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Small Intersessional Working Group on Legal Clarity

Second meeting

Konstanz, 25–26 January 2015

Items 3 and 4 of the provisional agenda*

Glossary of terms

Options for further steps towards the consistent interpretation of terminology

Comments received from parties and others

Note by the Secretariat

As referred to in documents UNEP/CHW/CLI_SIWG.2/2 and UNEP/CHW/CLI_SIWG.2/3, the annex to the present note contains comments submitted by parties and others in response to decision OEWG-9/8. The present note, including its annex, has not been formally edited.

* UNEP/CHW/CLI_SIWG.2/1.

Annex

Comments submitted by parties and others in furtherance to decision OEWG-9/8

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Algeria

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From: karim baba [baba.mate@hotmail.com]
Sent: jeudi, 30. octobre 2014 15:27
To: Juliette Kohler
Subject: ALGERIA Request7 OEWG9

Bonjour,

pour la requête (7) relative à la décision OEWG-9/8 portant sur la clarté légale, il est à noter que les différentes définitions citées par la législation nationale (loi N° 01-19 relative à la gestion, le contrôle et l'élimination des déchets du 12 décembre 2001) sont comme suit :

- Traitement écologiquement rationnel des déchets: toute mesure pratique permettant d'assurer que les déchets sont valorisés, stockés et éliminés d'une manière garantissant la protection de la santé publique et/ou de l'environnement contre les effets nuisibles que peuvent avoir ces déchets.
- Valorisation des déchets: toutes les opérations de réutilisation, de recyclage ou de compostage des déchets.
- Élimination des déchets: toutes les opérations de traitement thermique, physico-chimique et biologique, de mise en décharge, d'enfouissement, d'immersion et de stockage des déchets, ainsi que toutes autres opérations ne débouchant pas sur une possibilité de valorisation ou autre utilisation du déchet.

* pour ce qui de la nomination d'experts pour participer aux petits groupes de travaux d'intersession, il est proposé à ce que les Etats Parties qui sont dans l'impossibilité de désigner des experts au vu des courts délais ou même dans certains cas dépassés, soit représentés par les experts des centres régionaux ou par ceux des groupes régionaux désignés à cet effet.

salutations distinguées

CA ALGERIA

Argentina



*Jefatura de Gabinete de Ministros
Secretaría de Ambiente y Desarrollo Sustentable*

*"2014 - Año de Homaje al Almirante Guillermo Brown,
en el Bicentenario del Combate Naval de Montevideo"*

Argentina participates in the SIWG and agrees with the way the SIWG developed the wording and structure of the outcome document UNEP/CHW/OEWG.9/INF/20 developed in the face-to-face meeting held in Montreux, Switzerland, in June 2014: Annex I "Glossary of Terms" and its sections I "Introduction", section II "Explanations" and section III "Definitions". The explanatory section is extremely important because it is complementary to the glossary of terms and relate to each other. Without this introduction would be very cumbersome and difficult to understand every term in the glossary in isolation.

We recognize that each result can be improved and we are willing to go beyond in the framework of the SIWG. However, it is inappropriate for us to separate terms from the glossary and include them in the explanations of the definitions. As each dictionary has definitions-but also explanatory and examples that make them most deserving and understandable-, we suggest that each term must be part of the glossary and any necessary further explanation be part of the special section. Each term, but some more than others, are extremely relevant to the current status of the Convention and will be more important in the coming years, especially those related to the circular economy, sustainable production and consumption, the principle of cradle to the cradle and the Strategic Framework for the implementation of the Basel Convention 2012-2021 such as life-cycle approach, extended producer responsibility, sustainable use of resources and the hierarchy of waste management, among others.

Regarding Annex III and options, Argentina prefers the legally binding option. Like Annexes VIII and IX of the Basel Convention are reviewed and updated periodically, Annexes III and IV of the Basel Convention should be updated with the activities, disposal operations, which now apply to various waste streams that not were relevant 20 years ago or more. For the development and adoption of Annexes III and IV of the Basel Convention, studies and technical and scientific documents were taken into account with 25 years of age and 30 inclusive. In addition, since the adoption of the text of the Basel Convention, these annexes have been never revised or amended. The modification of the aforementioned Annexes will allow a better waste classification and qualification by the Competent Authorities of the activities associated with the management of hazardous waste.

Brazil

Submission by Brazil to the draft glossary of terms - out/2014

I. DEFINITIONS

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

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

Final disposal: Disposal operations specified in Annex IV A to the Basel Convention, i.e., operations which do not lead to the possibility of resource recovery (including energy recovery), recycling, reclamation, direct re-use or alternative uses.

Hazardousness: any of the characteristics contained in Annex III that makes a residue a risk to public health or environmental quality.

Hazardous wastes:

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

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

Intent to dispose of: Determination inferred from an act that could reasonably be expected to result in disposal.

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.

Non-waste: A material, substance, object or a discarded good that is not disposed, or are not intended to be disposed of or are not required to be disposed of by the provisions of national law.

Prevention: any measure that is taken, in order to avoid a material, substance or product to become 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 through 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.

Recovery: Any process of transformation of waste that involves changing their physical, physico-chemical and biological properties, with a view to transforming it into a useful purpose by replacing other raw materials which would otherwise have been used to fulfil a particular function. Some recovery operations are identified in Annex IVB to the Basel Convention. The term does not include reuse or direct re-use of waste or components.

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

Reduction: 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.

Refurbishment: Modification of a used electrical-electronic equipment to increase its performance and/or functionality or to meet applicable technical standards or regulatory requirements. Both a waste

and non-waste may be refurbished, in order to postpone its sent to disposal (prevention and reduction measure).

Repair: Fixing a specified fault or series of faults in a used electrical-electronic equipment or component and/or replacing defective components, with the result of making the good or component fully functional for its intended purpose. Both a waste and non-waste may be repaired, in order to postpone its sent to disposal (prevention and reduction measure).

Reuse: The using again, by a person other than its previous owner, of a material, substance, object or a discarded good that is not sent for disposal, for the same purpose for which it was conceived, in order to postpone its sent to disposal (prevention and reduction measure).

Wastes: Material, substances, objects or discarded goods which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law (see Article 1 paragraph 2 of the Basel Convention).

II. EXPLANATIONS¹

1. “Wastes” are defined by the Convention as “Substances or objects that are disposed of, are intended to be disposed of or are required to be disposed of by the provisions of national law.” When assessing whether a material, substance or object is waste or non-waste, all the circumstances must be taken into account. The origin of the substance or object may also be relevant.

2. The Convention defines “disposal” as “any operation specified in Annex IV to the Convention.” Annex IV includes two categories of disposal operations: (1) final disposal operations; and (2) recovery operations. These terms only applies for operations with waste.

3. 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. If the waste is subject to a transboundary movement, than it will have to be declared in one customs code for goods (Harmonized System), while it is still a waste. Economic value by itself is not a suitable criterion to distinguish waste from non-waste.

4. Preparing a waste for reuse 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.

5. Transfer of a used product or good that is destined for use, for purposes of charity and without any monetary rewards or benefits, or for barter is a charitable donation. This practice is not environmentally sound management of waste.

6. Waste may cease to be waste if it has undergone an environmentally sound recycling operation, when that operation is completed. In accordance with applicable national law, waste can cease to be waste when it has undergone an environmentally sound recovery, including recycling, operation, and the resulting material meets a predefined set of criteria, such as the following:

- (a) It is commonly used as a raw material in a process;
- (b) A market or demand exists for it;
- (c) It fulfils the technical requirements for the specific purposes and meets the existing legislation and standards applicable to products;
- (d) Its use will not lead to overall adverse environmental or human health impact; and
- (e) Limit values for pollutants are specified, where necessary.

7. A production residue that results from a production process, the primary aim of which is not the production of that item and that meets the following conditions:

- (a) Further use of the production residue in a non-disposal operation is certain; and,
- (b) Production residue can be used directly in the same industry it was generated without any further processing other than normal industrial practice.

Can be consider as a by-product, and thus, a non-waste.

¹ The explanations must be reviewed after the definitions been agreed.

8. **Reuse of waste** is to be encouraged because it promotes resource efficiency, especially of non-renewable resources. Encouraging **reuse** will sometimes help prevent a **used good or product to be discarded, and thus from becoming waste**. Where a **waste** 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.

9. In the context of **used electrical-electronic equipment**, it is necessary to consider factors such as functionality and the need for processing prior to **reuse**. A **fully functional used electrical-electronic equipment** that is destined for **direct re-use** is not considered to be a **waste**, unless so-classified by national law.

10. National legislation may recognize that where **repair** or **refurbishment** are necessary to prepare a **used electrical-electronic equipment** for **reuse**, they should be regarded as **recovery** operations. **Repair** or **refurbishment** are operations that apply to both **waste** and **non-waste**. Therefore by itself, the need for **repair** or **refurbishment** is not a suitable criterion for distinguishing between **waste** and **non-waste**.

11. **Reuse** refers to the point at which the **waste** is being used for the purpose for it was conceived and not any operations to enable that to occur. Once a **waste** is being **reused**, it is not considered as a disposal operation.

12. In addition, factors such as obsolescence and insufficient protection against damage during transport, loading and unloading may cast doubt on whether reuse will actually occur. Rather, these factors may suggest instead an **intent to dispose of the used electrical-electronic equipment**, which would make it a **waste**. **Intent to dispose** may be inferred from an act that could reasonably be expected to result in **disposal**.

13. A product is a thing intentionally produced by or resulting from a process that meets defined characteristics. A production process may be intended to produce several different products. Each will be a product as long as it is sought by the producer – i.e. it is intentionally produced as a result of a technical choice. A product may become a **waste** if the **waste** definition applies. A product may **still keep some original characteristics** after becoming a **waste**.

Other terms that need to have some more explanations, but can be defined as presented are:

Essential function*: An originally intended function of **an electro-electronic equipment** that will satisfactorily enable it to be used.

Fully functional*: An **electro-electronic equipment** is fully functional if it was tested and demonstrated to be capable of performing the essential functions that it was designed to perform.

Good: A material, substance, object or good, such as a product or a component, that has economic value and which is capable, as such, of forming the subject of commercial transactions.

Product: output or result of a fabrication, manufacturing, or production process.

Second-hand product: A used **product** that is or has been used by a second or subsequent owner and it was not discarded.

Upgrading: Modification of a fully functional **used electrical-electronic equipment** to increase its performance and/or functionality.

Use: Utilization of a **good or product**, whether by its first or a subsequent owner. The term “use” includes reuse and direct re-use of **an electrical-electronic equipment**.

Used good/product: A good that is or has been used, either by its first or subsequent owner. **Measures can be taken in order to avoid a used good to be discarded and becomes a waste**, depending upon its characteristics, intended destination, and fate, as well as the provisions of national law.

Central African Republic

29 December 2014

7) Réponse à la demande à d'autres Parties de désigner des experts pour participer aux travaux du petit groupe de travail intersessions sur la clarté juridique et demande d'observations sur les définitions et explications de certains termes et sur les possibilités de progresser davantage sur la voie de l'interprétation cohérente de la terminologie.

- La RCA a déjà désigné un expert au petit groupe de travail intersessions sur la clarté juridique ;
- La RCA considère que les définitions au niveau national doivent faire l'objet d'un consensus élargi, c'est pourquoi, une équipe a été mise en place dans le but de réfléchir sur ces définitions. La réponse par voie hiérarchique à la mise en place de cette équipe tarde à venir. Néanmoins, nous souhaitons à ce que la date limite fixée par le secrétariat soit revue pour certaines Parties retardataires selon l'importance que revêt cette demande.

Chile

From: Joost Meijer [mailto:jmeijer@mma.gob.cl]
Sent: Tue 11/11/2014 9:08 PM
To: Juliette Kohler
Subject: RE: SIWG on legal clarity: OEWG9

Dear Juliette,

Probably a bit late to send you my comments, but it might be considered to elaborate the new proposal:

Prevention:

- a) Measures taken to avoid the generation of waste
 - b) altering products and/or production processes, to minimize (I) the use of material or energy (II) the use of toxic or harmful substances and/or (III) substituting primary raw materials with secondary raw materials
 - c) the extension of the life span of products
 - d) the direct reuse of a product.
- In my opinion reduction is part of prevention, i.e. letters b) and c), and probably also d)

Best regards,
[Joost Meijer]

European Union and its member States



Comments from the EU and its Member States on the definitions and explanations of certain terms and on the options for further steps towards the consistent interpretation of terminology (decision OEWG-9/8 on providing further legal clarity)

Further to the Basel Secretariat's letter of 29 September 2014 requesting parties and others to submit information and comments requested in decision OEWG-9/8, please find below the EU and its Member States response to this request.

Decision OEWG-9/8 invited parties and others to submit comments by 31 October 2014 on the definitions and explanations mentioned in the meeting report of the ninth meeting of the Open-ended Working Group and on the options for further steps towards the consistent interpretation of terminology, including possible voluntary and legally binding options.

1. Concerning the additional definitions mentioned in doc. CRP.15, we have the following comments:

- it is unclear why "hazardousness" has been added and what it adds compared to "hazardous wastes". In this context, rather than trying to define new terms, we would suggest to draw attention to the review of the hazardous characteristics in Annex III of the Convention that has been suggested by the SIWG.

- it is unclear why the terms "prevention" and "reduction" have been added in the light of the fact that the primary aim of the glossary is to help clarify the terms relating to the distinction between wastes and non-wastes (see para. 3 of the draft glossary in Annex I of doc. INF/20). These terms fit clearly into the work stream developing guidance on prevention and therefore can be clarified in the context of the follow-up to the Cartagena declaration.

- it is unclear why it reads "good/product" and "used good/product", as in our view these are different terms; "good" is a broader term than "product", see the definition of good in section III of the draft glossary. It should be possible to include explanations that help the waste/non-waste distinction by referring to both products and goods without suggesting the terms are synonymous.

- Concerning the terms mentioned in doc. CRP.15 that should be part of explanations, we believe that it is important to keep the explanations already contained in the text of section II of the draft glossary as these explain how the terms relate to each other, and give further explanations (see para. 4 of the draft glossary). So we expect a longer guidance document because we believe that any attempt to shorten it would undermine the usefulness of the document itself.

2. Furthermore we would like to reiterate the following suggestions for amendments to the glossary of terms:
 - I. Introduction
 - Paragraph 2, Footnote 2
Correct reference to art.1, para.2 instead of art. 2, para. 1
 - II. Explanations
 - Paragraph 13
In the sentence “once a used good is being reused, it is not waste” replace “once” with “when”.
 - Paragraph 15
The final sentence “A product may still be a product after becoming a waste” should be replaced by:
“At the same time, it may still be considered as a product in some countries.”

3. Concerning the options for further steps towards the consistent interpretation of terminology, including possible voluntary and legally binding options set out in Annex III of document UNEP/CHW/OEWG.9/INF/20, the EU and its Member States generally believe that the SIWG proposals need to be thoroughly discussed. For example, we support reviewing Annex III of the Convention and suggest amending this annex taking into account the Globally Harmonized System of Classification and Labelling of Chemicals (GHS). We also think that other legally binding options should be considered. For instance, in addition to reviewing Annex III of the Convention, it may be useful to consider reviewing Annex I of the Convention, in the light of the fact that in practice the national law of some countries recognizes other constituents than the ones listed from Y19 in Annex I.

4. Finally, concerning the procedure to revise the draft glossary (see para. 4 in the OEWG9 decision - doc. CRP.12), we would suggest that the Secretariat prepares a draft, circulates it to the SIWG members with the invitation to provide comments in writing, and prepares a further revised draft which could then be discussed within the SIWG preferably at a second physical meeting e.g. in January 2015.

Switzerland



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of the Environment,
Transport, Energy and Communications DETEC
Federal Office for the Environment FOEN

Reference: N485-0813

Comments from Switzerland on the CLI follow up work on providing legal clarity

As a member of the SIWG on legal clarity we think that the draft glossary of terms constitutes a valuable and helpful basis for the further work on the definitions and explanations of certain terms. We welcome the decisions made by OEWG 9 in relation to this issue, especially to give Parties the possibility to nominate further experts for the group which will make its work more representative as well as to limit the definitions to 16 and the explanations to 9 terms, all of which we consider relevant for the distinction between waste and non-waste.

Although the draft glossary is a good start, the major part of the work is still ahead of us. The discussions at OEWG 9 showed the difficulties in finding definitions that are general enough to cover all possible cases in which the relevant terms are used but still specific enough in order to clarify the distinction between waste and non-waste. Furthermore the relevant terms are defined differently from one region or country to another. Whereas the definitions of some Parties reflect their objective of a recycling economy in which wastes are precious goods, other Parties tend to stick to a rather broad definition of waste and a clear distinction from non-waste. All these difficulties will have to be addressed and dealt with by the enlarged working group. We think that the best approach to deal with these difficulties is to define and explain the terms in a rather abstract and general way in order to lay the foundations for further steps towards the consistent interpretation of terminology, including possible voluntary and legally binding options.

Finally we think that it is important not to lose track of the primary aim of the glossary which is the clarification of certain terms in order to improve the effectiveness of the Basel Convention, especially in relation to the distinction between wastes and non-wastes.”

Basel Action Network

UNITED
NATIONS



BC

UNEP/CHW/OEWG.9/INF/20



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Open-ended Working Group of the Basel Convention
on the Control of Transboundary Movements of
Hazardous Wastes and Their Disposal
Ninth meeting

Geneva, 16–19 September 2014

Item 3 (c) (ii) of the provisional agenda*

Matters related to the work programme of the
Open-ended Working Group for 2014–2015:
legal, governance and enforcement matters:
providing further legal clarity

Draft glossary of terms and recommendations from the small intersessional working group on legal clarity

Note by the Secretariat

As referred to in document UNEP/CHW/OEWG.9/11 on providing further legal clarity, annexes I and III to the present note set out the draft glossary of terms prepared by the small intersessional working group on legal clarity, dated 15 June 2014, and the recommendations from the group on options for further steps towards the consistent interpretation of terminology, including possible voluntary and legally binding options, respectively. In addition, annex II to the present note sets out a note by the Secretariat entitled “Comparison between definitions used in previously adopted guidelines and guidance documents and those used in the glossary of terms”. The present note, including its annexes, has not been formally edited.

*UNEP/CHW/OEWG.9/1.

Annex I

Glossary of terms

(Draft of 15 June 2014)

Note to the reader:

This glossary of terms was prepared by the Small Intersessional Working Group (SIWG) on legal clarity established by the Conference of the Parties in Section III "Providing further legal clarity" of decision BC-11/1, and in furtherance to paragraph 22 of that decision that requests the SIWG to "prepare a revised draft of the revised glossary and related explanations, taking into account comments received by Parties and others, to be made available on the Basel Convention website by 15 June 2014". This draft is to be considered by the Open-ended Working Group at its ninth meeting.

*The use of the symbol * at the end of a term defined in section III of the glossary signals that a parallel definition currently exists in previously adopted technical guidelines and guidance documents or in guidelines currently under negotiation. In this regard, the attention of the reader is directed to the note by the Secretariat entitled "Comparison between definitions used in previously adopted guidelines and guidance documents and those used in the glossary of terms" set out in annex II to document UNEP/CHW/OEWG.9/INF/20. Some existing definitions might need to be amended if the definitions proposed in the glossary are retained. Paragraph 13 of the document entitled "Options for further steps towards the consistent interpretation of terminology, including possible voluntary and legally binding options", prepared by the Small Intersessional Working Group and set out in annex III to document UNEP/CHW/OEWG.9/INF/20, include some recommendations in this regard.*

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. Its purpose is the clarification of certain terms in order to improve the implementation of the Convention and the application of technical guidelines and guidance documents developed under the Convention. This may also help Parties identify further opportunities to improve implementation, including through the issuance of technical guidance.
2. The Basel Convention applies to the transboundary movement of hazardous wastes¹ and other wastes.² Thus, the term "wastes" is of fundamental importance in determining the scope of the Convention.
3. The primary aim of this glossary is to help clarify the terms relating to the distinction between wastes and non-wastes. This distinction has been a particular problem in relation to used goods 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.

II. EXPLANATIONS³

Input from BAN regarding EXPLANATIONS: We believe that once the group agrees on definitions, only then should we tackle explanations of those definitions. We have significant concerns about a number of the explanations

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

² This glossary does not address "other wastes" as defined in Article 2 paragraph 1 and Annex II of the Convention.

³ Terms highlighted in bold are defined in section III entitled "Definitions".

below, and look forward to contributing to better explanations once the definitions are finalized or near-final.

5. "Wastes" are defined by the Convention as "Substances or objects that are disposed of, are intended to be disposed of or are required to be disposed of by the provisions of national law." When assessing whether a substance or object⁴ is waste or non-waste, all the circumstances must be taken into account. The origin of the substance or object may also be relevant.
6. The Convention defines "disposal" as "any operation specified in Annex IV to the Convention." Annex IV includes two categories of disposal operations: (1) **final disposal operations**; and (2) **recovery operations**.
7. **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 good⁵, while it is still a waste. Economic value by itself is not a suitable criterion to distinguish waste from non-waste.
8. Waste may cease to be waste if:
- It has been prepared for reuse;
 - It has gained end-of-waste status as a result of a recovery operation and it meets defined criteria set out in national legislation; or
 - It has undergone a recycling operation, when that operation is completed.
9. **Reuse of used goods** is to be encouraged because it promotes resource efficiency, especially of non-renewable resources. Encouraging reuse will sometimes help prevent a used good from becoming waste, or in some cases bring waste back into use.
10. Where a used good 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.
11. In this context, it is necessary to consider factors such as functionality and the need for processing prior to reuse. A fully functional used good that is destined for direct reuse is not considered to be a waste, unless so-classified by national law. The term direct reuse is used to distinguish from cases where reuse is possible only after pre-processing⁶.
12. National legislation may recognize that where repair or refurbishment are necessary to prepare a waste for reuse, they should be regarded as recovery operations. Repair or refurbishment are operations that apply to both waste and non-waste. Therefore by itself, the need for repair or refurbishment is not a suitable criterion for distinguishing between waste and non-waste.
13. Reuse refers to the point at which the good is being used for the purpose for it was conceived and not any operations to enable that to occur. Once a used good is being reused, it is not waste.
14. In addition, factors such as obsolescence⁷ and insufficient protection against damage during transport, loading and unloading may cast doubt on whether reuse will actually occur.⁸ Rather, these factors may suggest instead an intent to dispose of the used good, which would make it a waste. Intent to dispose may be inferred from an act that could reasonably be expected to result in disposal.
15. A product is a thing intentionally produced by or resulting from a process that meets defined characteristics. A production process may be intended to produce several different products. Each will be a product as long as it is sought by the producer – i.e. it is intentionally produced as a result of a technical choice. A product may become a waste if the waste definition applies. A product may still be a product after becoming a waste.

⁴ "Material" is used as a synonym for "substances or objects".

⁵ The term "end-of-life good" is not considered to be useful in the context of this glossary.

⁶ Pre-processing may include checking, cleaning, repair, refurbishment or upgrading.

⁷ Obsolete means no longer produced or used, or out of date (see <http://www.oxforddictionaries.com/us/definition/english/obsolete>).

⁸ There are difficult distinctions which are amenable to being addressed through technical guidance.

16. Another category of materials that may be difficult to characterize are production residues. They are generally considered wastes. However if production residues meet criteria laid down in national legislation they will be referred to as a **by-product** and thus be **non-waste**.

III. DEFINITIONS

~~By-product: A production residue that results from a production process, the primary aim of which is not the production of that item and that meets the following conditions:~~

- ~~(a) Further use of the production residue is certain;~~
- ~~(b) Production residue can be used directly without any further processing other than normal industrial practice;~~
- ~~(c) Production residue is produced as an integral part of a production process; and~~
- ~~(d) Further use is lawful, i.e. the production residue fulfils all relevant process, product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts; and thus a non-waste.~~

Charitable donation*: Transfer of a product or used product, good that is destined for direct reuse, for purposes of charity and without any monetary rewards or benefits, or for barter.

Component*: ~~An element with functionality connected together with other elements to perform a particular function. A part or subassembly of a larger device or product.~~

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

Disposal: Any operation specified in Annex IV to the Basel Convention (see Article 2 paragraph 4 of the Basel Convention).

End-of-waste status: ~~Waste can cease to be waste when it has completed the recovery process and is no longer destined or intended to be destined for an Annex IV operation, unless, following the recovery process, it is still considered waste by national law.~~

~~In accordance with applicable national law, waste can cease to be waste when it has undergone a recovery, including recycling, operation, and the resulting material meets a predefined set of criteria, such as the following:~~

- ~~(a) It is commonly used for specific purposes;~~
- ~~(b) A market or demand exists for it;~~
- ~~(c) It fulfils the technical requirements for the specific purposes of and meets the existing legislation and standards applicable to products;~~
- ~~(d) Its use will not lead to overall adverse environmental or human health impact; and~~
- ~~(e) Limit values for pollutants are specified, where necessary.~~

Essential function*: Product features which a user of a product can reasonably expect to be present based on the original or upgraded design and marketed description of the product, and features without which safe or effective use would be unlikely. An originally intended function of a good or component that will satisfactorily enable it to be used.

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

Fully functional*: A good is fully functional if it was tested and demonstrated to be capable of performing the essential functions that it was designed to perform.

Good (delete this term): 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.

Comment [SW1]: We cannot re-define waste in this exercise, as this is the purview of the Convention. Any definition of “by-product” must not automatically exempt the material from Basel regulation. “Lawful” in one country (letter d) does not address transboundary movements. Furthermore, there is no definition for “normal industrial practice”, creating a huge loophole!

Comment [SW2]: The term ‘component’ should not be defined relative to its ‘functionality’. This term should include non-functional parts/components.

Comment [SW3]: Replace “pre-processing” with the PACE language here. The term ‘pre-processing’ is not defined (actually, it is explained in footnote 6, which would allow ONLY cleaning to meet this requirement!) Neither is the term ‘processing’.

Comment [SW4]: This appears to not define the term, but allow each country to define it ‘when it has undergone recovery’. This is not consistent with BC definition. This term should be defined here, rather than left up to each country.

Comment [SW5]: d) Only address its use? What about processing, transboundary movements, residuals, etc.?

Comment [SW6]: a) – c): All of this is only an example (and therefore not a requirement) – very problematic. And some of it is very troubling, such as b). e-Scrap has a market in China and elsewhere!!!

Comment [SW7]: Completely unclear and open to wide interpretation.

Comment [SW8]: “enable to be used” is too open-ended. Lacking in guidance.

Comment [SW9]: As discussed at OEWG9 by Parties, this term is very problematic. This certainly goes against common usage of the term ‘good’, and may create contradictions. Also, this definition is flawed, because “waste” headed for final disposal frequently is “the subject of commercial transactions”. BC definitions should never be made based on current economic value of something, but rather on its haz charac’s and destination.

Hazardous wastes:

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

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

Intent to dispose of: Determination inferred from an act that could reasonably be expected to result in disposal.

Non-hazardous waste: A waste that does not meet the definition of "hazardous waste".

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

Preparing waste for reuse: ~~Testing, Checking, cleaning and/or repairing, recovery operations by which products goods that have become waste are prepared so that they can be directly reused, re-used without any other pre-processing.~~

Product: An article or material that is manufactured or refined for sale or use. Products may contain or be components.

Recovery/Recovery or Recycling*: Operations specified in Annex IV B to the Basel Convention, plus operations which prepare waste and used products for direct reuse. Recovery refers to a process by which secondary or waste materials (as opposed to primary or raw materials) are processed in order to extract resources or materials and transform them into a usable form for further use. NOTE: Not all recovery operations use environmentally sound management (ESM).

~~Any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. Some recovery operations are identified in Annex IVB to the Basel Convention. The term does not include reuse or direct reuse of goods or components.~~

~~Recycling* Any recovery operation that involves the reprocessing or transformation of waste into products, materials or substances for any purposes other than energy recovery and the reprocessing into materials that are to be used as fuels or for back-filling operations. Some recycling operations are identified in section B of Annex IV to the Convention. The term does not include reuse or direct reuse.~~

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

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

Reuse*: The using again, by a person other than its previous owner, of a good that is not waste for the same purpose for which it was conceived.

Second-hand good: A used good that is or has been used by a second or subsequent owner.

Upgrading*: Modification of a fully functional good to increase its performance and/or functionality.

Use: Utilization of a good, whether by its first or a subsequent owner. The term "use" includes reuse and direct reuse of a good, but does not include utilization of a good in a recovery operation.

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

Wastes: 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 (see Article 21 paragraph 12 of the Basel Convention).

Comment [SW10]: "Checking" is not defined and means many different things to many different people, but "testing" is a better term to create a common understanding.

Comment [SW11]: This definition is highly problematic, as it would include using Basel-regulated wastes as all sorts of "particular functions", such as artificial reefs, filling holes in the ground, etc. In this draft definition, the 'purpose' of disposal is not addressed.

Comment [SW12]: There is only one definition needed (for both recycling and recovery). If someone wants to talk about energy recovery, that should be in a separate definition.

Annex II

Comparison between definitions used in previously adopted guidelines and guidance documents¹ and those used in the glossary of terms (Note prepared by the Secretariat, 15 June 2014)

Charitable Donation:

PACE glossary: Transfer of computing equipment or its components that are not waste for their intended direct reuse for purposes of charity without any monetary rewards or benefits, or for barter.

15 June 2014 draft glossary: Transfer of a good that is destined for direct reuse, for purposes of charity and without any monetary rewards or benefits, or for barter.

Component:

PACE glossary: Element with electrical or electronic functionality connected, together with other components and usually by soldering, to a printed circuit board to create an electric or electronic circuit with a particular function (for example an amplifier, radio receiver, or oscillator).

Draft e-waste guidelines: Element with electrical or electronic functionality connected together with other components, including by soldering to a printed circuit board, to create an electric or electronic circuit with a particular function (for example an amplifier, radio receiver, monitor, hard-drive, motherboard, battery).

15 June 2014 draft glossary: An element with functionality connected together with other elements, to perform a particular function.

Direct reuse:

Draft e-waste guidelines: [Using again equipment that is not waste for the same purpose for which it was conceived by another person, without the necessity of repair or refurbishment]

[Continued use of electrical and electronic equipment by another person without the necessity of repair, refurbishment, or (hardware) upgrading, provided that such continued use is for the intended purpose of the equipment].

PACE glossary: 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.

15 June 2014 draft glossary: The using again, by a person other than its previous owner, of a good that is not waste for the same purpose for which it was conceived without the necessity of pre-processing.

Essential function:

Draft e-waste guidelines: Essential key function: The originally intended function(s) of a unit of equipment that will satisfactorily enable the equipment to be reused.

PACE glossary: The originally intended function(s) of a unit of equipment or component that will satisfactorily enable the equipment or component to be reused.

¹These include: the Revised technical guidelines for the environmentally sound management of used and waste pneumatic tyres (hereinafter "Tyres guidelines"), the Technical guidelines for the environmentally sound management of the full and partial dismantling of ships (hereinafter "Ships guidelines"), the Technical Guidelines on the Environmentally Sound Recycling/Reclamation of Metals and Metal Compounds (R4)(2004), the Revised guidance document on the environmentally sound management of used and end-of-life computing equipment (hereinafter "PACE glossary"), and the Technical guidelines on transboundary movements of electronic and electrical waste (e-waste), in particular regarding the distinction between waste and non-waste (hereinafter "Draft e-waste guidelines"). These guidelines are available on the website of the Convention at: <http://www.basel.int/TheConvention/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>

15 June 2014 draft glossary: An originally intended function of a good that will satisfactorily enable it to be used.

Final disposal

PACE glossary: Final disposal: Disposal operations specified in Annex IV A to the Basel Convention.

15 June 2014 draft glossary: Disposal operations specified in Annex IV A of the Basel Convention, i.e., operations which do not lead to the possibility of resource recovery (including energy recovery), recycling, reclamation, or alternative uses.

Fully functional

Draft e-waste guidelines: Equipment is fully functional when it has been tested and demonstrated to be capable of performing at least the essential key functions it was designed to perform.

PACE glossary: Computing equipment or components are fully functional when they have been tested and demonstrated to be capable of performing the essential key functions that they were designed to perform.

15 June 2014 draft glossary: A good is fully functional if it was tested and demonstrated to be capable of performing the essential functions that it was designed to perform.

Recovery:

Draft e-waste guidelines: Relevant operations specified in Annex IV B of the Basel Convention: recycling operations are part of this annex.

Technical Guidelines on the Environmentally Sound Recycling/Reclamation of Metals and Metal Compounds (R4)(2004): Recovery: Taking metallic or metal-containing items and metallic pieces before they reach the waste stream or taking them out of the waste stream.

--Recovery operation: A process by which materials, which are no longer fit for their originally intended purpose, are transformed into a usable state or by which materials are extracted in usable form.

15 June 2014 draft glossary: Any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. Some recovery operations are identified in Annex IVB to the Basel Convention. The term does not include reuse or direct reuse of goods or components.

Recycling:

PACE glossary: Relevant operations specified in Annex IV B to the Basel Convention.

Tyre Guidelines: Any process by which waste tyres are reprocessed into products, materials or substances for any purpose. It does not include energy recovery or reprocessing into materials for use as fuels or in backfilling operations.

Technical Guidelines on the Environmentally Sound Recycling/Reclamation of Metals and Metal Compounds (R4)(2004): (a) The preparation of recovered items and pieces so that they may be used directly (e.g., in direct remelt) or sent for reclamation; (b) The series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products, other than fuel for producing heat or power by combustion.

15 June 2014 draft glossary: Any recovery operation that involves the reprocessing or transformation of waste into products, materials or substances for any purposes other than energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations. Some recycling operations are identified in section B of Annex IV to the Convention. The term does not include reuse or direct reuse.

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Refurbishment:

PACE glossary: Modification of used computing equipment to increase its performance and functionality or to meet applicable technical standards or regulatory requirements, including through such activities as cleaning, data sanitization and software upgrading.

Draft e-waste guidelines: [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.]

15 June 2014 draft glossary: Modification of a used good to increase its performance and/or functionality or to meet applicable technical standards or regulatory requirements.

Repair:

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].

PACE glossary: Fixing specified faults in computing equipment and/or replacing defective components of computing equipment to bring the computing equipment into a fully functional condition.

15 June 2014 draft glossary: Fixing a specified fault or series of faults in a good or component and/or replacing defective components, with the result of making the good or component fully functional for its intended purpose. Both a waste and non-waste may be repaired.

Reuse:

Draft e-waste guidelines: Using again equipment that is not waste, for the same purpose for which it was conceived by another person, possibly after repair or refurbishment.

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

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

15 June 2014 draft glossary: The using again, by a person other than its previous owner, of a good that is not waste for the same purpose for which it was conceived.

Upgrading:

Draft e-waste guidelines: Modification of fully functional equipment by the addition of new software or hardware.

PACE glossary: Modification of fully functional computing equipment by the addition of software or hardware to increase its performance and/or functionality.

15 June 2014 draft glossary: Modification of a fully functional good to increase its performance and/or functionality.

Used good:

PACE glossary: Computing equipment that is or has been used, either by its first owner or otherwise. Used computing equipment may or may not be a waste, depending upon the waste definition and its characteristics, intended destination and fate.

Tyres guidelines: A tyre that has been subjected to any type of use and/or wear.

15 June 2014 draft glossary: A good that is or has been used, either by its first or subsequent owner. A used good may or may not be a waste, depending upon its characteristics, intended destination, and fate, as well as the provisions of national law.

Annex III

Options for further steps towards the consistent interpretation of terminology, including possible voluntary and legally binding options

I. Introduction

1. As a threshold matter, whether the transboundary movement of a substance or object is subject to the Basel Convention depends upon whether it is a "waste", which in turn depends upon whether it is disposed of, intended to be disposed of, or required to be disposed of under national law. Thus, the definition of "disposed of" and the meaning of "intended" in the phrase "intended to be disposed of" are key to determining whether a substance or object is a waste, and thus potentially a hazardous or other waste.¹ This has been a particular problem in relation to used goods destined for reuse. Where a used good is exported for reuse, there needs to be sufficient certainty that it **and all of its hazardous components** will actually be reused, because if it is not, its disposal may pose a threat to human health and the environment.

2. The Basel Convention defines "disposal" as any operation specified in Annex IV. Annex IV A encompasses disposal operations which do not lead to the possibility of resource recovery, recycling, reclamation, direct reuse or alternative uses. Annex IV B encompasses "operations which may lead to resource recovery, recycling, reclamation, direct reuse or alternative uses," "with respect to materials legally defined as or considered to be hazardous wastes and which otherwise would have been destined for operations included in Section [IV]A."² Despite the caption of section B of annex IV, **direct reuse is not specified as an operation under Annex IV B; however, reuse of used oil is contained in operation R9. Nor is repair or refurbishment listed under Annex IV B. In practice, the national law of some countries recognizes disposal operations not listed in Annex IV or defined differently than in Annex IV.**

Comment [SW13]: Jim, you should review this to see if you want to argue for changes.

3. **If the approach in the draft glossary dated 15 June 2014 is followed, reuse and direct reuse should not be considered operations under Annex IV B.**

4. In the draft glossary no further guidance is given on the distinction between hazardous and non-hazardous wastes. In practice, the national law of some countries recognizes hazardous characteristics not defined in Annex III or hazardous characteristics defined differently than in Annex III.

5. Against this background, the following legally binding and voluntary options may be considered, bearing in mind that the options include as appropriate recommendations on where further guidance would be useful, as referred to in paragraph 16 (c) of decision BC-11/1.

II. Legally binding options

A. Waste / non-waste

6. It may be considered to review Annex IV as a whole in order to update the description of certain disposal operations and to include recovery operations as they occur in practice, and to possibly define relevant terms in this Annex.

7. It may also be considered to amend the captions of Annex IV A and Annex IV B to exclude "direct reuse" and to amend operation R9 in Annex IV B to **exclude the term "reuse"**²². In addition, the references to "direct reuse" and "reuse" in Annex IX entry B1110, including footnotes 20 and 21, may be reviewed. **In this case, it would be important to consider the removal of waste components and whole devices in the repair/refurbishment operations.**

B. Hazardous / non-hazardous waste

¹ Any relevant definitions of national law that bear on whether an object or substance is required to be disposed of are also important.

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8. It may be considered to review Annex III as a whole in order to update the description of certain hazardous characteristics and to include hazardous characteristics as they occur in practice.

C. Amendment to annexes to the Convention

9. An amendment to an annex to the Convention is to be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The amendment becomes effective for all Parties to the Convention which have not submitted, within six months from the date of the communication of the adoption by the Depositary, a written notification that it is unable to accept the amendment².

Comment [SW14]: This para does not appear to be an 'option' put forth by this group...

III. Voluntary options

10. The glossary of terms is a first step towards the development of guidance on the interpretation of terminology. It addresses terms relevant to all waste streams and is intended to complement technical guidelines and guidance documents.

A. Waste / non-waste

11. The Conference of the Parties could develop guidance on Annex IV as a whole to clarify the description of certain disposal operations and to include recovery operations as they occur in practice, and to possibly define relevant terms. This could serve as a first step towards amending Annex IV of the Convention.

12. The Conference of the Parties could also develop technical guidelines for specific materials based on the glossary, further elaborating on the distinction between waste and non-waste, as is under way in the context of the development of the technical guidelines on transboundary movements of electronic and electrical waste (e-waste), in particular regarding the distinction between waste and non-waste.

13. The Small Intersessional Working Group could not complete its work in relation to paragraph 16 (a) (v) of decision BC-11/1, therefore the Open-ended Working Group at its ninth meeting could request the Small Intersessional Working Group to recommend to the Conference of the Parties at its twelfth meeting whether any terms defined in previously adopted technical guidelines and guidance documents as well as the framework for the environmentally sound management of hazardous wastes and other wastes need to be updated as a result.

B. Hazardous / non-hazardous waste

14. The Conference of the Parties could develop as appropriate further guidance on hazardous characteristics.

C. Other issues

15. The Open-ended Working Group at its ninth meeting could consider whether other terms not mainly related to the distinction between waste/non-waste or hazardous/non-hazardous waste would benefit from further guidance.

²Article 18 paragraph 3 of the Basel Convention.