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Proposed amendment to the World Customs Organization (WCO)

Submission by Mauritius

The annex to the present note contains a proposed amendment submitted to the World Customs Organization by the Government of Mauritius suggesting that the Harmonized Commodity Description and Coding System codes for five hydrochloroflourocarbons controlled by the Montreal Protocol be reassigned so that the substances can be individually identified.

The proposed amendment is presented for the information of the Meeting of the Parties to the Montreal Protocol as submitted by Mauritius and has not been formally edited.

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Annex

**PROPOSED AMENDMENT SUBMITTED
TO
THE WORLD CUSTOMS ORGANISATION
TO
REVISE THE HS CODES FOR HYDROCHLOROFLUOROCARBONS**

1. COUNTRY SUBMITTING THE PROPOSED AMENDMENT

[Mauritius]

2. SUMMARY

We propose to re-assign the Harmonised Commodity Description and Coding System (HS) codes for ozone-depleting substances (ODS) controlled by the Montreal Protocol on "Substances that Deplete the Ozone Layer" so that five hydrochlorofluorocarbons (HCFCs) important in international trade can be individually identified. HCFCs are now the most predominant ODS traded internationally as they have been mainly used as replacements for chlorofluorocarbons (CFCs) in refrigeration & air-conditioning, foam blowing and solvent sectors. As a result, CFC production and consumption is almost phased out globally. HS codes for key HCFCs have become necessary recently as some Parties to the Montreal Protocol aim to reduce and phase out the most ozone-depleting HCFCs first, following an agreement by the Parties in 2007 to phase out all HCFCs. The management of the reduction and phase out of individual HCFCs by such Parties would be facilitated by the monitoring and control of the export and import of HS-coded HCFCs.

3. GOAL

To manage the reduction and elimination of the main HCFCs in global trade by re-assignment of the HS codes for ODS to allow important, globally-traded HCFCs to be individually identified.

4. CONTEXT

4.1 The Montreal Protocol

The Montreal Protocol on "Substances that Deplete the Ozone Layer" contains, *inter alia*, phase-out schedules for the production and consumption of ODS. As "consumption" is defined as "*production plus imports minus exports*", the monitoring and control of trade of ODS depends on accurate identification of ODS imports and exports in order to facilitate ODS reduction and phase out.

The most important category of ODS is now HCFCs. This is because HCFCs, which have relatively low ozone-depleting potentials (ODPs), have been increasingly used in the past 15 years to replace highly ozone-depleting chlorofluorocarbons (CFCs) in wide-ranging applications such as refrigeration, air-conditioning, solvent, foam blowing and fire extinguishing.

As a result, the global consumption of HCFCs has increased over last two decades from about 400 tonnes in 1988 to about 640,000 tonnes in 2008, with further significant increases expected in the near future. At the same time, the global consumption of CFCs has decreased dramatically from their peak of more than a

million tonnes in 1986 to less than 35,000 tonnes today. A further significant decrease in the production and consumption of CFCs is expected as the global phase out of production on 1 January 2010 approaches.

In response to the potential damage to the ozone layer and the climate system by ongoing increases in the production and consumption of HCFCs, the Parties to the Montreal Protocol agreed in September 2007 to reduce and phase out HCFCs globally by 2040.

The Parties to the MP requested the WCO in 1997 to establish separate HS codes for the most commonly used HCFCs¹. In response, the WCO recommended that the Contracting Parties to the HS Convention apply, in their national customs classification, the additional subdivisions to HS subdivision 2903.49 to allow codes for 6 HCFCs². At that time, the WCO could not assign individual codes to HCFCs as there was no available free space for such assignments in that HS subdivision.

However, the Parties to the Montreal Protocol have been reluctant to follow the recommendation as each might develop different extensions of the 6-digit HS code, which could complicate identification of shipments traded internationally. This complication could be avoided if internationally-accepted codes for individual HCFCs were to be developed. It was probably for this reason that in 2003 and 2006 the WCO revoked its own recommendation submitted in 1997.

Although previous amendments to the HS code were not successful, the WCO did approve an amendment in 2007 that allowed individual HS codes for mixtures containing HCFCs³.

Aware of that success, in 2007 the Parties agreed a further decision that, *inter alia*, requested "the Ozone Secretariat to continue to collaborate with the WCO in relation to possible actions by Parties on any new amendments to the HS with respect to ODS and to report to the Parties of the Montreal Protocol on actions taken at the WCO"⁴. Although the text does not refer specifically to HCFCs, the Parties were aware of the need to adapt the HS to reflect the significant changes in the quantities of CFCs/halons (diminishing) and HCFCs (increasing) traded internationally and, moreover, to assign separate customs codes for HCFCs.

4.2 HS codes for ozone-depleting substances

The WCO manages the periodic updating of the HS in the light of developments in technology and changes in trade patterns⁵. For these specific reasons, it is now necessary to change the HS codes for ODS to accommodate individual codes for HCFCs.

It is not possible to place HCFCs in codes outside of the 2903.41 to 2903.49 range as this is occupied by other chemicals. However, individual code assignment to HCFCs can be managed within this range because the decline in the international trade in CFCs has removed the need to distinguish them using the 5 HS codes in the current system, thereby freeing up four code spaces which would then be available to be re-assigned to other ODS.

¹ Decision 0022 "Customs Codes", Ninth Meeting of the Parties to the Montreal Protocol, 15-17 September 1997.

² Customs Cooperation Council, 25 June 1999. Recommendation to insert national statistical nomenclatures of subheadings to facilitate the collection and comparison of data on the international movement of substances controlled by virtue of amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer.

³ WCO, 2007. Submission by the Ozone Secretariat requesting HS-codes for mixtures containing HCFCs.

⁴ Decision XIX/12 "Preventing illegal trade in ozone-depleting substances" Nineteenth Meeting of the Parties to the Montreal Protocol, 17-21 September 2007.

⁵ http://www.wcoomd.org/in/en/topics_issues/harmonizedsystem/

ODSs are currently classified in HS subdivision 2903 "Halogenated derivatives of aliphatic hydrocarbons containing two or more different halogens" (Table 1).

Table 1: Current assignment of HS codes in subdivision 2903 "Halogenated derivatives of aliphatic hydrocarbons containing two or more different halogens".

HS code	Compound name	Compound common abbreviation or description
2903.41	Trichlorofluoromethane	CFC-11
2903.42	Dichlorodifluoromethane	CFC12
2903.43	Trichlorotrifluoroethanes	CFC-113
2903.44	Dichlorotetrafluoroethanes & pentachlorofluoroethane	CFC-114 & CFC-115
2903.45	Other derivatives perhalogenated only with fluorine & chlorine	Other CFCs
2903.46	Bromochlorodifluoromethane, bromotrifluoromethane & dibromotetrafluoroethanes	Halons 1301, 1211 & 2402
2903.47	Other perhalogenated derivatives	Other compounds perhalogenated with two different halogens, e.g. those containing fluorine and iodine, chlorine and iodine or bromine and iodine
2903.48	Free	No compounds assigned
2903.49	Other	HCFCs, HBFCs, BCM & many others

We propose an amendment to the HS codes to accommodate separate HS codes for 5 HCFCs, as they will predominate global trade in ODS up to 2030 (Table 2).

Table 2: Proposed assignment of HS codes in subdivision 2903 "Halogenated derivatives of aliphatic hydrocarbons containing two or more different halogens".

HS code	Compound name	Compound common abbreviation or description
2903.41	Perhalogenated only with fluorine and chlorine	Includes all CFCs
2903.42	Perhalogenated only with fluorine and bromine <u>or only fluorine, chlorine and bromine</u>	Includes all halons
2903.43	Other perhalogenated derivatives	Includes all compounds perhalogenated with two or more halogens other than only fluorine and chlorine, <u>only fluorine and bromine</u> or only fluorine, chlorine and bromine
2903.44	Chlorodifluoromethane	HCFC-22
2903.45	Dichlorotrifluoroethanes	HCFC-123 (covers two isomers)
2903.46	Dichlorofluoroethanes	HCFC-141 (covers 3 isomers including HCFC-141b)
2903.47	Chlorodifluoroethanes	HCFC-142 (covers 3 isomers including HCFC-142b)

HS code	Compound name	Compound common abbreviation or description
2903.48	Dichloropentafluoropropanes	HCFC-225 (covers 9 isomers)
2903.49	Other	Remaining HCFCs, HBFCs, BCM and many others

In selecting the HCFCs for individual codes⁸, we were guided by the proposals for adjustments to the HCFC control schedules submitted in 2007 by the USA and Argentina/Brazil to the Parties to the Montreal Protocol.

The USA proposed phasing out HCFC-22, HCFC-141b and HCFC-142b ahead of other HCFCs because of their large volumes and relatively high ozone-depleting potentials, relative to other HCFCs. In addition to the three chosen by the USA, Argentina/Brazil defined another group of HCFCs that included HCFC-21, HCFC-124, HCFC-225 and HCFC-123.

The justification for assigning individual customs codes to those HCFCs selected by Argentina/Brazil warrants further consideration. HCFC-21 is no longer produced commercially in significant quantities, and therefore it may be excluded from consideration. HCFC-124 is used as refrigerant, but mostly as component of refrigerant blends, so its candidature for an individual HS code is not a priority. HCFC-123 has a relatively low ODP and is used mainly for feedstock, but it also has a minor use as a refrigerant in centrifugal chillers, and therefore its candidature for an individual HS code is appropriate. Finally, some HCFC-225 isomers (9 in total) are mostly used as solvents, so this is an entirely separate use from refrigeration or foam blowing and therefore an individual HS code for HCFC-225 is justifiable.

Halons were mainly used as fire-fighting agents. Although they are no longer produced, limited quantities are stored and traded worldwide mainly for use in military equipment where alternatives have yet to be developed. Currently, halons do not have separate codes and we propose to continue this in the future.

The proposed text of the operative paragraph of the suggested amendment is presented in Section 4 of this submission.

4. LEGAL TEXT – PROPOSED AMENDMENT

We suggest the operative text of HS subdivision 2903 "Halogenated derivatives of aliphatic hydrocarbons containing two or more different halogens" is amended as follows:

Subheading 2903.41

Delete and substitute :

"2903.41 --Perhalogenated only with fluorine and chlorine"

Subheading 2903.42

Delete and substitute :

"2903.42 --Perhalogenated only with fluorine and bromine or only with fluorine, chlorine and bromine"

Subheading 2903.43

Delete and substitute :

"2903.43 --Other perhalogenated derivatives of aliphatic hydrocarbons containing two or

⁸ For the purpose of HS classification it may be necessary to list the isomers HCFC-141 and 141b together and the isomers HCFC-142 and 142b together – as proposed in WCO recommendation.

more different halogens”

Subheading 2903.44.

Delete and substitute :

“2903.44 --Chlorodifluoromethane

Subheading 2903.45.

Delete and substitute :

“2903.45 --Dichlorotrifluoroethanes”

Subheading 2903.46.

Delete and substitute :

“2903.46 --Dichlorofluoroethanes”

Subheading 2903.47.

Delete and substitute :

“2903.47 --Chlorodifluoroethanes”

Subheading 2903.48.

Delete and substitute :

“2903.48 --Dichloropentafluoropropanes”

5. CONCLUSIONS

The change to HS subdivision 2903 “Halogenated derivatives of aliphatic hydrocarbons containing two or more different halogens” will assist the Parties to the Montreal Protocol to monitor and control the trade in different types of HCFCs, which will aid in the management of their reduction and phase out.

As the reduction is already underway in many countries, it would be very helpful if the revised HS codes were to be agreed in the WCO at the earliest possible opportunity.