Good morning everyone, I’m pleased to be here on behalf of CIRCA, which represents Producers and Marketers of Coal Combustion Products in Canada.

I’m going to speak to an opportunity that presents itself to proponents of CCPs.
In brief, this will introduce the World Customs Organization’s Harmonized System (HS)
It’s relevance to trade and it’s classification of Coal Ash.

I’ll address Opportunities to amend the HS, incentives to do so, and describe some efforts in process.
To establish context, it’s helpful to know the HS was developed through international efforts, over many iterations.

The objective, was to classify goods in order to facilitate international trade
And after decades of work, the 1922 version classified 186 commodities into 5 groups)
(live animals, food & beverages, raw/simply prepared materials, manufactured goods, gold & silver)

In 1931, the classification system came to be named the Geneva Nomenclature, by which time it had evolved to include 991 headings, arranged into 86 chapters.
Work continued and in 1937 the Geneva Nomenclature was revised.

It was renamed at the 1950 Brussels Convention to the Brussels Tariff Nomenclature again in 1974 to the Customs Cooperation Council Nomenclature.

By this time the Nomenclature had grown to 1241 headings, in 99 chapters.
What’s more, there was the addition of Explanatory Notes to support the classifications.

In 1983 the CCCN was replaced by the Harmonized commodity description and coding System
And 5 years later, the Harmonized System entered into force (in 1988)
Today, the Harmonised System is a comprehensive “product nomenclature”, Comprised of about 5,000 commodity groups; each identified by a 6-digit code.

The HS has legal status, classifying over 98 % of the merchandise in international trade.
With 138 signatories, the HS is used by more than 200 countries as a basis for Customs tariffs and the collection of international trade statistics.

It has evolved into “a universal economic language and code for goods, and an indispensable tool for international trade”, used by governments, international organizations and the private sector for a variety of policy, legislative and economic purposes.
I want to give you some detail about how the HS is arranged so we can appreciate the logic behind its classifications.

Warning: this may test your patience for minutia, but if you bear with me for the next few slides, we’ll see there’s good reason for it.

Here we can see that a single Heading may cover a range of commodities, considered to fall into the same category. I want to note that 26.21 seems a rather broad Heading, as it covers slag, Ash, Seaweed Ash and Ashes from MSW.

To some degree, this awkwardness is mitigated by Subheadings, that serve to differentiate commodities by separate subheadings for some Heading contents.

In addition, the “Explanatory Notes” that first appeared in 1974 are provided in an Appendix to define commodities in still greater detail.
The Heading relating to Coal Ash is in Chapter 26 “Ores, Slag and Ash”

Now, again to understand the logic behind HS classifications, it’s by looking at Headings in close proximity that one discerns bases for different Headings. Headings 26.18 & .19 deal with slag, dross, scalings and waste from the manufacture of iron or steel

26.20 moves on to ash & residues Other than from the manufacture of iron or steel

By the time we get to Heading 26.21, it seems the common denominator among commodities cited is that they don’t fall into other chapter Headings, Which are differentiated here, by their inclusion or exclusion from iron or Steel manufacture.
Subheadings under Heading 26.21, provide additional detail. (these are the six digit codes I mentioned earlier (Slide 4)

And they confirm that commodities listed under Heading 26.21 have to do with exclusion from other Headings:

Heading 26.21.90 covers slag and ash not falling in heading 26.18, 26.19 or 26.20, derived from the working of ores or from metallurgical processes, as well as those derived from any other material or process. *(bold typeface is true to the HS, not mine)*

“Other” includes Coal Ash among the first of five commodities listed, materials with which it has little in common:
While we can appreciate the crumb of credibility inferred with the “product” preamble,

The 2621.90 Subheading fails to really distinguish Coal Ash from other ashes or wastes under the same “Other” Subheading,

Rather it seems to group Coal Ash with other commodities of comparatively little value and/or wastes with hazardous properties.

And one more thing, I’m sure you’ve noticed for yourselves, there’s no “Coal Ash”, in sight.
And in terms of understanding Coal Ash, the subheading does little to educate HS users about the material.

I'll remind you that HS users are governments, international organizations and the private sector which are referring to the Harmonized System for policy, legislative and economic purposes.

In fact we have leave the HS itself to find a definition of Coal Ash in the Explanatory Notes Appendix.

There, finally, the commodity definition for “Coal Ash” instructs an HS user’s understanding of the material and its uses, under “Ash and clinker of mineral origin (e.g., coal, lignite or peat ashes)”

An aside for more context; “Waldo” here is the subject of a series of books, meant to provide hours of entertainment as readers engage in their search.

For Waldo in any number of complex illustrated scenarios. In this case, he seems a character well-suited to the identification of Coal Ash in the HS.
The detail provided in Explanatory Notes begins to do justice to Coal Ash, itemizing different types of Coal Ash.

and going into more detail on physical characteristics. – This is good.

But it also leaves Coal Ash in the broad “Other” classification among byproducts of industries processing vegetable,
bone and sugar wastes, along with ashes from municipal waste incineration.

The a lack of commonality in terms of market demand, valuation of that demand, or the applications that underpin them, is startling.

The “Other” Subheading seems to underscore the fact that the commodities listed are mixed bag of materials that don’t fit under other Subheadings.
And there’s more,

Whereas HS Headings and Subheadings have legal status, the “Explanatory Notes” do not enjoy the same legal status as the HS itself.

In most nations the “Explanatory Notes” are not legislated, but only “recognized as authoritative”

Qualification for Heading or Subheading recognition in the HS is predicated on the value of annual, international trade
Volumes of $100M and $50M respectively.

And it is noteworthy that neither “Coal Ash” nor “Ash and clinker of mineral origin” are specified in the title of either the Heading (26.21) [1], or Subheading (2621.90) under which its presently classified.

As the HS lists only Headings and Subheadings, an HS user must search beyond the legal text to discover more detail of Subheading constituents.
Clearly, the 21.90.90 classification falls short, failing to distinguish Coal Ash from other ashes or wastes under the same “Other” Subheading, and effectively ranking Coal Ash among commodities of comparatively little value and/or wastes with hazardous properties.

HS 21.90.90 overlooks lack of commonality in terms of market demand, valuation of that demand, or the applications that underpin them.

And, as “Explanatory Notes” entries suggest no valuation of trade volumes, their inclusion of Coal Ash effectively understates the importance of Coal Ash trade.

In terms of product identification in a global market, these crucial shortcomings undermine the international community’s appreciation of our product.
The HS Classification of Coal Ash falls short because even when we know what we’re looking for…. … it’s not easy to find.

The current classification does nothing to support HS Users’ appreciation of Coal Ash.

But to be clear, it’s not meant to. As a product nomenclature, the HS is intended to capture commodities in trade, Not to promote them.

While the current classification is obviously in no danger of promoting Coal Ash, it may well beg questions of the Ash industry, like is this sufficient?, is this effective? is this all we can do?
Happily, there is something we can do to improve the lot of Coal Ash in the HS.

That is to propose re-classification based on: The value of annual international trade in Coal Ash

Quantifying international trade in Coal Ash can qualify “Ash and clinker of mineral origin” for Heading or Subheading status to reset the context in which Coal Ash is understood.

$100M annual international trade would qualify “Ash and clinker of mineral origin” for explicit mention in the HS Heading.

$50M annual international trade would qualify “Ash and clinker of mineral origin” for a dedicated Subheading to clearly distinguish Coal Ash from other commodities presently listed under 26.21 Subheadings (i.e.: “Ash and Residues from the Incineration of Municipal Waste” and “Other”).

A successful proposal would therefore confer legal status on “Ash and clinker of mineral origin”, making it more visible to HS users.

Because proposals to amend HS Headings or Subheadings must be supported by multiple, national proponents and global trade statistics, international participation is essential.

This is Necessarily an international effort....
The HS Committee is charged with maintaining the HS, examining policy matters and deciding on questions of classification.

Only HS Committee Members can initiate Proposals to amend the HS.
- National HS Review Committees are presently reviewing proposals for HS Committee consideration in 2012.

Support re-classification proposals with:
- Environmental impacts of Coal Ash use & development of new technologies furthering Coal Ash’s use will provide additional impetus.

The HS Committee is charged with maintaining the HS, examining policy matters and deciding on questions of classification to amend the HS and “Explanatory Notes”

Only HS Committee Members can initiate Proposals to amend the HS, and they work on a 5-year cycle.

National HS Review Committees are presently reviewing proposals for HS Committee consideration in 2012.

Here, we can appreciate that getting on the HS Committee agenda can be a challenge, but one the Ash industry is well equipped to undertake.

Since we are advised that environmental impacts of Coal Ash use and development of new technologies furthering Coal Ash’s use will provide additional impetus to any proposal presented for HS Committee consideration.

As we know, there is plenty of environmental benefit to underscore Coal Ash use.
So, there is a prescribed process; though I’m not sure that “Easy” is a fair description,

The first step is conferring with National HS Committee Members (asap) so they are aware of the intent and can provide input.

As the HS Committee Member will have to champion the proposal, their buy-in, interest and commitment to the proposal is important.

Developing a proposal to re-classify Coal Ash will be a compromise between what the Ash industry might like to see vs. what HS administrators are committed to:

A nomenclature classification, based on

- The value of annual international trade in Coal Ash;
- Environmental impacts of Coal Ash use & development of new technologies furthering Coal Ash’s use will provide additional impetus.

The next step is to submit a 2-3 page proposal to International HS Committee, through your National HS Committee representative (asap)

Then await National HS Committee feedback (summer 2011) to refine, confirm their acceptance/submission to the International HS Committee Agenda

And finally, await International HS Committee deliberation (Fall, 2012)…. All when time is short.
So, why Bother?

A successful effort would:

• Conf er legal status of Coal Ash as an internationally traded commodity;
• Raise the profile of Coal Ash in international trade/tariff literature;
• Educate HS administrators and users as to uses of Coal Ash that underpin demand & trade (policy makers, legislators, tariff agents);
• Establish the economic significance of beneficial use;
• Defend Coal Ash’s contribution to sustainable practice against technical ignorance, regulatory barriers and political impulse;
• Support efforts to establish Coal Ash as a “product” and a mineral resource, qualified for specific applications.

So, why bother?

Recent developments in industry specifications, regulation and legislation affecting the management of Coal Ash the world over indicate a better understanding of Coal Ash is sorely needed.

Despite its inclusion in national specifications/programs over the last decade and despite corresponding increases in demand and use, the public perception of Coal Ash remains vulnerable to technical ignorance, inappropriate regulatory barriers and political impulse.

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• Raise the profile of Coal Ash in international trade/tariff literature;
• Educate HS administrators and users (policy makers, legislators, tariff agents) as to uses of Coal Ash that underpin demand & trade
• Establish the economic significance of beneficial use;
• And
• Defend Coal Ash’s contribution to sustainable practice against technical ignorance, regulatory barriers and political impulse;

A successful effort would support international efforts to establish Coal Ash as a “product”
And there have been substantial efforts to establish Coal Ash as Product, making the case for a positive evaluation of Coal Ash.

In the European Union, European Coal Ashes have been registered as products under REACH (“Registration, Evaluation, Authorization and Restriction of Chemicals” Regulation);

• The European “Waste Framework Directive” distinguishes wastes, by-products and products, and charts the evolution of a material from one status to another;

• ECOBA/EURELECTRIC “Joint Briefing on The Classification of Coal Combustion Products under [Europe’s] Revised Waste Framework Directive (2008/98/EC)” establishes “CCPs” as the preferred term *, asserts CCPs’ value based on “quality criteria, standards, regulations or user-imposed technical requirements” and indicates CCPs “have no negative impact on the environment or on human health when put to beneficial use”.

* The HS classifies FGD Gypsum separately from Coal Ash, under heading 25.20 “Ores”.

And under REACH (“Registration, Evaluation, Authorization and Restriction of Chemicals” Regulation);

• The European “Waste Framework Directive” distinguishes wastes, by-products and products, and charts the evolution of a material from one status to another;


It asserts CCPs’ value based on “quality criteria, standards, regulations or user-imposed technical requirements” and

It indicates CCPs “have no negative impact on the environment or on human health when put to beneficial use”.
In the UK, the United Kingdom Quality Ash Association has also accomplished Coal Ashes’ transition from “waste” to “product” for specific applications, in collaboration with its national “Waste & Resources Action Programme” (WRAP). The UK “Quality Protocol” defines “criteria when coal fired ash products, PFA or Fly Ash and FBA can be used without the necessity of obtaining waste exemptions/permits and licences.”

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  http://www.ukqa.org.uk/qualityprotocol/index.html

- Australian regulatory exemptions for Coal Ash in specific applications

In the UK, the United Kingdom Quality Ash Association has also accomplished Coal Ashes’ transition from “waste” to “product” for specific applications, in collaboration with its national “Waste & Resources Action Programme” (WRAP). The UK “Quality Protocol” defines “criteria when coal fired ash products, PFA or Fly Ash and FBA can be used without the necessity of obtaining waste exemptions/permits and licences.”

Australians too have taken progressive action to effect regulatory exemptions for specific (& unencapsulated) uses of Coal Ash. The Ash Development Association of Australia’s close work with regulators addressed domestic Ashes, in the context of applications in demand.
Back home, Environment Canada develops and enforces regulations that shape the Canadian context for the management and trade of CCPs. And Canada’s historical ties with the UK have maintained a relationship between Canadian and European approaches to regulation.

In Canada, classification of Ash is influenced by international commitments.

Canada’s Environmental Protection Act (CEPA) cites the Basel Convention as a primary basis for Canadian environmental regulation. This relationship with the Basel Convention sets CDN regulation apart from that of the US. Since Canada is signatory to Basel; but the US is not.

To illustrate, our Export Import of Hazardous Waste and Hazardous Recyclable Materials Regulation dictates practices for transboundary movement of Ash, affecting the movement of Ash, from generation to final disposal.

And it references 3 international agreements:

1. **Canadian Environmental Protection Act (CEPA 1999)**
   - References the Basel Convention;
   - Canada is signatory to Basel; the US is not.

2. **Export/Import of Hazardous Waste and Hazardous Recyclable Materials Regulations (Transboundary Movement)**
   - References 3 international Agreements (Basel, OECD & US/Canada)

   *“Environment Canada has no intent of specifically listing Coal Ash as hazardous waste or hazardous recyclable material”* - Nov. 2009

   *“CEPA 1999 definitions will be for international as well as interprovincial movements, international obligations also have to be considered”* - Feb. 2010

An update of Export/Import Regulations is underway to incorporate HW and HRM into EIHWHRM Regulations for final disposal.

While we now await publication of the new Export/Import Regulation (expected in the Canada Gazette January, 2011) we have also

Twice been assured that Environment Canada will not follow the US EPA’s example (in terms of CCPs classification).
Meanwhile, Other Environment Canada/Health Canada Activities indicate there is room for Ash industry oversight:

2. Under its “Chemical Management Plan”, Environment Canada is consulting with industry to gather and review information on some 26,000 chemical substances listed on its Domestic Substances List (DSL). The objective of the Plan is to classify substances according to their potential exposure to the general population (GPe); Vanadium is one such substance present in CCPs being evaluated for its prevalence and behaviour in the environment.

4. In June 2010, the Canadian government mandated Environment Canada to develop a plan to reduce emissions from coal-fired boilers.
   • Effective 2015, all CCP generators over 10MW in capacity will be required to report their outputs.
   • This new Regulation encourages implementation of CO2 Capture & Sequestration technologies and links emission reductions to permitting for continued operation.

5. Finally, Canadian participation in the UN’s Environment Programme (UNEP) development of International Treaty on Mercury aims to develop a legally binding, International Treaty on Mercury emission reduction.
   • Treaty negotiations will address mercury supply, trade, demand in products and processes, atmospheric emissions, mercury-containing wastes, contaminated sites, long-term storage, scientific information exchange & arrangements for financial assistance and capacity building.
   • Here, negotiations are expected to conclude in 2013
And of course, the activities of our nearest neighbour, and largest trading partner are influential.

While the US EPA takes its time to reconsider the classification of Coal Ash, it is now clear we may not hear for some time.

While EPA seeks “comment on new coal ash data”
And insists on Isolating specific applications for additional scrutiny,
Coal Ash remains vulnerable to technical ignorance and political impulse that undermines perception of its value.

The Ash industry’s ability to advocate that Coal Ash is an environmentally sustainable alternative to more emission-intensive materials depends on an educated understanding of this mineral resource; how it is effectively used; and the magnitude of benefits attributable to its recycling and use.

I believe it’s possible that amending the HS would be an effective means to revise the definition of Coal Ash, communicating to international policy makers the relevance of Coal Ash as a mineral resource that is significant to achieving our environmental goals.
So, why should we bother?....A successful effort would:

A successful effort would:

- **Confer legal status** of Coal Ash as an internationally traded commodity;
- **Raise the profile** of Coal Ash in international trade/tariff literature;
- **Educate HS administrators and users** (policy makers, legislators, tariff agents) as to uses of Coal Ash that underpin demand & trade
- **Establish the economic significance** of beneficial use;
- **Defend Coal Ash’s contribution to sustainable practice** against technical ignorance, regulatory barriers and political impulse;

A successful effort would **support international efforts** to establish Coal Ash as a “product”

OR, we could just stick with Waldo, continuing to suffer technical ignorance, inappropriate regulatory barriers and political impulse.
There’s some basis for optimism;

2004’s proposal submitted to the HS Committee sought to expand the definition of Coal Ash in the HS Explanatory Notes *(cited on Slide 9: 2621.90 “Other”) with information to enlighten HS users’ understanding of the material and its uses.

*CIRCA’s collaboration with Coal Association of Canada, ACAA and ECOBA was key to proposal’s success.*

More recently, CIRCA has renewed discussions with Canada Border Services Agency with a view to another attempt at HS amendment.

**These efforts include those covered by the presentation you’re enduring right now**

& the accompanying Paper to WOCA 2011

We’ll present a Draft Proposal to WWCCPN Members tomorrow and, subject to a positive reception,

Proceed with a Proposal to Canadian HS Review Committee
Options under consideration will propose the inclusion of Coal Ash in the Heading text.

And a dedicated subheading

To confer the (legal) status beneficial use of Coal Ash should clearly have in the HS.
Thank you for your time and attention.

Anne Weir,
Executive Director,
Association of Canadian Industries Recycling Coal Ash

Questions? / Comments?
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