the recovery of these precious metals.]

Subheadings 8549.21, 8549.31 and 8549.91

[For purposes of these subheadings, the term “containing primary cells, primary batteries, electric accumulators” means primary cells, primary batteries, and electric accumulators, whether spent or functional, and whether physically intact or in a scrapped condition (for example, broken, cut-up, or otherwise worn or destructed, that are contained in or with electronic waste.]]

II. Note submitted to the World Customs Organization regarding the draft amendments to the Explanatory Notes in respect of heading 85.49 for electrical and electronic waste and scrap

Suggestions regarding the possible amendment to the HS 2022 Explanatory Notes in respect of heading 85.49 for electrical and electronic waste and scrap

At its 56th Session, the Harmonized System Review Subcommittee (RSC) considered the proposal for consequential amendments to the Explanatory Notes to new heading 85.49 in respect of electrical and electronic waste. During that session, delegates highlighted a number of elements and terms that would merit clarification. To assist the RSC in further considering the issue at its next session, the Secretariat of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the BC Secretariat) would like to provide some suggestions for revisions to the Explanatory Notes, including suggested definitions for certain terms. These suggestions take into account the comments by the WCO Secretariat in its working document NR1397Ea and the outcomes of the RSC's discussion at its 56th session, summarised in Annex D/8 to Doc. NR1403Ec. They also draw upon related information contained in relevant documents prepared under the Basel Convention namely the technical guidelines on transboundary movements of electrical and electronic waste and used electrical and electronic equipment, in particular regarding the distinction between waste and non-waste under the Basel Convention (technical guidelines), the Basel Convention glossary of terms and the practical guidance for the development of inventories of waste electrical and electronic equipment.

The BC Secretariat is of the opinion that it would be useful if the text of the Explanatory Note to new heading 85.49 includes a reference to Note 6 to Section XVI. The reference would clearly indicate to users of the Harmonized System that the scope of the heading is legally defined by that Note.

Referring to the first and second paragraphs of Annex G/10 to Doc. NR1403Ec, concerning the description of electrical and electronic waste and scrap (e-waste), and responding to a question from the WCO Secretariat, set out in paragraph 8 of document NR1397Ea, the BC Secretariat would like to highlight the following definitions provided in the Basel Convention glossary of terms and the technical guidelines for some of the terms contained in these two paragraphs:

Equipment	Electrical and electronic equipment that is dependent on electric currents or electromagnetic fields in order to work properly, including components that can be removed from equipment and can be tested for functionality and either be subsequently directly reused or reused after repair or refurbishment.
Refurbishment	Modification of used equipment to increase or restore its performance and/or functionality or to meet applicable technical standards or regulatory requirements, with the result of making it a fully functional product to be used for a purpose that is at least the one for which it was originally intended, including through such activities as cleaning and data sanitization.
Repair	Fixing a specified fault in used equipment that is a waste or a product and/or replacing defective components of equipment in order to make the equipment a fully functional product to be used for its originally intended purpose.
Reuse	The using again of fully functional equipment that is not waste for the same purpose for which it was conceived, possibly after repair or refurbishment.
Fully functional	Equipment is fully functional if it has been tested and demonstrated to be capable of performing the key functions that it was designed to perform.
Key function	The essential function of a unit of equipment that will satisfactorily enable the equipment to be used as originally intended.

The glossary of terms and technical guidelines also include definitions for the terms disposal, recovery and recycling. These make direct reference to the Annexes of the Basel Convention and are provided below for information:

Disposal	Any operation specified in Annex IV to the Basel Convention (Article 2, paragraph 4, of the Convention).
Recovery	Commonly used to refer to operations specified in Annex IVB to the Basel Convention.
Recycling	Relevant operations specified in Annex IVB to the Basel Convention.

Reflecting on the concern raised by a delegate during the 56th RSC session, regarding the possible definition of the term “original purpose” in the second paragraph of Annex G/10 to Doc. NR1403Ec, and taking into account the above mentioned definitions, the BC Secretariat would like to provide the following as a possible definition of the term:

“For the purposes of Note 6 to Section XVI and this Explanatory Note, the expression “original purpose” means the purpose and function for which the article was originally conceived and intended.”

The second paragraph of the proposed text of the Explanatory Note to new heading 85.49 in Annex G/10 to Doc. NR1403Ec explains conditions under which goods are to be considered as e-waste for the purposes of that heading. It should be noted that the technical guidelines provides information on situations where used electric and electronic equipment should normally be considered as waste. Taking into account the criteria set out in the technical guidelines, the BC Secretariat would like to suggest additional information that could be included in the Explanatory Notes concerning characteristics of waste electrical or electronic equipment, as follows:

- (i) It is not complete - essential parts are missing and it cannot perform its original key functions;
- (ii) It shows a defect that materially affects its original functionality;
- (iii) It shows physical damage that impairs its original functionality or safety, as defined in relevant standards, and cannot be repaired at a reasonable cost;
- (iv) It is particularly worn or damaged in appearance and its appearance reduces its marketability;
- (v) It is packaged in a manner that is not sufficient to protect individual articles from damage during transportation, loading and unloading operations.

Regarding the third paragraph of Annex G/10 to Doc. NR1403Ec, the BC Secretariat would like to suggest the following modifications to the text of that paragraph, that incorporates additional examples of electrical and electronic waste and draws upon a widely used approach to the categorization of such waste (see the Practical guidance for the development of inventories of waste electrical and electronic equipment):

“Electrical and electronic waste and scrap of this heading includes, but is not limited to, the following, provided that they meet the specifications in Note 6 to Section XVI:

- (a) Waste, scrap, or spent primary cells, primary batteries or electric accumulators;
- (b) Waste electrical and electronic equipment (i.e., equipment that is dependent on electric current or electromagnetic fields in order to work properly) such as:
 - (i) consumer equipment;
 - (ii) information technology and telecommunications equipment;
 - (iii) household appliances;
 - (iv) electrical or electronic power tools;
 - (v) Lighting equipment
- (c) Waste electrical and electronic components, including printed circuit boards;
- (d) Worn garments and other textile articles, and footwear, headgears, etc. incorporating electrical or electronic components;

- (e) Waste toys, leisure and sports equipment incorporating electrical or electronic components.

Regarding the concerns raised during the 56th session of the RSC about the types of waste that are excluded from new heading 85.49, the BC Secretariat supports the inclusion of text in the Explanatory Notes to provide clarity on this issue. A paragraph on excluded waste types could read as follows:

“This heading, however, does not cover:

- (a) Waste and scrap containing radioactive substances of heading 28.44 (heading 28.44).
- (b) Municipal waste, as defined in Note 4 to Chapter 38 (heading 38.25) (see also Note 6 (C) to Section XVI).
- (c) Goods that have been broken down to the extent that they meet the definition of Note 8 (a) to Section XV and does not incorporate any electrical or electronic component (Section XV).”

Relevant documents prepared under the Basel Convention referred to above can be accessed through the website of the Convention as follows:

- Technical guidelines on transboundary movements of electrical and electronic waste and used electrical and electronic equipment, in particular regarding the distinction between waste and non-waste under the Basel Convention: <http://www.basel.int/Implementation/tabid/8025>
- Basel Convention glossary of terms: <http://www.basel.int/tabid/3622>
- Practical guidance for the development of inventories of waste electrical and electronic equipment: <http://www.basel.int/tabid/1498>

Annex II

Proposal for amendment to the Harmonized Commodity Description and Coding System with respect to waste oils containing polychlorinated biphenyls (PCBs) at a specific concentration level

The Secretariat of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal respectfully submits for consideration by the Harmonised System (HS) Review Sub-Committee for consideration at its 57th session a proposal for amendment to heading 27.10 of the HS to specifically provide for waste oils containing PCBs at a concentration level of 50 mg/kg or more.

Reasoning for the proposed amendment

Waste oils containing, consisting or contaminated with PCBs at a concentration level of 50 mg/kg or more fall within Annex VIII to the Basel Convention within entry A3180. Wastes contained in Annex VIII to the Basel Convention are wastes characterized as hazardous under Article 1, paragraph 1 (a) of the Convention and their transboundary movements are regulated in accordance with the provisions of the Convention. Parties to the Basel Convention have the overall obligation to ensure that such transboundary movements are minimized and that any transboundary movement is conducted in a manner which will protect human health and the environment. In addition to these general obligations, the Convention provides that transboundary movements can only take place if certain conditions are met and if they are in accordance with strict procedures on prior informed consent.

The proposed amendment to heading 27.10 of the HS aims at facilitating the effective implementation of the requirements of the Basel Convention with regard to the significant amounts of waste oils containing PCBs that are imported and exported annually. Waste oils containing PCBs can currently be classified in subheading 2710.91 of the HS. The description of this subheading does not specify the level of PCBs contained in waste oils. An amendment to heading 27.10 is therefore proposed to discriminate between waste oils deemed hazardous from other waste mineral oils. The concentration level of 50 mg/kg corresponds to the hazardous waste threshold specified in entry A3180 in Annex VIII to the Basel Convention.

Proposed amendment to heading 27.10

- “ - Waste oils :
- 2710.92 -- Containing polychlorinated biphenyls (PCBs) at a concentration level of 50 mg/kg or more
 - 2710.93 -- Containing polychlorinated biphenyls (PCBs) at a concentration level of less than 50 mg/kg
 - 2710.94 -- Other containing polychlorinated terphenyls (PCTs) or polybrominated biphenyls (PBBs)
 - 2710.99 -- Other”.

Annex III

Draft proposal on amendments to the Harmonized Commodity Description and Coding System with respect to plastic waste

Heading 39.15.

Delete and substitute:

“39.15 - Waste, parings and scrap, of plastics.

- 3915.40 - Containing one or more of the following constituents: hexavalent chromium compounds; zinc compounds; arsenic and its compounds; cadmium and its compounds; antimony and its compounds; mercury and its compounds; lead and its compounds; asbestos (dust and fibres); organohalogen compounds
- Other waste, parings and scrap, consisting of single unmixed non-halogenated plastics:
- 3915.51 -- Of polymers of ethylene
- 3915.52 -- Of polymers of styrene
- 3915.59 -- Of other single unmixed plastics
- Other waste, parings and scrap, consisting of single unmixed halogenated plastics:
- 3915.61 -- Of polymers of ethylene
- 3915.62 -- Of polymers of styrene
- 3915.63 -- Of polymers of vinyl chloride
- 3915.64 -- Of other fluorinated polymers
- 3915.69 -- Of other single unmixed plastics
- Other waste, parings and scrap, consisting of mixtures of plastics:
- 3915.81 -- Mixtures of two or more of the following polymers: polymers of ethylene; polymers of propylene; poly(ethylene terephthalate)
- 3915.89 -- Other mixtures”.
-