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**Conference of the Parties to the Basel Convention  
on the Control of Transboundary Movements of  
Hazardous Wastes and Their Disposal**

**Eleventh meeting**

Geneva, 4-15 May 2015

Item 4 (a) (i) of the provisional agenda\*

**Matters related to the implementation of the Convention:  
strategic issues: follow-up to the Indonesian-Swiss  
country-led initiative to improve the effectiveness of the  
Basel Convention**

**Comments from parties and others on the draft glossary of  
terms**

**Providing further legal clarity**

**Note by the Secretariat**

As referred to in paragraph 18 of the note by the Secretariat on follow-up to the Indonesian-Swiss country-led initiative to improve the effectiveness of the Basel Convention (UNEP/CHW.12/3), the annex to the present note sets out the compilation of comments received from parties and others on the draft glossary of terms. The present note, including its annex, has not been formally edited.

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\* UNEP/CHW.12/1.

## **Annex**

### **Comments received from parties and others on the draft glossary of terms**

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## Brazil

### Submission by Brazil to the Revised draft glossary of terms version

(26 January 2015) – march/2015

BRAZIL COMMENTS: ALTHOUGH THE SIWG AGREED THAT THE TERMS "PREVENTION" AND "REDUCTION" COULD BE ADDRESSED IN THE PRACTICAL MANUAL ON TERMINOLOGY DEVELOPED BY THE EXPERT WORKING GROUP ON ENVIRONMENTALLY SOUND MANAGEMENT, BRAZIL UNDERSTANDS THAT THE TERMS "PREVENTION" AND "REDUCTION" CAN BE ADDRESSED UNDER A WASTE MANAGEMENT HIERARCHY DEFINITION. AT THE END OF THE DRAFT WE PRESENT SOME INPUTS RELATED TO THE DEFINITION OF THESE TWO TERMS, SINCE IT WAS AGREED IN OEWG-9 THAT THESE TERMS SHOULD BE DEFINED AND COULD ALSO HELP PARTIES TO DEFINE REUSE, REPAIR AND REFURBISHMENT OF WASTE, AND NOT ONLY FOR A USED GOOD/PRODUCT.

THE GLOSSARY CONSIDERS DIRECT REUSE ONLY VALID FOR A USED GOOD/PRODUCT, BUT IT IS STILL VALID FOR WASTE, SINCE IT IS POSSIBLE TO USE A WASTE IN A PROCESS IN A DIRECT WAY, WITHOUT ITS BIOLOGICAL, PHYSICAL OR PHYSICO-CHEMICAL TRANSFORMATION, SUBJECT TO THE CONDITIONS AND STANDARDS OF NATIONAL LAW.

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*Note to the reader:*

*This revised draft glossary of terms reflects the outcome of the second meeting of the small intersessional working group (SIWG) on legal clarity (25-26 January 2015, Konstanz). The introduction, the definitions of the terms, as well as section (a) of the explanatory notes for the term "wastes" set out in this revised glossary were considered by the SIWG during its second meeting. The brackets around the remainder of the explanatory notes reflect the fact that the SIWG did not have the time to consider them during that meeting. In addition, during its second meeting, the SIWG agreed that the terms "prevention" and "reduction" could be addressed in the practical manual on terminology developed by the expert working group on environmentally sound management.*

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## I. 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. This document, except where it reflects legally binding Convention terms, is provided as guidance under the Basel Convention. Its general 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 wastes<sup>1</sup> and other wastes.<sup>2</sup> Thus, the term "wastes" is of fundamental importance in determining the scope of the Convention.
3. Within the general purpose mentioned above, the main focus of this glossary is to provide guidance for further legal clarity in relation to the distinction between wastes and non-wastes. This distinction has been a particular problem in relation to [used goods or products] destined for ~~re-use~~ reuse.
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.

## II. Definitions

**Wastes** (see Article 2 paragraph 1 of the Basel Convention)

Substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law.

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<sup>1</sup> 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.

<sup>2</sup> This glossary does not address "other waste" as described in Article 1 paragraph 2 and Annex II to the Convention.

*Explanatory notes:*

- (a) When does a substance or object become waste?
- (i) The definition of “wastes” in the Convention gives three ways by which a substance or object is to be considered waste and each of these merits further explanation:
- a. Substances and objects that are disposed of:
- This is usually straightforward. The disposal operations are listed in Annex IV to the Convention. A substance or object undergoing one of these operations is waste. However some of the operations describe activities that may also be applied to non-waste e.g. [“Land treatment resulting in benefit to agriculture or ecological improvement” may cover the utilization of [compost] [fertiliser], but not all fertilisers are waste] [ R1 use as a fuel] ]. This shows that it is not always possible to determine whether something is waste by considering solely what happens to it. All the circumstances need to be considered.
- b. Substances and objects that are intended to be disposed of:
- i. A substance or object will be waste from the point that it is intended to be disposed of. This is necessary so that waste is subject to control before it is actually disposed of.
- ii. Intent to dispose can be inferred from surrounding facts and circumstances, including reasonably foreseeable results of conduct. Intention is not only the subjective belief of the exporter or generator of the waste. It is necessary therefore to also consider the circumstances in an objective manner, e.g. the existence of a contract. Therefore intent to dispose can be inferred from an act that could reasonably be expected to result in disposal.
- iii. When assessing whether a substance or object is intended to be disposed of, all the circumstances need to be taken into account on a case by case basis. The origin of the substance or object may be relevant. In addition, factors such as obsolescence<sup>3</sup>, insufficient functionality 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 object or substance, which would make it a waste.
- c. Substances and objects that are required to be disposed of by the provisions of national law
- This reflects the principle that substances or objects may be defined as “wastes” according to the national law of some, but not of other states.
- (ii) A product may become a waste if the waste definition applies. A product is a something intentionally produced by or resulting from a process that meets defined characteristics.
- [(iii) Another category of materials that may be difficult to characterize are production residues. They are generally considered wastes. However if production residues meet criteria, they may be referred to as a by-product and thus be non-waste according to national legislation and if they do not meet the waste definition. Such criteria may need to be laid down in national legislation to ensure that there is sufficient certainty of use and it is not subjected to a disposal operation. As the manual on implementation notes, as this is set down in national law, it is possible that a production residue may be regarded as a by-product in one state, but as a waste in another. ]
- (iv) A good may [be][become] a waste if the waste definition applies. [A good is a tradable commodity. Its value can be negative or positive. It can be a waste or a product. Whether something is a “good” has no relevance to the definition of waste. ][A good is a substance or object that has economic value and which is capable, as such, of forming the subject of commercial transactions.] It is a wider term than product. A used good is one that is or has been used, either by its first or subsequent owner. A used good may or may not be a waste. Use means the utilization of a good, whether by its first or a

<sup>3</sup> Obsolete means no longer produced or used, or out of date (see <http://www.oxforddictionaries.com/us/definition/english/obsolete>).

subsequent owner. This term includes reuse and direct reuse of a good, but does not include utilization of a good in a recovery operation.

[(b) When does waste cease to be waste?

For some recovery operations, there may be a question of when waste may cease to be waste and reach end-of-waste status. Once something becomes waste, and someone wants to bring it back into productive use, the activity it undergoes will by definition be a recovery operation as the activity is applied to waste that results in a non-waste. There are three possibilities:

(i) It has been prepared for reuse.

Used goods may become waste e.g. when their owner intends to dispose of them because he buys a newer model. If the used good can be made suitable for reuse, this will promote the better use of resources. It is necessary to check, clean or repair the good to ensure it will be suitable for reuse. Such operations will be recovery as the used goods that have become waste are prepared so that they can be re-used without any other pre-processing than checking, cleaning or repairing. As such operations are not listed in Annex IV to the Convention, they would need to be defined in national law.

(ii) It has undergone a recycling operation, when that operation is completed.

Recycling operations involve the reprocessing or transformation of waste into products, materials or substances, though not necessarily for the original purpose. Once the operation is complete, the substance or object is no longer waste. Some recycling operations are listed in Annex IV to the Convention.

(iii) It has otherwise gained end-of-waste status as a result of a recovery operation

Sometimes a recovery operation does not have the nature of a recycling operation. The result may be products, materials or substances that do not require further recovery operations to enable them to be used. An example might be scrap metal which is bundled and collected such that it meets international standards for use. It has not been transformed or reprocessed, but is no longer waste. Such standards may be set in national legislation with criteria to ensure that there is sufficient certainty of use and that there is sufficient certainty of use and that it is not subjected to a disposal operation.

(c) Economic value of wastes

Recovery operations make better use of resources and can reduce the negative impact of wastes. [Some recovery operations are identified in Annex IVB to the Convention.](#) 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, while it is still a waste. If the waste is subject to a transboundary movement, then it will have to be declared in one customs code for goods (Harmonized System), while it is still a waste. Economic value is not an appropriate criterion to distinguish waste from non-waste. ]

## Non-waste

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

*[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.]

## Hazardous wastes (see Article 1 paragraph 1 of the Basel Convention)

(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.

### **Hazardous characteristics**

Any of the characteristics contained in Annex III to the Basel Convention [that makes a waste a risk to public health or environmental quality.](#)

### **Non-hazardous waste**

A waste that does not meet the definition of “hazardous waste”. [A non-hazardous waste can present solubility in water, combustibility or biodegradability properties.](#)

### **Disposal**(see Article 2 paragraph 4 of the Basel Convention)

Any operation specified in Annex IV to the Basel Convention.

*[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**

Commonly used to refer to disposal operations [of waste](#) specified in Annex IV A to the Basel Convention.

*[Explanatory note*

This definition builds on the PACE<sup>4</sup> 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.]

## **Recovery**

Option 1

[Relevant operations specified in Annex IV B to the Basel Convention.]

Option 2

[Commonly used to refer to disposal operations specified in Annex IV B to the Basel Convention.]

*[Explanatory notes:*

(a) Pre-existing definitions

(i) Draft e-waste guidelines<sup>5</sup>: “Relevant operations specified in Annex IV B to the Basel Convention; recycling operations are part of this annex.”

(ii) [Technical guidelines on the environmentally sound recycling/reclamation of metals and metal compounds \(R4\)\(2004\)](#)<sup>6</sup>: “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](#)

<sup>4</sup>In this document, references to “PACE” are to be understood as references to the PACE glossary set out in the revised guidance document on the environmentally sound management of used and end-of-life computing equipment (document UNEP/CHW.11/6/Add.1/Rev.1 available at: <http://www.basel.int/TheConvention/ConferenceoftheParties/Meetings/COP11/tabid/3256/Default.aspx>).

<sup>5</sup>In this document, references to “draft e-waste guidelines” are to be understood as references to the 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) set out in document UNEP/CHW/12/5/Add.1 available at: <http://www.basel.int/TheConvention/ConferenceoftheParties/Meetings/COP12/tabid/4248/mctl/ViewDetails/EventModID/8051/EventID/542/xmid/13027/Default.aspx>

<sup>6</sup>Available at: <http://www.basel.int/Implementation/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>

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~~The term “direct [reuse](#)” is included in the caption to Annex IVB (~~though not its operative provisions~~)[and can be understand as the use of waste in a process without its biological, physical or physico-chemical transformation, subject to the conditions and standards of national law.](#) ~~–~~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. [Both a waste and non-waste may be repair or refurbished, in order to postpone its sent to disposal \(prevention and reduction measure\).](#)
- (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

### Option 1

[Any recovery operation that involves the reprocessing or transformation of waste into new products, or materials or substances that enter the [economic][production] cycle. Recycling does not include energy recovery and the reprocessing into materials that are to be used as fuels. Some recycling operations are identified in section B of Annex IV to the Convention.]

### Option 2

[Relevant operations specified in Annex IV B to the Basel Convention.]

[*Explanatory note:*

Pre-existing definitions

- (a) PACE: Relevant operations specified in Annex IV B to the Basel Convention.
- (b) Used tyres guidelines<sup>7</sup>: 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.
- (c) 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.]

## Repair

Fixing a specified fault in an object that is a waste or a [used](#) product and/or replacing defective components [in an electrical-electronic equipment](#), with the result of making the waste or product a fully functional product to be used for its originally intended purpose.

<sup>7</sup>In this document, references to “used tyres guidelines” are to be understood as references to the revised technical guidelines for the environmentally sound management of used and waste pneumatic tyres, available at: <http://www.basel.int/Implementation/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>

*[Explanatory notes]*

- (a) Pre-existing definitions
- (i) Draft e-waste guidelines: Fixing specified faults in equipment [and/or replacing defective components of equipment in order to bring the equipment into a fully functional condition].
  - (ii) 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.]

**Refurbishment**

Modification of an object that is a waste or a product to increase its performance and/or functionality to meet applicable technical standards or regulatory requirements, with the result of making the waste or product a fully functional product to be used for a purpose that is at least the one that was originally intended.

*[Explanatory notes]*

- (a) Pre-existing definitions
- (i) 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.
  - (ii) 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, in order to postpone its sent to 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 product, object or substance [that is not waste] that is not sent for disposal, [for the same purpose for which it was conceived, ] [possibly after pre-processing] [repair or refurbishment], in order to postpone its sent to disposal (prevention and reduction measure).

*[Explanatory notes]*

- (a) Pre-existing definitions
- (i) Draft e-waste 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.
  - (ii) 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.

- (iii) Ship recycling guidelines<sup>8</sup>: 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 obsolescence<sup>9</sup> and insufficient protection against damage during transport, loading and unloading may cast doubt on whether reuse will actually occur.<sup>10</sup> 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) Preparing a waste for reuse

These kind of action can be consider as a reduction measure, because many disposal operations needs the waste to have certain properties before submit for a recovery operation or to gain scale. Annex VA and VB present codes D13, D14, D15 and R12, R13 that encompasses such preparations.

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.] Some cases of transboundary movements of used goods/products for charitable donation, depending upon its characteristics, intended destination, and fate, as well as the provisions of national law, can meet the definition of waste.

## Direct reuse

Direct reuse is specified in Annex IV A and can be understand as the use of waste in a process without its biological, physical or physico-chemical transformation, subject to the conditions and standards of national law.

This term can also indicates the using again, by a person other than its previous owner, of a product, object or substance that is not waste for the same purpose for which it was conceived without the necessity of [pre-processing<sup>11</sup>][repair or refurbishment].

[Explanatory notes:

- (a) Pre-existing definitions

<sup>8</sup>Technical guidelines for the environmentally sound management of the full and partial dismantling of ship, available at: <http://www.basel.int/Implementation/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>

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

<sup>10</sup>There are difficult distinctions which are amenable to being addressed through technical guidance.

<sup>11</sup>Pre-processing may include e.g. [checking], [testing] cleaning, repair, refurbishment [or upgrading] but not disposal.

- (i) Draft e-waste 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 without the necessity of repair or refurbishment
- (ii) PACE: “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]”

The term “direct reuse” excludes the possibility of reuse of a used or discarded 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.]

## Waste Hierarchy

The waste management hierarchy indicates an order of preference for action to reduce and manage waste, and represents the progression of a material or product through successive stages of waste management, and represents the latter part of the life-cycle for each product.

Explanatory notes:

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

- (a) the content of harmful substances or hazardous elements in materials and in products;
- (b) the amount of waste generated, including trough the intermediary process of reuse or by lengthening the lifespan of products;
- (c) the potential hazards of waste disposal, both on the environment and on human health.

Reduction or Minimization: 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.

## European Union and its member States

### Comments by the EU and its Member States

#### Revised draft glossary of terms

(26 January 2015)

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*Note to the reader:*

*This revised draft glossary of terms reflects the outcome of the second meeting of the small intersessional working group (SIWG) on legal clarity (25-26 January 2015, Konstanz). The introduction, the definitions of the terms, as well as section (a) of the explanatory notes for the term "wastes" set out in this revised glossary were considered by the SIWG during its second meeting. The brackets around the remainder of the explanatory notes reflect the fact that the SIWG did not have the time to consider them during that meeting. In addition, during its second meeting, the SIWG agreed that the terms "prevention" and "reduction" could be addressed in the practical manual on terminology developed by the expert working group on environmentally sound management.*

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## I. 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. This document, except where it reflects legally binding Convention terms, is provided as guidance under the Basel Convention. Its general 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 wastes<sup>1</sup> and other wastes.<sup>2</sup> Thus, the term "wastes" is of fundamental importance in determining the scope of the Convention.

3. Within the general purpose mentioned above, the main focus of this glossary is to provide guidance for further legal clarity in relation to the distinction between wastes and non-wastes. This distinction has been a particular problem in relation to transboundary transports of used substances or objects intended ~~used goods or products~~ 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.

## II. Definitions

**Wastes** (see Article 2 paragraph 1 of the Basel Convention)

Substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law.

*Explanatory notes:*

(a) When does a substance or object become waste?

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<sup>1</sup> 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.

<sup>2</sup> This glossary does not address "other waste" as described in Article 1 paragraph 2 and Annex II to the Convention.

- (i) The definition of “wastes” in the Convention gives three ways by which a substance or object is to be considered waste and each of these merits further explanation:
- a. Substances and objects that are disposed of:
 

~~This is usually straightforward.~~ The disposal operations are listed in Annex IV to the Convention and include both recovery and final disposal. If a substance or object undergoes any of the operations identified as Annex IV operations this might be regarded as evidence for being waste. However, some operations such as incineration may also be relevant to non-waste e.g. the use of some of the operations in Annex IV describe activities that may also be applied to non-waste e.g. of auxiliary fossil fuel in cement kilns or power stations.<sup>1</sup> In such a case they are not referred to as Annex IV operations (D or R operations). [“Land treatment resulting in benefit to agriculture or ecological improvement” may cover the utilization of [compost] [fertiliser], but not all fertilisers are waste] [RI use as a fuel]. This shows that it is not always possible to determine whether something is waste by considering solely what happens to it. All the circumstances need to be considered.
  - b. Substances and objects that are intended to be disposed of:
    - i. A substance or object will be waste from the point that it is intended to be disposed of. This is necessary so that waste is subject to control before it is actually disposed of.
    - ii. Intent to dispose can be inferred from surrounding facts and circumstances, including reasonably foreseeable results of conduct. Intention is not only the subjective belief of the exporter or generator of the waste. It is necessary therefore to also consider the circumstances in an objective manner, e.g. the existence of a contract to dispose of the substance or object. Therefore intent to dispose can be inferred from an act that could reasonably be expected to result in disposal.
    - iii. When assessing whether a substance or object is intended to be disposed of, all the circumstances need to be taken into account on a case by case basis. The origin of the substance or object may be relevant. In addition, factors such as obsolescence<sup>23</sup>, insufficient functionality 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 object or substance, which would make it a waste.
  - c. Substances and objects that are required to be disposed of by the provisions of national law.
 

This reflects the principle that substances or objects may be defined as “wastes” according to the national law of some, but not of other states.
- (ii) A product may become a waste if the waste definition applies. A product is a something intentionally produced by or resulting from a process that meets defined characteristics. A product may become a waste if the waste definition applies.
- (iii) Another category of materials that may be difficult to characterize are production residues. They are generally considered wastes. However if production residues meet specific criteria, they may be referred to as a by-product and thus be non-waste according to national legislation and if they do not meet the waste definition. Such criteria may need to be laid down in national legislation to ensure that there is sufficient certainty of use of the material and that it is not subjected to a disposal operation. As the manual on implementation notes, having the criteria set down in national law, it is possible that a production residue may be regarded as a by-product in one state, but as a waste in another.

**Comment [EU1]:** A contract by itself does not infer much so it may be clearer to indicate what the contract might cover.

<sup>1</sup>We think that examples are useful throughout this document and would like to flag that we are flexible on the examples used.

<sup>23</sup>Obsolete means no longer produced or used, or out of date (see <http://www.oxforddictionaries.com/us/definition/english/obsolete>).

- (iv) A good may ~~become a~~ waste if the waste definition applies. ~~[A good is a tradable commodity. Its value can be negative or positive. It can be a waste or a product. Whether something is a "good" has no relevance to the definition of waste. ]~~ A good is a substance or object that has economic value and which is capable, as such, of forming the subject of commercial transactions. ~~[Good~~ is a wider term than "product". A used good is one that is or has been used, either by its first or subsequent owner. A used good may or may not be a waste. ~~This will depend on the circumstances, but for example the point at which the used good is a burden to its owner, it is likely to be~~ may be waste. ~~This may be because it is no longer of use, e.g. obsolete or non-functional or because it is uneconomic to repair.~~ Use means the utilization of a good, ~~except in a recovery operation,~~ whether by its first or a subsequent owner. ~~This term includes reuse and direct reuse of a good, but does not include utilization of a good in a recovery operation.~~

(b) When does waste cease to be waste?

For some recovery operations, there may be a question of when waste may cease to be waste and reach end of waste status. ~~Once something becomes waste, and someone wants to bring it back into productive use, the activity it undergoes will by definition be a recovery operation as the activity is applied to waste that results in a non-waste.~~ There are three possibilities:

- (i) It has been prepared for reuse.

Used goods may become waste e.g. ~~if an~~ when their owner intends to dispose of a ~~fridge them~~ because he buys a newer model and ~~takes the old fridge to the local waste collection facility for waste fridges.~~ If the ~~fridge is reused this may will~~ promote a better use of resources. ~~Used goods that have become waste like this may will have a variety of problems so it must be established if they are can be made suitable for reuse. -- this will promote the better use of resources. A preparation process, or pre-processing, is needed to ensure that used goods have characteristics that mean that they will be reused. This might be establishing that used goods work properly through checking, repairing or cleaning them. Although such pre-processing operations are not listed in Annex IV, national legislation may recognise situations where they are to be regarded them as recovery operations necessary to ensure that the waste is suitable for any proposed reuse. It is necessary to check, clean or repair the good to ensure it will be suitable for reuse. Such operations will be recovery as the used goods that have become waste are prepared so that they can be re-used without any other pre-processing than checking, cleaning or repairing. As such operations are not listed in Annex IV to the Convention, they would need to defined in national law.~~

- (ii) It has undergone a recycling operation ~~and, when~~ that operation is completed.

Recycling operations involve the reprocessing or transformation of waste into products, materials or substances, though not necessarily for the original purpose, ~~e.g. reprocessing of used oil so that it is brought back to its original or any equivalent specifications.~~ Once the operation is complete, the substance or object is no longer waste. Some recycling operations are listed in Annex IV to the Convention.

- (iii) It has otherwise gained end-of-waste status as a result of a recovery operation.

Sometimes ~~the result of a waste management-waste treatment operation~~ may be products, materials or substances that do not require further recovery operations to enable them to be used. An example might be scrap metal which is bundled and collected such that it meets international standards for use. It has not been transformed or reprocessed, ~~so has not been subject to recycling as such,~~ but ~~may still have ceased to be~~ is no longer waste. Such standards may be set in national legislation with ~~stringent criteria to ensure that there is sufficient certainty of use and that in there is sufficient certainty of use~~ and that it is not subjected to a disposal operation. ~~As an example, the EU has adopted a specific regulation establishing criteria for when certain types of scrap metal cease to be waste, Council Regulation (EU) No 333/2011 of 31 March 2011.~~

(c) Economic value of wastes

~~Recovery operations make better use of resources and can reduce the negative impact of wastes.~~ Wastes destined for ~~these~~ recovery 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, while it is still a waste. If the waste is subject to a

transboundary movement, then it will have to be declared in one customs code for goods(Harmonized System), while it is still a waste. Waste can be substances or objects which have a positive, neutral or negative economic value. A negative economic value of an object or substance might give an indication of that its owner wants to get rid of it and that it is therefore waste, but positive or neutral economic value cannot be used as criteria. Economic value is not an appropriate criterion to distinguish waste from non-waste.

### **Non-waste**

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

#### 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.

**Comment [EU2]:** We do not see the need for an explanatory note on non-waste. It is quite clear that everything that does not fall under the definition of waste is non-waste. The explanations might risk leading to confusion more than clarity.

### **Hazardous wastes**(see Article 1 paragraph 1 of the Basel Convention)

- (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.

### **Hazardous characteristics**

Any of the characteristics contained in Annex III to the Basel Convention.

#### Explanatory notes

Wastes falling under Annex I of the Convention are presumed to exhibit a hazardous characteristic listed in Annex III of the Convention unless, through “national tests”, they can be shown to not exhibit those characteristics. National testing may be useful for identifying a particular hazardous characteristic listed in Annex III until such time as the hazardous characteristic is fully documented. Guidance papers for Annex III hazardous characteristics H11, H12 and H13 were adopted on an interim basis by the Conference of the Parties to the Basel Convention at its sixth and seventh meeting.

Wastes contained in Annex VIII of the Convention are characterized as hazardous under Article 1, paragraph 1 (a) of the Convention and their designation on Annex VIII does not preclude the use of Annex III to demonstrate that a waste is not hazardous. Wastes contained in Annex IX of the Convention will not be wastes covered by Article 1, paragraph 1 (a), of the Convention unless they contain Annex I material to an extent causing them to exhibit an Annex III characteristic.

In addition to the hazardous characteristics listed in Annex III of the Convention, hazardous characteristics defined at the national level may be relevant in the context of Article 1, paragraph 1 (b) and Article 3 of the Convention.

### **Non-hazardous waste**

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

### **Disposal**(see Article 2 paragraph 4 of the Basel Convention)

Any operation specified in Annex IV to the Basel Convention.

#### Explanatory note

a. Annex IV includes two categories of disposal operations: (1) final disposal operations in Annex IVA; and (2) recovery operations in Annex IVB.

b. Disposal is considered to be the key element of the Basel Convention's definition of waste. Since some of the listed operations may also be relevant to describe activities that may also be applied to non-waste, all circumstances need to be assessed in determining whether the substance or object is waste, see further Section II (a) above the explanatory note under (a)(i)(a) for "wastes" above. This term only applies for operations with waste.

## Final disposal

Commonly used to refer to disposal operations specified in Annex IV A to the Basel Convention.

*{Explanatory note*

### a. Pre-existing definitions

This definition builds on the PACE<sup>4</sup> 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.~~

### b. Final disposal operations are to be distinguished from recovery operations.

The primary aim of a final disposal operation is to get rid of the waste in an environmentally sound manner. This may be done in more than one stage, so it includes interim operations such as storage (see Annex IV operations D13-15). The submission of a substance or object to a recovery operation will ensure environmentally sound management but also have as an additional objective to obtain some useful benefit from the waste, perhaps by bringing it back into productive use or obtaining energy from it.

## Recovery

### Option 1

~~{Relevant operations specified in Annex IV B to the Basel Convention.}~~

### Option 2

{Commonly used to refer to disposal operations specified in Annex IV B to the Basel Convention.}

*{Explanatory notes:*

#### (a) Pre-existing definitions

- (i) ~~Draft e-waste guidelines<sup>5</sup>: "Relevant operations specified in Annex IV B to the Basel Convention; recycling operations are part of this annex."~~
- (ii) Technical guidelines on the environmentally sound recycling/reclamation of metals and metal compounds (R4)(2004)<sup>6</sup>: "Recovery: Taking metallic or metal-containing items and metallic pieces before they reach the waste stream or taking them out of the waste stream."
- (iii) Technical guidelines on the environmentally sound co-processing of hazardous wastes in cement kilns<sup>3</sup>: "Recovery: Any operation where waste is serving a useful purpose by replacing other materials that 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".

<sup>4</sup>In this document, references to "PACE" are to be understood as references to the PACE glossary set out in the revised guidance document on the environmental sound management of used and end-of-life computing equipment (document UNEP/CHW.11/6/Add.1/Rev.1 available at: <http://www.basel.int/TheConvention/ConferenceoftheParties/Meetings/COP11/tabid/3256/Default.aspx>).

<sup>5</sup>In this document, references to "draft e-waste guidelines" are to be understood as references to the 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) set out in document UNEP/CHW/12/5/Add.1 available at: <http://www.basel.int/TheConvention/ConferenceoftheParties/Meetings/COP12/tabid/4248/metl/ViewDetails/EventModID/8051/EventID/542/xmid/13027/Default.aspx>

<sup>6</sup>Available at: <http://www.basel.int/Implementation/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>

<sup>3</sup> Available at <http://www.basel.int/Implementation/Publications/TechnicalGuidelines/tabid/2362/Default.aspx#>

(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) Recovery operations contribute to ESM are to be distinguished from final disposal operations.~~

~~Both types of operations must take place in an environmentally sound manner. However, the submission of a waste to a recovery operation will have as an additional objective to obtain some useful benefit, e.g. through material or energy recovery, see R1 'use as a fuel (other than in direct incineration) or other means to generate energy. Recovery operations make better use of resources as their object is not simply to get rid of the waste and this can entail additional contributions to environmentally sound management by reducing the overall negative impact of waste. A recovery operation can be understood as an 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.~~

(de) Distinguished from reuse and direct reuse

~~Although "direct reuse" is included in the caption to Annex IV B refers to operations that may lead to direct reuse. The recovery operations listed include operations that may lead to reuse (such as R9 – used oil re-refining). The term "recovery" does not include the actual reuse or direct reuse. In the example, once oil is re-refined, it is no longer waste and its reuse is not therefore not a recovery operation as such operations only apply to waste. In addition, no operation listed may lead to direct reuse as that term itself requires that reuse will occur without any pre-processing of any kind of goods/products or components.~~

(de) Relationship to "repair" and "refurbishment"

~~No suitable operation is listed in Annex IV to the Convention that describes "repair" or "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. For example, a non-functioning used good is waste if it is repaired to regain full functionality, it will no longer be waste. To address this, 'Preparing for reuse' may be defined at national level as a recovery operation and used to distinguish operations that lead to recovery of waste from ordinary repair of equipment that is not waste.~~

(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

### Option 1

~~{Any recovery operation that involves the reprocessing or transformation of waste into new products, or materials or substances that enter the [economic][production] cycle. Recycling does not include energy recovery and the reprocessing into materials that are to be used as fuels. Some recycling operations are identified in section B of Annex IV to the Convention.}~~

### Option 2

~~{Relevant operations specified in Annex IV B to the Basel Convention.}~~

~~{Explanatory note:~~

#### (a) Pre-existing definitions

~~(i) PACE: Relevant operations specified in Annex IV B to the Basel Convention.~~

~~(ii)~~



Used tyres guidelines<sup>7</sup>: 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.

(iii)

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.

(b) Distinguished from other recovery operations

Recycling operations usually involves the reprocessing or transformation of waste into products, materials or substances, though not necessarily for the original purpose. Resources are saved by recovering material benefits from the waste. This Recycling is to be distinguished from operations that recover energy from the waste or where material is used once merely for its physical properties e.g. for backfilling. An example is used lubricating oil re-refined which could result in high grade oil which is valuable for its chemical properties and hence that would be a recycling operation. Used oil could also simply be used as a fuel so that the recovery operation would be energy recovery and not recycling.

(c) Distinguished from preparing for reuse

Recycling involves some reprocessing or transformation of waste so that it becomes a wholly new product, material or substance. It may not always be necessary to reprocess a waste in this way in order for it to cease to be waste. Used goods that are waste will may have a variety of problems so must be prepared to ensure they are suitable for use. The preparation process, or pre-processing, is needed to produce a used good with characteristics that ensure that it will be reused. Such a 'preparing for reuse' operation would not be a recycling operation as no reprocessing is involved.

(a) Distinguished from reuse

Recycling results in a non-waste which is able to be used. As the waste is subject to a process that transforms it, the purpose of the resulting substance or object may be different than the original purpose. For example, use to which the result of the operation is put may not be the same as the original waste. A plastic bottle may be reprocessed into other plastic products (or indeed another bottle). In contrast, a used good, it would may continue to be used for the purpose that it was originally conceived intended and this would commonly be referred to as reuse, e.g. a milk bottle being reused many times. If a substance or object is used for a wholly new purpose, it may not be reuse.

## Repair

Fixing a specified fault ~~in an object that is a waste or a product~~ and/or replacing defective components ~~in a waste or a non-waste in order to make~~, with the result of making the waste or product a fully functional product to be used for its originally intended purpose.

~~{Explanatory notes~~

(a) Pre-existing definitions

~~(i) Draft e waste guidelines: Fixing specified faults in equipment [and/or replacing defective components of equipment in order to bring the equipment into a fully functional condition].~~

<sup>7</sup>In this document, references to "used tyres guidelines" are to be understood as references to the revised technical guidelines for the environmentally sound management of used and waste pneumatic tyres, available at: <http://www.basel.int/Implementation/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>

- (ii) 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) Does not determine whether an object is waste/non-waste

Repair is an operation that can be applied to both waste and non-waste. Therefore by itself, the need for repair is not a suitable criterion for distinguishing between waste and non-waste. Although repair is not listed as an operation in Annex IV, national legislation may recognise situations where pre-processing operations such as repair as a recovery operation where it is ensured that, are necessary to ensure waste that is made suitable for any proposed reuse.

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.]

**Refurbishment**

Modification of an object that is a waste or a product to increase its performance and/or functionality or to meet applicable technical standards or regulatory requirements, with the result of making the waste or product a fully functional product to be used for a purpose that is at least the one that was originally intended.

Explanatory notes

- (a) Pre-existing definitions

- (i) 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.

- (ii) ~~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) Does not determine whether an object is waste/non-waste

Refurbishment Repair is an operation that can be applied to both waste and non-waste. Therefore by itself, the need for refurbishment repair is not a suitable criterion for distinguishing between waste and non-waste. Although refurbishment repair is not listed as an operation in Annex IV, national legislation may recognise refurbishment as a recovery operation where it is ensured that waste is made suitable for reuse. situations where pre-processing operations such as repair, are necessary to ensure waste that is suitable for any proposed reuse.

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.]

**Reuse**

The using again, by a person other than its previous owner, of a product, object or substance ~~that is not waste, for the same purpose for which it was conceived, possibly after pre-processing, repair or refurbishment.~~

~~Explanatory notes~~

(a) Pre-existing definitions

- (i) ~~Draft e-waste 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.~~
- (ii) 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.
- (iii) Ship recycling guidelines<sup>8</sup>: 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/objects or substances~~ is to be encouraged because it promotes resource efficiency, especially of non-renewable resources. Encouraging reuse will sometimes help prevent ~~an object or substance a used good/product~~ from becoming waste, or in some cases bring waste back into use.

(c) “Reuse” ~~distinct from recovery operations that precede it, processing or can occur after some degree of pre-processing~~

~~Used goods that are waste must usually be prepared if they are to be reused. In such a case, recovery. The pre-processing operations are necessary to enable the actual reuse. Once an object or substance used good/product is being reused, it is not waste anymore. However, a transboundary movement of used goods for pre-processing prior to reuse may be waste if the waste definition is met. repair or refurbishment.~~

(d) Need for certainty of actual reuse

Where a used good ~~or~~ 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. ~~In this context, it is necessary to consider factors such as functionality and the need for processing prior to reuse. In addition, factors such as obsolescence<sup>9</sup> and insufficient protection against damage during transport, loading and unloading may cast doubt on whether reuse will actually occur.<sup>10</sup> These factors may suggest instead an intent to dispose of the used good ~~or~~ 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 ~~or~~ product is being used for the purpose for it was conceived and not any operations to enable ~~that reuse~~ to occur. ~~Once~~ ~~when~~ a used good ~~or~~ product is being reused, it is not waste ~~anymore~~.

(f) Charitable donation

Reuse can apply to ~~used goods/ or~~ 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.~~

## Direct reuse

<sup>8</sup>Technical guidelines for the environmentally sound management of the full and partial dismantling of ship, available at: <http://www.basel.int/Implementation/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>

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

<sup>10</sup>There are difficult distinctions which are amenable to being addressed through technical guidance.

The using again, by a person other than its previous owner, of a product, object or substance that is not waste for the same purpose for which it was conceived without the necessity of ~~pre-processing.~~<sup>11</sup> ~~[repair or refurbishment].~~

~~[Explanatory notes:~~

(a) Pre-existing definitions

~~(i) Draft e-waste 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 without the necessity of repair or refurbishment~~

(ii) PACE: “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]~~”

The term “direct reuse” excludes the ~~need possibility of pre-processing reuse of an object or substance used good/product in order for it to be suitable for reuse, 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 ~~or~~ product, i.e. a good ~~or~~ 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 ~~or~~ product that is destined for direct reuse is not considered to be a waste, unless so-classified by national law. ~~A transboundary movement of used goods suitable for direct reuse would generally fall outside the Convention as a non-waste.~~

~~(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.~~

<sup>11</sup>Pre-processing may include e.g. ~~[checking], [testing]~~ cleaning, repair, refurbishment ~~[or upgrading] but not disposal.~~

## Japan

### Revised draft glossary of terms

(26 January 2015)

#### Comments by Japan (13<sup>th</sup> March 2015)

Japan would like to express our appreciation to the secretariat and the SIWG for their efforts to develop the glossary of terms. We believe that the clarification of certain terms, especially in relation to the distinction between “wastes” and “non-wastes”, is very meaningful in order to promote the implementation of the Convention and the technical guidelines and guidance documents developed under the Convention. Hereafter we have made some comments based on our experience, especially in light of the difficulty in making clear the distinction between “wastes” and “non-wastes”. The comments are integrated in the text in revision mode or presented in the bubbles.

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*Note to the reader:*

*This revised draft glossary of terms reflects the outcome of the second meeting of the small intersessional working group (SIWG) on legal clarity (25-26 January 2015, Konstanz). The introduction, the definitions of the terms, as well as section (a) of the explanatory notes for the term “wastes” set out in this revised glossary were considered by the SIWG during its second meeting. The brackets around the remainder of the explanatory notes reflect the fact that the SIWG did not have the time to consider them during that meeting. In addition, during its second meeting, the SIWG agreed that the terms “prevention” and “reduction” could be addressed in the practical manual on terminology developed by the expert working group on environmentally sound management.*

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## I. 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. This document, except where it reflects legally binding Convention terms, is provided as guidance under the Basel Convention. Its general 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 wastes<sup>1</sup> and other wastes.<sup>2</sup> Thus, the term “wastes” is of fundamental importance in determining the scope of the Convention.
3. Within the general purpose mentioned above, the main focus of this glossary is to provide guidance for further legal clarity in relation to the distinction between wastes and non-wastes. This distinction has been a particular problem in relation to [used goods or products] destined for re-use.

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<sup>1</sup> 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.

<sup>2</sup> This glossary does not address “other waste” as described in Article 1 paragraph 2 and Annex II to the Convention.

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.

## II. Definitions

**Wastes**(see Article 2 paragraph 1 of the Basel Convention)

Substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law.

*Explanatory notes:*

- (a) When does a substance or object become waste?
- (i) The definition of “wastes” in the Convention gives three ways by which a substance or object is to be considered waste and each of these merits further explanation:
- a. Substances and objects that are disposed of:
 

This is usually straightforward. The disposal operations are listed in Annex IV to the Convention. A substance or object undergoing one of these operations is waste. However some of the operations describe activities that may also be applied to non-waste e.g. [ “Land treatment resulting in benefit to agriculture or ecological improvement” may cover the utilization of [compost] [fertiliser], but not all fertilisers are waste] [ R1 use as a fuel] ]. This shows that it is not always possible to determine whether something is waste by considering solely what happens to it. All the circumstances need to be considered.
  - b. Substances and objects that are intended to be disposed of:
    - i. A substance or object will be waste from the point that it is intended to be disposed of. This is necessary so that waste is subject to control before it is actually disposed of.
    - ii. Intent to dispose can be inferred from surrounding facts and circumstances, including reasonably foreseeable results of conduct. Intention is not only the subjective belief of the exporter or generator of the waste. It is necessary therefore to also consider the circumstances in an objective manner, e.g. the existence of a contract. Therefore intent to dispose can be inferred from an act that could reasonably be expected to result in disposal.
    - iii. When assessing whether a substance or object is intended to be disposed of, all the circumstances need to be taken into account on a case by case basis. The origin of the substance or object may be relevant. In addition, factors such as defaced appearance, obsolescence<sup>13</sup>, insufficient functionality 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 object or substance, which would make it a waste.
  - c. Substances and objects that are required to be disposed of by the provisions of national law
 

This reflects the principle that substances or objects may be defined as “wastes” according to the national law of some, but not of other states.
- (ii) A product may become a waste if the waste definition applies. A product is a something intentionally produced by or resulting from a process that meets defined characteristics.
- [(iii) Another category of materials that may be difficult to characterize are production residues. They are generally considered wastes. However if production residues meet criteria, they may be referred to as a by-product and thus be non-waste according to national legislation and if they do not meet the waste definition. Such criteria may need to be laid down in national legislation to ensure that there is sufficient certainty of use and it is not subjected to a disposal operation. As the manual on implementation notes,

**Comment [Japan3]:** Such factors could include appearance.

<sup>3</sup>Obsolete means no longer produced or used, or out of date (see <http://www.oxforddictionaries.com/us/definition/english/obsolete>).

as this is set down in national law, it is possible that a production residue may be regarded as a by-product in one state, but as a waste in another. ]

- (iv) A good may [be][become ] a waste if the waste definition applies. [A good is a tradable commodity. Its value can be negative or positive. It can be a waste or a product. Whether something is a “good” has no relevance to the definition of waste.][A good is a substance or object that has economic value and which is capable, as such, of forming the subject of commercial transactions.] It is a wider term than product. A used good is one that is or has been used, either by its first or subsequent owner. A used good may or may not be a waste Use means the utilization of a good, whether by its first or a subsequent owner. This term includes reuse and direct reuse of a good, but does not include utilization of a good in a recovery operation.

(b) When does waste cease to be waste?

For some recovery operations, there may be a question of when waste may cease to be waste and reach end of waste status. Once something becomes waste, and someone wants to bring it back into productive use, the activity it undergoes will by definition be a recovery operation as the activity is applied to waste that results in a non-waste. There are three possibilities:

- (i) It has been prepared for reuse.

Used goods may become waste e.g. when their owner intends to dispose of them because he buys a newer model. If the used good can be made suitable for reuse, this will promote the better use of resources. It is necessary to check, clean or repair the good to ensure it will be suitable for reuse. ~~Such operations will be recovery as the used goods that have become waste are prepared so that they can be re-used without any other pre-processing than checking, cleaning or repairing. As such operations are not listed in Annex IV to the Convention, they would need to be defined in national law.~~

**Comment [Japan4]:** This sentence is unclear. Operations considered as “recovery” should be defined in the definition for “Recovery”.

- (ii) It has undergone a recycling operation, when that operation is completed.

Recycling operations involve the reprocessing or transformation of waste into products, materials or substances, though not necessarily for the original purpose. Once the operation is complete, the substance or object is no longer waste. Some recycling operations are listed in Annex IV to the Convention.

- (iii) It has otherwise gained end-of-waste status as a result of a recovery operation

~~Sometimes a recovery operation does not have the nature of a recycling operation. The result may be products, materials or substances that do not require further recovery operations to enable them to be used. An example might be scrap metal which is separated, bundled and collected such that it meets international or domestic standards for use. It has not been transformed or reprocessed, but is no longer waste. Such standards may be set in national legislation with criteria to ensure that there is sufficient certainty of use and that in there is sufficient certainty of use and that it is not subjected to a disposal operation.~~

**Comment [Japan5]:** This sentence is unclear and needs to be further elaborated. What is the nature of a recycling operation?

**Comment [Japan6]:** Before bundled and collected, separating process is supposed to be conducted.

**Comment [Japan7]:** As far as we know, there is no such international standard (please let us know if any). We therefore suggest adding “or domestic”. (In Japan, the relevant industrial association has its own criteria).

(c) 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, while it is still a waste. If the waste is subject to a transboundary movement, then it will have to be declared in one customs code for goods (Harmonized System), while it is still a waste. Economic value is not an appropriate criterion to distinguish waste from non-waste. ]

**Non-waste**

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

*[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.]

**Hazardous wastes**(see Article 1 paragraph 1 of the Basel Convention)

- (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.

### **Hazardous characteristics**

Any of the characteristics contained in Annex III to the Basel Convention.

### **Non-hazardous waste**

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

**Disposal**(see Article 2 paragraph 4 of the Basel Convention)

Any operation specified in Annex IV to the Basel Convention.

*[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**

Commonly used to refer to disposal operations specified in Annex IV A to the Basel Convention.

*[Explanatory note*

This definition builds on the PACE<sup>4</sup>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.]

### **Recovery**

Option 1

[Relevant operations specified in Annex IV B to the Basel Convention.]

Option 2

[Commonly used to refer to disposal operations specified in Annex IV B to the Basel Convention.]

*[Explanatory notes:*

- (a) Pre-existing definitions
  - (i) Draft e-waste guidelines<sup>5</sup>: “Relevant operations specified in Annex IV B to the Basel Convention; recycling operations are part of this annex.”

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<sup>4</sup>In this document, references to “PACE” are to be understood as references to the PACE glossary set out in the revised guidance document on the environmentally sound management of used and end-of-life computing equipment (document UNEP/CHW.11/6/Add.1/Rev.1 available at: <http://www.basel.int/TheConvention/ConferenceoftheParties/Meetings/COP11/tabid/3256/Default.aspx>).

<sup>5</sup>In this document, references to “draft e-waste guidelines” are to be understood as references to the 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) set out in document UNEP/CHW/12/5/Add.1 available at: <http://www.basel.int/TheConvention/ConferenceoftheParties/Meetings/COP12/tabid/4248/mctl/ViewDetails/EventModID/8051/EventID/542/xmid/13027/Default.aspx>



- (ii) Technical guidelines on the environmentally sound recycling/reclamation of metals and metal compounds (R4)(2004)<sup>6</sup>: “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

### Option 1

[Any recovery operation that involves the reprocessing or transformation of waste into new products, or materials or substances that enter the [economic][production] cycle. Recycling does not include energy recovery and the reprocessing into materials that are to be used as fuels. Some recycling operations are identified in section B of Annex IV to the Convention.]

### Option 2

[Relevant operations specified in Annex IV B to the Basel Convention.]

[*Explanatory note:*

Pre-existing definitions

- (a) PACE: Relevant operations specified in Annex IV B to the Basel Convention.
- (b) Used tyres guidelines<sup>7</sup>: 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.
- (c) 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.]

## Repair

<sup>6</sup>Available at: <http://www.basel.int/Implementation/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>

<sup>7</sup>In this document, references to “used tyres guidelines” are to be understood as references to the revised technical guidelines for the environmentally sound management of used and waste pneumatic tyres, available at: <http://www.basel.int/Implementation/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>

Fixing a specified fault in an object that is a waste or a product and/or replacing defective components, with the result of making the waste or product a fully functional product to be used for its originally intended purpose.

*[Explanatory notes]*

- (a) Pre-existing definitions
  - (i) Draft e-waste guidelines: Fixing specified faults in equipment [and/or replacing defective components of equipment in order to bring the equipment into a fully functional condition].
  - (ii) 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.]

### **Refurbishment**

Modification of an object that is a waste or a product to increase its performance and/or functionality or to meet applicable technical standards or regulatory requirements, with the result of making the waste or product a fully functional product to be used for a purpose that is at least the one that was originally intended.

*[Explanatory notes]*

- (a) Pre-existing definitions
  - (i) 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.
  - (ii) 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.]

### **Reuse**

The using again, by a person other than its previous owner, of a product, object or substance [that is not waste], [for the same purpose for which it was conceived, ] [possibly after pre-processing] [repair or refurbishment].

*[Explanatory notes]*

- (a) Pre-existing definitions
  - (i) Draft e-waste 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.

- (ii) 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.
- (iii) Ship recycling guidelines<sup>8</sup>: 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 obsolescence<sup>9</sup> and insufficient protection against damage during transport, loading and unloading may cast doubt on whether reuse will actually occur.<sup>10</sup> 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.]

### Direct reuse

The using again, by a person other than its previous owner, of a product, object or substance that is not waste for the same purpose for which it was conceived without the necessity of [pre-processing<sup>11</sup>][repair or refurbishment].

[*Explanatory notes:*

- (a) Pre-existing definitions
- (i) Draft e-waste 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 without the necessity of repair or refurbishment
- (ii) PACE: “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]”

**Comment [Japan8]:** In our view, “testing” for reuse is the same as “checking”. We suggest to remove “testing” and leave “checking” in the footnote.

<sup>8</sup>Technical guidelines for the environmentally sound management of the full and partial dismantling of ship, available at: <http://www.basel.int/Implementation/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>

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

<sup>10</sup>There are difficult distinctions which are amenable to being addressed through technical guidance.

<sup>11</sup>Pre-processing may include e.g. [checking], [testing] cleaning, repair, refurbishment [or upgrading] but not disposal.

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.]

## Mexico

### **Comentarios del Gobierno de México sobre el glosario preparado en cumplimiento de la Decisión BC-11/1 en seguimiento a la iniciativa patrocinada por Indonesia y Suiza para mejorar la eficacia del Convenio de Basilea y de la Decisión OEWG-9/8 en la prestación de una mayor claridad jurídica.**

La Secretaría de Medio Ambiente y Recursos Naturales comenta que la definición de “Waste” del glosario preparado en cumplimiento de la Decisión BC-11/1: “*Substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law*”, es diferente aún con las notas explicativas del glosario preparado, a la definición nacional de residuos de la Ley General para la Prevención y Gestión Integral de los Residuos (LGPGIR), que describe por residuo: “Material o producto cuyo propietario o poseedor desecha y que se encuentra en estado sólido o semisólido, o es un líquido o gas contenido en recipientes o depósitos, y que puede ser susceptible de ser valorizado o requiere sujetarse a tratamiento o disposición final conforme a lo dispuesto en esta Ley y demás ordenamientos que de ella deriven”. Lo anterior debido a que “Waste” no entra en detalles sobre el estado físico ni abunda sobre la posibilidad de su valorización; no obstante, debido a que incluye el precepto de aplicación de disposiciones de la legislación nacional, se sugiere que deben complementarse durante su interpretación e implementación nacional.

Para México es importante aclarar la forma en que se publicará el glosario preparado y si su aplicación será vinculante o servirá como una guía para la aplicación del Convenio.

Con relación a la definición de residuos peligrosos del glosario preparado por el Pequeño Grupo de Trabajo entre sesiones sobre Claridad Jurídica (SIWG por sus siglas en inglés), esta engloba o cubre a la definición nacional, por lo que su aplicación en movimientos transfronterizos no representa mayor dificultad.

Los términos recuperación, reparación, restauración, eliminación, reúso directo, no se encuentran definidos por la legislación nacional, por ende es imprescindible la correcta interpretación jurídica y técnica para evitar errores de aplicación o circunscribir su aplicación al contexto del glosario preparado.

Los conceptos sobre reparación o reconstrucción (referentes a “repair” or “refurbishment”, para evitar errores de traducción), son conceptos que no deben causar contradicción en la legislación nacional ya que como lo aclara el documento motivo de análisis, son necesarios para preparar un residuo para su reutilización, reparación o reconstrucción, y deben ser considerados como operaciones de recuperación.

Al respecto, las directrices técnicas para residuos electrónicos deben ser aplicadas de forma que no se confundan los movimientos transfronterizos que involucren operaciones de reparación con fines de garantía, ensamble y reconstrucción de equipos y aparatos eléctricos y electrónicos útiles, nuevos o seminuevos, con la importación/exportación de residuos peligrosos.

Asimismo, México considera importante no dejar abierta la posibilidad, para que algunos países envíen sus desechos bajo la figura de reparación, restauración o reutilización directa a países en desarrollo o con economías en transición, que en ocasiones no cuentan con la infraestructura para su manejo adecuado, y que en ocasiones tampoco cuentan con un marco normativo que los regule o la legislación no es clara en la materia por lo que está sujeta a interpretación y por ende su aplicación.

Es importante considerar en el movimiento transfronterizo de mercancías usadas, en particular, los equipos eléctricos y electrónicos, factores tales como los tiempos de vida útil, o costos de reparación; por lo que pueden estar importando bienes que en un corto plazo serán desechos y por lo tanto no serán redituables, porque el costo por manejarlos como residuos o residuos peligrosos puede ser mayor a su costo inicial, independientemente de los riesgos que implica su desensamble o intento de aprovechamiento de metales. Asimismo, se tiene que considerar que varios países desarrollados no permiten este tipo de importación de bienes o equipos electrónicos usados, toda vez que los tienen clasificados de acuerdo a su legislación nacional como residuos y por lo tanto su movimiento transfronterizo está sujeto a control.

Por su parte, la Procuraduría Federal de Protección al Ambiente (PROFEPA), tiene entre otras funciones, la atribución de verificar el movimiento transfronterizo de materiales, sustancias y residuos peligrosos en los principales puntos de entrada y salida del territorio nacional, de conformidad con lo que establece el artículo 60 del Reglamento Interior de la SEMARNAT, publicado en el Diario Oficial de la Federación (D.O.F.), el 26 de noviembre de 2012, así como a lo previsto en los numerales Sexto, Octavo y Noveno del

Acuerdo que establece la clasificación de mercancías cuya importación y exportación está sujeta a regulación por parte de la SEMARNAT, publicado en el mismo instrumento informativo de la Federación el 19 de diciembre de 2012, así como en los artículos 25,26, 27 y 29 del Manual de procedimientos para la importación y exportación de vida silvestre, productos y subproductos forestales, y materiales y residuos peligrosos, sujetos a regulación por parte de la SEMARNAT, publicado en el D.O.F., el 29 de enero de 2004.

En razón de lo anterior, el actuar de México se apega a la interpretación de las disposiciones contenidas en el referido glosario de términos, mismas que se encuentran alineadas a las definiciones establecidas en el artículo 5° de la Ley General para la Prevención y Gestión Integral de los Residuos.

Sin embargo, es de considerar que la cuarta versión del Glosario de Términos establece algunas definiciones que no contempla el marco normativo nacional como anteriormente se mencionó, tales como los conceptos de recuperación, reparación y restauración, que al momento de realizar la verificación al cumplimiento de restricciones no arancelarias puede generar omisión por parte de los interesados en importar o exportar ciertos residuos que son manejados en el comercio actualmente, así como del personal de inspección y, en su caso, no brindar certeza jurídica al inspeccionado, como es el caso del movimiento transfronterizo de los desechos electrónicos.

Por lo que, al no estar consideradas en el marco legal nacional las citadas definiciones de recuperación, reparación y restauración, se tiene una situación de interpretación entre los interesados en importar o exportar los desechos de los dispositivos eléctricos y electrónicos, así como de la autoridad de gestión de la SEMARNAT, ya que para el caso de la importación ésta sólo se otorga para su reutilización o reciclaje, tal y como se establece en la fracción I del artículo 86 de la Ley General para la Prevención y de Gestión Integral de los Residuos, mientras que para la exportación se debe contar con el consentimiento previo del país importador y, en su caso, de los gobiernos de los países por los que transiten los residuos, siendo que en México los desechos electrónicos se consideran de manejo especial, pero su movimiento de salida del país requiere de autorización de la SEMARNAT y revisión de la PROFEPA, por lo que no es posible constatar el manejo ambientalmente adecuado de ese tipo de desechos electrónicos y con ello no es posible rastrear la cadena de valor de los residuos que nos ocupan.

## Mozambique

**From:** Rosalina Naife [mailto:[ronaife@yahoo.com.br](mailto:ronaife@yahoo.com.br)]  
**Sent:** dimanche, 15. mars 2015 19:39  
**To:** Le Gong  
**Cc:** Juliette Kohler  
**Subject:** Re: Glossary of terms: invitation to submit comments

Dear Sir/Madame,

I would like to thank you for this wonderful draft glossary. The content draft is very clear and understandable. However it needs small orthographic corrections, unless otherwise you see such corrections irrelevant. The attachment has some passages in track change of some words which were linked, that I have corrected.

Sincerely

Rosalina Naife

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## Oman

*Sultanate of Oman*  
*Ministry of Environment & Climate Affairs*

سلطنة عمان  
وزارة البيئة والمناخ

Ref: MECA/MO/IC/ 35 / 405 /2015  
Date: 12/04/2015

**Mr. Rolph Payet**  
**Executive Secretary**  
**Secretariat of the Basel Convention**  
**UNEP**  
**Fax: 00 41 0 22 917 8098**  
**Geneva, Switzerland**

After compliments,

**Subject: Glossary of Terms: Submission of Comments.**

With reference to your letter dated January 29<sup>th</sup> 2015 regarding the abovementioned Subject.

I would like to inform you that Sultanate of Oman has no Views and Comments on the glossary of terms.

Thank you for your co-operation and best regards.

  
SULTANATE OF OMAN  
Department of International Cooperation  
Ministry of Environment & Climate Affairs

  
**Mohamed Rashid AlSinaidi**  
**Managing Director of**  
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## Qatar

### Revised draft glossary of terms

(26 January 2015)

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*Note to the reader:*

*This revised draft glossary of terms reflects the outcome of the second meeting of the small intersessional working group (SIWG) on legal clarity (25-26 January 2015, Konstanz). The introduction, the definitions of the terms, as well as section (a) of the explanatory notes for the term "wastes" set out in this revised glossary were considered by the SIWG during its second meeting. The brackets around the remainder of the explanatory notes reflect the fact that the SIWG did not have the time to consider them during that meeting. In addition, during its second meeting, the SIWG agreed that the terms "prevention" and "reduction" could be addressed in the practical manual on terminology developed by the expert working group on environmentally sound management.*

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## I. 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. This document, except where it reflects legally binding Convention terms, is provided as guidance under the Basel Convention. Its general 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 wastes<sup>1</sup> and other wastes.<sup>2</sup> Thus, the term "wastes" is of fundamental importance in determining the scope of the Convention.

3. Within the general purpose mentioned above, the main focus of this glossary is to provide guidance for further legal clarity in relation to the distinction between wastes and non-wastes. This distinction has been a particular problem in relation to [used goods or 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.

## II. Definitions

**Wastes**(see Article 2 paragraph 1 of the Basel Convention)

Substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law.

*Explanatory notes:*

- (a) When does a substance or object become waste?
  - (i) The definition of "wastes" in the Convention gives three ways by which a substance or object is to be considered waste and each of these merits further explanation:
    - a. Substances and objects that are disposed of:

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<sup>1</sup> 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.

<sup>2</sup> This glossary does not address "other waste" as described in Article 1 paragraph 2 and Annex II to the Convention.

This is usually straightforward. The disposal operations are listed in Annex IV to the Convention. A substance or object undergoing one of these operations is waste. However some of the operations describe activities that may also be applied to non-waste e.g. [ “Land treatment resulting in benefit to agriculture or ecological improvement” may cover the utilization of [compost] [fertiliser], but not all fertilisers are waste] [ R1 use as a fuel] ]. This shows that it is not always possible to determine whether something is waste by considering solely what happens to it. All the circumstances need to be considered.

- b. Substances and objects that are intended to be disposed of:
  - i. A substance or object will be waste from the point that it is intended to be disposed of. This is necessary so that waste is subject to control before it is actually disposed of.
  - ii. Intent to dispose can be inferred from surrounding facts and circumstances, including reasonably foreseeable results of conduct. Intention is not only the subjective belief of the exporter or generator of the waste. It is necessary therefore to also consider the circumstances in an objective manner, e.g. the existence of a contract. Therefore intent to dispose can be inferred from an act that could reasonably be expected to result in disposal.
  - iii. When assessing whether a substance or object is intended to be disposed of, all the circumstances need to be taken into account on a case by case basis. The origin of the substance or object may be relevant. In addition, factors such as obsolescence<sup>3</sup>, insufficient functionality 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 object or substance, which would make it a waste.

- c. Substances and objects that are required to be disposed of by the provisions of national law

This reflects the principle that substances or objects may be defined as “wastes” according to the national law of some, but not of other states.

- (ii) A product may become a waste if the waste definition applies. A product is a something intentionally produced by or resulting from a process that meets defined characteristics.
- [(iii) Another category of materials that may be difficult to characterize are production residues. They are generally considered wastes. However if production residues meet criteria, they may be referred to as a by-product and thus be non-waste according to national legislation and if they do not meet the waste definition. Such criteria may need to be laid down in national legislation to ensure that there is sufficient certainty of use and it is not subjected to a disposal operation. As the manual on implementation notes, as this is set down in national law, it is possible that a production residue may be regarded as a by-product in one state, but as a waste in another. ]
- (iv) A good may [be][become] a waste if the waste definition applies. [A good is a tradable commodity. Its value can be negative or positive. It can be a waste or a product. Whether something is a “good” has no relevance to the definition of waste. ][A good is a substance or object that has economic value and which is capable, as such, of forming the subject of commercial transactions.] It is a wider term than product. A used good is one that is or has been used, either by its first or subsequent owner. A used good may or may not be a waste Use means the utilization of a good, whether by its first or a subsequent owner. This term includes reuse and direct reuse of a good, but does not include utilization of a good in a recovery operation.

- [(b) When does waste cease to be waste?

For some recovery operations, there may be a question of when waste may cease to be waste and reach end of waste status. Once something becomes waste, and someone wants to bring it back into productive use, the activity it undergoes will by definition be a recovery operation as the activity is applied to waste that results in a non-waste. There are three possibilities:

**Comment [Sd9]:** Need further explanation, may use the example of used lead acid batteries and its transboundary movement as good or waste.

<sup>3</sup>Obsolete means no longer produced or used, or out of date (see <http://www.oxforddictionaries.com/us/definition/english/obsolete>).

- (i) It has been prepared for reuse.  
Used goods may become waste e.g. when their owner intends to dispose of them because he buys a newer model. If the used good can be made suitable for reuse, this will promote the better use of resources. It is necessary to check, clean or repair the good to ensure it will be suitable for reuse. Such operations will be recovery as the used goods that have become waste are prepared so that they can be re-used without any other pre-processing than checking, cleaning or repairing. As such operations are not listed in Annex IV to the Convention, they would need to be defined in national law.
- (ii) It has undergone a recycling operation, when that operation is completed.  
Recycling operations involve the reprocessing or transformation of waste into products, materials or substances, though not necessarily for the original purpose. Once the operation is complete, the substance or object is no longer waste. Some recycling operations are listed in Annex IV to the Convention.
- (iii) It has otherwise gained end-of-waste status as a result of a recovery operation  
Sometimes a recovery operation does not have the nature of a recycling operation. The result may be products, materials or substances that do not require further recovery operations to enable them to be used. An example might be scrap metal which is bundled and collected such that it meets international standards for use. It has not been transformed or reprocessed, but is no longer waste. Such standards may be set in national legislation with criteria to ensure that there is sufficient certainty of use and that there is sufficient certainty of use and that it is not subjected to a disposal operation.
- (c) 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, while it is still a waste. If the waste is subject to a transboundary movement, then it will have to be declared in one customs code for goods (Harmonized System), while it is still a waste. Economic value is not an appropriate criterion to distinguish waste from non-waste. ]

### **Non-waste**

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

*[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.]

**Hazardous wastes** (see Article 1 paragraph 1 of the Basel Convention)

- (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.

### **Hazardous characteristics**

Any of the characteristics contained in Annex III to the Basel Convention.

### **Non-hazardous waste**

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

**Disposal** (see Article 2 paragraph 4 of the Basel Convention)

Any operation specified in Annex IV to the Basel Convention.

*[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**

Commonly used to refer to disposal operations specified in Annex IV A to the Basel Convention.

*[Explanatory note*

This definition builds on the PACE<sup>4</sup> 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.]

**Recovery**

Option 1

[Relevant operations specified in Annex IV B to the Basel Convention.]

Option 2

[Commonly used to refer to disposal operations specified in Annex IV B to the Basel Convention.]

*[Explanatory notes:*

- (a) Pre-existing definitions
  - (i) Draft e-waste guidelines<sup>5</sup>: “Relevant operations specified in Annex IV B to the Basel Convention; recycling operations are part of this annex.”
  - (ii) Technical guidelines on the environmentally sound recycling/reclamation of metals and metal compounds (R4)(2004)<sup>6</sup>: “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

<sup>4</sup>In this document, references to “PACE” are to be understood as references to the PACE glossary set out in the revised guidance document on the environmentally sound management of used and end-of-life computing equipment (document UNEP/CHW.11/6/Add.1/Rev.1 available at: <http://www.basel.int/TheConvention/ConferenceoftheParties/Meetings/COP11/tabid/3256/Default.aspx>).

<sup>5</sup>In this document, references to “draft e-waste guidelines” are to be understood as references to the 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) set out in document UNEP/CHW/12/5/Add.1 available at: <http://www.basel.int/TheConvention/ConferenceoftheParties/Meetings/COP12/tabid/4248/mct/ViewDetails/EventModID/8051/EventID/542/xmid/13027/Default.aspx>

<sup>6</sup>Available at: <http://www.basel.int/Implementation/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>

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

### Option 1

[Any recovery operation that involves the reprocessing or transformation of waste into new products, or materials or substances that enter the [economic][production] cycle. Recycling does not include energy recovery and the reprocessing into materials that are to be used as fuels. Some recycling operations are identified in section B of Annex IV to the Convention.]

### Option 2

[Relevant operations specified in Annex IV B to the Basel Convention.]

[*Explanatory note:*

Pre-existing definitions

- (a) PACE: Relevant operations specified in Annex IV B to the Basel Convention.
- (b) Used tyres guidelines<sup>7</sup>: 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.
- (c) 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.]

## Repair

Fixing a specified fault in an object that is a waste or a product and/or replacing defective components, with the result of making the waste or product a fully functional product to be used for its originally intended purpose.

[*Explanatory notes*

(a) Pre-existing definitions

- (i) Draft e-waste guidelines: Fixing specified faults in equipment [and/or replacing defective components of equipment in order to bring the equipment into a fully functional condition].
- (ii) 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.]

<sup>7</sup>In this document, references to “used tyres guidelines” are to be understood as references to the revised technical guidelines for the environmentally sound management of used and waste pneumatic tyres, available at: <http://www.basel.int/Implementation/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>

## Refurbishment

Modification of an object that is a waste or a product to increase its performance and/or functionality or to meet applicable technical standards or regulatory requirements, with the result of making the waste or product a fully functional product to be used for a purpose that is at least the one that was originally intended.

*[Explanatory notes]*

- (a) Pre-existing definitions
- (i) 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.
  - (ii) 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.]

## Reuse

The using again, by a person other than its previous owner, of a product, object or substance [that is not waste], [for the same purpose for which it was conceived, ][possibly after pre-processing] [repair or refurbishment].

*[Explanatory notes]*

- (a) Pre-existing definitions
- (i) Draft e-waste 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.
  - (ii) 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.
  - (iii) Ship recycling guidelines<sup>8</sup>: 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

<sup>8</sup>Technical guidelines for the environmentally sound management of the full and partial dismantling of ship, available at: <http://www.basel.int/Implementation/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>

the environment. Factors such as obsolescence<sup>9</sup> and insufficient protection against damage during transport, loading and unloading may cast doubt on whether reuse will actually occur.<sup>10</sup> 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.]

### Direct reuse

The using again, by a person other than its previous owner, of a product, object or substance that is not waste for the same purpose for which it was conceived without the necessity of [pre-processing<sup>11</sup>][repair or refurbishment].

[*Explanatory notes:*

(a) Pre-existing definitions

- (i) Draft e-waste 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 without the necessity of repair or refurbishment
- (ii) PACE: “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]”

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

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

<sup>10</sup>There are difficult distinctions which are amenable to being addressed through technical guidance.

<sup>11</sup>Pre-processing may include e.g. [checking], [testing] cleaning, repair, refurbishment [or upgrading] but not disposal.

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.]



## United States of America

**U.S. comments:** We appreciate the opportunity to review the draft glossary of terms. Unfortunately, we believe that we have stepped back since OEWG-9 and are concerned with the tone of many of the definitions. At OEWG-9, we heard many countries and other stakeholders that were concerned that this glossary would be too prescriptive and set one definition forward for these terms. We share that concern and continue to believe that this glossary must allow for flexibility and reflect how these terms are currently used among countries. Only in that way can it inform our discussions in other areas on when a material is a waste or non-waste.

### Revised draft glossary of terms

(26 January 2015)

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*Note to the reader:*

*This revised draft glossary of terms reflects the outcome of the second meeting of the small intersessional working group (SIWG) on legal clarity (25-26 January 2015, Konstanz). The introduction, the definitions of the terms, as well as section (a) of the explanatory notes for the term "wastes" set out in this revised glossary were considered by the SIWG during its second meeting. The brackets around the remainder of the explanatory notes reflect the fact that the SIWG did not have the time to consider them during that meeting. In addition, during its second meeting, the SIWG agreed that the terms "prevention" and "reduction" could be addressed in the practical manual on terminology developed by the expert working group on environmentally sound management.*

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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. This document, except where it reflects legally binding Convention terms, is provided as guidance under the Basel Convention. Its general 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 wastes<sup>1</sup> and other wastes.<sup>2</sup> Thus, the term "wastes" is of fundamental importance in determining the scope of the Convention.
3. Within the general purpose mentioned above, the main focus of this glossary is to provide guidance for further legal clarity in relation to the distinction between wastes and non-wastes. This distinction has been a particular problem in relation to ~~used goods or products~~ destined for re-use.

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<sup>1</sup> 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.

<sup>2</sup> This glossary does not address "other waste" as described in Article 1 paragraph 2 and Annex II to the Convention.

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.

## II. Definitions

**Wastes**(see Article 2 paragraph 1 of the Basel Convention)

Substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law.

*Explanatory notes:*

- (a) When does a substance or object become waste?
- (i) The definition of “wastes” in the Convention gives three ways by which a substance or object is to be considered waste and each of these merits further explanation:
- a. Substances and objects that are disposed of:
 

This is usually straightforward. The disposal operations are listed in Annex IV to the Convention. A substance or object undergoing one of these operations (D1 – D10) is waste. However some of the operations (R1 – R13) describe activities that may also be applied to non-waste e.g. [“Land treatment resulting in benefit to agriculture or ecological improvement” may cover the utilization of [compost] [fertiliser], but not all fertilisers are waste] [R1 use as a fuel] [–]. This shows that it is not always possible to determine whether something is waste by considering solely what happens to it. All the circumstances need to be considered.
  - b. Substances and objects that are intended to be disposed of:
    - i. A substance or object will be waste from the point that it is intended to be disposed of. This is necessary so that waste is subject to control before it is actually disposed of.
    - ii. Intent to dispose can be inferred from surrounding facts and circumstances, including reasonably foreseeable results of conduct. Intention is not only the subjective belief of the exporter or generator of the waste. It is necessary therefore to also consider the circumstances in an objective manner, e.g. the existence of a contract. Therefore intent to dispose can be inferred from an act that could reasonably be expected to result in disposal.
    - iii. When assessing whether a substance or object is intended to be disposed of, all the circumstances need to be taken into account on a case by case basis. The origin of the substance or object may be relevant. In addition, factors such as obsolescence<sup>13</sup>, insufficient functionality 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 object or substance, which would make it a waste.
  - c. Substances and objects that are required to be disposed of by the provisions of national law
 

This reflects the principle that substances or objects may be defined as “wastes” according to the national law of some, but not of other states.
- (ii) A product may become a waste if the waste definition applies. A product is a something intentionally produced by or resulting from a process that meets defined characteristics.
- (iii) Another category of materials that may be difficult to characterize are production residues. They are generally considered wastes. However if production residues do not meet the waste definition meet criteria, they may be referred to as a by-product and thus be non-waste according to national legislation and if they do not meet the waste definition. Some countries have specific criteria for determining whether a production residue is a waste or a non-waste. In these countries, such criteria may need to be

**Comment [USA10]:** This is a better example. There are wastes that can be used as fuels, such as tires. There are also many other non-wastes that can be used as fuel, such as coal.

<sup>13</sup>Obsolete means no longer produced or used, or out of date (see <http://www.oxforddictionaries.com/us/definition/english/obsolete>).

laid down in national legislation or regulations to ensure that there is sufficient certainty of use and it is not subjected to a disposal operation. As the manual on implementation notes, as this is set down in national law or regulation, it is possible that a production residue may be regarded as a by-product/non-waste in one state, but as a waste in another.]

- (iv) A good may ~~be~~ become a waste if the waste definition applies. [A good is a tradable commodity. ~~Its value can be negative or positive. It can be a waste or a product. Whether something is a "good" has no relevance to the definition of waste. [A good is a substance or object that has economic value and which is capable, as such, of forming the subject of commercial transactions.] It is a wider term than product. A used good is one that is or has been used, either by its first or subsequent owner. A used good may or may not be a waste Use means the utilization of a good, whether by its first or a subsequent owner. This term includes reuse and direct reuse of a good, but does not include utilization of a good in a recovery operation.~~

(b) When does waste cease to be waste?

For some recovery operations, there may be a question of when waste may cease to be waste and reach end of waste status. Once something becomes waste, and someone wants to bring it back into productive use, the activity it undergoes will by definition be a recovery operation as the activity is applied to waste that results in a non-waste. There are three possibilities:

- (i) It has been prepared for reuse (in some countries).

~~Used goods may become waste e.g. when their owner intends to dispose of them because he buys a newer model. In some countries, used goods destined for reuse are considered wastes, while they are not considered wastes in other countries. If the used good can be made suitable for reuse, this will promote the better use of resources. It is necessary to check, clean or repair the good to ensure it will be suitable for reuse. Such operations will ~~be~~ may be considered recovery operations in some countries as the used goods that have ~~been~~ are considered wastes in those countries are prepared so that they can be re-used without any other pre-processing than checking, cleaning or repairing. As such operations are not listed in Annex IV to the Convention, they would need to be defined in national law if the country considers these operations to be waste operations.~~

- (ii) It has undergone a recycling operation, when that operation is completed.

Recycling operations involve the reprocessing or transformation of waste into products, materials or substances, though not necessarily for the original purpose. Once the operation is complete, the substance or object is no longer waste. Some recycling operations are listed in Annex IV to the Convention.

- (iii) It has otherwise gained end-of-waste status as a result of a recovery operation

Sometimes a recovery operation does not have the nature of a recycling operation. The result may be products, materials or substances that do not require further recovery operations to enable them to be used. An example might be scrap metal which is bundled and collected such that it meets international standards for use. It has not been transformed or reprocessed, but is no longer waste. Such standards may be set in national legislation with criteria to ensure that there is sufficient certainty of use and that in there is sufficient certainty of use and that it ~~is~~ will not be subjected to a disposal operation.

(c) 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, while it is still a waste. If the waste is subject to a transboundary movement, then it will have to be declared in one customs code for goods (Harmonized System), while it is still a waste. Economic value is not an appropriate criterion to distinguish waste from non-waste. While waste may have an economic value, its value is often significantly lower than that of new or reusable goods.]~~

**Non-waste**

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

**Comment [USA11]:** This definition should be edited to reflect first what the Basel Convention requires. If some countries have specific criteria for evaluating whether a production residue is a waste, that can be identified as additional good practice here.

It is important that this section reflect deference to national definitions whether they address 'waste' or 'non-waste' so that if the said waste does not meet Basel's definition, there is room for the national definition to apply (which would allow for flexibility in what constitutes a waste).

**Comment [USA12]:** We recommend deleting this section on a good being negative or positive and that it has no relevance to the definition of waste. This is not clear at all and serves to confuse. Anything that is a good and can be a tradable commodity should not be considered a waste unless/until it becomes one.

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**Comment [USA13]:** This sentence in particular is limiting. Goods, whether used or not used at all, may become a waste if owner chooses to dispose of it regardless of whether a newer model is there to replace it.

**Comment [USA14]:** We believe that this is a good area to reflect differences among countries on when a good becomes a waste. Not all countries consider used goods destined for reuse as "wastes."

**Comment [USA15]:** As stated above, we find that mixing the definitions of "waste" and "good" to be confusing and unhelpful.

**Comment [USA16]:** It is unclear how this is relevant.

**Comment [USA17]:** In the context of the draft Technical guidelines on e-waste, parties and others have decided in paragraph 25 that economic value can be utilized as a criterion to distinguish waste from non-waste. That paragraph specifically lists two criteria for identifying materials that are wastes related to economic value:  
 "(i) There is no regular market for the equipment."  
 "(k) The price paid for the items is significantly lower than would be expected from fully functional equipment intended for reuse."

Therefore, we suggest replacing this sentence with one that states that, while waste can have economic value, it is typically much lower than new or reusable goods.

*[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.]

**Hazardous wastes**(see Article 1 paragraph 1 of the Basel Convention)

- (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.

**Hazardous characteristics**

Any of the characteristics contained in Annex III to the Basel Convention.

**Non-hazardous waste**

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

**Disposal**(see Article 2 paragraph 4 of the Basel Convention)

Any operation specified in Annex IV to the Basel Convention.

*[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 that manage~~with~~ waste.]

**Final disposal**

Commonly used to refer to disposal operations specified in Annex IV A to the Basel Convention.

*[Explanatory note*

This definition builds on the PACE<sup>4</sup> 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.]

**Recovery**

Option 1

[Relevant operations specified in Annex IV B to the Basel Convention.]

Option 2

[Commonly used to refer to disposal operations specified in Annex IV B to the Basel Convention.]

**Comment [USA18]:** We are unsure of the intent behind these two options. Option 1 appears to be clearer.

*[Explanatory notes:*

- (a) Pre-existing definitions
  - (i) Draft e-waste guidelines<sup>5</sup>: “Relevant operations specified in Annex IV B to the Basel Convention; recycling operations are part of this annex.”

<sup>4</sup>In this document, references to “PACE” are to be understood as references to the PACE glossary set out in the revised guidance document on the environmentally sound management of used and end-of-life computing equipment (document UNEP/CHW.11/6/Add.1/Rev.1 available at: <http://www.basel.int/TheConvention/ConferenceoftheParties/Meetings/COP11/tabid/3256/Default.aspx>).

- (ii) Technical guidelines on the environmentally sound recycling/reclamation of metals and metal compounds (R4)(2004)<sup>6</sup>: “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”  
 In some countries, national legislation may recognize that where repair or refurbishment are necessary to prepare a waste for reuse, they should be regarded as recovery operations. In other countries, such facilities may not 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 not longer destined or intended to be destined for an Annex IV A 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.

**Comment [USA19]:** The definitions in this document should reflect that different countries have different interpretations of terms. It should not reflect one country or region’s definitions only.

**Comment [USA20]:** This definition should be clear that there is a difference among countries regarding whether such facilities are waste facilities.

**Comment [USA21]:** It is not clear what the value of this statement is.

## Recycling

### Option 1

[Any recovery operation that involves the reprocessing or transformation of waste into new products, materials or substances that enter the [economic] production cycle. Recycling does not include energy recovery and the reprocessing into materials that are to be used as fuels. Some recycling operations are identified in section B of Annex IV to the Convention.]

**Comment [USA22]:** Option 1 is too prescriptive.

### Option 2

[Relevant operations specified in Annex IV B to the Basel Convention.]

[Explanatory note:

Pre-existing definitions

- (a) PACE: Relevant operations specified in Annex IV B to the Basel Convention.
- (b) Used tyres guidelines<sup>7</sup>: 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.
- (c) 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,

<sup>5</sup>In this document, references to “draft e-waste guidelines” are to be understood as references to the 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) set out in document UNEP/CHW/12/5/Add.1 available at: <http://www.basel.int/TheConvention/ConferenceoftheParties/Meetings/COP12/tabid/4248/mctl/ViewDetails/EventModID/8051/EventID/542/xmid/13027/Default.aspx>

<sup>6</sup>Available at: <http://www.basel.int/Implementation/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>

<sup>7</sup>In this document, references to “used tyres guidelines” are to be understood as references to the revised technical guidelines for the environmentally sound management of used and waste pneumatic tyres, available at: <http://www.basel.int/Implementation/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>

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.]

## Repair

Fixing a specified fault in an object that is a waste or a product and/or replacing defective components, with the result of making the waste or product a fully functional product to be used for its originally intended purpose.

[Explanatory notes

- (a) Pre-existing definitions
  - (i) Draft e-waste guidelines: Fixing specified faults in equipment [and/or replacing defective components of equipment in order to bring the equipment into a fully functional condition].
  - (ii) 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

Some countries apply the terms "Repair or refurbishment" are operations that can be applied to both waste and non-waste, while other countries only apply these terms to 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.]

Comment [USA23]: This is unclear

Comment [USA24]: This should reflect the disagreement among countries rather than be prescriptive.

## Refurbishment

Modification of an object that is a waste or a product to restore or increase its performance and/or functionality or to meet applicable technical standards or regulatory requirements, with the result of making the waste or product a fully functional product to be used for a purpose that is at least the one that was originally intended.

[Explanatory notes

- (a) Pre-existing definitions
  - (i) 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.
  - (ii) 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

Some countries apply the terms "Repair and refurbishment" are operations that can be applied to both waste and non-waste, while other countries only apply these terms to non-waste. Therefore by itself, the need for repair or refurbishment is not [a suitable criterion][determinative] for distinguishing between waste and non-waste.]

Comment [USA26]: This should reflect the disagreement among countries rather than be prescriptive.

## Reuse

The using again, by a person other than its previous owner, of a product, object or substance that is not waste, for the same purpose for which it was conceived, possibly after pre-processing, repair or refurbishment.

[Explanatory notes

(a) Pre-existing definitions

- (i) Draft e-waste 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.
- (ii) 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.
- (iii) Ship recycling guidelines<sup>8</sup>: 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 obsolescence<sup>9</sup> and insufficient protection against damage during transport, loading and unloading may cast doubt on whether reuse will actually occur.<sup>10</sup> 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.

**Comment [USA27]:** This definition is too prescriptive and unnecessary. End-of-waste is already described under the “waste” definition.

(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.~~

**Comment [USA28]:** We find this sentence confusing. It is unclear why this sentence is needed here or what it means. Instead, the bullets above (e.g. need for certainty, point of reuse, etc.) describe what we believe this sentence is trying to capture.

**Direct reuse**

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

**Comment [USA29]:** This footnote should be moved to the first mention of “pre-processing” in this document.

[Explanatory notes:

(a) Pre-existing definitions

<sup>8</sup>Technical guidelines for the environmentally sound management of the full and partial dismantling of ship, available at: <http://www.basel.int/Implementation/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>

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

<sup>10</sup>There are difficult distinctions which are amenable to being addressed through technical guidance.

<sup>11</sup>Pre-processing may include e.g. [checking], [testing] cleaning, repair, refurbishment [or upgrading] but not disposal.

- (i) Draft e-waste 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 without the necessity of repair or refurbishment
- (ii) PACE: “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]~~”

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 restore or 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.

**Comment [USA30]:** We do not refer to wastes as products. We find that using the two terms interchangeably to be confusing and unhelpful.

- (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.]~~

**Comment [USA31]:** We find this sentence confusing. It is unclear why this sentence is needed here or what it means. Instead, the bullets above (e.g. need for certainty, point of reuse, etc.) describe what we believe this sentence is trying to capture.



## Basel Action Network

### Revised draft glossary of terms

(26 January 2015)

*Note to the reader:*

*This revised draft glossary of terms reflects the outcome of the second meeting of the small intersessional working group (SIWG) on legal clarity (25-26 January 2015, Konstanz). The introduction, the definitions of the terms, as well as section (a) of the explanatory notes for the term "wastes" set out in this revised glossary were considered by the SIWG during its second meeting. The brackets around the remainder of the explanatory notes reflect the fact that the SIWG did not have the time to consider them during that meeting. In addition, during its second meeting, the SIWG agreed that the terms "prevention" and "reduction" could be addressed in the practical manual on terminology developed by the expert working group on environmentally sound management.*

## I. 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. This document, except where it reflects legally binding Convention terms, is provided as guidance under the Basel Convention. Its general 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 wastes<sup>1</sup> and other wastes.<sup>2</sup> Thus, the term "wastes" is of fundamental importance in determining the scope of the Convention.

3. Within the general purpose mentioned above, the main focus of this glossary is to provide guidance for further legal clarity in relation to the distinction between wastes and non-wastes. This distinction has been a particular problem in relation to [used ~~goods or~~ products] destined for re-use.

4.3. This glossary includes definitions of terms, ~~as well as and~~ further explanations ~~of the terms and , including in order to explain~~ how certain terms relate to each other. For the convenience of the reader, some explanations, *in italic font*, are included under more than one heading.

## II. Definitions

**Wastes** (see Article 2 paragraph 1 of the Basel Convention)

Substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law.

*Explanatory notes:*

*(a) When does a substance or object become waste?*

*(i) The definition of "wastes" in the Convention gives three ways by which a substance or object is to be considered waste and each of these merits further explanation:*

*a. Substances and objects that are disposed of:*

<sup>1</sup> 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.

<sup>2</sup> This glossary does not address "other waste" as described in Article 1 paragraph 2 and Annex II to the Convention.

**Comment [SW32]:** We are still concerned with the use of the word 'good' (see next paragraph in this comment). But if it is part of the group's mandate, then it is critical to use the first bracketed definition in the explanatory notes (a) iv for the term "wastes" below. This concern applies to all use of the term "good" or "goods" throughout the document.

As discussed at OEWG 9 by Parties, this term is very problematic. Using the term 'goods' to describe what may contain hazardous waste or has unknown characteristics or unknown types of destinations (e.g. bad parts/waste removed in importing countries) certainly goes against common usage of the term 'good', and may create significant contradictions with Basel definitions of waste.

**Comment [SW33]:** We believe it would be best to put all Explanatory Notes into italic font, so that the reader can easily distinguish between a definition versus an explanatory note, no matter how long the text.

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This is usually straightforward. The disposal operations are listed in Annex IV to the Convention. A substance or object undergoing one of these operations is waste. However, some of the operations describe activities that may also be applied to non-waste, e.g. [“Land treatment resulting in benefit to agriculture or ecological improvement” may cover the utilization of [compost] [fertiliser], but not all fertilisers are waste] [ R1 use as a fuel ]. This shows that it is not always possible to determine whether something is waste by considering solely what happens to it. All the circumstances need to be considered.

- b. Substances and objects that are intended to be disposed of:
- i. A substance or object will be waste from the point that it is intended to be disposed of. This is necessary so that waste is subject to control before it is actually disposed of.
  - ii. Intent to dispose can be inferred from surrounding facts and circumstances, including reasonably foreseeable results of conduct. Intention is not only the subjective belief of the exporter or generator of the waste. It is necessary therefore to also consider the circumstances in an objective manner, e.g. the existence of a contract. Therefore intent to dispose can be inferred from an act that could reasonably be expected to result in disposal.
  - iii. When assessing whether a substance or object is intended to be disposed of, all the circumstances need to be taken into account on a case by case basis. The origin of the substance or object may be relevant. In addition, factors such as obsolescence<sup>3</sup>, insufficient functionality 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 object or substance, which would make it a waste.
- c. Substances and objects that are required to be disposed of by the provisions of national law

This reflects the principle that substances or objects may be defined as “wastes” according to the national law of some, but not of other states.

- (ii) A product may become a waste if the waste definition applies. A product is ~~+~~ something intentionally produced by or resulting from a process that meets defined characteristics.
- [(iii) Another category of materials that may be difficult to characterize are production residues. They are generally considered wastes. However if production residues meet criteria, they may be referred to as a by-product and thus be non-waste according to national legislation and if they do not meet the Basel waste definition. Such criteria may need to be laid down in national legislation to ensure that there is sufficient certainty of use and it is not subjected to a disposal operation. As the manual on implementation notes, as this is set down in national law, it is possible that a production residue may be regarded as a by-product in one state, but as a waste in another. ]
- (iv) A good may ~~f~~~~be~~~~+~~~~or~~~~may~~ become ~~+~~~~a~~ waste if the waste definition applies. [A good is a tradable commodity. Its value can be negative or positive. It can be a waste or a product. Whether something is a “good” has no relevance to the definition of waste. ] ~~[A good is a substance or object that has economic value and which is capable, as such, of forming the subject of commercial transactions. ]~~ It is a wider term than product. A used good is one that is or has been used, either by its first or subsequent owner. A used good may or may not be a waste. Use means the utilization of a good, whether by its first or a subsequent owner. This term includes reuse and direct reuse of a good, but does not include utilization of a good in a recovery operation.

[(b) When does waste cease to be waste?

For some recovery operations, there may be a question of when waste may cease to be waste and reach end-of-waste status. Once something becomes waste, and someone wants to bring it back into productive use, the activity it undergoes will by definition be a recovery operation as the activity is applied to waste that results in a non-waste. There are ~~two~~~~+~~~~three~~ possibilities:

**Comment [SW34]:** This language is highly problematic, as “waste” headed for final disposal frequently is “the subject of commercial transactions”. BC definitions are not based on current economic value of something or commercial transactions, but rather on its hazardous characteristics and destination.

<sup>3</sup>Obsolete means no longer produced or used, or out of date (see <http://www.oxforddictionaries.com/us/definition/english/obsolete>).

- (i) It has been prepared for direct reuse and is ready to fulfil the purpose for which it was originally intended.

*Used goods may become waste, e.g. when their owner intends to dispose of them because ~~he buys~~ a newer model ~~is purchased~~ or the product no longer functions properly. ~~If the used good can be made suitable for reuse, this will promote the better use of resources. It is necessary to test, check, clean, and, if needed, repair the good to ensure it will be suitable for direct reuse. However, repair operations often create wastes (e.g. when bad parts are replaced) that may need further material recovery or disposal. If the material that is prepared for direct reuse without the need for further processing or repair no longer meets the definition of waste under the Convention then such wastes will no longer be considered waste. Such operations will be recovery as the used goods that have become waste are prepared so that they can be re-used without any other pre-processing than checking, cleaning or repairing. As such operations are not listed in Annex IV to the Convention, they would need to be defined in national law.~~*

**Comment [SW35]:** Get rid of masculine pronoun.

- (ii) It has been transformed through ~~undergone~~ a recovery or recycling operation to produce a secondary raw material or new product, when that operation is completed.

*Recovery and recycling operations involve the reprocessing or transformation of waste into products, materials or substances, ~~which then become a new product (though not necessarily for the original purpose) or a direct feedstock into a primary manufacturing process.~~ Once the operation is complete and the material no longer needs to be directed to an Annex IV destination, the substance or object is no longer waste. However, the recovery or recycling process may create or result in further waste that needs to be processed, and this material is a waste. Some recycling operations are listed in Annex IV to the Convention.*

- (iii) It has otherwise gained end-of-waste status as a result of a recovery operation

*Sometimes a recovery operation does not have the nature of a recycling operation. The result may be products, materials or substances that do not require further recovery operations to enable them to be used. An example might be scrap metal which is bundled and collected such that it meets international standards for use. It has not been transformed or reprocessed, but is no longer waste. Such standards may be set in national legislation with criteria to ensure that there is sufficient certainty of use and that in there is sufficient certainty of use and that it is not subjected to a disposal operation.*

**Comment [SW36]:** This entire concept of exempting materials from the definition of waste if "it meets international specifications" has no basis in Basel, and is extremely problematic. In fact, international scrap associations have plenty of 'specifications' which contain lead, cadmium, etc. for materials which are regulated under Basel as hazardous wastes. Delete this entire paragraph, and add the concept of recycling into the paragraph above, as found in Annex IV.

- (c) Economic value of wastes

*Recovery operations <sup>2</sup>typically make better use of resources than disposal and can reduce the negative impact and sometimes the costs of wastes. However, ~~W~~wastes destined for recovery ~~these~~ operations may ~~not~~ have economic value that is either positive or negative. This value is and are capable, as such, of forming the subject of commercial transactions. In such circumstances, a waste would meet the definition of a good, while it is still a waste. If the waste is subject to a transboundary movement, then it will have to be declared in one customs code for goods (Harmonized System), while it is still a waste. Economic value is not an appropriate criterion irrelevant in to distinguishing waste from non-waste. ]*

**Non-waste**

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

[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. In other circumstances, it will be considered a waste, e.g. if it is not fully functional. If claimed to be destined for reuse, 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, age, and insufficient protection against damage during transport, loading and unloading, and lack of a

**Comment [SW37]:** This first sentence is a far better explanation of what a 'used good' is than above, and should be placed above in the first use, even if repeated here.

**Comment [SW38]:** This second sentence ("In some circumstances...") does not provide much clarity for the reader. In addition, it appears *notto* describe circumstances in which individual Parties (e.g. Egypt) consider 'used products' – even for direct reuse – as wastes, so we'll add a sentence to balance it out.

**Comment [SW39]:** This is only one of many elements of reuse being considered by Parties in the TBM document.

<sup>2</sup> However, in the case of some toxic materials, it may be preferable to properly dispose of them than recover the toxics and put them back into new products.

**declaration of functionality** 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.]

**Hazardous wastes**(see Article 1 paragraph 1 of the Basel Convention)

- (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.

**Hazardous characteristics**

Any of the characteristics contained in Annex III to the Basel Convention.

**Non-hazardous waste**

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

**Disposal**(see Article 2 paragraph 4 of the Basel Convention)

Any operation specified in Annex IV to the Basel Convention.

[*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**

Commonly used to refer to disposal operations specified in Annex IV A to the Basel Convention.

[*Explanatory note*

This definition builds on the PACE<sup>4</sup> 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.]

**Comment [SW40]:** This quotation mark does not appear to be closed in the following two sentences, making it unclear where the PACED definition ends.

**Recovery**

~~Option 1~~

[Relevant operations specified in Annex IV B to the Basel Convention.]

~~Option 2~~

~~[Commonly used to refer to disposal operations specified in Annex IV B to the Basel Convention.]~~

[*Explanatory notes:*

- (a) Pre-existing definitions
  - (i) Draft e-waste **guidelines**<sup>5</sup>: “Relevant operations specified in Annex IV B to the Basel Convention; recycling operations are part of this annex.”
  - (ii) Technical guidelines on the environmentally sound recycling/reclamation of metals and metal compounds (R4)(2004)<sup>6</sup>: “Recovery: Taking metallic or metal-containing items

**Comment [SW41]:** Unclear why this word is plural, if we are only referencing one guideline (TBM)

<sup>4</sup>In this document, references to “PACE” are to be understood as references to the PACE glossary set out in the revised guidance document on the environmentally sound management of used and end-of-life computing equipment (document UNEP/CHW.11/6/Add.1/Rev.1 available at: <http://www.basel.int/TheConvention/ConferenceoftheParties/Meetings/COP11/tabid/3256/Default.aspx>).

<sup>5</sup>In this document, references to “draft e-waste guidelines” are to be understood as references to the 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) set out in document UNEP/CHW/12/5/Add.1 available at: <http://www.basel.int/TheConvention/ConferenceoftheParties/Meetings/COP12/tabid/4248/mctl/ViewDetails/EventModID/8051/EventID/542/xmid/13027/Default.aspx>

<sup>6</sup>Available at: <http://www.basel.int/Implementation/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>

and metallic pieces before they reach the waste stream or taking them out of the waste stream.”

(b) Sources 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 or are residual wastes needing further recovery or disposal.

(f) Value

~~Recovery operations make better use of resources and can reduce the negative impact of wastes.~~ Recovery operations typically make better use of resources than disposal and can reduce the negative impact and sometimes the costs of wastes.

**Comment [SW42]:** This definition has not been finalized, and therefore could include repair, which is typically considered a recovery operation, as above and just below.

## Recycling

### Option 1

~~[Any recovery operation that involves the reprocessing or transformation of waste into new products, or materials or substances that enter the [economic][production] cycle. Recycling does not include energy recovery and the reprocessing into materials that are to be used as fuels. Some recycling operations are identified in section B of Annex IV to the Convention.]~~

### Option 2

[Relevant operations specified in Annex IV B to the Basel Convention.]

[Explanatory note:

Pre-existing definitions:

(d) PACE: Relevant operations specified in Annex IV B to the Basel Convention.

(e) Used tyres guidelines<sup>7</sup>: 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.

(f) 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.]~~

**Comment [SW43]:** Or: Recovery operations that involve the reprocessing or transformation of waste into products, materials or substances, which then become a new product (though not necessarily for the original purpose) or a direct feedstock into a primary manufacturing process. Once the recycling operation is complete and the material no longer needs to be directed to an Annex IV destination, the substance or object is no longer waste. However, the recovery or recycling process may create or result in further waste that needs to be processed, and this material is a waste.

## Repair

<sup>3</sup>However, in the case of some toxic materials, it may be preferable to properly dispose of them than recover the toxics and put them back into new products.

<sup>7</sup>In this document, references to “used tyres guidelines” are to be understood as references to the revised technical guidelines for the environmentally sound management of used and waste pneumatic tyres, available at: <http://www.basel.int/Implementation/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>

Fixing a specified fault in an object that is a waste or a product and/or replacing defective components, with the result of making the waste or product a fully functional product to be used for its originally intended purpose.

[Explanatory notes

- (a) Pre-existing definitions
  - (i) Draft e-waste guidelines: Fixing specified faults in equipment [and/or replacing defective components of equipment in order to bring the equipment into a fully functional condition].
  - (ii) 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, and frequently result in waste generation. ~~-, in order to postpone disposal (prevention and reduction measure)~~. ~~Therefore~~. Therefore, by itself, the need for repair or refurbishment is not [a suitable criterion] ~~[determinative]~~ for distinguishing between waste and non-waste.]

Comment [SW44]: There could be other reasons, as well.

### Refurbishment

Modification of an object that is a waste or a product to increase its performance and/or functionality or to meet applicable technical standards or regulatory requirements, with the result of making the waste or product a fully functional product to be used for a purpose that is at least the one that was originally intended.

[Explanatory notes

- (a) Pre-existing definitions
  - (i) 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.
  - (ii) 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, and frequently result in waste generation. 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 product, object or substance [that is not waste], [for the same purpose for which it was conceived, ] [possibly after ~~pre-processing~~] repair or refurbishment].

[Explanatory notes

- (a) Pre-existing definitions
  - (i) Draft e-waste 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.

Comment [SW45]: "Pre-processing" is only defined at the bottom of the document, and in some industries refers to shredding, or manually removing contaminants or lower value components to prepare a waste for processing.

- (ii) 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.
- (iii) Ship recycling guidelines<sup>8</sup>: 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 ~~if because~~ it promotes resource efficiency and recovery using environmentally sound management, 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 direct 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 obsolescence<sup>9</sup> and insufficient protection against damage during transport, loading and unloading may cast doubt on whether reuse will actually occur.<sup>10</sup> 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, such as repair or refurbishment. ~~Once~~ [when] a used good/product is being reused for the purpose it was conceived, 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.]

**Comment [SW46]:** It is important to remember that there are plenty of ‘reuse’ operations that cause tremendous damage to human health and the environment, and it should not always be presumed that reuse is always better than recovery or disposal, no matter what.

## Direct reuse

The using again, by a person other than its previous owner, of a product, object or substance that is not waste for the same purpose for which it was conceived without the necessity of ~~pre-processing, repair or refurbishment~~.<sup>11</sup>

[Explanatory notes:

- (a) Pre-existing definitions
- (i) Draft e-waste 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 without the necessity of repair or refurbishment
- (ii) PACE: “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.

<sup>8</sup>Technical guidelines for the environmentally sound management of the full and partial dismantling of ship, available at: <http://www.basel.int/Implementation/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>

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

<sup>10</sup>There are difficult distinctions which are amenable to being addressed through technical guidance.

<sup>11</sup>Pre-processing may include e.g. [checking], [testing] cleaning, repair, refurbishment [or upgrading] but not disposal.

- (b) “No [pre-processing][repair, or refurbishment]”

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.

**Comment [SW47]:** Here is a definition of ‘pre-processing’ at the bottom of the document, after much usage. If we must use this term, we ought to place its definition near the first usage. Also, the “i.e.” at the end of sentence may appear to uninitiated readers that the explanation (“modification of...”) pertains to “pre-processing”, rather than “upgrading”.

- (e) —“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.~~

**Comment [SW48]:** If necessary to repeat this definition here, make sure it repeats the language agreed to above. This ‘economic value’/‘subject of commercial transactions’ is problematic, as stated above.

- (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.]