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Small Intersessional Working Group on Legal Clarity**Second meeting**

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Item 3 of the provisional agenda*

Glossary of terms**Glossary of terms¹****Note by the Secretariat****I. Introduction**

1. By its decision BC-11/1 on the follow-up to the Indonesian-Swiss country-led initiative to improve the effectiveness of the Basel Convention, the Conference of Parties established, within available resources, a small intersessional working group (hereinafter “SIWG”) to, among other things, complete the glossary of terms set out in the annex to document UNEP/CHW.11/3/Add.2, and recommend whether any terms defined in previously adopted technical guidelines and guidance documents as well as the framework for the environmentally sound management of hazardous wastes and other wastes need to be updated as a result.

2. The SIWG was requested to prepare a first draft of the revised glossary and related explanations to be made available on the Basel Convention website by 15 February 2014 with an invitation for parties and others to comment thereon by 15 April 2014, for the consideration of the SIWG. The SIWG was further requested to prepare by 15 June 2014 a revised draft of the glossary and related explanations, taking into account comments received from parties and others, and to submit it to the Open-ended Working Group at its ninth meeting (OEWG-9) for its consideration, alongside recommendations as to whether any terms defined in previously adopted technical guidelines and guidance documents as well as the framework for the environmentally sound management of hazardous wastes and other wastes need to be updated as a result.

3. In decision BC-11/1, the Conference of the Parties invited the OEWG-9 to finalize the glossary and related explanations, recommendations as to whether any terms defined in previously adopted technical guidelines and guidance documents as well as the framework for the environmentally sound management of hazardous wastes and other wastes need to be updated as a result, and to prepare a draft decision for consideration and possible adoption by the Conference of the Parties at its twelfth meeting.

II. Implementation

4. The Secretariat received a financial contribution from the Government of Switzerland to support the work of the SIWG.

* UNEP/CHW/CLI_SIWG.2/1.

¹ This document has not been formally edited.

5. Information on the work of the SIWG until OEWG-9 is set out in document UNEP/CHW/OEWG.9/11. The draft glossary of terms, including explanations, prepared by the SIWG for the consideration of OEWG-9 is set out in document UNEP/CHW/OEWG.9/INF/20. A compilation of comments received from parties and others on the 15 February 2014 draft glossary of terms is set out in document UNEP/CHW/OEWG.9/INF/21.
6. The draft glossary of terms developed by the SIWG, set out in annex I to document UNEP/CHW/OEWG.9/INF/20, was considered during OEWG-9, including in a contact group co-chaired by SIWG members Mr. Joost Meier (Chile) and Mr. Peter Wessman (European Union).
7. In their report back to the OEWG plenary, the co-chairs of the contact group indicated that the contact group had agreed that the following 16 terms should be defined in the glossary: direct reuse, disposal, final disposal, hazardousness, hazardous wastes, intent to dispose, non-hazardous wastes, non-waste, prevention, recovery, recycling, reduction, refurbishment, repair, reuse and wastes. The group also had agreed that the following 9 terms should be part of explanations of the definitions: by-product, charitable donation, end of waste status, fully functional, good/product, preparing waste for reuse, upgrading, use, and used good/product.²
8. Following the report of the co-chairs, the OEWG adopted decision OEWG-9/8. In its decision, the OEWG invited additional parties to nominate experts in the SIWG, and invited parties and others to submit comments by 31 October 2014 on, among other things, the definitions and explanations mentioned in the report of the meeting. The OEWG-9 further invited the SIWG to prepare a revised version of the draft glossary including explanations, taking into account the comments received from parties and others as well as the deliberations of the OEWG-9 for the consideration and possible adoption by the Conference of the Parties at its twelfth meeting.
9. In a letter dated 19 September 2014, the Secretariat transmitted to parties and others the various invitations of the OEWG set out in its decision OEWG-9/8. As a result, as at 4 December 2014, the following parties had nominated experts to also serve on the SIWG: Argentina, Brazil, Canada, Colombia, Denmark, Mexico, and Yemen³. As at that same date, comments had been received from Argentina, Algeria, Brazil, Chile, the European Union and its member States, Switzerland and Basel Action Network. These comments are set out in document UNEP/CHW/CLI_SIWG.2/INF/2.
10. The annex to this note sets out a revised version of the draft glossary including explanations, taking into account the comments received from parties and others as well as the deliberations of the OEWG-9. The development of recommendations as to whether any terms defined in previously adopted technical guidelines and guidance documents as well as the framework for the environmentally sound management of hazardous wastes and other wastes would need to be updated as a result, is expected to be considered subsequent to the finalization of the glossary by the SIWG.

III. Proposed action

11. The SIWG may wish to consider the information set out in this note including its annex as well as in document UNEP/CHW/CLI_SIWG.2/INF/2 with a view to:
 - (a) Finalizing, for the consideration of the Conference of the Parties at its twelfth meeting, the glossary of terms, including explanations;
 - (b) Developing recommendations as to whether any terms defined in previously adopted technical guidelines and guidance documents as well as the framework for the environmentally sound management of hazardous wastes and other wastes need to be updated as a result, for the consideration of the Conference of the Parties at its twelfth meeting.

² UNEP/CHW/OEWG.9/15

³ The full list of members is available at :

<http://www.basel.int/Implementation/LegalMatters/LegalClarity/SmallIntersessionalWorkingGroup/tabid/3622/Default.aspx>

Annex

Revised draft glossary of terms

(10 December 2014)

Introduction

1. This glossary was prepared in furtherance of decision BC-11/1 on the follow-up to the Indonesian-Swiss country-led initiative to improve the effectiveness of the Basel Convention and of decision OEWG-9/8 on providing further legal clarity. Its purpose is the clarification of certain terms in order to improve the implementation of the Convention and the application of technical guidelines and guidance documents developed under the Convention. This may also help parties identify further opportunities to improve implementation, including through the issuance of technical guidance.
2. The Basel Convention applies to the transboundary movement of hazardous wastes¹ and other wastes.² Thus, the term “wastes” is of fundamental importance in determining the scope of the Convention.
3. The primary aim of this glossary is to help clarify the terms relating to the distinction between wastes and non-wastes. This distinction has been a particular problem in relation to used goods/products destined for re-use.
4. This glossary includes definitions of terms and further explanations, including in order to explain how certain terms relate to each other. For the convenience of the reader, some explanations are included under more than one heading.

Definitions

Direct reuse

Option 1:

The using again, by a person other than its previous owner, of a good/product that is not waste for the same purpose for which it was conceived without the necessity of [pre-processing][repair or refurbishment.]

Option 2:

The use of waste in a process without its biological, physical or physico-chemical transformation, subject to the conditions and standards of national law.

Explanatory notes:

- a. Pre-existing definitions
 - Draft e-waste guidelines³: The using again, by a person other than its previous owner, of equipment that is not waste for the same purpose for which it was conceived without the necessity of repair or refurbishment
 - PACE⁴: “The using again, by a person other than its previous owner, of computing equipment and components that are not waste for the same purpose for which they were conceived without the necessity of repair, refurbishment or hardware upgrading.”

The glossary uses the PACE definition, substituting the term “pre-processing” for the phrase “repair, refurbishment or hardware upgrading”, so that the definition is not limited to electronic equipment.

- b. “No [pre-processing][repair or refurbishment]”

¹ Hazardous wastes are defined in article 1 paragraph 1 of the Basel Convention, are elaborated in Annexes VIII and IX of the Convention, and addressed in guidance developed under the Convention (<http://www.basel.int/TheConvention/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>). Most hazardous wastes result from production processes.

² This glossary does not address “other waste” as described in Article 1 (2) and Annex II of the Convention.

³ Draft technical guidelines on transboundary movements of electronic and electrical waste and used electrical and electronic equipment, in particular regarding the distinction between waste and non-waste under the Basel Convention (Draft of 20 November 2014)

⁴ See the PACE glossary set out in the revised guidance document on the environmentally sound management of used and end-of-life computing equipment

The term “direct reuse” excludes the possibility of reuse of a used good/product after [repair or refurbishment][pre-processing. Pre-processing, may include repair, refurbishment or upgrading, i.e., modification of a fully functional good/product to increase its performance and/or functionality.] Direct reuse generally applies to the reuse of a fully functional good/product, i.e. a good/product that was tested and demonstrated to be capable of performing the essential functions that it was designed to perform. A fully functional used good/product that is destined for direct reuse is not considered to be a waste, unless so-classified by national law.

c. “Good/product”

As used in this Glossary, the term “good/product” refers to a substance or object, [such as a product or a component,] including a waste, that has economic value and which is capable, as such, of forming the subject of commercial transactions. The terms “good” and “product” are largely synonymous, although some intangible products, such as services, would not be considered to be goods.

d. Charitable donation

Direct reuse can apply to goods/products that are transferred for purposes of charity and without any monetary rewards or benefits, or for barter. This practice is not environmentally sound management of waste.

Disposal

Any operation specified in Annex IV to the Basel Convention (see Article 2 paragraph 4 of the Basel Convention) [including material and energy recovery, recycling, reclamation, direct re-use or alternative uses].

Explanatory note

Annex IV includes two categories of disposal operations: (1) final disposal operations; and (2) recovery operations. Disposal is the key element of the Basel Convention’s definition of waste. This term only applies for operations with waste.

Final disposal

Disposal operations specified in Annex IV A of the Basel Convention, i.e., operations which do not lead to the possibility of resource recovery (including energy recovery), recycling, reclamation, [direct reuse] or alternative uses.

Explanatory note

This definition builds on the PACE definition: “Disposal operations specified in Annex IV A to the Basel Convention. The term “direct reuse” is omitted, as it is not considered to be a disposal operation.

Hazardous wastes

(a) Wastes that belong to any category contained in Annex I to the Convention, unless they do not possess any of the characteristics contained in Annex III; and

(b) Wastes that are not covered under paragraph (a) but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit (see Article 1 paragraph 1 of the Basel Convention).

Hazardousness

Option 1:

[Any of the characteristics contained in Annex III that makes a residue a risk to public health or environmental quality.]

Option 2:

[The state of being attended with danger or risk.⁵ Annex III of the Convention presents a list of hazardous characteristics.]

Intent to dispose of

Determination inferred from an act that could reasonably be expected to result in disposal.

Explanatory notes

a. Intent to dispose

Intent to dispose is not defined in existing documents published under the Basel Convention. The definition here reflects the widely accepted legal principle that intent may be inferred from surrounding facts and circumstances, including reasonably foreseeable results of conduct.

b. Confers “waste” status

⁵ Webster’s New Twentieth Century Dictionary, Unabridged (2d Ed.)(1978).

As the definition of “waste” makes clear, intent to dispose of a used good/product (as well as actual disposal or a legal requirement to dispose) makes that good/product a waste.

c. Reuse/direct reuse

Factors such as obsolescence and insufficient protection against damage during transport, loading and unloading may cast doubt on whether reuse/direct reuse will actually occur. These factors may suggest instead an intent to dispose of the used good/product.

Non-hazardous waste

A waste that does not meet the definition of “hazardous waste”.

Non-waste

A substance or object that does not meet the definition of “waste”.

[A material, substance, object or a discarded good/product that is not disposed, is not intended to be disposed of and is not required to be disposed of by the provisions of national law.]

Explanatory note

Used goods/products: A good/product that is or has been used, either by its first or subsequent owner, may or may not be a waste, depending upon its characteristics, intended destination, and fate, as well as the provisions of national law. In some circumstances, a used good/product destined for reuse –especially direct reuse -- may not be considered to be a waste. However, there needs to be sufficient certainty that the good/product will actually be reused, because if it is not, its disposal may pose a threat to human health and the environment. Factors such as obsolescence and insufficient protection against damage during transport, loading and unloading may cast doubt on whether reuse will actually occur. These factors may suggest instead an intent to dispose of the used good/product, which would make it a waste.

Prevention

Measures taken before a good/product becomes a waste to reduce the generation of hazardous waste.

Explanatory note: Prevention measures reduce the potential hazards of waste disposal, both on the environment and on human health. Prevention measures include (inter alia):

- (a) substituting primary raw materials with secondary materials
- (b) otherwise altering products or production processes to minimize the use of material, energy, and toxic or harmful substances
- (c) designing products to encourage re-use or to extend the product’s life span;

Prevention: any measure that is taken, in order to avoid a material, substance or product to become a waste. These measures aim to reduce:

Recovery

Option 1:

[Any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. Some recovery operations are identified in Annex IV B to the Basel Convention.]

Option 2:

[Any process of transformation of waste that involves changing its physical, physico-chemical and biological properties, with a view to transforming it into a useful purpose by replacing other raw materials which would otherwise have been used to fulfil a particular function.]

Explanatory notes:

a. Pre-existing definitions

- Draft E-waste guidelines: “Relevant operations specified in Annex IV B of the Basel Convention; recycling operations are part of this annex.”
- Technical Guidelines on the Environmentally Sound Recycling/Reclamation of Metals and Metal Compounds (R4)(2004): “Recovery: Taking metallic or metal-containing items and metallic pieces before they reach the waste stream or taking them out of the waste stream.”

b. Source of proposed definition

In addition to the reference to Annex IV B, the draft definition draws on Art. 3(15) of Directive 2008/98/EC on waste.

- c. Distinguished from direct reuse
Although “direct reuse” is included in the caption to Annex IVB (though not its operative provisions), the term “recovery” is not considered to include reuse or direct reuse of goods/products or components.
- d. Relationship to “repair” and “refurbishment”
National legislation may recognize that where repair or refurbishment are necessary to prepare a waste for reuse, they should be regarded as recovery operations.
- e. Waste/non-waste
Goods/products that have become waste can attain non-waste status when they have undergone a recovery process and are no longer destined or intended to be destined for an Annex IV operation, unless, following the recovery process, they are still considered waste by national law.
- f. Value
Recovery operations make better use of resources and can reduce the negative impact of wastes.

Recycling

[Any recovery operation that involves the reprocessing or transformation of waste into products,][Any process of transformation of waste that involves changing its physical, physico-chemical and biological properties, with a view to transforming it into new products,] materials or substances for any purposes other than energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations. Some recycling operations are identified in section B of Annex IV to the Convention. The term does not include reuse or direct reuse.

Explanatory note:

Pre-existing definitions:

- PACE: Relevant operations specified in Annex IV B to the Basel Convention.
- Used Tyre Guidelines⁶: Any process by which waste tyres are reprocessed into products, materials or substances for any purpose. It does not include energy recovery or reprocessing into materials for use as fuels or in backfilling operations.
- Technical Guidelines on the Environmentally Sound Recycling/Reclamation of Metals and Metal Compounds (R4)(2004): (a) The preparation of recovered items and pieces so that they may be used directly (e.g., in direct remelt) or sent for reclamation; (b) The series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products, other than fuel for producing heat or power by combustion.

The draft Glossary is based on the Used Tyres Guidelines.

Reduction

Option 1:

[Prevention and minimization of hazardous wastes and other wastes generated at source. Reduction is a form of prevention.]

Option 2:

[Any measure that is taken to reduce the volume or the hazardousness of waste generated and that is sent to final disposal, including the design and manufacture of products with minimum volume of material, minimum hazards content, and a longer useful life.]

Explanatory notes

a. Reduction

Reduction seeks to minimize the quantity of hazardous waste required to be treated and disposed of. Reduction can be achieved through means such as: cleaner and safer production, and other improved manufacturing processes; product design (including the facilitation of recycling and improvement of product durability); and improvement of consumption behavior and lifestyles.⁷

b. Preparing a waste for reuse

⁶ Revised technical guidelines for the environmentally sound management of used and waste pneumatic tyres

⁷ UNEP, Div. of Technology, Industry and Economics, “Waste Minimization Work Plan for 2012-2013.”

Available at

http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCIQFjAA&url=http%3A%2F%2Fwww.unep.org%2Fgpwm%2FPortals%2F24123%2Fimages%2FWorking%2520group%2520meeting%2FWaste%2520Minimization.pdf&ei=dglpVKfpGoicygTniYGIDw&usg=AFQjCNFoIXGu_aIAeNhoefspz0S94BZxq&sig2=4IH7aqt3KhnOIgvIFqVFJA&bvm=bv.79142246,d.aWw. (Accessed 16 Nov. 2014.)

Preparing a waste may be considered to be a reduction measure, because many disposal operations need the waste to have certain properties before submitting it for a recovery operation or to gain scale. Annex VA and VB present codes D13, D14, D15 and R12, R13 that encompass such preparations.

Refurbishment

Modification of a used good/product to increase its performance and/or functionality or to meet applicable technical standards or regulatory requirements.

Explanatory notes

a. Pre-existing definitions

- PACE: Modification of used computing equipment to increase its performance and functionality or to meet applicable technical standards or regulatory requirements, including through such activities as cleaning, data sanitization and software upgrading.
- Draft e-waste guidelines: [Process for transforming reusable equipment or components into a refurbished good through refurbishing or reconditioning the equipment. With respect to used equipment, refurbishment may include such activities as cleaning, data sanitization and minor repair.] [Creating refurbished or reconditioned equipment, including such activities as cleaning, data sanitization and (software) upgrading.] [Modification of fully functional equipment to increase its performance and/or functionality or to meet applicable technical standards or regulatory requirements, including through such activities as cleaning, data sanitization and upgrading.]

The draft Glossary is based on the PACE definition, though not limited to computing equipment and associated activities.

b. Distinction between waste and non-waste

Repair and refurbishment are operations that can be applied to both waste and non-waste. Therefore by itself, the need for repair or refurbishment is not [a suitable criterion][determinative] for distinguishing between waste and non-waste.

Repair

Fixing a specified fault or series of faults in a good/product or component and/or replacing defective components, with the result of making the good/product or component fully functional for its intended purpose. Both a waste and non-waste may be repaired.

Explanatory notes

a. Pre-existing definitions

- E-waste draft guidelines: Fixing specified faults in equipment [and/or replacing defective components of equipment in order to bring the equipment into a fully functional condition].
- PACE: Fixing specified faults in computing equipment and/or replacing defective components of computing equipment to bring the computing equipment into a fully functional condition.

b. Application to waste/non-waste

Repair or refurbishment are operations that can be applied to both waste and non-waste [, in order to postpone disposal (prevention and reduction measure)]. Therefore by itself, the need for repair or refurbishment is not [a suitable criterion][determinative] for distinguishing between waste and non-waste.

Reuse

The using again, by a person other than its previous owner, of a [good/product][a material, substance, object or a discarded good/product] that is [not waste] [sent for disposal], for the same purpose for which it was conceived, possibly after repair or refurbishment[.][, in order to postpone its disposal (prevention and reduction measure).]

Explanatory notes

a. Pre-existing definitions

- E-waste draft guidelines: The using again, by a person other than its previous owner, of equipment that is not waste for the same purpose for which it was conceived, possibly after repair or refurbishment
- PACE: The using again, by a person other than its previous owner, of used computing equipment or a functional component from used computing equipment that is not waste for the same purpose for which it was conceived, possibly after refurbishment, repair or hardware upgrading.

- Ship recycling guideline⁸: When a product is used again following normal use. Implies recovery and refurbishment before the product can be reused.

b. Reuse encouraged

Reuse of used goods/products is to be encouraged because it promotes resource efficiency, especially of non-renewable resources. Encouraging reuse will sometimes help prevent a used good/product from becoming waste, or in some cases bring waste back into use.

c. “Reuse” can occur after some degree of [pre-processing][repair or refurbishment].

d. Need for certainty

Where a used good/product is exported for reuse, there needs to be sufficient certainty that it will actually be reused, because if it is not, its disposal may pose a threat to human health and the environment. Factors such as obsolescence⁹ and insufficient protection against damage during transport, loading and unloading may cast doubt on whether reuse will actually occur.¹⁰ These factors may suggest instead an intent to dispose of the used good/product, which would make it a waste. Intent to dispose may be inferred from an act that could reasonably be expected to result in disposal.

e. Point of reuse

Reuse refers to the point at which the good/product is being used for the purpose for it was conceived and not any operations to enable that to occur.[Once] [when] a used good/product is being reused, it is not waste.

f. Charitable donation

Reuse can apply to goods/products that are transferred for purposes of charity and without any monetary rewards or benefits, or for barter. This practice is not environmentally sound management of waste.

Wastes

Material, Substances or objects, or discarded goods/products that are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law (see Article 1 paragraph 2 of the Basel Convention).

Explanatory notes

a. Need to consider relevant circumstances

When assessing whether a substance or object is waste or non-waste, the origin of the substance or object, and all other relevant circumstances must be taken into account. For example, a fully functional used good/product that is destined for direct reuse is not considered to be a waste, unless so-classified by national law.

b. Goods/products and wastes

As used in this glossary, the term “good/product” refers to a substance or object, [such as a product or a component,] that has economic value and which is capable, as such, of forming the subject of commercial transactions. The terms “good” and “product” are synonymous, although some intangible products, such as services, would not be considered to be goods. A good/product may become a waste if the waste definition applies; however, it may still be considered a good/product in some countries. A good/product may still keep some original characteristics after becoming a waste.

c. Used good/product

A good/product that is or has been used, either by its first or subsequent owner may or may not be a waste, depending upon its characteristics, intended destination, and fate, as well as the provisions of national law.

d. Economic value of wastes

Recovery operations make better use of resources and can reduce the negative impact of wastes. Wastes destined for these operations might have economic value and are capable, as such, of forming the subject of commercial transactions. In such circumstances, a waste would meet the definition of a good/product, while it is still a waste. If the waste is subject to a transboundary movement, than it will have to be declared in one customs code for goods/products (Harmonized System), while it is still a waste. Economic value is not an appropriate criterion to distinguish waste from non-waste.

⁸ Technical guidelines for the environmentally sound management of the full and partial dismantling of ship

⁹ Obsolete means no longer produced or used, or out of date (see <http://www.oxforddictionaries.com/us/definition/english/obsolete>)

¹⁰ There are difficult distinctions which are amenable to being addressed through technical guidance.

e. Ceasing to be a waste

Option 1:

In accordance with national law, a waste may cease to be waste¹¹ if:

- (1) it has been prepared for reuse; or
- (2) it has undergone an environmentally sound recovery, including recycling operation, and the resulting material meets a predefined set of criteria, such as the following:
 - (i) It is commonly used as a raw material in a process;
 - (ii) A market or demand exists for it;
 - (iii) It fulfils the technical requirements for the specific purposes and meets the existing legislation and standards applicable to products;
 - (iv) Its use will not lead to overall adverse environmental or human health impact; and
 - (v) Limit values for pollutants are specified, where necessary.

Option 2:

[In accordance with national law, a waste may cease to be waste when it has completed the recovery process and is no longer destined or, intended to be destined for an Annex IV operation, unless, following the recovery process, it is still considered waste by national law. [Goods/products that have become wastes may be prepared for reuse by means of checking, cleaning or repairing recovery operations, so that they can be re-used without any other pre-processing].]

f. Preparing waste for reuse

Goods/products that have become wastes may be prepared for reuse by means of testing, cleaning or repairing [recovery] operations, by which goods/products that have become waste are prepared so that they can be re-used without any other pre-processing.

g. Production residues and by-products

Another category of materials that may be difficult to characterize are production residues, which are generally considered wastes. However a production residue that meets criteria laid down in national legislation may be considered to be a by-product and thus be non-waste. [Non-waste by-products generally will meet the following conditions: (i) further use of the production residue is certain; (ii) the production residue can be used directly in the same industry in which it was generated without any further processing other than normal industrial practice; (iii) the production residue is produced as an integral part of a production process; and (iv) further use is lawful, i.e. the production residue fulfils all relevant process, product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts; and thus is a non-waste.]

¹¹In some countries, this is referred to as attaining “end-of-waste status.”