

Submission from the EU on harmonisation of customs nomenclature codes to control implementation of Article 4 and Annex A (Part I) of the Minamata Convention on Mercury regarding the prohibition to manufacture, import and export certain mercury-added products as from certain dates

In accordance with Decision MC-2/9 (*Harmonized System codes*), the Secretariat of the Minamata Convention on Mercury ('Convention') published on Minamata website on 7 June 2019 a *draft report on possible mechanisms for consideration by the third meeting of the Conference of the Parties to identify and distinguish non-mercury-added and mercury-added products listed in Annex A to the Minamata Convention on Mercury on the harmonised Tariff System*.

The EU welcomes the efforts of the Convention's Secretariat and of the United Nations Environmental Programme Global Mercury Partnership – Products Partnership in developing this draft report.

The draft report contains useful information on the global Harmonised Commodity Description and Coding System (HS) and its interplay with national or regional customs nomenclature codes/systems, including the EU Combined Nomenclature (CN). Section 6 describes possible approaches to identify and distinguish mercury-added products (MAPs) listed in Annex A to the Convention from non-MAPs and to harmonise new customs nomenclature codes. It also discusses the potential associated limitations.

Whereas this draft report will undoubtedly enhance common understanding among Parties on the matter, the EU would like to share the following views:

1. The time factor (e.g. 5-year cycle to amend the HS) and the need for a dynamic system capable of dealing rapidly with possible future amendments to Annex A (Part I) to the Convention are among the key parameters to consider when discussing the possible use of customs nomenclature codes and approaches for doing so.
2. Whilst the draft report makes clear that customs nomenclature codes are used for tariffs and statistical purposes relating to commodities that are internationally traded, the development of customs nomenclature codes for products that are not deemed to be subject to international trade is not common practice.
3. We understand that a number of Parties are interested in the development of an enforcement tool that would be useful for ensuring compliance, regarding in particular imports, with the provisions of the Convention, including its Article 4(1) and Annex A (Part I). The draft report should therefore discuss the potential role of customs nomenclature codes in controlling imports of relevant products by customs authorities and the limitations of using such codes for such purpose.

Given that imports (and exports) of MAPs listed in Annex (Part I) to the Convention are prohibited as from 2021, new customs nomenclature codes for these MAPs might not be used by importers to carry out international trade. It cannot either be excluded that some importers could be tempted to notify in customs documentation codes corresponding to a non-MAP to carry out imports. This may occur both in cases of outright bans of MAPs (e.g. mercury-containing pesticides) and in cases where mercury content is limited (e.g. compact fluorescent lamps for general lighting purposes that are ≤ 30 watts). Accordingly, should customs authorities rely only upon customs nomenclature codes communicated by traders to let products enter in the territory of the concerned importing country; there may be a significant risk of fraudulent trade.

4. The draft report should cover additional possible options for consideration. For example:
 - One option could consist in associating to existing customs nomenclature codes information on applicable regulatory trade restrictions to ensure that customs and market surveillance authorities are made fully aware of import and export prohibitions affecting MAPs listed in Annex A to the Convention.
 - Another option could consist in requiring importers to formally declare to customs authorities of importing countries that products intended to be traded are not among those that cannot be imported and exported in accordance with the Convention.
