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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, 28 April–10 May 2013

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**

**Report on the implementation of the Basel Convention as it
relates to the interpretation of certain terminology**

Note by the Secretariat

As referred to in document UNEP/CHW.11/3 on the follow-up to the Indonesian-Swiss country-led initiative to improve the effectiveness of the Basel Convention, the annex to the present note contains the report on the implementation of the Basel Convention as it relates to the interpretation of certain terminology that was finalized and taken note of by the Open-ended Working Group at its eighth meeting.¹ The annex to the present note has not been formally edited.

* UNEP/CHW.11/1.

¹ Decision OEWG-8/7 on the follow-up to the Indonesian Swiss country-led initiative: providing further legal clarity.

Annex

Report on the implementation of the Basel Convention as it relates to the interpretation of certain terminology

Executive Summary

1. In accordance with Decision BC-10/3, this report presents a study on the implementation of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (hereinafter, the “Basel Convention or “Convention”) as it relates to the interpretation of certain terminology used in the Convention and a list of other relevant terms related to the implementation of the Convention, including: waste/non-waste; hazardous waste/non-hazardous waste; re-use; direct re-use; refurbishment; second-hand goods; and used goods, as well as possible options for the interpretation of those terms.
2. While the concept of “waste” is well-understood in the context of materials destined for final disposal, a lack of clarity and divergent interpretations have attended the transboundary movement of materials destined for further use. Many Parties consider that such materials are not waste if destined for various modes of re-use. This is especially true for materials that require no repair, refurbishment, reassembly, or similar processing. A number of criteria have been employed or suggested in order to determine and assure that such is the case.
3. This report suggests several options as a means for interpreting the term “waste” in order to clarify whether and how the Convention applies to materials destined for further use. In putting these options forward, this draft report also suggests interpretations of terms such as re-use; direct re-use; refurbishment; second-hand goods; and used goods, in so far as these terms are used in defining the term “waste.” The options presented may serve as a basis for the elaboration, by the Open ended Working Group during its eighth meeting, of draft guidance to provide national authorities, regional centres and other stakeholders with consistent advice on the interpretation of the terms in question, for consideration by the Conference of the Parties during its eleventh meeting.
4. This report should be considered in tandem with the study commissioned by Decision BC-10/3 on “Used and End-of-Life Goods.”¹

¹ UNEP/CHW/OEWG.8/INF/14.

TABLE OF CONTENTS

INTRODUCTION	4
PART I: METHODOLOGY	4
PART II: STUDY ON THE IMPLEMENTATION OF THE CONVENTION AS IT RELATES TO THE INTERPRETATION OF CERTAIN TERMINOLOGY	5
1. Background	5
2. “Waste/non-waste”	6
a. Introduction	6
b. Refinements to definitions of “disposal”	8
c. Residues	11
d. Hazard to human health and the environment	11
e. Value of the material	11
f. Distinguishing waste from non-waste	11
g. Objective and subjective elements of the definition of “wastes”.	12
3. Hazardous waste/non-hazardous waste.....	12
4. Re-use/direct re-use	14
5. Refurbishment	16
6. Second-hand goods/used goods.....	17
7. Commonalities and differences	18
PART III: OPTIONS FOR THE INTERPRETATION OF TERMS	19
Appendix 1 – Questionnaire on the implementation of the Basel Convention as it relates to the interpretation of certain terminology used in the Convention and a list of other relevant terms related to the implementation of the Convention	
Appendix 2 – National/regional legislation, regulations and other measures, policies and practices as they relate to the terminology at issue	
Appendix 3 – Parties’ approaches to the definition of “waste”	
Appendix 4 – How Parties distinguish between waste and non-waste	
Appendix 5 – Potential criteria for exclusion from regulation as a hazardous waste	
Appendix 6 – References	

Introduction

This report was prepared in response to Decision BC-10/3 of the Conference of Parties (“COP”) to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (hereinafter, the “Basel Convention” or “Convention”). In that decision, adopted in furtherance of the Indonesian-Swiss “country-led initiative” to improve the effectiveness of the Convention, the COP noted that “a number of the provisions of the Convention are interpreted differently by parties and that the implementation and application of these provisions would benefit from additional legal clarity.” The COP “[r]ecogniz[ed] that there needs to be a clear distinction between wastes and non-wastes for some used equipment and second hand goods and that imports of used and near end-of-life goods that soon become waste are a matter of serious concern in some countries.” With a view toward providing more legal clarity, the COP requested that the Secretariat provide a study on the implementation of the Convention as it relates to the interpretation of certain terminology used in the Convention and a list of other relevant terms related to the implementation of the Convention, including: (i) waste/non-waste; (ii) hazardous waste/non-hazardous waste; (iii) re-use; (iv) direct re-use; (v) refurbishment; (vi) second-hand goods; and (vii) used goods. As requested by the COP, this report, which contains the study and possible options for the interpretation of the terms listed above, was finalized in the light of the comments received from Parties on a first draft dated 25 May 2012.

This report is divided into three parts. The first part explains the methodology used to prepare the report. The second part presents a study on the implementation of the Convention as it relates to the terminology mentioned above.¹ The study includes a summary of Parties’ national/regional legislation, regulations and other measures, policies and practices as they relate to the interpretation of each term, with a focus on the distinction between waste/non-waste. Commonalities among and differences between Parties’ interpretations of the relevant terms are identified, and regional approaches are highlighted. The concluding section of this document presents some potential options that could be considered in the development of guidance or other approaches regarding the interpretation of these terms, within the context of the future implementation of the Convention.

PART I: METHODOLOGY

The following is an account of the methodology used for the preparation of this report. The report is largely based on a review of information contained in:

- Responses of Parties to the “Questionnaire on the implementation of the Basel Convention as relates to the interpretation of certain terminology used in the Convention and a list of other relevant terms related to the implementation of the Convention” circulated by the Secretariat in February 2012 pursuant to COP Decision BC-10/3 (hereinafter, the “2012 Questionnaire”)²;
- Comments submitted by several Parties³ on a draft of this report dated 25 May 2012;
- Liaising with focal points and competent authorities of several Parties, as a means of clarifying some points raised in the responses and comments mentioned above;
- Recent communications (from 2008-2011) from Parties to the Basel Convention Secretariat regarding the subject matter of the report;
- Compilation of national reports from Parties and summary of national laws and regulations, prepared by the Secretariat in 2008 and 2009⁴;

¹ Apart from the term, “disposal,” the Secretariat did not identify any relevant terminology from the Convention, other than the terms set forth in Decision BC-10/3.

² The Questionnaire is reproduced as Appendix 1 to this report. The following Parties responded to the 2012 Questionnaire: Argentina, Brazil, Canada, Central African Republic, Chad, Colombia, the European Union and Member States, Ivory Coast, Japan, Lithuania, Malaysia, Montenegro, Morocco, Nicaragua, Paraguay, St. Lucia, Yemen, and Zambia. Responses were also received from the United States, BCRC Tehran, the Information Technology Industry Council, Phillips Medical, and PC Rebuilders and Recyclers, LLP. Unless otherwise indicated, the 2012 Questionnaire is the source for references to Parties’ law, regulations, views, and policies.

³ Comments were submitted by the Canada, the Central African Republic, Colombia, and the European Union and its member States.

- Review of national and regional laws and guidance documents;
- The Basel Convention Draft Technical Guidelines on Transboundary Movements of E-Waste, in particular Regarding the Distinction between Waste and Non-waste (version 8 May 2012) (hereinafter, “Draft Guidelines on E-waste”)⁵;
- Guidelines and guidance prepared by the Partnership for Action on Computing Equipment (“PACE”)⁶ and the Mobile Phone Partnership Initiative (“MPPI”)⁷;
- Reports issued in connection with various other initiatives, particularly those involving the Basel Convention, pertaining to the subject of the report, particularly regarding the distinction between waste and non-waste;
- Reports and guidance issued by the Organization for Economic Cooperation and Development (“OECD”); and
- Publications by Non-Governmental Organizations and academicians⁸.

Information regarding the laws, practices and policies of the Parties, as well as recommendations found in the guidance documents mentioned above, was compiled⁹ and analysed for commonalities and differences. The report highlights common and regional approaches, and draws heavily on those approaches in the options presented in Part III.

PART II: STUDY ON THE IMPLEMENTATION OF THE CONVENTION AS IT RELATES TO THE INTERPRETATION OF CERTAIN TERMINOLOGY

1. Background

Hazardous waste moved to the forefront of the global environmental agenda in the early 1980’s, following the discovery in several developing countries of deposits of toxic wastes imported from abroad. In response to growing international concern about the hazards posed to human health and the environment by transboundary movement of hazardous wastes and their disposal, the Basel Convention was adopted by a Conference of Plenipotentiaries in Basel, Switzerland on 22 March 1989.¹⁰

Although hazardous waste dumping and other unsafe final disposal practices may have precipitated development and adoption of the Convention, the instrument also applies to waste destined for certain recycling/recovery operations. In recent years, international attention has focused on problems associated with the transboundary movement of used and end-of-life electronic equipment and other goods (hereinafter, “UELG”), where the asserted or actual purpose of the export is for re-use¹¹, refurbishment, recycling¹², or a recovery¹³ operation.

⁴ Basel Convention, National Reporting Compilation Part I (2008) and (2009),

<http://www.basel.int/Countries/NationalReporting/>

[StatusCompilations/CompilationPartI2008/tabid/2561/Default.aspx](http://www.basel.int/Countries/NationalReporting/StatusCompilations/CompilationPartI2008/tabid/2561/Default.aspx), and

<http://www.basel.int/Countries/NationalReporting/StatusCompilations/CompilationPartI2009/tabid/2561/Default.aspx> (Retrieved 17 Apr. 2012) (hereinafter, Reporting Compilation (2008) or Reporting Compilation (2009), respectively).

⁵ The latest version of the guidelines, set out in document UNEP/CHW/OEWG.8/INF/9, was not available at the time of finalization of this document. The attention of the reader is drawn to that document for updated information.

⁶ Guidance Document on the Environmentally Sound Management of Used and End-of-Life Computing Equipment” (hereinafter, the “PACE ESM Guidance”), UNEP/CHW.10/20. Sections 1, 2, 4 and 5 of the PACE guidance document were adopted by COP Decision BC-10/20. Section 3 on transboundary movement was not adopted. The PACE working group has decided to wait for the final draft of the Basel Convention Technical Guidance on e-waste before finalizing section 3.

⁷ MPPI, “Guidance document on the environmentally sound management of used and end-of-life mobile phones,” UNEP/CHW/10/Inf27/rev.1, para. 31. The document was adopted with revisions by COP Decision BC 10/21, and is available on the Basel Convention website.

⁸ Due to space limitations, these sources are not cited in this report.

⁹ A detailed compilation is included in Appendix 2 to this report.

¹⁰ United Nations Treaty Series, Vol. 1673, p. 57 et seq.

¹¹ It might be argued that while they can be subject to recycling or recovery operations, truly “end-of-life” goods cannot, by definition, be re-used, at least not for their original purpose. Thus, much of this report’s discussion on re-use may not apply to end-of-life goods.

As the Basel Convention applies to transboundary movement of “hazardous wastes,” interpretation of that term, as well as its predicate, “waste,” will determine how the Convention applies to UELG. This report addresses those terms, as well as other relevant terminology such as “disposal,” which determines whether something is a waste, and interpretive issues regarding Annex IV, upon which the term “disposal” depends. The other terminology addressed in this report – re-use, direct re-use, refurbishment, second-hand goods and used goods may be relevant to determining whether a particular UELG or category of UELG is a hazardous waste and thus subject to the Convention.¹⁴ Of course, national laws and regulations will be of primary importance, both because that is how the Convention is implemented, and because the Convention’s definition of “wastes” and “hazardous wastes” includes objects and substances (hereinafter “materials”)¹⁵ that a Party so designates.¹⁶

The Basel Convention’s framework rests on three pillars: (i) a global control system for the transboundary movement of wastes; (ii) the environmentally sound management (“ESM”) of wastes; and (iii) minimizing the generation of wastes. How the terminology examined in this report is interpreted, especially the terms “wastes” and “hazardous wastes,” has implications for the scope of the global control system of transboundary movement. Excluding used goods, or goods destined for re-use, direct re-use, or refurbishment (or some subset of the foregoing), while perhaps desirable for economic, developmental, and resource conservation purposes, could detract from environmentally sound management of such goods, especially in developing countries, unless the exclusion is based or conditioned on ESM criteria.

In addition, the interpretation of this terminology will help determine the manner and degree to which the global control system is applied to the transboundary movement of used and end-of-life goods. This is likely to affect the extent to which used and end-of-life goods are exported and are in fact re-used.

2. “Waste/non-waste”

a. Introduction – Much of this report is devoted to this seminal issue of waste/non-waste. The interpretation of these terms, as well as hazardous waste, are addressed in most of the responses to the 2012 Questionnaire, as well as other recent communications from Parties. Fewer responses to the Questionnaire address the interpretation of the other terms: re-use/direct re-use, refurbishment, and used/second-hand goods. Those latter terms are however often employed in determining whether a material is a waste.

The interpretation of “waste/non-waste” is critical to determining whether a material is a “hazardous waste,”¹⁷ and thus subject to the Convention’s coverage. In many cases, the waste/non-waste dichotomy will determine whether a material presenting potential hazard to human health or the environment is a hazardous waste, although the presence or absence of hazard characteristics

¹² For purposes of this report, the term “recycling” refers to the processing or transformation of used materials into new products. The term does not include re-use or direct re-use.

¹³ For purposes of this report, the term “recovery operation” refers to processes 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. Cf, Basel Convention Technical guidelines on the environmentally sound recycling/reclamation of metals and metal compounds (R4).

¹⁴ This other terminology does not figure in the Convention’s definition of waste. However, the terms re-use, direct re-use, and refurbishment do appear in the Annex IX, item B1110 of the Convention, which provides that certain electrical and electronic assemblies are not hazardous wastes if destined for direct re-use. Annex IX lists wastes that are not considered hazardous; it does not identify materials that are not considered to be wastes, although footnote 21 notes that some Parties do not consider the covered material to be waste. This item is discussed further in section 4, below.

¹⁵ For the sake of brevity, this report generally uses the term “materials” in its broadest possible sense, to include substances and objects.

¹⁶ It is important to note that national provisions concerning the definition of waste (and hazardous waste) may differ; therefore, the same material may be regarded as waste or hazardous waste in one country but as a non-waste or non-hazardous waste in another country.

¹⁷ In accordance with Article 1.1 of the Convention: “The following wastes that are subject to transboundary movement shall be “hazardous wastes” for the purposes of this Convention: (a) Wastes that belong to any category contained in Annex I, 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.”

may affect the determination of whether the material was a waste to begin with. This report will focus on Parties' definitions of "hazardous waste" as they pertain to the "waste/non-waste" issue.¹⁸

Since most Parties define "wastes" in terms identical or similar to those of the Convention, a useful starting point is the Convention's definition. "Wastes" is defined by the Article 2.1 of Convention as "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." The term "disposal," is defined as "any operation specified in Annex IV" to the Convention. Annex IV, in turn, is divided into two sections. Annex IVA identifies "Operations Which Do Not Lead to the Possibility of Resource Recovery, Recycling, Reclamation, Direct Re-Use or Alternative Uses," and Annex IVB identifies "Operations Which May Lead to the Possibility of Resource Recovery, Recycling, Reclamation, Direct Re-Use or Alternative Uses."

The difficulty in interpreting the term "wastes" in the context of UELG may be illustrated by a series of examples: at one end of the spectrum, if an exporter collects UELG with the intention of exporting it for final disposal, there can be little doubt of its status as a waste as it begins its transboundary movement, since it clearly meets the standard "intended to be disposed of." Similarly, if the material goes directly to final disposal in the country of import, it would be a "waste" because of the clause "are disposed of." At the other end of the spectrum, a newly manufactured product exported for use would likely not meet the definition of waste.¹⁹ Between these two poles lies the export for various purposes of used or second-hand materials. Export of a late-model, lightly used automobile in running order might not be considered to involve a waste, while export of an older model that needs repair might be so-considered. Whether exports of recent or older model automobiles, either "road ready" or requiring various levels of repair, are subject to the Basel Convention²⁰ may depend on the interpretation of Annex IV, since materials are "wastes" if they are disposed of, and they are "disposed of" if subject to any operation in Annex IV.²¹ It may be noted that while the caption to Annex IV refers to "direct re-use," none of the actual operations listed in Annex IVB explicitly pertain to direct re-use, nor do they directly address the issue of the export of materials for refurbishment and subsequent use.

Parties' interpretations of the terms "waste" and "non-waste," as discussed below, underscore the complexity of this issue. Though grounded in the provisions of the Convention, the definitions often depend on arguably ambiguous terms such as "disposal", "discarded", and even "waste," and thus provide varying degrees of clarity on whether and how transboundary movement of materials is to be regulated. Appendix 3 to this report presents a table identifying the various ways in which Parties define "waste." The following discussion summarizes those approaches, which include: (i) various means of defining the term "disposal," including the use of additional terminology and identification of materials considered to be wastes; (ii) focus on residues; (iii) focus on the hazard presented to human health or the environment; and (iv) consideration of the market value of the material in question. This discussion is followed by a summary of efforts to specifically distinguish waste from non-waste, and concludes with a consideration of objective and subjective elements in the definition of "wastes."

¹⁸ Parties' definitions of "waste" and "hazardous waste," as communicated in responses to the 2012 Questionnaire, are summarized in Appendix 2.

¹⁹ There could be situations, however, where, upon arrival in the importing country, a newly manufactured product is immediately sent for final disposal. Unless the product was defective, it arguably would not have become a waste until arrival in the importing country, and thus its transboundary movement would not be subject to the Convention, even though it is literally a material that "is disposed of."

²⁰ It may be noted that waste end-of-life vehicles are considered non-hazardous under Annex IX, item B1250, of the Convention, if not containing liquids or other hazardous waste.

²¹ In some cases, it might be argued that subjecting a material to an Annex IV B operation does not necessarily mean that the material is a waste; Annex IV B applies only to materials "legally defined as or considered to be hazardous wastes ...," even though it may be the determiner of whether the material is a waste. For this reason, the nature of the materials and provisions of national law can be particularly important.

b. Refinements to definitions of “disposal” – Like Article 2.1 of the Convention, many national definitions refer to materials that are “disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law.” And, like the Convention, many define “disposal” with reference to whether the material in question is subject to certain operations, such as those identified in Annex IV to the Convention. Under this approach, it is not the intrinsic composition of the material itself that determines whether it is waste, but the operation for which that material is destined. That operation will often be heavily influenced by the nature of the material.

Seeking to refine the meaning of “disposal,” many Parties have adopted all or part of what is essentially a three-part test to determine whether a material is a waste: First, there must be an intent to “discard,” “abandon,” “eliminate,” or “get rid of” the material. Second, the material must be destined for or subjected to one of a list of disposal operations, similar to (though in some cases broader than) the Convention’s Annex IV. Finally, some national approaches employ the use of a list of wastes or categories of wastes to assist in the determination. Each prong of this approach is summarized below.

(i) *“Discarded” and similar terminology* -- Many Parties have adopted the definition, or a similar definition, of “waste” found in the European Union and its member States (hereinafter, “EU”) “Waste Framework Directive”:

“any substance or object which the holder discards or intends or is required to discard.”²²

The English term “discard” might be considered somewhat narrower than the term “dispose of.”²³ A typical dictionary definition of “dispose of” is: “1. To attend to; settle: [e.g.,] disposed of the problem quickly. 2. To transfer or part with, as by giving or selling. 3. To get rid of; throw out. 4. To kill or destroy: [e.g.,] a despot who disposed of all his enemies, real or imagined.”²⁴ It would appear that the term “dispose of” in Article 2.1 of the Convention is used in this third sense, which is quite similar to the term “discard,” defined by the same reference as: “to get rid of as useless or undesirable.” Another source adds that “discard implies the letting go or throwing away of something that has become useless or superfluous though often not intrinsically valueless < [e.g.,] discard old clothes>.”²⁵

However, the EU Court of Justice has made clear that “discard” has a very special meaning in this context which is much wider than the dictionary definition. It includes not only operations where a substance is landfilled or ‘got rid of’ in some other way, but also operations where the substance performs some useful function, either directly (such as being used as fuel) or as one stage towards eventual use (such as sorting of recyclates). If any other interpretation was used, then substances would not be considered waste when subjected to those operations.

The EU Court of Justice has also identified that the submission of a substance to one of the listed activities is not sufficient to classify a substance as waste for the very good reason that many non-wastes are subjected to the same operation. Use as a fuel is one such example. Many wastes make good fuels and their use as such could be encouraged (subject to appropriate controls) as this ultimately saves resources. But virgin fuels are not waste even though they are put to the same use. The EU Court of Justice has recognized that one needs to look at all the circumstances in making the distinction in assessing whether a substance is waste.

It is not clear that the term “discard,” while perhaps more precise than “dispose of,” has brought additional clarity to the waste/non-waste issue, in the context of a material that is not destined for final disposal.²⁶ To be sure, some materials are considered to be discarded even

²² Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste, Article 3 paragraph 1. Some Parties indicate they are following Directive 2006/12/EC, which was repealed by Dir. 2008/98/EC. It is anticipated that those Parties will update their legislation to accord with the revised Directive; accordingly, this report does not discuss Directive 2006/12/EC, except to the extent its provisions are incorporated into the revised Directive.

²³ It may be noted that the English term “discard” is replaced in the French and Spanish versions of the Directive with “se défaire” and “desprenderse,” respectively.

²⁴ The American Heritage® Dictionary of the English Language, Fourth Edition copyright ©2000 by Houghton Mifflin Company, <http://www.thefreedictionary.com/disperse> (Retrieved 11 May 2012.)

²⁵ <http://www.merriam-webster.com/dictionary/discard>. (Retrieved 8 Apr. 2012.)

²⁶ The European Court of Justice has addressed the meaning of the terms “discard”, as well as the more general issues of disposal and whether a material is a waste, albeit not in the context of goods destined for re-use. In *Palin Granit Oy Case 9-00 [2002] ECR I-3533*, the Court ruled that leftover quarry stone was “discarded,” despite claims that it was being stored indefinitely for possible use and was alleged to pose no threat to human health or the environment.

though they are not “useless or superfluous.” For example, some (perhaps most) materials destined for recovery operations specified in Annex IV B are considered to be discarded.²⁷ Were it otherwise, Annex IV B would lack any meaning. But this observation does not answer the question of whether a material destined for an Annex IV B operation is a waste,²⁸ and still less, whether a material destined for re-use is a waste. As the proverb has it, “one person’s trash is another person’s treasure.” For example, if a lightly worn, out-of-fashion dress, or a well-functioning computer whose speed has been eclipsed by newer machines, is donated to a charity, those items may be said to be “discarded,” in the sense that their original owner wanted to get rid of them. There is little doubt that these items would be waste if sent to a landfill. However, if those and similar UELG items are collected, exported for re-use (especially direct re-use and if sold for value), they might not be considered to be wastes, even though they were in some sense “discarded” by the original owner. Under EU law “used goods” may be waste or not depending on the question whether the waste definition (see above) applies or not. In June 2012, the European Commission published a guidance document on the interpretation of key provisions of the Directive.²⁹

Some Parties employ the other terms, such as “abandoned” or “get rid of” in their definition of waste. For example, Andorra defines waste as: “Any substance or object whose possessor abandons has the intention to abandon, or has the obligation to abandon, according with the National Waste Catalogue, published according to the European waste list.”³⁰

Whatever the terminology, under most national approaches, a necessary predicate to waste status is that the material (with the possible exception of residues, discussed below) be “discarded” (or abandoned or gotten rid of). In addition, most Parties also require that the material be subject to one of a number of specified “operations,” or appear on an official list of wastes. These elements are discussed below. It bears emphasis, however, that some Parties appear to consider any discarded item or material to be a waste, regardless of its ultimate destiny. For example, according to its Basel Convention Fact Sheet, Algeria reportedly includes in its definition of waste: “in general any substance or product and any personal estate that the property or the holder wants to get rid of or eliminate.”³¹ In addition, a court in the Hong Kong Special Administrative Region of China (“HKSAR”) recently ruled that for the purpose of waste import and export control, any article or substance once given up by its original user is considered to be waste, whether or not it is still workable or can be sold for a value. As such, used electrical and electronic equipment having hazardous components or constituents (e.g. televisions, computer monitors and batteries) will likely be regarded as waste and fall within the said control unless they will be re-used for their originally intended purpose without repair.³²

²⁷ Not all materials destined for Annex IV B operations are wastes. As the ECJ has observed, not all substances burned as fuel are to be considered “discarded” solely because “use as a fuel” is an operation listed in the pertinent Council Directive (and in Basel Convention Annex IV B, R1) *ARCO Chemie*, Case C-418/97 [2000] ECR I-4475.

²⁸ In *ARCO Chemie*, the ECJ rejected the contention that “LUWA-bottoms,” a production process by-product destined for use as a fuel in the cement industry, was a waste solely by virtue of its Annex IV B destiny. While the court emphasized that whether a material is a waste within the meaning of the directive “must be determined in the light of all the circumstances, regard being had to the aim of the directive and the need to ensure that its effectiveness is not undermined.” *Id.*, para. 97. The Court considered as evidence of discard that the substance in question was “commonly regarded as waste,” was the residue of the manufacturing process of another substance, that no use for that substance other than disposal could be envisaged, that the composition of the substance was not suitable for the use made of it, and that special environmental precautions must be taken when it is used. *Id.*, para. 48. It may be noted that the Court appeared to assume that use as a fuel was “disposal,” even as it was attempting to discern whether discard was involved.

²⁹ The Guidance is available at http://ec.europa.eu/environment/waste/framework/pdf/guidance_doc.pdf

³⁰ Reporting Compilation (2009.) As noted above, “get rid of” is interchangeable with “discard.” In English parlance, the term, “abandon” has a slightly different connotation: it is ordinarily used in the context of suggests leaving a large or valuable item (or even person) in place, often illegally. However, it is likely that Parties who use this term do not intend a limited construction of “abandoned,” since most waste, especially waste that is exported, is not “abandoned” in the narrower sense.

³¹ Basel Convention Fact Sheet for Algeria, <http://archive.basel.int/natreporting/cfs.html> (Retrieved 11 May 2012.)

³² Basel Convention Coordinating Center for Asia and the Pacific (Asia-Pacific Regional Centre for Hazardous Waste Management Training and Technology Transfer), Report of the Project on “the Import/Export Management of E-waste and Used EEE,” (June 30, 2009) (hereinafter, the “BCCCAP Project Report”), http://www.env.go.jp/en/recycle/asian_net/Project_N_Research/E-wasteProject/10.pdf Retrieved 19 April 2012, para. 39.

Norway considers used electrical and electronic equipment destined for repair or refurbishment, except for certain equipment returned to the manufacturer, to be waste and hence procedures for transboundary movement of waste would apply.³³

South Africa defines “waste” as any substance, whether or not it can be reduced, re-used, recycled and recovered (a) that is surplus, unwanted, rejected, discarded, abandoned or disposed of; (b) which the generator has no further use of for the purposes of production; (c) that must be disposed of; or (d) that is identified as a waste by the Minister by notice in the Gazette, but – (i) a by-product is not considered waste; and (ii) any portion of waste, once re-used, recycled and recovered ceases to be waste.³⁴

(ii) Identification of disposal operations -- Similar to Annex IV of the Basel Convention, some Parties’ definition of the term “waste” references the operations for which a material is intended. For example, while Canadian regulations do not define “waste” per se, definitions for “waste” and “recyclable material” can be derived from the definitions of “hazardous waste” and “hazardous recyclable material,” as follows:

“Waste” means anything intended to be disposed of using one of the listed “D” operations in Annex IVA. “Recyclable material” means anything intended to be recycled using one of the listed “R” operations in Annex IVB.³⁵

The EU defines disposal to mean “any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy.”³⁶ However, as noted above, it has been clarified that not all substances treated by such methods are necessarily waste.³⁷

(iii) Use of lists of wastes -- Many Parties employ lists as part of the determination of whether materials are wastes, often in conjunction with other approaches. A commonly used list is the European List of Waste, established by Decision 2000/532/EC³⁸. According to Article 7.1 of Directive 2008/98/EC, that list, which includes more than 800 specific types of wastes and waste streams, is to be updated, taking into account the origin and composition of the waste and, where necessary, the limit values of concentration of hazardous substances. However, the List of Waste is intended to be binding only with respect to whether a waste is to be considered a hazardous waste, and includes a specific disclaimer that it applies only to materials deemed to be wastes “only where the definition of waste in Article 1(a) of Directive 75/442/EEC [now Article 3.1 of Directive 2008/98/EC] is met.”

³³ Norway, letter of 28 June 2011, “BSC technical guidelines on transboundary movement of E-waste - comments from Norway,” http://archive.basel.int/techmatters/e_wastes/guidelines/comments/2011-02-21norway.pdf. (Retrieved 15 March 2012.) Norway refers to Para. 27(b) of the Draft Guidelines, which provides that equipment returned as defective batches for repair to the producer (under warranty) with the intention of receiving it back for re-use is not a waste if: (i) a declaration is made by the exporter that none of the equipment within the consignment is waste as defined by national law of the countries involved in the movement; and (ii) appropriate protection is provided against damage during transportation, loading and unloading, in particular through sufficient packaging and/or stacking of the load.

³⁴ Reporting Compilation (2009), citing National Environmental Management Waste Act 58 of 2008.

³⁵ Response to 2012 Questionnaire, citing Canadian Export and Import of Hazardous waste and Hazardous Recyclable Material Regulations.

³⁶ Directive 2008/98/EC. Annex I to the Directive sets out a non-exhaustive list of disposal operations. The EU defines “recovery” to mean “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 fulfill that function, in the plant or in the wider economy.” Article 3(15) of the EU waste framework directive. Annex II to the same directive sets out a non-exhaustive list of recovery operations

³⁷ See, e.g., Arco Chemie, supra; and Inter-Environment Wallonie ASBL v Région Wallonne, Case C-129/96 [1997] ECR I-7411, para. 45.

³⁸ European Commission Decision of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste

c. Residues – Many Parties define “waste” to include residues or byproducts of production and consumption processes. The export of such residues would seem to have little to do with the issue of waste/non-waste in the context of UELG, although the creation of residues in operations to which UELG is subject after export could be relevant.

On the other hand, the EU provides that a substance resulting from a production process whose primary aim is not the production of that item, may be regarded as a “byproduct” and not a “waste,” if the following conditions are met:

(a) further use of the substance or object is certain; (b) the substance or object can be used directly without any further processing other than normal industrial practice; (c) the substance or object is produced as an integral part of a production process; and (d) further use is lawful, i.e. the substance or object fulfills all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts.³⁹

d. Hazard to human health and the environment – Some Parties define the term “waste” with reference to the hazardous character of the material, or the threat it may pose to human health and the environment, rather than the intended disposition of the material. For example, Egypt defines “waste” as: “waste of any activities or any processes which exhibit any of the hazardous characteristics.”⁴⁰ Uganda provides: “Waste includes any matter prescribed to be waste, and any radioactive waste whether liquid, solid, gaseous or radioactive which is discharged, emitted or deposited into the environment in such volume, composition or manner as to cause an alteration of the environment.”⁴¹ Other Parties include hazard as an element of the definition of waste.

e. Value of the material – Some Parties take into account the value of an item in determining whether it is a waste. Items are considered to be waste if transferred free of charge or for a fee payable to the receiver. For example, part of Argentina’s definition of waste includes “...all material, substances or objects ... offered free of charge or paying a fee for recycling, treatment or disposal.”⁴² Similarly, the Armenian definition of waste includes “manufactured goods/produce that lost the initial consumer properties.”⁴³ These definitions do not provide an exemption for, or otherwise address, charitable donations.

f. Distinguishing waste from non-waste – In some cases, Parties have explicitly articulated distinctions between waste and non-waste. In other cases, Parties’ interpretation on this point can be inferred from legal documents or communications that address the definition of waste or hazardous waste, or otherwise describe their regulatory scheme, but do not explicitly address the waste-non/waste issue. Some Parties have adopted laws, regulations, guidance or policies specifically aimed at distinguishing between waste and non-waste, particularly in regard to electrical and electronic equipment. A number of Parties in the Latin American region have developed guidance that presents a concept of waste electronic and electrical equipment (hereinafter “WEEE”) that is based on the idea of abandonment or discarding by its holder. The guidance provides that the following characteristics, in order of precedence, indicate that used electronic and electrical equipment (hereinafter “EEE”) is waste: when it can no longer be used for the purpose it has been created; by obsolescence or technological replacement; or when the holder makes a decision to discard or abandon it.⁴⁴

In Argentina, the national environment agency has ruled that used EEE (hereinafter “UEEE”) is waste, and is hazardous when it possesses hazardous characteristics, except for certain materials that were remanufactured for use for the same purpose for which they were designed or produced and having the same characteristics of use when they were produced. In the case of electrical and electronic equipment, the government is studying the issue and expects to issue a regulation that defines EEE, UEEE, and WEEE. The rule is expected to provide some flexibility for the collection, transport and storage of UEEE, prior to a recovery, treatment and subsequent disposal.

To distinguish WEEE from UEEE, some Parties in the Asian-Pacific Region, including China, Japan, Republic of Korea, Malaysia and Thailand, have adopted specific definitions or

³⁹ Art. 5.1 of Directive 2008/98/EC on waste.

⁴⁰ Reporting Compilation (2009).

⁴¹ Reporting Compilation (2009).

⁴² Executive Decree 181/92, Art. 4.

⁴³ Reporting Compilation (2009).

⁴⁴ Colombia’s Response to 2012 Questionnaire, citing “Lineamientos para la Gestión de los Residuos de Aparatos Eléctricos y Electrónicos (RAEE) en Latinoamérica: resultados de una mesa regional de trabajo público-privado” (hereinafter, the “Latin America Guidance.”)

criteria.⁴⁵ Other Parties in the region, such as Cambodia, Indonesia, Singapore and Vietnam, have adopted definitions of “waste,” which could be used to distinguish EEE destined for legitimate re-use from WEEE. Similarly, the EU has addressed the subject in great detail. The waste shipment correspondents of the EU member States have agreed on a number of guidelines addressing the distinction between waste and non-waste, including on WEEE and motor vehicles.⁴⁶ Commonalities and differences in approaches to distinguishing waste and non-waste, which have most often been developed with respect to EEE, are discussed in section 7, below.

Appendix 4 describes in tabular format the criteria that Parties employ to distinguish waste and non-waste.

g. Objective and subjective elements of the definition of “wastes” – It may be observed that the Convention’s definition of “waste” includes both objective and subjective elements. Whether a waste actually undergoes an operation specified in Annex IV or is required to be disposed of by the provisions of national law are objective issues, although interpretation of Annex IV or national law might be required. Conversely, the phrase “intended to be disposed of,” carries an element of subjectivity, as intent is presumably in the mind of the exporter or generator. On the other hand, intent can be inferred from actual conduct and other objective evidence, such as the nature of the material, packaging and transportation methods, common practice, and other factors.

From a practical standpoint, a focus on intent to dispose makes sense, as the exporter or generator with such intent can reasonably be expected to seek the necessary authorizations. However, actual disposal presents a more difficult issue, at least in cases where the exporter or generator denies having intended that disposal to occur. The Basel Convention applies to *transboundary movement of hazardous wastes* and other wastes, so it would seem that the Convention would apply only to materials that are wastes at the time of their transboundary movement. This conclusion carries two implications: First, even if a hazardous waste subsequently becomes a non-waste after export,⁴⁷ its transboundary movement is nonetheless subject to the Basel Convention, because transboundary movement of a hazardous waste has occurred. Conversely, if there is no intent to dispose at the time of export, it might be argued that the Convention does not apply, since the material is not a waste at the time of transboundary movement. If, despite the lack of such intent on the part of the exporter, the material is disposed of upon its arrival in the country of import, that cannot retroactively transform the prior transboundary movement of what was a non-waste. On the other hand, such an argument tends to downplay the “actual disposal” prong of the Basel Convention’s definition of “wastes,” because if only intent mattered, there would be no need to include the phrase “are disposed of.” This is an area where national law can provide clarification.

3. Hazardous waste/non-hazardous waste

Most Parties define “hazardous waste” in terms identical or similar to those used by the Convention. Appendix II to this report summarizes communications from Parties on this point. The most obvious way to distinguish between hazardous waste and non-hazardous waste is to determine whether the waste exhibits a hazardous characteristic or is included on a national list of hazardous wastes. If the waste does not exhibit the requisite characteristic, it is not a hazardous waste. Of course, this approach presupposes that the material is indeed a waste, and as discussed above, a primary factor in distinguishing hazardous waste from non-hazardous waste, at least in the case of UELG, is whether the material is a waste to begin with.

⁴⁵ BCCCAP Project Report (see footnote 33). The HKSAR has adopted its own set of criteria, which are addressed separately in the report.

⁴⁶ Elements of the Correspondents' guidelines on WEEE will become legally binding as part of EU legislation in the recast of the new WEEE Directive, whereby the burden of proof on functionality of used equipment is incumbent upon exporters of waste.

⁴⁷ In addition to export for re-use (discussed in greater detail in section 4, below), EU Directive 2008/98 also provides: “Certain specified waste shall cease to be waste when it has undergone a recovery, including recycling, operation and complies with specific criteria to be developed in accordance with the following conditions:

- (a) The substance or object is commonly used for specific purposes;
- (b) A market or demand exists for such a substance or object;
- (c) The substance or object fulfils the technical requirements for the specific purposes and meets the existing legislation and standards applicable to products; and
- (d) The use of the substance or object will not lead to overall adverse environmental or human health impacts. It would appear from the above provision that waste exported prior to being subject to a recovery operation would still be a waste and subject to the Basel Convention if hazardous.

At least one Party's definition of "hazardous waste" appears to be more holistic, in that it does not involve a two-step process of waste-hazardous waste. Venezuela reportedly defines hazardous waste as a "simple or compound material in a solid, liquid or gaseous state which has hazardous properties or is composed of hazardous substances, whether or not it preserves its physical, chemical or biological properties, and for which no use is found with the result that a method of final disposal must be employed."⁴⁸

Some Parties explicitly address the distinction between hazardous and non-hazardous waste. For example, Nicaragua defines "hazardous waste" as those wastes "containing significant amounts of substances that may pose danger to life or health of living organisms when released into the environment if handled improperly or because of its size ..., form, or any other characteristic that poses a danger to human health, quality of life, environmental resources and ecological balance."⁴⁹ Nicaragua goes on to define "non-hazardous wastes" as those "that pose no immediate or potential danger to human health or other living organisms. Within non-hazardous wastes are: waste domiciliary, commercial, institutional, and wastes generated in markets, supermarkets and similar establishments."⁵⁰

Apart from the waste/non-waste dichotomy, many Parties have addressed the hazardous waste/non-hazardous waste issue in the context of UEEE and WEEE. While not explicit, some Parties appear to consider that the hazardous waste/non-hazardous waste distinction is not dependent on what will be done with the material after it is imported. For example, Brazil considers that the Convention establishes a presumption that waste containing Annex I constituents are hazardous, unless they do not exhibit Annex III characteristics. The implication might be that subsequent use is not a relevant factor, although it should be noted that the presumption applies to "waste."⁵¹ In a similar vein, Costa Rica defines hazardous waste as materials that, due to hazardous characteristics, could produce damage to human health or the natural environment.⁵² Colombia states that hazardous waste remains hazardous waste regardless of whether destined for final disposal (e.g., secure landfill) or recovery (e.g. recycling). The definition is based on the characteristic of danger inherent in the residue (corrosivity, toxicity, etc.), and not on the concept of management or risk. A waste can be classified as "non-hazardous" only if it loses its hazard characteristic.

The Central African Republic considers that any good destined to be abandoned [discarded?] that could make life difficult and unhealthy is a hazardous waste⁵³.

For the purpose of "international" movements, Canada defines "hazardous waste" as anything that is intended to be disposed of using one of the listed "D" operations in Annex IV to the Basel Convention and that is either specifically listed, exhibits a hazardous characteristic, contains a hazardous substance, produces a leachate containing a hazardous constituent, is considered or defined as hazardous under the legislation of the country receiving it and is prohibited by that country for being imported.⁵⁴ "Hazardous recyclable material" means anything that is intended to be recycled using one of the listed "R" operations and that is either specifically listed, exhibits a hazardous characteristic, contains a hazardous substance, produces a leachate containing a hazardous constituent, or is considered or defined as hazardous under the legislation of the country receiving it and is prohibited by that country for being imported.

For the EU, "hazardousness of a waste" is determined by using Decision 2000/532/EC on the List of Waste in conjunction with Annex III to the Waste Framework Directive. If a waste type appears in the list as "hazardous" and there is no reference to hazardous criteria or a mirror entry in the list of non-hazardous waste, the waste will be classified as hazardous, without further assessment. Conversely, wastes to which a "non-hazardous" waste code is assigned and for which

⁴⁸ Reporting Compilation (2009), citing Official Gazette Extraordinary No. 5554 of 13 November 2001, and Decree 2635 containing the "Norms for the Control and Recovery of Hazardous Materials and the Management of Hazardous Wastes", published in the Official Gazette Extraordinary No. 5245 of 3 August 1998.

⁴⁹ Response to 2012 Questionnaire, citing Law 217, Law of Environment and Natural Resources. Official Gazette (GDO) No. 105, June 6, 1996.

⁵⁰ Response to 2012 Questionnaire, citing Technical Standards for the Management and Disposal of Hazardous Solid Waste, 015-02 No. 05, Official Gazette No. 210 of November 5, 2002.

⁵¹ See Brazil's comments on the "Guidance Document on the Environmentally Sound Management of Used and End-of-life Mobile Phones," archive.basel.int/industry/mppi/oewg6-21comments/brazil-e.doc (Retrieved 12 Apr. 2012.)

⁵² Reporting Compilation (2009).

⁵³ In French: « rendre la vie malsaine et pénible ».

⁵⁴ Response to 2012 Questionnaire, citing Export and Import of Hazardous waste and Hazardous Recyclable Material Regulations.

there is no reference to hazardous criteria or a mirror entry in the list of hazardous waste, are classified as non-hazardous. The hazardousness of wastes that could be assigned either a hazardous or a non-hazardous waste code is to be evaluated on the basis of the hazardous properties included in Annex III to the Waste Framework Directive. Wastes displaying one or more of these properties are to be classified as hazardous. These hazardous properties (which are currently being reviewed, together with the List of Waste) are intrinsic properties and their definitions are very similar to those of the Basel Convention. The destination of the waste, i.e. its recovery or disposal, does not have any bearing on whether the waste will be considered as hazardous. The EU response to the 2012 Questionnaire noted that Annex III of Directive 2008/98/EC contains wastes and hazard characteristics in addition to those found in Annex I and Annex III of the Basel Convention.

Egypt and BAN stated that when different Parties apply different interpretations of hazardous characteristics, a lack of harmony in Basel application results. In such instances confusion can result in the PIC regime and other obligations. There have been instances of the European Union for example considering some waste to be non-hazardous whereas their Basel trading partners Parties may consider the same waste to be hazardous. While Article 3 requires reporting to the Secretariat national waste definitions other than those listed in Annexes I and II, it does not require reporting different interpretations of Annex III. In their view, one solution however would be to continue to allow flexibility for Parties to add to Annex I or II on a national basis via 1.1.b, but work to better ensure uniform interpretation of Annex III characteristic application among Parties. Otherwise, countries could conclude that many wastes on Annex 1.1.a are not hazardous as far as they are concerned, leading to Parties being able to subtract wastes from 1.1.a rather than add, which does not appear to be the intention of the Convention.

4. Re-use/direct re-use

As noted in the 8 May 2012 version of the Draft Guidelines on E-waste⁵⁵, direct re-use or re-use after repair or refurbishment can contribute to sustainable development by extending the lifetime of the equipment and providing access to such equipment to underserved groups in society. However, as the Draft Guidelines further describe, the lack of clarity in defining when equipment is waste and when it is not has led to a number of situations where such equipment was exported to, in particular, developing countries ostensibly for reuse where a large percentage of these goods in fact were not suitable for further use or were not marketable and had to be disposed of in the developing country as waste. The presence of hazardous substances and components in this equipment and the lack of adequate installations to treat those in an environmentally sound manner has led to serious problems for human health and the environment in the countries receiving this e-waste.⁵⁶ As noted above, materials subject to the “disposal operations” identified in Annex IV B to the Basel Convention are considered wastes, by virtue of the definitions in Articles 2.1 (“wastes”) and 2.4 (“disposal”). The caption to Annex IV includes operations which may lead to “direct re-use or alternative uses.” However, neither re-use nor direct re-use is among the listed operations themselves, and none of the identified operations appear to be directly linked to re-use or direct re-use.

The concept of re-use/direct re-use is also introduced in Annex IX to the Basel Convention. The third item under entry B1110 provides that “electronic and electronic assemblies (including printed circuit boards, electronic components and wires)” are not hazardous wastes⁵⁷ when “destined for direct re-use and not for recycling or final disposal.” A footnote to that item explains that “re-use can include repair, refurbishment or upgrading, but not major reassembly.”⁵⁸

As its introduction indicates, Annex IX applies to “wastes.”⁵⁹ So, from a logical viewpoint, entry B1110 (3rd item) would not address the issue of whether materials destined for direct re-use

⁵⁵ Draft Guidelines on E-waste (Draft for consultation, Version 8 May 2012, available at: <http://www.basel.int/Implementation/TechnicalMatters/DevelopmentofTechnicalGuidelines/Ewaste/tabid/2377/Default.aspx>). The most recent version of the draft guidelines is set out in document UNEP/CHW/OEWG.8/INF/9, not available at the time of the finalization of this document.

⁵⁶ *Id.* para. 12.

⁵⁷ Like all listings in Annex IX, this characterization as non-hazardous does not obtain if the item contains Annex I material causing it to exhibit an Annex III characteristic.

⁵⁸ Annex IX, note 20. It’s not clear why the footnote uses the term “re-use” when the operative provision to which it refers uses the phrase “re-use.” An inference might be drawn that repair, refurbishment or upgrading, and some reassembly might be consistent with direct re-use.

⁵⁹ The introduction to the Annex states: “Wastes contained in this Annex will not be wastes covered by Article I(1)(a) of this Convention unless they contain Annex I material to an extent causing them to exhibit an Annex III characteristic.”

are wastes. However, a footnote to that item states that some countries do not consider these materials to be wastes.⁶⁰ In any case, many Parties consider that materials destined for re-use, and especially direct re-use, are not wastes⁶¹, though in some cases the intervening steps between export and re-use are critical. Not all Parties have adopted an explicit definition of “re-use” or “direct re-use,” or attempt to distinguish between them. But whether by definition or by exclusion from the hazardous waste regulatory regime, a common theme is that re-use involves using an item for the original purpose for which it was manufactured. Thus, an automobile that continues to serve as a discrete conveyance in transportation would be re-used; whereas another that was harvested for spare parts or scrap metal would not.⁶²

Among the Parties adopting this approach are Colombia, the EU⁶³, Malaysia⁶⁴, Montenegro, Nicaragua, and Japan⁶⁵. In the Latin American region, a Regional public-private working group issued guidelines along these lines and defined re-use to include the continued use of the apparatus or some of its components returned to collection points or distributors, recyclers, manufacturers, social re-use programs, etc.⁶⁶

Some Parties’ definitions, however, contemplate the possibility that re-use may be for a different purpose than originally intended,⁶⁷ and at least one Party defines “re-use” to encompass a broader spectrum of activities.⁶⁸

Indonesia has published a new regulation in 2011 which allows limited importation of second hand goods of EEE with strict criteria, under the category of “non-new capital goods”. The criteria for second hand EEE goods that can be imported are: the goods should be imported as a whole unit, in working order, including their components; maximum 5 years-old (after the date of production); latest specification and type; sent in a good packaging.

⁶⁰ Annex IX, note 21. It may be noted that the parallel entry in Annex VIII, A1180 characterizes the same materials identified in B1110 (3d item) as hazardous wastes if they contain Annex I material causing them to exhibit Annex III characteristics. That entry does not mention direct re-use, perhaps suggesting that the Annex does not consider direct re-use to be a sign of non-waste status, but rather a factor affecting the hazardousness of the material.

⁶¹ The OECD has noted that its “R” list (which is identical to Basel Convention Annex IV B) “illustrate[s] that a ‘recovery operation’ entails 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. OECD, “Final Guidance Document for Distinguishing Waste from Non-Waste,” para. 14, ENV/EPOC/WMP (98)1/REV1, <http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=ENV/EPOC/WMP%2898%291/REV1&docLanguage=En> (Retrieved 11 Apr. 2012.) The implication is that “recovery operations” do not include, at a minimum, materials that are directly re-used without any transformation.

⁶² European Union, Correspondents’ Guidelines No. 9 on Used Vehicles, http://ec.europa.eu/environment/waste/shipments/pdf/correspondents_guidelines9_en.pdf (Retrieved 12 Apr. 2012.)

⁶³ Art 3.13 of Directive 2008/98/EC on waste.

⁶⁴ Malaysia defines re-use, with respect to EEE as “any operation by which discarded electrical or electronic equipment or components are used for the same purpose for which they were conceived, including the continued use of the whole systems or components (Defined under the “Guidelines for the Classification of Used Electrical and Electronic Equipment in Malaysia”).

⁶⁵ Japan regards as an “activity in which a used item is used for secondary use without any dismantling. But this includes the item is used for secondary use through repairing.”

⁶⁶ See note 44, supra. As reported by Colombia, these guidelines document were developed within the framework of the Regional project on harmonization of management of electronic waste in Latin America, implemented by the RELAC platform with the support of the International Development Research Center, IDRC.

⁶⁷ See responses to 2012 Questionnaire from Canada (re-use means using the same material again, for the same or a different purpose ...); and Chad (“l’utilisation d’un matériau récupéré pour un usage différent de son premier emploi, ou l’introduction de ce matériau dans un autre cycle de production que celui dont il est issu”); Ivory Coast (“La réutilisation consiste à utiliser un déchet pour un usage différent de son premier emploi, ou à faire, à partir d’un déchet, un autre produit que celui qui lui a donné naissance”); Brazil’s regime does not appear to focus on the purpose of the re-use, as long as there is no biological, physical or physico-chemical transformation, and that conditions and standards set by relevant authorities are met (Response to 2012 Questionnaire, citing Law 12,305/2010, Article 3, section XVIII).

⁶⁸ Morocco reports that it defines re-use (and direct re-use) as Recovery of waste: any recycling, re-use, or recovery operation, use of waste as an energy source, or any other action to obtain raw material or reusable products from waste recovery, and to reduce or eliminate the negative impact of such waste on the environment. Similarly, Paraguay’s entry on re-use, captioned as “Reciclaje”, contemplates the recovery of raw material refers to a process that allows recovery of raw material.

Some Parties provide some exclusion from their regime on transboundary movement of hazardous waste in the case of re-use or direct re-use, but have published guidelines or legal requirements establishing criteria for determining when and how that exclusion would be applied, particularly in the case of EEE. These criteria are elaborated in Appendix 2 to this report, and are discussed in section 2.f. above, as they can determine whether a material destined for re-use is considered a “waste.”

While few Parties appear to have explicitly defined “direct re-use,” a common theme is that it involves the re-use of a product without any intervening repair, refurbishment, or other modifications to that product between export and such re-use. Among Parties following this approach are Brazil,⁶⁹ Colombia, Japan, and Nicaragua. HKSAR also follows this approach and advises that “used electrical and electronic equipment having hazardous components or constituents will likely be regarded as waste and fall within the said control unless they will be re-used for their originally intended purpose without repair.”⁷⁰ In addition, HKSAR advises that “if EEE is exported for direct re-use, no waste import/export permit will generally be required ...”⁷¹

The EU defines “re-use” as: “any operation by which products or components that are not waste are used again for the same purpose for which they were conceived.”⁷² The EU considers re-use as a means of waste prevention, rather than a waste management operation. For example, if a person takes over a material, e.g. piece of clothing, directly from the current owner with the intention of re-using (even if some repairing is necessary) it for the same purpose, this is evidence that the material is not a waste. However, the EU Waste Framework Directive considers “preparing for re-use” to be a recovery operation, and that materials to be “prepared for re-use” are considered to be waste within the meaning of the waste definition. Examples for preparing for re-use include repairing bicycles, furniture, or EEE which was previously discarded by its owner. The EU defines the term, “repairing for re-use,” as: “checking, cleaning or repairing recovery operations, by which products or components of products that have become waste are prepared so that they can be re-used without any other pre-processing.”⁷³

As the EU notes, the difficulty in this context is to distinguish between items that can be repaired as non-wastes, and repair considered to be a recovery operation, meaning that the item to be repaired is a waste. According to the EU, this will depend on the circumstances, but a critical factor is the likelihood of re-use. Under EU law, if goods beyond economic repair in one country are exported, they will likely be considered to be waste, unless there is evidence to the contrary, such as evidence that a manufacturer will repair a faulty product to enable re-use. Developing criteria to help with that assessment could be a helpful approach, although it might not be possible to capture all the circumstances (e.g. the degree of repair) or being able to distinguish every case.⁷⁴

The EU reports that direct re-use is not defined in EU legislation, but some member States regard direct re-use as continued use of products and components by another person without the necessity of repair or other preparatory handling, provided that such continued use is for the intended purpose of the product or components.⁷⁵

5. Refurbishment

The term, “refurbishment” is relevant to transboundary movement of UELG, because it is sometimes used to describe the process that some goods undergo before being sold for re-use. The term is used in the Basel Convention, although only in a footnote associated with electrical and electronic assemblies,⁷⁶ and few Parties appear to have defined it in their legal frameworks implementing the Basel Convention. Colombia reports that although the term “reconstrucción” is

⁶⁹ See Brazil’s comments on MPPI Guidance Document, note 51, supra. (agreeing with conclusion that mobile phones exported for immediate use without repair are not subject to the Convention).

⁷⁰ Hong Kong, SAR, Environmental Protection Department Advice on Import and Export of Used Electrical and Electronic Equipment Having Hazardous Components or Constituents (3d ed., Nov. 2011). http://www.epd.gov.hk/epd/english/environmentinhk/waste/guide_ref/files/advice_on_e-waste.pdf (Retrieved 11 April 2012)

⁷¹ Id.

⁷² EU comment letter (22 June 2012)

⁷³ Id.

⁷⁴ Id.

⁷⁵ In its response to the 2012 Questionnaire, Lithuania advised that while it has no definition for direct re-use, the term would be interpreted as re-use without any interim repair or amendment. No other EU Member addressed the definition of re-use or direct re-use in its response to the Questionnaire.

⁷⁶ Basel Convention, Annex IX, note 20.

not legally defined in its hazardous waste rules, the rule governing the environmental management of waste computers and peripherals defines “reacondicionamiento” as a technical process of renewal (“renovación”), which completely restores the functional and aesthetic conditions of used or discarded equipment, so that it can be re-used for the same purposes for which it was originally manufactured. The term may also entail repair of damaged or malfunctioning equipment. In addition, the bill currently enrolled in the Colombian Congress on the Management of WEEE would define “remanufacturado” equipment as: all defective electrical and electronic equipment that has undergone an evaluation process by the producer where the damaged (“deñadas”) parts have been replaced and repackaged to go back on the market.

Refurbishment is also defined in the Latin American guidance⁷⁷ as a technical process of renewal, which restores the fully functional and aesthetic conditions of a piece of UEEE, so that it can be re-used in a new life cycle for the same purpose. It may also entail repair, in case the device may be damaged.

Japan defines refurbishment as “an activity in which a used item is reformed in order to recover the original function of the item for the secondary use.”

Interpretation of the term “refurbishment” seems less important than the degree to which Parties consider repairs and other alterations to an item to affect its status as a waste or non-waste. “Refurbish” is generally defined in English as a light operation to restore or renovate an article or building.⁷⁸ The PACE ESM Guidance Document defines “refurbishment” as a “process for creating refurbished or reconditioned computing equipment including such activities as cleaning, data sanitization, and software upgrading.” In a slightly different context, footnote 20 to Annex IX to the Convention draws a distinction is drawn between “refurbish” and “major reassembly.”⁷⁹ Whatever the terminology used – others are repair, renovate, reconstruction, remanufacturing – Parties are grappling with the question of how much, and what kind of alterations to an item is consistent with the notion that the item was not a waste prior to such alterations. This question is addressed by the various criteria discussed above under the headings of waste/non-waste and re-use/direct re-use, and below under second-hand/used goods.

6. Second-hand goods/used goods

For Parties that do not consider the export of “used goods” to involve transboundary movement of hazardous waste, defining these terms is essentially another way of addressing the question of whether an item is a waste; whether it is subject to re-use/direct re-use, or to refurbishment or some more extensive form of alteration. Parties’ definitions of these terms appear in Appendix II to this report.

Japan interprets the terms “second-hand goods” as “items which are directly used for [their] original purpose without any dismantling and refurbishing activities, not for recycling or final disposal...” For example, if second-hand electronics are not directly re-used, Japan requires that the Basel Convention control procedure apply, depending on the hazardous characteristics of the EEE. “Used goods” is similarly defined.

Lithuania interprets “second-hand goods” as those “that have been used and can continue to be used by somebody else for the same purpose they were created for without any refurbishment.”⁸⁰ “Used goods” are simply “[g]oods that have been used before.”⁸¹

⁷⁷ See note 44, supra.

⁷⁸ E.g., “renovate; brighten”: [as in] to refurbish the lobby. (Oxford Dictionaries on line, Oxford University 2012 <http://oxforddictionaries.com/definition/refurbish?region=us&q=refurbish>. The French equivalent, “remise á neuf” is similarly limited. The Spanish version of the 2012 Questionnaire uses the term “reconstrucción,” which generally translates a “reconstruction,” suggested a more extensive process than refurbishment. However, Colombia uses the terms “reacondicionamiento,” suggesting a more limited process. Conversely, the MPPI and PACE guidance appear to consider refurbishment to include more robust processes that may include, for example, dismantling a mobile phone and replacing some of its parts.

⁷⁹ Definitions of “refurbishment” in other publications accords with the more limited connotation of the term. For example, the “BCRC Technical Guidelines On The Reduce, Reuse, Recycle (3r) Of End Of Life Electronic Products” (Part II, para. 17) defines “refurbishment” as “a process of returning a used electronic appliance to satisfactory working condition, meeting applicable technical performance standards without replacing any parts.” [Http://www.env.go.jp/en/recycle/asian_net/Project_N_Research/E-wasteProject/12-1.pdf](http://www.env.go.jp/en/recycle/asian_net/Project_N_Research/E-wasteProject/12-1.pdf). (Retrieved 13 May 2012.). The examples provided by PACE suggest rather modest alterations to the equipment. It may be noted that the refurbishment discussion is in Section 4 of the Guidance Document, which was approved by COP 10, although Section 3 on transboundary movement was not approved.

⁸⁰ Lithuania defines “refurbishment” as “preparation for re-use.”

Thailand's "Criterion for the Import of Used Electrical and Electronics Equipment Considered as Hazardous Substances into the Kingdom of Thailand" defines used EEE as "Electric and Electronic Equipment which were used but still be workable and keep as its original form or can be repaired, modified, reconditioned in order to be used same as original purposes."⁸²

Most Parties recognize that the transboundary movement of at least some used goods is not subject to control as hazardous waste. For example, the EU considers that "second-hand goods are generally regarded as non-waste." Indonesia, as discussed above, allows importation of second hand goods of EEE under strict criteria. Brazil has prohibited the importation of "virtually all used consumer goods, including motor vehicles... [and] [t]he importation of used machinery, equipment, and cargo containers will only be granted if it is proven that the products are not produced in Brazil and cannot be substituted by a similar product currently produced in Brazil."⁸³

7. Commonalities and differences

While most Parties define "waste" in terms similar to that of Art. 2.1, most recognize that terms such as "disposal" and "discard" are difficult to apply in the case of used goods and other materials that are not destined for final disposal. Whether it is through the definition of intermediate terms critical to the definition of "waste," (such as "discard") or by reference to the other terminology addressed by this report, there is a strong convergence among the Parties that some materials, especially if destined for direct re-use, are not subject to Basel Convention controls, subject in many cases to explicit conditions or consideration of factors.⁸⁴ Among the most common of these factors are:

- Limitation to direct re-use only;
- Suitable to be re-used for originally intended purpose;
- Item to be re-used is marketable in importing country;
- Compliance with mandatory, documented testing to assure functionality and compliance with technical and safety specifications;
- Compliance with certification, reporting, and other documentation obligations;
- Item must be of fairly recent manufacture (e.g. 3-5 years for UEEE) and pleasing appearance;
- Item labelled and protected during transport by high-quality packaging; existence of contractual arrangement with concerned parties in the importing countries to secure proper second-hand outlet; contractual relationship with concerned parties (e.g., refurbishment facility);
- Item is not classified as hazardous waste in importing, exporting, or transit countries;
- Item does not contain environmentally harmful components that need to be removed during repair/refurbishing operations;
- Repair/refurbishment operations to be conducted in an ESM.

On the other hand, there appears to be some divergence in approaches regarding potential means of distinguishing between waste and non-waste, including:

- Is direct re-use required, or is some degree of repair/refurbishment/reassembly allowed in order to consider a material to be a "non-waste"?
- If the latter, how much repair/refurbishment/reassembly is permissible?
- Can materials destined for recycling/reclamation/recovery activities be considered "non-waste"?
- Are the materials designated on a list of prohibited import items?
- How should off-spec products returned to manufacturer be classified?

⁸¹ For the sake of convenience, this report will henceforth use the term "used goods" to include "second-hand" goods as well; the terms are generally considered to be synonymous.

⁸² BCCCAP Study Report (see footnote 33), para. 33.

⁸³ In Brazil, the prohibition is set out in trade law.

⁸⁴ See Appendix 4 to this report.

- Should the potential hazard or environmental impact of a material destined for re-use be relevant to whether it is a waste?

Beyond these differences among Parties who consider that at least some used goods are not waste, some Parties (Colombia, Nicaragua⁸⁵, Norway,⁸⁶ and South Africa) affirmatively reject the concept that used goods are not “wastes,” even if destined for direct re-use.⁸⁷ Many other Parties, do not acknowledge the issue within their legal frameworks. On the other hand, a number of Parties do not insist that the re-use be direct, and some appear to contemplate that goods destined for certain recycling operations are also not “waste.” Some of these differences may be attributable to ambiguities in and differing interpretations of terminology (notably the terms, “waste,” “discard,” and “dispose of), and some to divergence in policy views on how transboundary movement of these goods should be regulated.⁸⁸

PART III: OPTIONS FOR THE INTERPRETATION OF TERMS ⁸⁹

Among the Guiding Principles of the “Strategic framework for the implementation of the Basel Convention for 2012–2021”⁹⁰ is the recognition of a “waste management hierarchy (prevention, minimization, re-use, recycling, other recovery including energy recovery, and final disposal) ...” that “encourage[s] treatment options that deliver the best overall environmental outcome, taking into account life-cycle thinking.” The Strategic Framework encourages the use of waste management policy tools, including “recognition of wastes as a resource, where appropriate.” In addition, Objective 2.5 of the Strategic Framework is: “To enhance and promote the sustainable use of resources by improving the management of hazardous and other wastes and to encourage the recognition of wastes as a resource, where appropriate.”

Consistent with the Strategic Framework, the approaches presented below are suggested as potential options for defining the terminology covered by this report in ways that would recognize the value of re-use, while ensuring that the transboundary movement of goods destined for re-use is consistent with the Convention’s provisions on environmentally sound management. These options retain the Convention’s binary approach whereby its application depends on whether a material is classified as a waste.⁹¹

This issue of waste/non-waste is dominant in determining the Convention’s applicability. The terms: “re-use/direct re-use,” “refurbishment” and “used goods” are of interest only if they are pertinent to the definition of “waste.” Moreover, while not all wastes are hazardous, the definition of “waste” is of paramount importance to the determination of whether a material is a “hazardous waste.”

If there is agreement to clarify that the term “waste” excludes some set of used goods or other materials, a threshold issue would be how to describe that set. Terms such as “re-use,” “direct re-use,” “refurbishment,” and “used goods” could be used to define or limit the exclusion. If current practice is any guide, consensus seems most likely to converge on the exclusion of materials destined for “**direct re-use,**” which could refer to situations where an item is used for the purpose for which it was originally conceived, without the need for significant repair.⁹² Some have argued that “direct re-use” could also be defined to encompass items destined for minor repairs, replacement

⁸⁵ Nicaragua believes that all countries’ Environmental Authorities must ensure prior consultation with their counterparts before authorizing the export of a second-hand good, whether hazardous or non-hazardous, given the ability of handling, use, response and responsibility to return them to their origin.

⁸⁶ Norway excludes from waste status certain equipment returned to the manufacturer. See note 33, supra.

⁸⁷ In addition, Indonesia prohibits the importation of a wide range of used goods. BCCAP Study Report (see http://www.env.go.jp/en/recycle/asian_net/Project_N_Research/E-wasteProject/10.pdf Retrieved 19 April 2012).

⁸⁸ “Colombia considers that the ambiguous language embedded in the Convention text leads to real difficulties for Parties willing to implement the Treaty and comply with its provisions”; and that “[t]he lack of clarity also benefits those who want to continue trading in hazardous waste with no control of any kind causing a great deal of environmental damage, in particular in developing countries. Colombia comment letter (15 June 2010).C

⁸⁹ The options considered here parallel those discussed in the accompanying study on “Options for Dealing with the Problem Posed by Used and End-of-Life Goods.

⁹⁰ Adopted by and annexed to COP Decision 10/2.

⁹¹ The accompanying study on Used and End-of-life Goods suggests other options.

⁹² Guidance might be necessary to flesh out the degree of repair that would be acceptable. For example, replacing a windshield wiper blade or taillight on an automobile might seem to be a minor, but it might be necessary in order for the vehicle to comply with applicable safety standards. As discussed in the accompanying study on UELG, compliance with technical and safety standards may be a condition for non-waste treatment.

of parts (other than those containing hazardous materials), and reconditioning. It has also been advocated that these operations could be included collectively in a definition of “refurbishment.” Others have questioned these approaches.

Beyond “direct” re-use, it might be agreed that non-waste status should be accorded more generally to materials destined for “**re-use**”, i.e., materials that requiring more extensive operations between import and re-use.⁹³ Adopting this approach would entail more risk, both from the possibility that the item will not actually be re-used, and from potential harm to human health or the environment associated with the repair/refurbishment operation, if not carried out in an environmentally sound manner. For that reason, many Parties consider such items to be wastes, and other Parties have applied more stringent criteria to the characteristics of the item and to the repair/refurbishment operation that it will undergo. For example, it is often held that transformation of the material (e.g., through a recycling process) or replacement of parts containing hazardous materials will defeat any exclusion from waste status.

An exclusion for direct re-use or re-use could also be expressed as an exclusion for “**used goods**,” where “used goods” are defined in terms of the operations to which they may be subject prior to re-use. For example, an item destined for refurbishment prior to re-use for the purpose for which it was manufactured might be considered a “used good,” but an item destined for recycling or major reassembly would not be.

In each of the preceding cases, it might be desirable to attach conditions to the exclusion. For example, warranty repair might be exempted only if the good is returned to a facility that is certified by a competent authority or organization. There might be value in further clarifying treatment of special cases such as when a repair (perhaps under warranty) requires disposal of a component that contains a hazardous substance listed in Annex I to the Convention and displays an Annex III characteristic.⁹⁴ It may be useful to identify circumstances that would help determine whether goods or materials fit into the various categories, such as the functionality or packaging of the goods or materials.

Some Parties and other stakeholders agree on the need to ensure that products purportedly destined for re-use are functional and securely packaged.⁹⁵ Where direct re-use is the standard, various testing, reporting, and certification schemes have been suggested and adopted in order to provide some verification that the exported good is of sufficient quality and condition to support the exporter’s claim that the material is destined for direct re-use. Similar, but perhaps more relaxed requirements could be provided for re-use more generally. However, some are of the view that the need to dispose of a hazardous component during the operation is an indication that the item is a waste. Guidance for these and other potential criteria are included in the Draft Guidelines on E-waste, PACE ESM Guidance and MMPI Guidance Document. In addition, whether the standard is direct re-use or simply re-use, it might be possible to attach “take back” provisions to such exports in the underlying contract, so that the exporter would need to reclaim goods that could not be (or perhaps were not) re-used.

Further along the path between “brand new” and “waste” lie materials destined for **recycling** or **recovery**. Such materials would undergo a major transformation before being incorporated into a useful product. Their legal status may differ from goods destined for re-use, at least if the recycling or recovery operation is described in Annex IVB. Recognizing these materials as non-waste might require some revision to that Annex.

Below are some options and potential implementing mechanisms which might be considered to further clarify the terminology of the Convention and related terms. These options are not intended to be mutually exclusive, and a combination of approaches could be considered, particularly among the options envisioning revision to the Convention or its Annexes, and those that would rely on the issuance of guidance.⁹⁶

⁹³ According to one study, some African countries consider used EEE from Europe to have higher quality and durability compared to lower priced new equipment from other regions. It is common that the life span of such new equipment is shorter than the life of refurbished used EEE. Basel Convention Secretariat, “Where are Weee in Africa,”: <http://www.basel.int/Implementation/TechnicalAssistance/EWaste/EwasteAfricaProject/Publications/tabid/2553/Default.aspx>. (Retrieved 11 May 2012.)

⁹⁴ Parties would need to decide whether an item shipped abroad for repair and returned to its owner is a waste by virtue of containing such a component.

⁹⁵ E.g., China, EU, Malaysia; also HKSAR. See BCCCAP Study Report (see footnote 33) (except for EU).

⁹⁶ Some of these options are similar to those considered in the accompanying study on used and end-of-life goods, although that study also considers options that go beyond the interpretation of existing terminology.

Table 1 below briefly summarizes the options, along with their “pros and cons.”

Option 1: Amend Article 2.1 (definition of “waste”) or Article 2.4 (definition of disposal) to clarify the Convention’s application to the transboundary movement of used goods destined for re-use in the country of import.

The definition of either “wastes” or “disposal” could be revised to exclude materials that are exported for warranty work, re-use, or direct re-use, subject to specified criteria.⁹⁷ This approach might provide the most legal clarity and uniformity of the options presented, but would also be the most lengthy and cumbersome in that it would require negotiation and formal agreement both on conceptual policy issues and on the use and definition of limiting terms such as “re-use/direct re-use,” “refurbishment/restoration,” or “used goods.” It would trigger the substantial procedural requirements necessary for amending the Convention, could be difficult to adjust as future circumstances warrant, and would only bind those Parties that express their consent to be bound by the amendment, potentially resulting in a patchwork of obligations. Moreover, the terms “wastes” and “disposal” are embedded in the legislation of most, if not all Parties, and revision of those terms in the Convention could create confusion until parallel terminology is revised in that legislation.

Option 2: Clarify the application of Annex IV B to materials destined for re-use

A more targeted approach, recognizing that Annex IV is an important determinant of what is a “waste,” would be to clarify whether and to what extent Annex IVB applies to operations to which materials destined for re-use are subject.⁹⁸ This could be accomplished by amendment to the Annex itself, by the adoption of guidance or guidelines, or a combination of these two approaches.

Option 2a – Amend Annex IV: Again, an actual amendment would be the most authoritative way to resolve ambiguities, and amendment of an Annex to the Basel Convention is less cumbersome, and more likely to be accomplished than is amendment to the Convention itself.⁹⁹ Reference is made to Articles 17 and 18 of the Basel Convention in this regard.¹⁰⁰ One simple method of doing so would be to delete from the caption the phrase “direct re-use” and perhaps “alternative uses,”¹⁰¹ although that revision by itself would be unlikely to resolve all ambiguities. Definition of subsidiary terminology would still be necessary, but procedures for amending and fine-tuning Annexes are flexible. A potential drawback to this option is that some Parties might choose not to accept the amendments, potentially resulting in a patchwork of legal obligations.¹⁰²

Option 2b – Issue guidance/guidelines: Under this approach, guidance or guidelines would be developed to help Parties interpret Annex IV, in order to determine whether and to what extent the operations in that Annex include re-use, recycling, and/or recovery of used goods and other materials. Such an approach might include development of a list of materials that, in conjunction with those operations, are considered to be non-wastes, and perhaps a list of materials that are not considered eligible for such treatment. Eligibility could also depend upon compliance with certain criteria, for both the materials (e.g., functionality, marketability) and the operations (ESM). On the downside, while the use of a list might be thought to convey more clarity, it seems likely that any list might soon be rendered obsolete by new technology, and it also may be questioned why some materials and not others should be eligible for treatment as a non-waste. Whether or not a list is employed, this approach would provide more flexibility than amendment of Annex IV, and could be accomplished more quickly and easily. However, guidance or guidelines would not be binding and cannot be used to achieve an informal amendment of the Convention, and thus cannot alter any inherent ambiguities in the Annex.

Option 3: Clarify Annex IX on exclusion of UEEE

A third approach would be to elaborate or expand in Annex IX the criteria for excluding certain used electrical and electronic goods, perhaps adding to or clarifying Item B1110. The

⁹⁷ Potential criteria for these and the other options are set forth in Appendix 5 to this report.

⁹⁸ But see discussion of Annex IV B under Option 4, below.

⁹⁹ Numerous amendments to Basel Convention Annexes have been adopted over the years, but only one amendment to the Convention itself has been adopted by the Parties, and that amendment has yet to enter into force.

¹⁰⁰ Basel Convention, Article 18.2(b)(six month period for amendments to Annexes); Article 17.5 (3/4 ratification, etc. requirement).

¹⁰¹ Deletion of the latter term might be more controversial as many Parties recognize exclusion for re-used goods only if they are used for the purpose for which they were intended.

¹⁰² To some extent, that is already possible, given the ability of each Party to expand the universe of hazardous wastes that will be subject to the Convention, with respect to transboundary movements involving that Party.

difficulty with this approach is that Annex IX is meant to deal with hazard; it provides that *wastes* covered in this Annex will not be considered *hazardous wastes* covered by Article 1. Footnote 21 recognizes that “in some countries, materials destined for direct re-use are not considered wastes.” This Option would be most efficiently implemented through actual amendment of Annex IX, perhaps making it explicit that the Annex (as amended) would thereafter deal with *waste*, as well as *hazard* issues.

Option 4: Parties could elect to resolve any ambiguity by transmitting notifications pursuant to Articles 3, 4(1) and 13(2) of the Convention.

Under this approach, each Party could decide for itself which materials it will regulate as hazardous or other wastes for the purposes of transboundary movement, and transmit appropriate notifications pursuant to Articles 3, 4(1) and 13(2) of the Convention.¹⁰³ Trading partners would need to respect these determinations. Presumably, Parties could develop common approaches on a regional or other basis of common interest, and guidance could be developed to facilitate this task. To the extent that Parties clearly articulate the universe of materials which they consider to be hazardous or other waste, this approach would minimize ambiguities, at least with respect to transboundary movements involving those Parties. On the other hand, this approach would not necessarily further the purposes of the Strategic Framework.

In order to provide clarity, all of the above options would benefit from the inclusion of criteria relating to the nature of the object or material, or category thereof, involved, as well as the operation to which the object is intended to be subject. Such criteria could draw on those developed by Parties, and those included in guidance/guidelines issued by PACE, MPPI, and the Basel Convention. Appendix 5 sets out potential criteria for exclusion from regulation as a hazardous waste.

Table 1 – Summary of Terminology Options, with Pros and Cons

OPTION	Pros	Cons	Comments
1. Amend Article 2.1 (definition of “waste”) or Article 2.4 (definition of disposal) to clarify the Convention’s application to the transboundary movement of used/second-hand goods.	<ul style="list-style-type: none"> -Binding among Parties who accept the amendment -Promotes legal clarity regarding application of the Convention -Optimizes uniformity among Parties who accept it the amendment 	<ul style="list-style-type: none"> -Time-consuming and cumbersome -Would require negotiation and formal agreement both on concepts and on use and definition of terms such as: <ul style="list-style-type: none"> --“re-use/direct re-use,” --“refurbishment/ restoration” -- “used goods” -Would trigger the substantial procedural requirements necessary for amending the Convention -Could be difficult to adjust as future circumstances warrant; -Would bind only those Parties that affirmatively accept the amendment, resulting in a potential patchwork of obligations; -Could require revision of longstanding national implementing legislation 	This option is linked to the options mentioned in the UELG study ¹⁰⁴ .
2a. Amend Annex IV B to clarify its application to materials destined for re-use	<ul style="list-style-type: none"> --Most authoritative way to resolve ambiguities --Amendment of an Annex is less cumbersome and more likely to be accomplished than is amendment 	<ul style="list-style-type: none"> -Amending Annex IV B might require extensive negotiations and could raise other issues. -A potential drawback to this option is that some Parties might 	This option could be used to accomplish UELG Option 2 or 3.

¹⁰³ One Party considers this Option “ to be the current operating norm under the Convention, which among other things, require Parties to inform other Parties (through the Secretariat) about: changes in their national definitions of hazardous wastes; decisions made by them not to consent totally or partially to the import of hazardous wastes or other wastes for final disposal within the area under their national jurisdiction; and decisions taken by them to limit or ban the export of hazardous wastes or other wastes.” However, the Party also laments that: “it has become apparent that many Parties do not submit proper notifications making it very difficult for other Parties to ensure that dissimilar foreign requirements are equally respected through application of their domestic laws. Consequently, this option is unlikely to resolve ongoing ambiguities under the Convention on its own.” Letter from Canada to SBC, “ RE: Draft Report on Terminology and Study on Used and End-Of-Life Goods” (14 June 2012).

¹⁰⁴ Options on pages 19 to 21 of the UELG study

OPTION	Pros	Cons	Comments
	<p>to the Convention itself.</p> <p>--Annex amendment binding after 6 months to Parties who don't object.</p> <p>--Could be accomplished surgically by deleting the phrase "direct re-use" and perhaps "alternative uses."</p> <p>-- procedures for amending and fine-tuning Annexes are flexible.</p>	<p>choose to reject the amendments, potentially resulting in a patchwork of legal obligations.</p> <p>- A revision to the caption would be unlikely to resolve all ambiguities; definition of subsidiary terminology would still be necessary.</p>	
<p>2b. Issue guidance or guidelines in order to determine whether and to what extent the operations in that Annex include re-use, recycling, and/or recovery of used goods and other materials. Eligibility could also depend upon compliance with certain criteria, for both the materials (e.g., functionality, marketability) and the operations (ESM)</p>	<p>--Allows for a more flexible and detailed approach.</p> <p>--Could be accomplished more quickly and easily, thus potentially expediting harmonization of national approaches..</p> <p>--Use of a list might soon be rendered obsolete by new technology, and it also may be questioned why some materials and not others should be eligible for treatment as a non-waste.</p>	<p>--Would not be binding</p> <p>--Cannot be used to achieve an informal amendment of the Convention</p> <p>--Cannot alter any inherent ambiguities in the Annex.</p>	<p>This option could be used to accomplish UELG Option 2 or 3.</p>
<p>3. Clarify Annex IX B1110 on exclusion of UEEE</p>	<p>--Binding and authoritative option for specifying circumstances under which used/second-hand goods are excluded from treatment as hazardous waste</p> <p>--Procedural advantages associated with amendment of Annexes</p>	<p>-Option inconsistent with general Annex IX function of identifying hazard; not whether a material is a waste</p> <p>--Counter: Footnote 21 recognizes that "in some countries, materials destined for direct re-use are not considered wastes."</p> <p>-Procedural disadvantages associated with amendment of Annexes</p>	<p>-Difficult to implement through guidance, given general function of Annex IX; actual amend-ment of Annex IX could make explicit that the Annex would thereafter deal with waste, as well as hazard issues.</p>
<p>4. Parties could elect to resolve any ambiguity by transmitting notifications pursuant to Articles 3, 4(1) and 13(2) of the Convention. Trading partners would need to respect these determinations.</p>	<p>-Avoids necessity for negotiation of amendments, guidance or guidelines</p> <p>-Parties could develop common approaches on a regional or other basis of common interest, and guidance could be developed to facilitate this task.</p> <p>-Would minimize ambiguities if Parties clearly articulate the universe of materials which they consider to be hazardous or other waste</p>	<p>--Would not necessarily further the purposes of the Strategic Framework regarding waste as a resource</p> <p>--Continues current operating norm of the Convention, which is hampered by deficiencies in proper notifications</p>	

APPENDIX 1



Questionnaire on the implementation of the Basel Convention as it relates to the interpretation of certain terminology used in the Convention and a list of other relevant terms related to the implementation of the Convention

Introduction	
	<p>The Conference of the Parties to the Basel Convention, at its tenth meeting, adopted decision BC-10/3 on the Indonesian-Swiss Country-led Initiative to improve the effectiveness of the Basel Convention.</p> <p>Section C of this decision requests the Secretariat, assisted by legal and technical experts as appropriate, to prepare:</p> <p style="padding-left: 40px;">(a) A study on the implementation of the Convention as it relates to the interpretation of certain terminology used in the Convention and a list of other relevant terms related to the implementation of the Convention, including: waste/non-waste; hazardous waste/non-hazardous waste; re-use; direct re-use; refurbishment; second-hand goods; and used goods;</p> <p style="padding-left: 40px;">(b) A draft report containing the above study and possible options for the interpretation of the terms.</p> <p>The Secretariat was also requested, assisted by legal and technical experts as appropriate and taking into account other initiatives such as the "Partnership for Action on Computing Equipment" (PACE), to prepare a study to identify options for dealing with the problem posed by used and end-of-life goods, which could include take-back obligations and clarification of the concept of "charitable donations".</p> <p>This questionnaire aims to collect the views of such experts within Parties, to provide information towards the preparation of the above reports and study.</p> <p>The Secretariat would be most grateful to the Focal Points, assisted by legal and technical experts as appropriate, for completing and returning this questionnaire to: Ms. Yvonne Ewang-Sanvincenti (yvonne.ewang@unep.org) no later than 15 March 2012.</p> <p>We thank you in advance for your kind cooperation.</p> <p style="text-align: right;">The Secretariat of the Basel Convention</p>

Please fill in the following information:

Party: _____ **Date when form completed(D/M/Y):** -- / -- / ----

Name of the person who completed the questionnaire:

Title:

Address:

Telephone no:

Fax no:

E-mail:

For further information and clarification, please contact:

yvonne.ewang@unep.org

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I. Implementation of the Basel Convention as it relates to certain terminology

1. How does your country interpret the following terms? If relevant, please provide the text of the basis for any such interpretation(s) e.g. legislation, regulation, policy (in English)

(i) Waste/non-waste

(ii) Hazardous waste/non-hazardous waste

(iii) Re-use

(iv) Direct re-use

(v) Refurbishment

.....
.....
(vi) Second-hand goods

.....
.....
(vii) Used goods

2. Please provide any other information you feel relevant about the interpretation of these terms

3. Does your country participate in any bilateral, regional or multilateral efforts, initiatives or agreements to harmonise implementation of the Basel Convention as it relates to the interpretation of any of the terminology listed in Question 1 above?

No Yes

If yes, please specify and provide texts of any related measures (in English):

II. Options for dealing with the problem posed by used and end-of-life goods

4. Has your country been faced with or identified problems posed by used and end-of-life goods, particularly transboundary movements of such goods? No Yes

If yes, please specify the problem(s) identified:

5. Please provide details of any legislation, measures, initiatives or other options that have been implemented in your country to address this problem, including take-back obligations:

6. Does a definition or interpretation of "charitable donations" exist in your country?

No Yes

If yes, please specify and provide any related text of legislation or other measures adopted (in English):

7. Does your country link any measures adopted to address these problems with the implementation of its obligations under the Basel Convention?

No Yes If yes, please provide details:

8. Does your country participate in any bilateral, regional, multilateral efforts, initiatives or agreements to harmonise its approach for dealing with problems it may face from used and end-of-life goods? No Yes
If yes, please provide details, in particular as may relate to take-back obligations and/or “charitable donations”?
.....
.....
.....

III. Other Relevant Information

9. Is there any other information you would like to provide concerning the implementation of the Convention as it relates to the interpretation of the terminology listed in question 1 and/or concerning the options for dealing with the problem posed by used and end-of-life goods that could be of relevance to the preparation of the studies?
.....
.....
.....

Thank you for completing the questionnaire

APPENDIX 2

National/regional legislation, regulations and other measures, polices and practices as they relate to the terminology at issue

Partyⁱ	Waste/non-waste	Hazardous waste/non-hazardous wasteⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
Algeriaⁱⁱⁱ	Any residue of a process of transformation or using or in general any substance or product and any personal estate that the property or the holder wants to get rid of or eliminate.			améliorer, rendre meilleur	
Andorra^{iv}	Any substance or object whose possessor abandons, has the intention to abandon, or has the obligation to abandon, in accordance with the National Waste Catalogue, published according to the European waste list. ^v	Reference to Basel, EC; no discussion of waste/non waste issue			
Argentina^{vi}	<p>Any kind of material, substance or object "...produced by any activity and which elimination, recycling, recovery, reuse and/or final disposal is proceeded, are intended to be disposed of or are required to be disposed of, as well as those considered as waste by the implementation authority,"^{vii}</p> <p>Also: "any material, substance or object intended to be imported or introduced to Argentine territory in the same state in which it was discarded by its generator, and/or offered free of charge or paying a fee for recycling, treatment or disposal."^{viii}</p> <p>The national environment agency has ruled that used assets are waste, hazardous when they possess hazardous characteristics, except for certain materials which can be ascertained that were remanufactured as it can be used for the same purpose for which they were designed or produced and having the same characteristics of use when</p>	<p>Every waste that could cause damage, direct or indirectly, to living beings or contaminate the ground, water, atmosphere or the environment in general. In particular, wastes indicated in Annex I or having a characteristic listed in the Annex II of this Law will be considered hazardous. The provisions of the present law will be also applied to those hazardous wastes that could, in the future, be used in other industrial processes.^{ix}</p> <p>Annex I of Decree 181/92 includes an indicative list of the wastes that are covered.</p> <p>The national environment agency has classified as hazardous waste</p>			See column 1, para. 2.

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
Argentina (c'td)	they were produced.	<p>goods (electrical and electronic equipment-EEE) that have been used and disposed of, which have hazardous characteristics and are intended to be imported for sale or use in the country. In particular cases, the national environmental agency has ruled that the used assets are waste, and are hazardous when they possess hazardous characteristics, except for certain materials that were remanufactured for use for the same purpose for which they were designed or produced and having the same characteristics of use when they were produced.</p> <p>When subject to transboundary movement, special consideration is required for products that are made by recycling of wastes or which use recycled wastes as raw materials (e.g. carpets made by recycled rubber).</p> <p>National Law 24.051 establishes in its Article 2°: "It will be considered hazardous, to the effects of this law, every waste that could cause damage, direct or indirectly, to living beings, or contaminate the ground, water, atmosphere or environment in general. In particular, wastes will be considered hazardous if included in Annex I or having any of the</p>			

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
		characteristics listed in the Annex II of this Law. The provisions of the Hazardous Waste Law also apply to those hazardous wastes that could, in the future, be used as input in other industrial processes. The scope of this law excludes household and radioactive wastes, and those derived from the normal operations of ships, that shall be ruled by special laws and international conventions in force on the matter".			
Armenia^x	industrial and household wastes (hereinafter – wastes) are wastes arising in the process of industrial or household consumption of raw materials, compounds, products and by-products, other production or food processing remains, as well as manufactured goods/produce that lost the initial consumer properties.	Wastes, the physical, chemical or biological characteristics of which pose or can arise danger to human health and damage to the environment and require special methods, procedures, and means for their management.			
Austria[*]	Definition of waste is in line with EU Regulation 2008/98/EC (Article 3/1). For the purposes of this Directive: "waste" means any substance or object which the holder discards or intends or is required to discard."	Hazardous waste definition is based on the EU Directive 91/689/EEC. ^{xi}			
Australia	Basel definition	Basel definition			
Bahrain[*]	Resolution No.(3) of the year 2006 with respect to the management of hazardous materials attachment # 1.				
Belgium[*]	EC Council Resolution 1013/2006				
Bhutan[*]	Waste means any material or substance in whatever form, whether solid, liquid or gaseous, hazardous or non-hazardous, organic or inorganic that has lost its primary value and is disposed of, intended to be disposed of or recycled.				
Bolivia[*]	those substances or objects which must follow the procedure for final disposal or elimination. ^{xiii}	those [wastes] involving potential risk to humans or the			

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
		environment, by having any of the following characteristics: corrosivity, explosivity, flammability, pathogenicity, bioinfection, radioactivity, reactivity and toxicity. ^{xiii}			
Brazil ^{xiv}	solid and semisolid waste resulting from activities of industry, home, hospital, commercial, agricultural and sweeping services. This definition includes sludge from water treatment systems, those generated in equipment and plant for pollution control, and certain liquids whose characteristics make it inadvisable to release to the public network of sewers or water bodies, or requires uneconomical technical solutions in view of the best available technology.	Basel Convention establishes presumption that waste containing Annex I constituents are hazardous, unless they do not exhibit Annex III characteristics.			
Brunei Darussalam*	Waste is defined as any matter prescribed to be scheduled waste, or any matter whether in a solid, semi-solid or liquid form, or in the form of gas or vapour which is emitted, discharged or deposited in the environment in such volume, composition or manner as to cause pollution.				
Bulgaria*	"Waste" shall be any substance, object or part of an object which the holder discards or intends or is required to discard and which belongs to at least one of the following categories set forth in 2006/12/EC Annex I.				
Burkina Faso**	There is no general definition of waste, but according to article 5 of Law 005/97/ADP establishing the Environmental Code for Burkina Faso, there are specific definitions of urban, industrial and hazardous waste. In summary, it is an item, product or by-product which cannot be utilized for different reasons.				
Cambodia^{xv}	"hard objects, hard substances, products or refuse which are useless, disposed of, are intended to be disposed of, or required to be disposed of"				

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
Canada ^{xvi}	<p>Canadian regulations do not define “waste” per se; however, definitions for “waste” and “recyclable material” are somewhat included in the definitions of “hazardous waste” and “hazardous recyclable material” and can be derived from them as follows:</p> <p>a. “Waste” means anything intended to be disposed of using one of the listed “D” operations.</p> <p>b. “Recyclable material” means anything intended to be recycled using one of the listed “R” operations.</p> <p>Note that other Canadian jurisdictions (provinces, territories, municipalities) may have their own definition or interpretation that they use for different purposes. This remark applies to all words in question 1.^{xvii}</p>	<p>Canadian regulations define “hazardous waste” and “hazardous recyclable material” separately for the purpose of international movements.</p> <p>“Hazardous waste” means anything that is intended to be disposed of using one of the listed “D” operations and that is either specifically listed, exhibits a hazardous characteristic, contains a hazardous substance, produces a leachate containing a hazardous constituent, is considered or defined as hazardous under the legislation of the country receiving it and is prohibited by that country for being imported.</p> <p>“Hazardous recyclable material” means anything that is intended to be recycled using one of the listed “R” operations and that is either specifically listed, exhibits a hazardous characteristic, contains a hazardous substance, produces a leachate containing a hazardous constituent, is considered or defined as hazardous under the legislation of the country receiving it and is prohibited by that country for being imported.</p>	<p>No definition but regulations make use of the word in relation to recyclable materials. The word therefore retains its common use definition that can be interpreted as follows: With respect to a recyclable material, re-use means using the same material again, for the same or a different purpose, without any transformation required between uses.</p> <p>In addition to the 13 R codes of the Convention. Canada has also the code R- which means ‘recovery or regeneration of a substance or use or re-used of a recyclable</p>	None	None

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
			material, other than by any of operations R-1 to R-10'. The R-14 code is used to take in account the 're-use' of a recyclable material		
Central African Republic ^{xviii}	All residues of production, use, and processing, or all goods destined to be discarded ["abandonné]. The term "non-waste" is not specified in the Central African Environmental regulation ("Code Centrafricain de l'Environnement").	Any residue of production, use, processing or any good destined to be discarded ["abandonné] that could make life painful [difficult] and unhealthy.	not defined	not defined	<p>"Produits d'occasion" These are used products for sale or import. This term is not yet developed specifically at the national level.</p> <p>"Produits usagés A used product that has lost its new aspect. [Produit qui est déjà utilisé et qui a perdu son aspect neuf]</p>
Chad	all gas, liquid or solid residues resulting from a process of offence, exploitation, processing, production, consumption, use, control or treatment, whose quality does not permit reuse or treatment or, more generally, all movable property discarded [abandonné] or intended to be discarded. ^{xix}	any waste which, by virtue of its dangerous, toxic, reactive, explosive, flammable, biological or bacterial nature, is [likely][“susceptible” is original French term] to constitute a hazard to human health and the environment. ^{xx}	the utilization of a recovered material for a use other than its first use, or the introduction of this material in a different cycle of production. ^{xxi} [Difficult to		

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
			translate Original language: l'utilisation d'un matériau récupéré pour un usage différent de son premier emploi, ou l'introduction de ce matériau dans un autre cycle de production que celui dont il est issu .]		
China ^{xxii}	<p>"Solid waste" refers to any solid, semisolid, or contained gaseous substance or material resulting from production, daily life and other activities, which loses its original utilization value, or which does not lose utilization value but is discarded, and substance or material regulated as solid waste by laws and regulations.^{xxiii}</p> <p>SPECIFIC FACTORS FOR DISTINGUISHING</p> <p>Two methods can be used to distinguish waste from non-waste.</p> <p>(1) The substance or material is classified as waste if it must be treated by the operations listed in Table 3 [similar to Annex IV of the Convention] and accord with the reasons listed in Table 4. Table 3 and Table 4 are not irrespective, must combined to distinguish waste. (Table 4 is reproduced below.)</p> <p>(2) Distinguish by characteristics and impact. The following factors need to be considered:</p> <p>(i) General considerations include: Is the material produced intentionally? Is the material made in response to market demand? Is the overall economic value of the material positive? Is the material part of</p>	<p>Those belonging to any one of the following actions shall be managed in accordance with Forbidden Import Solid Wastes in China:</p> <p>(1) The goods prohibited to be imported in China have lost the original value in use, or not lost the value in use but been discarded or abandoned, or been considered as solid wastes for other reasons.</p> <p>(2) Those have been recognized as hazardous wastes and other wastes (waste collected from household) in accordance with [the Basel Convention], as well as those have been listed in National Catalogue of Hazardous Waste or been considered as hazardous wastes under Identification Standard for Hazardous Wastes.^{xxix}</p>	<p>In HKSAR, genuine second hand electrical and electronic appliances which are imported / transshipped for direct re-use are not subject to the permit control.^{xxx}</p>		

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
	<p>the normal commercial cycle or chain of utility?</p> <p>(ii) Characteristics and specification include: Is the production of the material subject to quality control? Does the material meet well developed nationally and internationally recognized specifications/standards?</p> <p>(iii) Environmental Impact: Is the use of the material as environmentally sound as that of a primary product? Does the use of the material in a production process cause any increased risks to human health or the environment greater than the use of the corresponding raw material? Does the material have environmental harmful components which cannot be reused effectively during recycling, while the substitutes don't have these components.</p> <p>(iv) Use and Destination: Is further processing required before the material can be directly used in a manufacturing/commercial application? Is this processing limited to minor repair? Is the material still suitable for its originally intended purpose? Can the material be used for another purpose as a substitute material? Will the material actually be used in a production process? Does the material have an identified use? Can the material be used in its present form or in the same way as a raw material without being subjected to a recovery operation? Can the material be used in its current form by the operations listed in Table 3? Can the material only be used by the operations listed in Table 3?</p> <p>The flow chart (reproduced below) identifying waste and non-waste can be used on distinguishing waste and non-waste, but the characteristics and impact of each material need to be considered.^{xxiv}</p> <p>WEEE: China defines WEEE as waste electrical and electric products, equipment and its waste assemblies and substances and materials managed as</p>	<p>In HKSAR, under the WDO, contaminated wastes are also controlled as hazardous wastes. For the purpose of control on import and export of wastes, a waste is "contaminated" if it is contaminated by a substance to an extent which:</p> <ul style="list-style-type: none"> - Significantly increases the risk of human health, property or the environment associated with the waste; or - Prevents the reprocessing, recycling, recovery or re-use of the waste in an ESM.^{xxx} 			

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
	<p>e-waste regulated by Chinese government. It includes discarded products or equipment from industry; discarded products and scraps; waste products or equipment from repairing, reproducing and daily activities; and products or equipment forbidden to produce or import by law.^{xxv}</p> <p>In HKSAR^{xxvi}, the Waste Disposal Ordinance (WDO) defines “waste” as any substance or article which is abandoned. It also stipulates that any substance or article which is discarded or otherwise dealt with as waste is presumed to be waste until the contrary is proved.^{xxvii} A court recently ruled that for the purpose of waste import and export control, any article or substance once given up by its original user is considered as waste under the WDO, irrespective whether it is still workable or can be sold for a value. As such, used electrical and electronic equipment having hazardous components or constituents (e.g. televisions, computer monitors and batteries) will likely be regarded as waste and fall within the said control unless they will be re-used for their originally intended purpose without repair.</p> <p>If such equipment is shipped to the importing country for direct re-use, no waste import/export permit will generally be required from the EPD.</p> <p>To distinguish disguised WEEE from secondhand EEE, the following aspects should be considered:</p> <ul style="list-style-type: none"> (i) Genuine demand in HK; (ii) Good conditions and meeting both the technical specifications and safety standard; (iii) Compliance testing results and certificates; (iv) Proper and sufficient individual protective Packaging; 				

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
	<p>(v) Prior contractual agreement with concerned parties^{xxviii}.</p> <p>Encourages:</p> <p>--reasonably new models with genuine demand in second-hand market; avoid >5 yrs. old</p> <p>--arrange examination, repairing and retrofitting and testing to ensure equipment is in good conditions and meets tech. specs. and safety standards</p> <p>-- no damaged or non-working items should be allowed in the shipment;</p> <p>(iii) Properly record the examination, repairing and testing results of each of the used equipment</p> <p>(iv) Provide proper and sufficient individual protective packaging to each of the used equipment to protect the WHOLE unit from damage during transportation and the associated loading and unloading operations.</p> <p>--There should be legible labels or signs (e.g. with unique serial numbers) on the packaging to identify each item. and</p> <p>(v) Confirm with the control authorities of the importing countries on whether import of used equipment is allowable and whether the consignee or buyer is permitted to import them for sale as second-hand commodities.</p>				
Colombia^{xxxii}	<p>any object, material, substance, element or product found in a solid or semi-solid state, or is a liquid or gas contained in a tank or other container, which is discarded, rejected or delivered by its originator because its properties prevent it from being reused in the framework of the activity under which it was produced, or because currently applicable legislation forbids its reutilization.</p> <p>A residue or a process waste delivered to serve as primary material or input to be reused in another production process does not lose the connotation of</p>	<p>waste that due to its explosive, toxic, flammable, infectious, radioactive or corrosive characteristics may cause direct or indirect risks, damage or undesirable effects to human health or than environment. Likewise, packaging, containers and packaging that were in contact such wastes shall be considered hazardous residues.</p> <p>In this vein, waste that does not</p>	<p>There is no legal definition of re-use. However, the rule governing the environmental management of waste computers and peripherals (resolution 1512 2010) defines reuse as: any</p>	<p>The term refurbishment ["reconstruction"] is not legally defined in the rules on hazardous waste. However, the rule governing the environmental management of waste computers</p>	<p>The terms "second hand goods" and "used goods" have not been incorporated into the existing environmental legislation on hazardous waste and WEEE. However the above, the</p>

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
	<p>residue or waste.</p> <p>Packaging is considered as waste or hazardous waste packaging, if it was in contact with the materials themselves or dangerous products.</p> <p>Latin Am guidance: The concept of WEEE is based on the idea of abandonment or discarding by its holder. Establishing that the characteristics that make an EEE is regarded as WEEE, in order of precedence, are as follows: when it can no longer be used for the purpose that has been created; by obsolescence or technological replacement; or when the holder makes a decision to discard or abandon it.</p>	<p>present any hazard characteristics mentioned above, is considered non-hazardous waste.</p> <p>With regard to the definition of "waste or hazardous waste": dangerous^{xxxiii} waste remains dangerous waste regardless of whether it is destined for final disposal (e.g., secure landfill) or recovery (e.g. recycling). I.e., the definition is based on the characteristic of danger inherent in the residue (corrosivity, toxicity, etc.), and not on the concept of management or risk. A residue can be classified as "non-hazardous" only if it loses its hazard characteristic.</p>	<p>use, after the first user, of a device or its parts, in the same function for which the apparatus or part were designed.</p> <p>Direct re-use: There is no current legal definition of direct reuse. However, it is conceptually understood that it is any reuse, after the first user, of a device or its parts, without an intervening transformation process (i.e. directly from one user to a subsequent user).</p> <p>Latin Am guidance: Reuse: Any operation by which electronic waste or some of its components are used for the same purpose for which they were</p>	<p>and peripherals (resolution 1512 2010) defines refurbishment as a technical process of renewal [renovation?], which completely restores the functional and aesthetic conditions of used or discarded equipment, so that it can be reused or reutilized for the same purposes for which it was originally manufactured. The term may also entail repair of damaged or malfunctioning equipment.</p> <p>In addition, the bill currently enrolled in the Congress on the Management of Waste Electrical and Electronic would define [refurbished] [remanufactured?]</p>	<p>Ministry of Commerce, industry and tourism is working on the preparation of a regulation to establish requirements relating to applications for registration and import licenses, applicable to imports of goods, services and technologies to the country. The above, as part of the regulations that the national Government is preparing for the entry into force of the free trade agreements with other countries (egg.) (USA and Canada). In this regard, it is important to note that with the next rules to be issued is projecting require as part of the description of the goods to be imported, the following</p>

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
			<p>conceived. This term includes the continued use of the apparatus or some of its components returned to collection points or distributors, recyclers, manufacturers, social reuse programs, etc.</p>	<p>] equipment as: all defective electrical and electronic equipment that has undergone an evaluation process by the producer [generator] [originator] where the malfunctioning] [defective?] [deñadas] parts have been replaced and repackaged to go back to the market.</p> <p>Latin Am guidance: a technical process of renewal, which restores fully functional and aesthetic conditions of an ESA, so it can be reused or reused in a new life cycle for the same purpose. It may also entail repair, in case the device may be damaged.</p>	<p>information:(1) the year of manufacture and specify whether the [mercancia] [merchandise][items][goods] are new, used, imperfect, repaired, rebuilt, restored (refurbished), sub-standard, remanufactured, remainders ["saldos"] waste [remains] or scrap".</p> <p>(2) In the case of used, repaired, imperfect, rebuilt, restored (refurbished), sub-standard or remanufactured goods, you may request certification of its useful life, its environmental effect or any other document permitting identification of the good to be imported will contribute to the technological</p>

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
					<p>development of the country. It is important to note that these regulations would not [require the importer to] define each of these goods (e.g., imperfect, used merchandise, etc.). The importer would be required to input all information deemed pertinent on the interpretation of those terms, On the definition of scrap or waste: products, materials, substances or elements may all be considered waste, meaning that a residue can be not only a product of a process or a production activity, but also an unprocessed material or substance that has been dismissed, rejected or</p>

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
					delivered as useless.
Croatia*	Article 2 of the Waste Act, Official Gazette, No. 178/04. Pursuant to this Act, waste means any substance or object determined by categories of waste by means of prescribed secondary legislation (Regulation categories, types and classification of waste with a waste catalogue and list of hazardous waste, Official Gazette, No. 50/05, 39/09) pursuant to this Act, which the holder discards, intends to or must discard. List of categories of waste is harmonised with Annex I of Directive 2006/12/EC of the European Parliament and of the council of 5 April 2006 on waste. Further, waste codes are harmonized with the European List of waste.				
Cyprus*	The Law on Solid and Hazardous Waste Management (December 12, 2002). defines waste, for the purpose of transboundary movements of waste, in accordance with the provisions of the Basel Convention.				
Czech Rep. ^{xxxiv}	Waste means any movable thing in the categories set out in Annex 1 to the Act, which a person discards or intends or is required to discard. Annex 1 to the Act is identical with Annex I of Directive of the European Parliament and the Council 2006/12/EC on waste.	Hazardous waste means any waste featured on the list of hazardous wastes as well as any other waste displaying one or more hazardous properties. described in Annex III to the Directive. The list of hazardous waste pursuant to the Directive has been established by Decision 200/532/EC as amended. The wastes featuring on the list of hazardous wastes must have on or more of the properties listed in Annex III to the Directive. In the Czech Republic (and in the EU) the above definition is used only for the purpose of implementing the Basel Convention amendment			

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
		<p>(ban on export of hazardous waste destined for recovery to non-OECD countries). The control procedures for other transboundary movements of wastes destined for recovery are not based on the definition of hazardous waste, but on a specific listing system established by EU Regulation (EC) 1013/2006 on shipments of waste. The listing system consists of two lists of waste. The first one (Annex III to the EU Regulation 1013/2006 - Green listed waste) containing wastes not requiring notification and prior consent consists of wastes listed in Annex IX to the Basel Convention supplemented by several other non-hazardous wastes. The second one (Annex IV to the EU Regulation 1013/2006 - Amber listed waste) containing wastes requiring notification and prior consent consists of wastes listed in Annex VIII to the Basel Convention supplemented by several other not necessarily hazardous wastes. Transboundary movements of all wastes (both hazardous and non-hazardous) destined for final disposal are either prohibited or subject to notification and prior consent. National definition of hazardous waste used for the</p>			

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
		purpose of transboundary movements of waste exists in Czech Republic.			
Denmark*	According to EU directive 2008/98/EC article 3 (1): "waste" means any substance or object which the holder discards or intends or is required to discard. This is ratified in the Danish Statutory Order of Waste no. 1473/2009, § 2.				
Ecuador*	Wastes are substances (solid, gaseous or mixtures) or objects, which are disposed of, or are intended to be disposed of are required to be disposed of by virtue of the national law in force.	Hazardous wastes are those solid, mixed, liquid or gaseous wastes resulting from a process of production, transformation, recycling, use or consumption which contain some compounds with reactive, inflammable, corrosive, infectious or toxic characteristics that represent a risk to human health, natural resources or the environment according to existing legal provisions.			
Egypt*	Waste of any activities or any processes which exhibit any of the hazardous characteristics.	Hazardous Waste is the Waste of activities and processes or its ashes which retain the properties of hazardous characteristics and have no subsequent original or alternative uses. ^{xxxv}			
Estonia*	Waste shall mean any movable [item] which the holder has discarded or intends or is required to discard.				
EU^{xxxvi}	any substance or object [in the categories set out in Annex I] [to the Directive] which the holder discards or intends or is required to discard. ^{xxxvii} 'disposal' means any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy. Annex I sets out non-	Waste which displays one or more of the hazardous properties listed in Annex III [to the Directive] ^{xlii} [unable to edit footnote] (Annex III of the Directive appears to include all of the characteristics listed in Annex III to the Basel Convention);	any operation by which products or components that are not waste are used again for the same purpose for which they were	Not defined	Not defined in EU legislation. Second-hand goods are generally regarded as non-waste. The actual owner/user is not the original

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
	<p>exhaustive list of disposal operations^{xxxviii};</p> <p>A substance resulting from a production process, the primary aim of which is not the production of that item, may be regarded as a “byproduct” and not a “waste” if the following conditions are met:</p> <p>(a) further use of the substance or object is certain;</p> <p>(b) the substance or object can be used directly without any further processing other than normal industrial practice;</p> <p>(c) the substance or object is produced as an integral part of a production process; and</p> <p>(d) further use is lawful, i.e. the substance or object fulfils all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts.^{xxxix}</p> <p>Certain specified waste shall cease to be waste when it has undergone a recovery operation (including recycling) and complies with specific criteria relating to use, market-demand, technical requirements, and safety for health and environment^{xl}</p> <p>End of [life?] waste criteria have been adopted at EU level for certain types scrap metal. Proposals for end of waste criteria on recovered paper, glass cullet and scrap copper will be submitted to a vote in May 2012, with a possible subsequent adoption. Finally, end of waste criteria for other waste streams such as biodegradables, plastics, aggregates and refuse derived fuels may be considered.</p> <p>Elements of the Waste Shipment Correspondents(WSC) guidelines on WEEE will become legally binding as part of EU legislation in the recast of the WEEE Directive, whereby the</p>	<p>“Wastes featuring on a list to be drawn up on the basis of Annexes I and II to this Directive,...These wastes must have one or more of the properties listed in Annex III. The list shall take into account the origin and composition of the waste and, where necessary, limit values of concentration.....It is noted that Annex I.B and Annex II of this EU Directive are different from Annex I and Annex III of the Basel Convention and contain additional wastes as follows: ANNEX I.B - Wastes which contain any of the constituents listed in Annex II and having any of the properties listed in Annex III and consisting of waste which displays one or more of the hazardous properties listed in Annex III to Directive 2008/98/EC (Annex III includes a list of properties of waste which render it hazardous)^{xliii} Further, a list of waste is established by Decision 2000/532/EC. The list of waste includes hazardous waste and shall take into account the origin and composition of the waste and, where necessary, the limit values of concentration of hazardous substances. The list of waste shall</p>	<p>conceived.^{xliiv}Preparing for re-use’ means checking, cleaning or repairing recovery operations, by which products or components of products that have become waste are prepared so that they can be re-used without any other pre-processing.^{xlv} Direct reuse is not defined in EU legislation. However, in some Member States direct re-use is regarded as continued use of products and components by another person without the necessity of repair or other preparatory handling, provided that such continued use is for the intended purpose</p>		<p>owner/first user.</p> <p>Used goods –is not defined in EU legislation.</p>

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
	<p>burden of proof on functionality of used equipment is incumbent upon exporters of waste. (Note that the WSC guidelines are already applicable while the recast of the WEEE Directive will be applicable in the future). Other WSC guidelines addressing the distinction between waste and non-waste for the specific waste streams of WEEE and waste vehicles.</p> <p>EU comment letter of 30 June 2011: “We are of the opinion that these guidelines give a useful guidance on the distinction between waste and non-waste electronic and electric equipment and on the possible control techniques and procedures to be applied in the different cases.”</p> <p>ECJ: It follows that the scope of the term waste turns on the meaning of the term discard (Case C-129/96 Inter-Environnement Wallonie ASBL v Région Wallonne [1997] ECR I-7411, paragraph 26).</p> <p>It follows that the concept of waste cannot be interpreted restrictively.</p> <p>All those who have submitted observations to the Court propose that that question be answered in the negative. Annexes IIA and IIB describe methods of disposal and recovery of substances. However, not all substances treated by such methods are necessarily waste.</p> <p><i>51 The answer to the first question in both cases should therefore be that it may not be inferred from the mere fact that a substance such as LUWA-bottoms or wood chips undergoes an operation listed in Annex IIB to the [EC] directive that that substance has been discarded so as to enable it to be regarded as waste for the purposes</i></p>	<p>be binding as regards determination of the waste which is to be considered as hazardous waste. (Art 7.1 Directive 2008/98/EC on waste).</p> <p>In some member States, the waste list covers all types of waste listed in Decision 2000/532/EC and additionally covers several types of waste which are considered hazardous under national legislation.</p>	<p>of the product or components.</p> <p>The above-mentioned definitions may differ for specific waste streams which have been regulated by waste stream specific legislation. For all other wastes, the definitions of Directive 2008/98/EC will apply.</p>		

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
	<i>of the directive.^{xli}</i>				
Finland*	According to Section 3 of the Finnish Waste Act (1072/1993) "Waste shall mean any substance or object which the holder discards, intends, or is required, to discard." This definition is identical to the definition of waste in the Council Directive of the European Communities on waste (2006/12/EC).				
Germany*	In Germany the provisions of the Regulation (EC) No 1013/2006 apply (Waste Shipment Regulation). Concerning the definition of waste the regulation refers to the Waste Framework Directive (2006/12/EC). (See entry on Bulgaria, supra.)	Waste (91/689/EEC) as amended. Article 1(4) reads: "For the purpose of this Directive "hazardous waste" means wastes featuring on a list to be drawn up on the basis of Annexes I and II to this Directive,.....These wastes must have one or more of the properties listed in Annex III. The list shall take into account the origin and composition of the waste and, where necessary, limit values of concentration.....It is noted that Annex I.B and Annex II of this EU Directive are different from Annex I and Annex III of the Basel Convention.			
Guinea-Bissau*	Wastes are substances or objects to eliminate or which are supposed to be eliminated, or by Law have to be eliminated.				
Guyana**	"Waste" includes any matter prescribed to be waste and any matter, whether liquid, solid, gaseous or radioactive, which is discharged, emitted, or deposited in the environment in such volume, composition or manner as to cause an adverse effect. ^{xlvi}				
Honduras*	: all solid, pasty, liquid or gaseous material discarded after the best and most useful parts of a product or substance have been used, and that must be eliminated, with hazardous characteristics that				

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
	represent a risk to human health, the environment and the property according to the legal provisions in force.				
Hungary*	Waste shall mean any substance or object in the categories set out in Annex 1 to Act XLIII of 2000 which the holder discards or intends or is required to discard.				
Indonesia^{xlvi}		residue of a business and/or toxic material which due to its nature and/or concentration and/or amount, directly as well indirectly, can pollute and/or damage the environment, and/or endanger the environment, health, the continuation of human life and other living creatures	<i>The non-new capital goods listed in its annex are prohibited for import in Indonesia, including refrigerators, washing machines, TV, phones, air conditioners, printed circuit, valve and thermion tube, cold cathode or photo cathode tube, etc.^{xlvi}</i> Importation of used EEE and e-waste for direct (individual) consumption by consumer is prohibited. ^{xlvi}		In Indonesia, non-new capital goods are capital goods, which are still suitable for reuse or reconditioning (i.e. non-scrap). Provisions under No. 7/MPP/KEP/1/2000 require producers or importers to register Bahasa language versions of their manuals and warranties for their products with the Ministry of Industry and Ministry of Trade, and to provide the following materials in each package of registered product: ① Manuals: - To operate the

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
					product; - To repair or maintaining the product; - Product specification. ② Warranty card: - Free of charge for repair during warranty period; - Guaranty availability of spare parts; - Time limit for warranty one year at minimum.
Ireland*	Section 4(1)(a) of the Waste Management Act, 1996, as amended defines waste to mean any substance or object belonging to a category of waste specified in the First Schedule (of the Act), or for the time being included in the European Waste Catalogue which the holder discards or intends to or is required to discard, and anything which is discarded or otherwise dealt with as if were waste shall be presumed to be waste until the contrary is proved. New regulations are currently being drafted which will transpose the provisions of the Revised Waste Framework Directive – 2008/98/EC. The regulations, when finalized, will amend the definition of waste to “‘waste’ means any substance or object which the holder discards or intends or is required to discard”.				
Italy*	Legislative Decree No 152/2006, the Regulation (EC) N. 1013/2006 and as defined in Article 1(1)(a) of Directive 2006/12/EC.				
Ivory Coast¹	solid, liquid or gaseous products resulting from households, manufacturing process or any movable property or building that is abandoned or dilapidated	représentent une menace sérieuse ou des risques particuliers, pour la santé, la sécurité des êtres vivants	La réutilisation consiste à utiliser un déchet pour		

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
	[qui menace ruin].	et la qualité de l'environnement. (Code de l'Environnement, 1996)	un usage différent de son premier emploi, ou à faire, à partir d'un déchet, un autre produit que celui qui lui a donné naissance. (Cette définition est tirée du projet de Décret fixant les conditions de gestion des déchets d'emballages et des autres déchets industriels soumis au Gouvernement depuis 2011)		
Jamaica**	Part I of the Natural Resources (Hazardous Waste)(Control of Transboundary Movement) Regulations, 2002 "wastes" includes any material, substance or object, or its residue or by-product , which - (a) is rejected, discarded or abandoned; or (b) is disposed of or is intended to be disposed of or is required to be disposed of in accordance with the Regulations				
Japan	Two national laws regulate transboundary movement of waste (in broad sense) in Japan. One is the Law for the Control of Export, Import and Others of Specified Hazardous Wastes and Other Wastes ("Basel Law"). The other is the Waste Management and Public Cleansing Law ("Waste Management Law").	Two national laws regulate and define hazardous waste (in broad sense) with regards to transboundary movement in Japan. The "Basel Law" defines "hazardous waste" in terms similar to that of the Convention. The Waste Management Law also	activity in which an used item is used for secondary use without any dismantling. But this includes the item is used for	activity in which a used item is reformed in order to recover the original function of the item for the secondary use.	Second hand goods can be interpreted as the items which are directly used for its original purpose without any dismantling

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
	<p>Basel Law: definition same as Convention. Waste Management Law: defines "waste" as "refuse, bulky refuse, ashes, sludge, excreta, waste oil, waste acid and alkali, carcasses and other filthy and unnecessary matter, which are in solid or liquid state (excluding radioactive waste and waste polluted by radioactivity)".</p> <p>During the past workshop of Asian Network, Japan announced its practice how to identify Used EEE from Waste EEE, based on whether the EEE is destined for direct reuse, not for recycling or final disposal.</p>	<p>defines hazardous waste as "Special Control Waste (hereinafter SCW)" independently, but import/export regulations under the Waste Management Law do not differ between SCW and non-SCW.)</p> <p>Japan requires special consideration for the following waste(s) when subjected to transboundary movement: Any person who intends to import waste (excluding navigational wastes and carried-in wastes) shall procure the permission of the Minister of the Environment. Any person who intends to export domestic or industrial wastes (excluding valuable material) must obtain the confirmation of the Minister of the Environment that the export of domestic wastes comes under the respective items in the following:</p> <ul style="list-style-type: none"> - The wastes to be exported are deemed difficult to be treated properly in Japan in the light of the available treatment and technique; and - The wastes to be exported will be recycled in the country to which they are exported. 	<p>secondary use through repairing.</p> <p>Direct re-use -- direct-reuse can be interpreted as the items which are used for the secondary use not through recycling nor repairing. However, direct reuse has not been legally defined in the law yet.</p>		<p>and refurbishing activities, not for recycling or final disposal. In case of EEE (Electrical and Electrical Equipment), import and export of second-hand EEE are allowed as long as the EEE is destined for direct reuse. If second-hand goods are not directly re-used, then it requires the Basel procedure depending on the hazardous characteristics of the EEE.</p> <p>Used goods can be interpreted as the items which are destined for direct reuse, not for recycling or final disposal.</p>
Kazakhstan*	Consistent with Basel Convention. According to the Environmental Code of Kazakhstan, production and consumption waste (waste) - the remnants of raw materials and other goods and products which are formed in the process of production and				

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
	consumption, as well as goods (products) that have lost their consumer properties.				
Korea, Republic of **	Materials that have ceased to be useful for the human living or business activities. Pursuant to Article 2 of the Waste Management Act (enacted in 1986), waste is defined as “any matter such as trash, fly ash, sludge, waste oil, waste acid, waste alkali and animal carcasses, which becomes unnecessary for human living or business activities.”	uses Basel definition			
Kyrgyzstan*	In accordance with the Law of the Kyrgyz Republic from November 13, 2001 (89) "On Waste from Production and Consumption" Waste from Production - the remains of raw materials, intermediate products formed during production or execution of works and have lost all or part of their consumer properties, and related substances formed during the manufacturing process and is not used in this production. Waste from consumption - products, materials and substances that have lost their consumer qualities because of their physical or mental deterioration. Waste from consumption also includes municipal solid waste.				
Latvia*	“any object or substance which holder disposes of, or intends to or is forced to dispose of, and which conforms to the categories specified in the waste classification.” (Waste Management Law, Art.1.1)				
Lithuaniaⁱⁱ	substance or object that the holder discards, wants to discard or is required to discard.	waste that has one or more properties listed in the respective Annex of Waste Management Law.	activity when non-waste products or their components are used again for the same purpose they were created for. There is no definition for direct re-use , but it would be	preparation for reuse	goods that have been used and can continue to be used by somebody else for the same purpose they were created for without any refurbishment. Used goods-- Goods that have

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
			interpreted as re-use without any interim repair or amendment. For comparison: preparation for re-use – testing, purification or amendment / repair of waste products or their components with the purpose to make them fit for re-use without primary processing.		been used before.
Luxembourg *	References directive 2006/12/EC				
Madagascar *	All material that has no more use for its owner or producer and is discarded or abandoned. In general, waste could be defined as all residues resulting from production process, transformation or use, or any substance, materials, products or more generally, any material or item which has been abandoned by its owner, either because its economic value is too small, or because it is low in quantity to justify an investment.				
Malaysia ⁱⁱⁱ	any matter prescribed to be scheduled waste or any matter whether in a solid, semi-solid or liquid form, or in the form of a gas or vapor, which is emitted, discharged or deposited in the environment in such volume, composition or manner as to cause pollution.	any waste falling within the categories of waste listed in the First Schedule of the Environmental Quality (Scheduled Waste) Regulation 2005 as stipulated under Environmental Quality Act 1974.	Means any operation by which discarded electrical or electronic equipment or components are used for the same purpose for		Used electrical and electronic equipment or components is defined as e-waste if it has any of the following criteria: (a) A defect that

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
			<p>which they were conceived, including the continued use of the whole systems or components (Defined under the “Guidelines For The Classification of Used Electrical and Electronic Equipment in Malaysia”)</p>		<p>materially affects its functionality. For example it DOES NOT:</p> <ul style="list-style-type: none"> • power up; or • have a functioning motherboard; or • perform Basic Input / Output System (BIOS) or internal set-up routines or self-checks fail; or • communicate with the host; or • print / scan / copy a test page or the page is not identifiable or readable or is blurred or lined; or • read, write or record / burn. <p>(b) Physical damage that impairs its functionality or safety, as defined in the specification. Physical damage includes, but not limited to:</p> <ul style="list-style-type: none"> • a screen that has physical damage, such as burn marks, or is

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
					broken, cracked heavily scratched or marked, or that materially distorts image quality; or <ul style="list-style-type: none"> • a signal (input) cable has been cut off or cannot be easily replaced without recourse to open the case . (c) a faulty hard disc drive and a faulty Random Access Memory (RAM) and a faulty Video Card; or (d) batteries made with lead, mercury or cadmium or lithium or nickel that are unable to be charged or to hold power; or (e) insufficient packaging to protect it from damage during transportation, loading and unloading operations; or (f) the appearance of the equipment or components are generally worn or damaged, thus

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
					<p>reducing the marketability of the equipment; or (g) the electrical and electronic equipment or components are destined for recycling or recovery or disposal; or (h) the electrical and electronic equipment or components are discarded, or are intended or are required to be discarded; or (i) there is no regular market for the used electrical and electronic equipment or components; or (j) the used equipment or components are old and out dated, and destined for salvaging purpose; or (k) end-of-life electrical and electronic equipment; or (l) more than three years (3) from the</p>

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
					date of manufactured (for imports); or (m) products / goods produced by partially e-waste recovery
Malta*	any substance or object which is disposed of, or is in intended to be disposed of, or is required to be disposed of.				
Mexico*	Material or product whose proprietor or possessor rejects and who is in solid state or semisolid, or is a liquid or gas contained in containers or deposits, and that can be susceptible to be valorized or requires to subject to treatment or final disposition according to the arranged thing in this Law and other orderings that of it derive. In accordance with Article 5 Fraction XXIX of the General Law of Prevention and Integral Management of Wastes, published in the Official Newspaper of the Federation the 08 of October of 2003.				
Moldova, Rep. of*	substances, materials or objects from statistical classificatory of waste, which the holder or producer discards or intends or required to discard disposed through disposal.				
Montenegro ^{liii}	Waste shall mean any substance or object which the holder discarded or is required to discard.	Hazardous waste shall mean any waste or compound, which exhibit any of the following properties: explosive, reactive, flammable, irritant, harmful, toxic, infectious, carcinogenic, mutagenic, teratogenic, eco-toxic, oxidizing, corrosive and releasing toxic gases when undergo chemical or biological reaction; (WML, Off GM, No 64/11 dated 23 December 2011)	re-use' means any operation by which products or components that are not waste are used again for the same purpose for which they were conceived; (WML, Off GM, No 64/11 dated		

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
			23 December 2011)		
Morocco^{liv}	All residues resulting from a process of extraction, exploitation, processing, production, consumption, use, control or filtering [contrôle ou filtration], and in general, any object and material that is abandoned or that the holder must eliminate in order not to affect public health, safety, and the environment.	All forms of waste which, by their dangerous toxic, reactive, explosive, flammable, biological or bacterial nature, constitute a danger for the ecological balance as set out by international standards in this area and in complementary annexes .	Reuse – Recovery of waste : any operation of recycling, re-use, recovery, use of waste as an energy source or any other action to obtain raw material or reusable products from waste recovery, and to reduce or eliminate the negative impact of such waste on the environment; Direct reuse – same définition.	[same definition as reuse and direct reuse	
Netherlands*	Directive 2006/12/EC				
New Zealand**	“waste” means any substance or object that is— (a) intended to be disposed of by any of the methods specified in Part 4 of Schedule 3; or (b) required, by any law of New Zealand, to be disposed of by any of the methods specified in Part 4 of Schedule 3. ^{lv}				
Nicaragua^{lvi}	“desechos” are waste by-products destined for a landfill or confinement with or without pre-treatment, for its owner has no value. “Residuo Sólido”: material, product or by-product that without being regarded as dangerous that is discarded ^{lvii} and is capable of being exploited or	Hazardous waste all those who are contaminated by chemicals and radiation, whose handling, storage, treatment and disposal threatens human health and the protection of natural resources, especially the waste contained	Reuse: the return of a good or product to the economic stream to be used in the form exactly equal to as it was		No specific definitions, although in some regulations, second goods or used goods refer to materials that

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
	used, subject to treatment or disposal methods.	<p>within the categories specified in the Annex to Act 168.^{lviii}</p> <p>A substance or object whose removal is necessary, and also has the potential to cause an unacceptable risk to health and the environment and will depend on their composition, physical and chemical properties.^{lix}</p> <p>Non-hazardous wastes are those waste or combination of wastes that pose no immediate or potential danger to human health or other living organisms. Within non-hazardous wastes are: waste domiciliary, commercial, institutional, and wastes generated in markets, supermarkets and similar establishments.^{lx}</p> <p>Hazardous waste is defined as those who, in whatever physical state, containing significant amounts of substances that may pose danger to life or health of living organisms when released into the environment if handled improperly or because of its size or form of its corrosive, toxic, poisonous, reactive, explosive, flammable, biologically harmful, infectious, irritating or any other characteristic that pose a danger to human health, quality of life, environmental resources and ecological balance.</p>	<p>used earlier, without any change in their form or nature.</p> <p>Direct Reuse^{lxi}: the use of waste without being subjected to industrial processing, the processing for ensuring compliance with the standards of public health and the environment.^{lxii}</p>		still have life and can be used for their original purpose, or as spare parts for other equipment or materials.

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
		<p>Law 217, Law of Environment and Natural Resources. Official Gazette (GDO) No. 105, June 6, 1996;</p> <p>Technical Standards for the Management and Disposal of Hazardous Solid Waste, 015-02 No. 05, Official Gazette No. 210 of November 5, 2002.</p>			
Nigeria*	FEPA Harmful Wastes Provision Decree 42 of 1988. Wastes are defined as 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 the laws of the Federal Republic of Nigeria.				
Norway	<p>The term waste means discarded objects of personal property or substances. Surplus objects and substances from service industries, manufacturing industries and treatment plants, etc., are also considered to be waste. Waste water and exhaust gases are not considered to be waste.^{ixiii}</p> <p>Norway considers used equipment destined for repair or refurbishment, except for the situation in paragraph 27(b) of the SBC Draft Guidance^{ixiv}, to be waste and hence procedures for transboundary movement of waste shall apply.^{ixv}</p>	<p>According to that regulation the Norwegian regulation on waste, art. 11-3, "hazardous waste means waste that cannot be treated appropriately together with other household waste because it may cause serious pollution or involve a risk of injury to people and animals."</p> <p>An unofficial translation of the Waste regulation may be found at http://www.sft.no/seksjonsartikkel_30216.aspx.^{ixvi}</p>			
Pakistan*	According to Pakistan Environmental Protection Act -1997, "waste" means any substance or object which has been, is being or is intended to be , discarded or disposed of, and includes liquor waste , solid waste, waste gasses, suspended waste, industrial waste, agricultural waste, nuclear waste, municipal waste, hospital waste, used polythene bags and residues from incineration of all types of wastes.				
Paraguay ^{ixvii}	Substances or elements whose elimination is intended, originating as a result of the processing ["transformation, Sp.] of primary raw material.	substances or elements resulting from industrial processes and products that have been acquired	Recycling ("Reciclaje): Process through		

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
	Accompanied by the product, they may be of a hazardous or non-hazardous nature.	and/or discarded, exhibiting explosive, flammable, oxidizing, toxic, infectious, radioactive, corrosive, etc., characteristics. These substances or elements can cause present or future risks to the quality of life of persons or affect the soil, flora, fauna, pollute the air or water in a manner to harm human or environmental health.	which deals with solid waste in technical, sanitary and environmental conditions, allowing its reincorporation as materials having useful physical and chemical properties and can be reused as raw material. ^{lxviii}		
Philippines	Under DENR Administrative Order (DAO) 36, Series of 2004, or the Procedural Manual on Hazardous Waste management, there is no clear cut classification on waste electronic and electrical equipment. These are presently classified under waste with inorganic chemicals depending on the metal constituent of the waste. DAO 36 is currently being revised to include a specific classification for waste electrical and electronic equipment in the List of Prescribed Hazardous Wastes				There is no distinction between “waste or scrap” and “used or second hand” in the existing regulations. For electronic assemblies and scrap (i.e. used computers, televisions etc..) intended for direct re-use and not recycling or final disposal as categorized under B1110, notification under the Basel Convention is not required. However, for

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
					those destined for recycling or categorized under A 1180, the notification procedure applies. Used goods such as mobile phones under warranty intended for repair returned back to the consumers are also allowed for importation and not subject to the Basel Convention. However, those intended for disassembly and major repair or refurbishment shall be required to undergo the notification process.
Poland ^{lxix*}	Means any substance or object in one of the categories listed in Annex I to this Act with the holder thereof discards or intends or is required to discard.				
Portugal ^{lxx*}	Means any substance or object that the holder discards or intends to or is required to discard, in accordance with Council Directive 2006/12/EC.				
Qatar **	The national definition of hazardous waste is in accordance with the Basel Convention.				
Romania *	In Romania there is no national definition of waste used specially for the purposes of transboundary movements. The definition of waste from the Emergency Ordinance no. 78/2000 concerning the				

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
	Waste Regime approved with modifications by Law no. 426/2001 with all further updates is generally based on the relevant definitions of the Basel Convention and the pertinent EU Directives.				
Rwanda*	any substance whether solid, liquid or gaseous resulting from household activities, from manufacturing plants or any abandoned movable or immovable property, and which may be harmful. ^{lxxi}	Hazardous wastes** : are any substances whether solid, liquid or gaseous that cause a serious harmto human health, security and other biodiversity together with the quality of the environment. **Organic Law N° 04/2005 of 08/04/2005, determining the modalities of protection, conservation and promotion of environment in Rwanda, page 24.			
Saint Lucia^{lxxii}	“... any material solid or liquid discarded by the owner of the material, whether or not the material is in the same form as it was when it came to be in the possession of the owner, and includes any derelict vehicle”. Non-waste - not defined in legislation?	identical to Basel except: NB: Annex I of Schedule 1 is almost identical to Annex I of the Basel Convention’s Annex I except: i) Y19 is added – Wastes, from banned or expired agro-chemicals ii) Y20 of national legislation through to Y46 is the same as Y19 through to Y45 of Annex I of Basel Convention iii) Y47 (wastes collected from households) and Y48 (residues arising from the incineration of household wastes) added to national legislation but non-existent in Annex I of BC – these exist as Y46 & Y47 respectively in Annex II of BC			

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
		Annex II of schedule 1 in national legislation is identical to Annex III of the BC. Non –hazardous waste – not defined in legislation			
Senegal**	Any solid, liquid or gaseous substance, or any residues coming from the production process, transformation or utilization of any other eliminated or disposed of substance, destined to be eliminated or needing to be disposed of in accordance with the laws and regulations in force.				
Tanzania (United Republic of)**	According to the Environment Management Act, 2004 of Tanzania, Waste is defined as any matter whether liquid, solid, gaseous or radioactive, which is discharged, emitted or deposited in the environment in such volume, composition or manner likely to cause an alteration of the environment, and includes such waste as may be prescribed under this Act.				
Serbia*^{lxiii}	substance or object, contained in the list of waste categories (Q list), which the holder discards or intends or is required to discard, in accordance with the law 15); 18) Article 71. The cross-border movement of waste shall be accompanied by documentation regarding the movement from the place where the movement began to the final destination in accordance with the national and international regulations on cross-border movement.	hazardous waste means waste that because of its origin, composition or concentration of dangerous substances may endanger the environment and human health and has at least one of the dangerous properties governed by special regulations, including the package into which the hazardous waste was or is packed; non-hazardous waste means waste without hazardous characteristics;			
Singapore*	Under the Hazardous Waste (control of export, import and transit) Act (HWA) “waste” means a substance or object that is proposed to be disposed of; disposed of; or required by any written law to be disposed of.				32. In Singapore, National Environment Agency has started controlling

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
					<p>the import/export of UEEE through its TRADENET system since March 2008. Under TRADENET control system, all declarations for import/export of UEEE will be routed to NEA for processing and clearance. Third-party surveyor certification is required for the import of UEEE. Prior informed consent is required for import/export of EEE that are not suitable for reuse and intended for recycling/recovery . Requirements for import/export of UEEE are identified in Figures 1 and 2 [17].</p>
South Africa*	The National Environmental Management Waste Act 58 of 2008, defines waste as any substance, whether or not that substance can be reduced, reused, recycled and recovered (a) that is surplus,				

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
	unwanted, rejected, discarded, abandoned or disposed of; (b) which the generator has no further use of for the purposes of production; (c) that must be disposed of; or (d) that is identified as a waste by the Minister by notice in the Gazette, but – (i) a by-product is not considered waste; and (ii) any portion of waste, once reused, recycled and recovered ceases to be waste.				
Slovakia*	According to the Act No. 223/2001 Coll. of Laws on Waste and on Amendment of Certain Acts as amended a waste shall mean a movable thing specified in Annex 1, which the holder discards, or wishes to discard, or is obliged to discard pursuant to the Act or special regulations. ^{lxxiv} According to the Annex 1 to Act No. 223/2001 Coll. of Laws the wastes are: Production or consumption wastes not otherwise specified below; Off-specification products; Products whose date for appropriate use has expired; Materials spilled, lost or having undergone other mishap, including any materials, equipment, etc., contaminated as a result of the mishap; Materials soiled or contaminated as a result of planned actions (e.g. waste from cleaning operations, packing materials, containers); Unusable parts (e.g. rejected batteries, exhausted catalysts); Substances which no longer perform satisfactorily (e.g. contaminated acids, contaminated solvents, exhausted tempering salts); Residues of industrial processes (e.g. slags, still bottoms); Residues from pollution abatement processes (e.g. scrubber sludges, baghouse dusts, spent filters); Machining/finishing residues (e.g. lathe turnings, mill scales); Residues from raw materials extraction and processing (e.g. mining residues, oil fieldslops); Adulterated materials (e.g. oils contaminated with PCBs); Any materials, substances or products whose use has been banned by law; Products for which the holder has no further use (e.g. agricultural,				

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
	household, office, commercial and shop discards); Contaminated materials, substances or products resulting from remedial action with respect to land; and Any materials, substances or products which are not contained in the above categories.				
Slovenia*	in line with Directive 2006/12/EC on waste. According to Environmental Protection Act (2004) as amended definition of waste is (Art. 3): Waste is any substance or item which is discarded, intended for or it must be discarded by generator or the person who has it in possession. According to Art. 3 of Decree on Waste Management (2008) waste is further defined as: Waste is waste according to act regulating environmental protection and it is classified in one of the groups of wastes specified in Annex 1 to this decree.				
Spain**	According to the Act 10/1998 on Wastes, Article 3, Definitions, "wastes" are those substances or objects falling under any of the categories referred to in the annex to the present Act, which the holder discards, has the intention or is required to discard. In any case, substances or objects (which fulfill the above condition) and listed in the European Waste Catalogue approved by the Community institutions should always be considered as wastes. (See also entry on Andorra, concerning Agreement between Andorra and Spain (17-10-06) concerning the transboundary movements of wastes.)				
Sri Lanka*	any matter prescribed to be waste and any matter, whether liquid, solid, gaseous or radioactive which is discharged, emitted, or deposited in the environment in such volume, constituency or manner as to cause alternation of the environment.				
Sweden*	Waste means any substance or object in the categories set out in a list of waste categories which the holder discards or intends to or is required to discard (citing EU regulation 1013/2006).				
Tanzania,	According to the Environment Management Act,				

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
United Republic of**	2004 of Tanzania, Waste is defined as any matter whether liquid, solid, gaseous or radioactive, which is discharged, emitted or deposited in the environment in such volume, composition or manner likely to cause an alteration of the environment, and includes such waste as may be prescribed under this Act				
Thailand	<p>Indicia that UEEE is waste: --poor packaging --obsolete; unmarketable</p> <p>Not waste: --info that guarantees imported items to be sold for reuse --labels on items or containers --functions to be tested on site</p>				<p>Under the „Criterion for the Import of Used Electrical and Electronics Equipment Considered as Hazardous Substances into the Kingdom of Thailand B.E.2550 “, defines UEEE as „Electric and Electronic Equipment which were used but still be workable and keep as its original form or can be repaired, modified, reconditioned in order to be used same as original purposes^{“1xxxv}. When household EEE become obsolete, these products become WEEE when gathered by</p>

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
					various collectors. The categories of WEEE mainly include: large home appliances, small home appliances, IT equipment, consumer products, lighting equipment, monitoring & control instruments, electrical & electronic tools, medical instruments, electrical & electronic toys, automatic dispensers [24].
Togo*	Définition du déchet Tout résidu d'un processus de production, de transformation ou d'utilisation, toute substance, tout matériau, tout produit ou plus généralement tout bien meuble abandonné ou que son détenteur destine à l'abandon. (Article 02 paragraphe 13 de la Loi No 2008-005 du 30/05/2008, loi-cadre sur l'environnement).	Définition de déchet toxique ou dangereux Produits solides, liquides ou gazeux qui présentent une menace sérieuse ou des risques particuliers, pour la santé, la sécurité des êtres vivants et la qualité de l'environnement. (Article 02 paragraphe 14 de la Loi No 2008-005 du 30/05/2008, Loi-cadre sur l'environnement).			
Uganda*	Waste includes any matter prescribed to be waste, and any radioactive waste whether liquid, solid,				

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
	gaseous or radioactive which is discharged, emitted or deposited into the environment in such volume, composition or manner as to cause an alteration of the environment.				
Ukraine*	any substances, materials and articles that are generated in the course of human activity and have no future use at the site of their generation or exposure and shall be rejected by their owner by utilization or disposal (as stated in the Regulation on the Control of Transboundary Movements of Hazardous Wastes and their Utilization/Disposal and “Yellow Waste List” and “Green Waste List” under the Decree of the Cabinet of Ukraine of July 13, 2000, No. 1120 “On Approval of the Regulation on the Control of Transboundary Movements of Hazardous Wastes and their Utilization/Disposal and “Yellow Waste List” and “Green Waste List”).				
United Arab Emirates*	All hazardous and non-hazardous remnants and wastes, including nuclear wastes, disposed of or need to be disposed of, in accordance with the provisions of the law and include: Solid Wastes: such as domestic, industrial, agricultural, medical, construction and demolition wastes. Liquid Wastes: produced by domestic, commercial, industrial and other premises. Gaseous (smoke, vapour and dust) Wastes: produced by domestic premises, bakeries, incinerators, factories, crushing plants, stone quarries, power stations, oil works and means of transportation and communication..	Hazardous Wastes: residues or ash of different activities and operations containing properties of hazardous substances Medical Wastes: Wastes constituted wholly or partially of human or animal tissues, blood or other body fluids or excretions or drugs or other pharmaceutical products or bandages, needles, syringes, sharp medical objects or any other contagious, chemical or radioactive wastes produced by medical or nursing activities, treatment or health care, dentistry or veterinary and pharmaceutical practices or manufacturing, research, teaching, sample taking or storage.			
UK*	Cites EC Framework Directive on (Council				

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
	Directive 2006/12/EC). Article 1(a).				
Uzbekistan*	Waste is the rest of raw materials, articles, which were generated during the production of goods, energy, implementation of works (services) and lost initial consumer characteristics completely or partly (waste of production) and articles and materials, which lost their consumer characteristics as a result of their physical depreciation and obsolescence (waste of consumption). (Document O'z RH 84.3.19:2005 Terms and determinations)				
Venezuela*	Material, substance, solution, mixture or object with no immediate fate provided for which must be eliminated or disposed of in a permanent manner. ^{lxxvi}	Hazardous waste: Simple or compound material in a solid, liquid or gaseous state which has hazardous properties or is composed of hazardous substances, whether or not it preserves its physical, chemical or biological properties, and for which no use is found with the result that a method of final disposal must be employed. The term includes receptacles containing or having contained such wastes. Recoverable hazardous material: Material which has hazardous characteristics but after serving a specific purpose still retains useful physical and chemical properties and therefore may be reused, recycled, regenerated or used for the same or another purpose.			
Vietnam		WEEE is considered as hazardous waste ^{lxxvii}			
Yemen	Any waste that is generated from industrial, chemical or radiation operations and becomes hazardous due to its contents of materials or	Any waste generated from industrial, chemical or radiation operations and becomes			

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
	concentrations of materials or due to its chemical reactions or due to its toxic character or being liable to explosion or to create corrosion or any other characteristics that arise danger to human being, fauna and flora or to the environment whether independently or intermixed with other waste.	hazardous due to its content or concentration of materials, its chemical reactions, its toxic character, being liable to explosion or to create corrosion, or any other characteristics that pose danger to humans, fauna and flora or to the environment whether independently or intermixed with other waste.			
Zambia	“Garbage, refuse, sludges and other discarded substances resulting from industrial and commercial operations and domestic and community activities, but does not include waste water”.	”waste that is poisonous, corrosive, irritant, explosive, inflammable, toxic or other substance or thing that is harmful to human beings, animals, plants or the environment”...			
SIGNATORIES AND OTHER STAKEHOLDERS					
USA	<p>a. definition: solid, semi-solid, liquids or contained gaseous material that is discarded by being abandoned, inherently waste-like (i.e., certain dioxin-containing listed wastes), recycled (i.e. used, reused, or reclaimed), or meets the definition of waste military munitions.</p> <p>b. Exclusions</p>	<p>a. Must be solid waste b. [to be completed]</p>			
PACE				Refurbishment: Process for creating refurbished or reconditioned computing equipment including such activities as cleaning, data sanitization, and software upgrading.	

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
				Refurbished computing equipment: Computing equipment that has undergone refurbishment returning it to working condition functional for its originally conceived use with or without upgrades and meeting applicable technical performance standards and regulatory requirements and possible upgrades. ^{lxxviii}	

Party ⁱ	Waste/non-waste	Hazardous waste/non-hazardous waste ⁱⁱ	Re-use, direct re-use	Refurbishment	Used & Second hand goods
OECD	OECD Decision C(2001)107/FINAL (as amended in 2001 and 2002): substances or objects, other than radioactive materials covered by other international agreements, which: (i) are disposed of or are being recovered; or (ii) are intended to be disposed of or recovered; or (iii) are required, by the provisions of national law, to be disposed of or recovered.	(i) Wastes that belong to any category contained in Appendix 1 to this Decision unless they do not possess any of the characteristics contained in Appendix 2 to this Decision; and (ii) Wastes that are not covered under sub-paragraph 2. (i) but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Member country of export, import or transit. Member countries shall not be required to enforce laws other than their own .			
IPMI	Reuse, repair, refurbishment and upgrading of used mobile phones are not operations specified in Annex IVA or IVB. Ltr of 25 Feb 2008, commenting on MPPI Chairman's paper Project 2.1.				

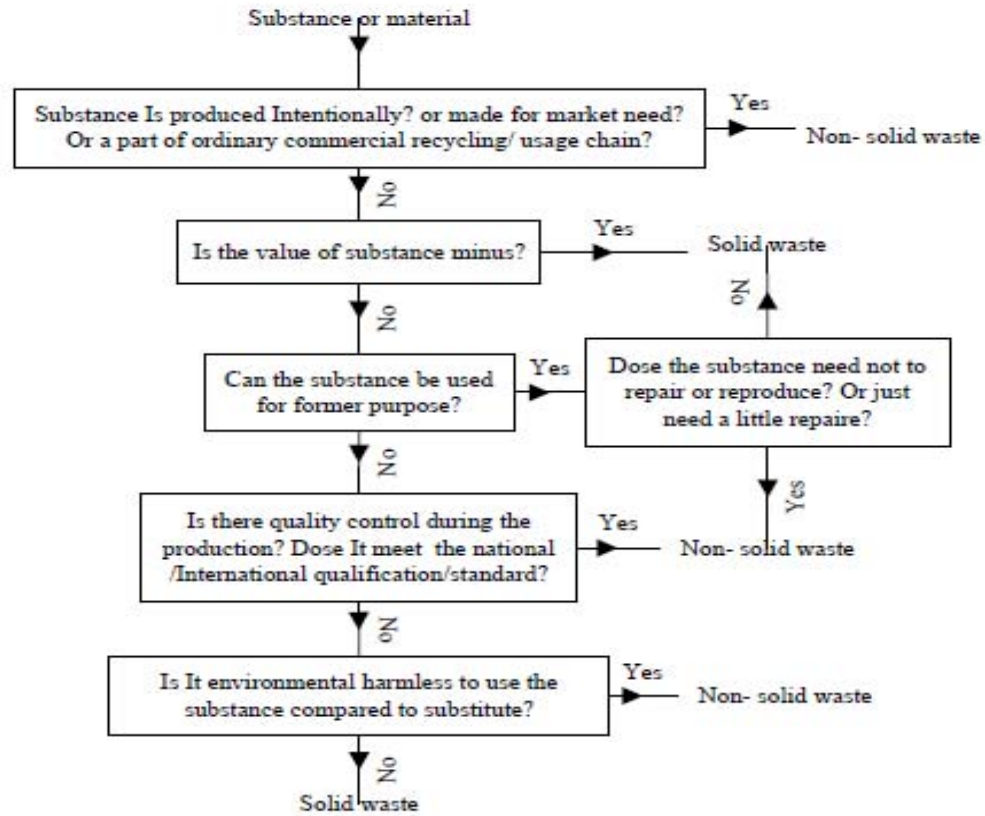
China Table 4

Table 4 Reasons why materials are intended for disposal

Q1	Production or consumption residues
Q2	Off-specification products
Q3	Penalized counterfeit products
Q4	Products whose date for appropriate use has expired Materials spilled, lost or having undergone other mishap including any materials, equipment etc. contaminated as a result of the mishap
Q5	Materials contaminated or soiled as a result of planned actions (e.g. residues from cleaning operations, packing materials, containers, etc.)
Q6	Contaminated substances or material during production
Q7	Materials, substances or products resulting from remedial actions with respect to contaminated land
Q8	Products losing original function (e.g. exhausted catalysts)
Q9	Substances which no longer perform satisfactorily (e.g. contaminated acid, contaminated solvents, exhausted tempering salts, etc.)

Q10	Residues from pollution abatement processes (e.g. scrubber sludge, bag house dusts, spent filters, etc.)
Q11	Machining/finishing residues
Q12	Residues from raw materials processing
Q13	Other reasons regulated by law or Chinese government

Chinese flow chart



APPENDIX 3

Parties' approaches to the definition of "waste"

Term	Parties who use term
"discard", "intent to discard"	<p>EU and member States</p> <p>Argentina ("discard" includes offering an item free of charge or paying a fee for its recycling, treatment or disposal)</p> <p>Bosnia/Herzegovina</p> <p>Bulgaria</p> <p>Central Af. Rep. ["abandonné"]</p> <p>Chad ["abandonné"]</p> <p>China</p> <p>Colombia –"discarded because its properties prevent it from being reused in the framework of the activity under which it was produced, or because currently applicable legislation forbids its reutilization."</p> <p>HKSAR, Ireland -- any substance or article which is discarded or otherwise dealt with as waste is presumed to be waste until the contrary is proved.</p> <p>HKSAR: If such equipment is shipped to the importing country for direct re-use, no waste import/export permit will generally be required.</p> <p>Jamaica (also "rejected or abandoned")</p> <p>Madagascar (also "abandoned")</p> <p>Moldova</p> <p>Montenegro (does not mention "intent to discard")</p> <p>Nicaragua</p> <p>Norway – also includes surplus materials from industries, treatment plants, etc.</p> <p>Pakistan</p> <p>St. Lucia</p> <p>UAE</p> <p>Zambia ("Garbage, refuse, sludges and other discarded substances resulting from industrial and commercial operations and domestic and community activities, but does not include waste water".)</p>
byproduct	<p>EU</p> <p>Armenia</p>
production/	Algeria

consumption residues	<p>Central African Republic</p> <p>Chad</p> <p>Colombia</p> <p>Kazakhstan</p> <p>Kyrgyzstan -- Waste from consumption - products, materials and substances that have lost their consumer qualities because of their physical or mental deterioration.</p> <p>Madagascar</p> <p>Nicaragua: “desechos” are waste by-products destined for a landfill or confinement with or without pre-treatment, for its owner has no value.</p> <p>Morocco</p> <p>Paraguay</p> <p>Senegal (destined to be eliminated or needing to be disposed of in accordance with the laws and regulations in force.)</p> <p>Uzbekistan</p> <p>Yemen</p>
“get rid of”	Algeria
abandons	<p>Andorra</p> <p>Chad</p> <p>HKSAR</p> <p>Ivory Coast (or dilapidated [“qui menace ruin”].</p> <p>Jamaica (also, “discarded” or “rejected”)</p> <p>Madagascar</p> <p>Togo</p>
refers to a list of specific wastes or categories thereof	<p>Australia (?)</p> <p>Brazil</p> <p>Bulgaria</p> <p>China</p> <p>Guyana</p> <p>Japan</p> <p>Korea: Waste is defined as “any matter such as trash, fly ash, sludge, waste oil,</p>

	<p>waste acid, waste alkali and animal carcasses, which becomes unnecessary for human living or business activities.”</p> <p>Malaysia (“scheduled waste”)</p> <p>Moldova</p> <p>Pakistan</p> <p>Serbia</p> <p>Sri Lanka</p> <p>Uganda</p>
<p>references list of operations for which material is destined (cf. BC Annex IV)</p>	<p>Canada</p> <p>China</p> <p>European Union and member States</p> <p>Ukraine</p> <p>New Zealand</p>
<p>loss in value</p>	<p>Bhutan (lost its primary value)</p> <p>China (loses its original utilization value)</p> <p>Honduras</p> <p>Armenia</p> <p>Madagascar</p> <p>Kyrgyzstan -- Waste from consumption - products, materials and substances that have lost their consumer qualities because of their physical or mental deterioration.</p> <p>Nicaragua</p> <p>Serbia</p>
<p>ref. to hazard/pollution/ environmental effects</p>	<p>Brunei Darussalam</p> <p>Costa Rica</p> <p>Egypt</p> <p>Guyana</p> <p>Honduras</p> <p>Madagascar</p> <p>Malaysia</p> <p>Morocco</p>

	<p>Nicaragua</p> <p>Rwanda</p> <p>Sri Lanka</p> <p>Tanzania</p> <p>Uganda</p> <p>Yemen</p>
cannot be utilized/useless	<p>Burkina Faso</p> <p>Cambodia</p> <p>Colombia (discarded, rejected or delivered by its originator because its properties prevent it from being reused in the framework of the activity under which it was produced, or because currently applicable legislation forbids its reutilization.</p> <p>Costa Rica</p> <p>Egypt</p> <p>Kazakhstan—waste includes goods (products) that have lost their consumer properties.</p> <p>Korea: materials which have ceased to be useful for the human living or business activities.</p> <p>Madagascar</p> <p>Nicaragua</p> <p>South Africa</p> <p>Ukraine: “no future use at site of generation or exposure”</p> <p>Uzbekistan</p>

APPENDIX 4

Summary of Parties' and other stakeholders' Criteria for Distinguishing Waste and Non-waste

Criteria for waste destined for re-use	Parties – consideration as waste	Parties – consideration as non-waste
Requires use for original purpose		Argentina China European Union Singapore Thailand
Not suitable for direct re-use	European Union Japan Malaysia	
Substance produced intentionally or part of international commercial recycling/usage chain		China [OECD Guidelines]
Functionality testing; international standards and specifications		required by virtually all Parties who have criteria; included in all guidelines and guidances
A defect that materially affects functionality	Malaysia (para 43) HKSAR	
Physical damage that impairs its functionality or safety, as defined in the specification.	European Union HKSAR Malaysia Japan	
Insufficient packaging to protect it from damage during transportation, loading and unloading operations	European Union HKSAR Japan Malaysia Thailand	
low or reduced marketability: --no regular market -- worn appearance -- equipment is old or obsolete	Argentina China European Union HKSAR (5 year cutoff - recommended) Indonesia Malaysia (has 3 year cutoff) Japan Singapore Thailand	

3C Certification (comparable to new EEE)		China
the EEE or components are discarded, or intended or required to be discarded	Argentina China EU Japan Malaysia	
Used or low-quality components or parts imported from overseas.	Thailand	
Off-spec products returned from domestic and overseas customers.	China Philippines Thailand	
Documentation and Reporting Obligations		EU HKSAR Japan
Contractual relationship with concerned parties (e.g., refurbishment facility)	HKSAR Japan Singapore	
Status as waste/non-waste in importing and exporting countries	HKSAR Japan	
Banned categories	China (used TVs) Indonesia Vietnam	
Off-spec products	China	
Counterfeit products	China	
adverse environmental impact	China	

APPENDIX 5

Potential Criteria for Exclusion from Regulation as a Hazardous Waste

1. Recognize exclusion for warranty repair work.
 - Protective packaging for shipping and handling, consistent with that provided for new products
 - Documentation of warranty contract and intent to return to customer
 - Limitation on warranty period
 - ESM certification of warranty repair facility
 - Provision for take-back of any hazardous components removed from item

2. Recognize exclusion for direct re-use
 - Protective packaging¹⁰⁷ for shipping and handling
 - Legible labeling and signage
 - Full functionality¹⁰⁸ (perhaps comparable to new) and conformance with applicable technical, performance and safety specifications
 - Documentation of:
 - functionality (perhaps comparable to new)
 - applicable technical, performance and safety specifications
 - age, quality, and condition of good
 - maximum age specifications (e.g., 3-5 years for used computing equipment)
 - limitations on wear, damage, defects
 - marketability
 - intended destination or distribution chain
 - legal status in countries of export, import and transit
 - Use only for original purpose
 - Could allow minor repairs/refurbishment
 - Prohibition counterfeit products
 - Could prohibit specified items
 - Assurance of take-back for items not directly reused

3. Recognize exclusion for re-use (subject to repair/refurbishment)
 - Protective packaging for shipping and handling
 - Legible labeling and signage
 - Full functionality (perhaps comparable to new) and conformance with applicable technical, performance and safety specifications
 - Documentation of:
 - functionality (taking into account intended repair/refurbishment operation)
 - applicable technical, performance and safety specifications
 - age, quality, and condition of good
 - maximum age specifications (e.g., 3-5 years for used computing equipment)
 - minimum remaining useful life
 - limitations on wear, damage, defects
 - marketability
 - intended destination or distribution chain
 - contracts for repair/refurbishment and intended distribution chain
 - description of intended repairs/refurbishment
 - legal status in countries of export, import and transit
 - Use only for original purpose (?)
 - Limitation on extent or nature of repairs/refurbishment; e.g., could prohibit major reassembly, etc.

¹⁰⁷ See PACE ESM Guidance, Appendix III for more detail.

¹⁰⁸ See, e.g. European Union, Malaysia, PACE ESM Guidelines, Appendix V (functionality tests for computing equipment).

- Environmental considerations
 - environmental assessment of repair/refurbishment operation
 - comparison of environmental impact to use of primary products
 - ESM certification of repair/refurbishment facility
- Could prohibit specified items, categories, or operations
- Provision for takeback of hazardous components and items not reused
- Prohibit counterfeit products

4. Recognize exclusion for certain recycling/recovery operations

Recognize exclusion for re-use (subject to repair/refurbishment)

- Packaging to prevent release of hazardous materials to the environment
- Documentation of:
 - suitability for intended purpose and recycling/recovery operation
 - legal status in countries of export, import and transit
 - contracts for recycling/recovery operations
 - legal status in countries of export, import and transit
 - commercial demand for material (material must have positive value)
- Could limit to “closed loop” processing within a single industrial organization
- Environmental considerations
 - environmental assessment of recycling/recovery operation and of any waste generated thereby
 - ESM certification of repair/refurbishment facility
 - comparison of environmental impact to use of raw materials

APPENDIX 6

References

Unless otherwise indicated, entries refer to both the draft terminology report and the study on UELG. References from the terminology report only denoted by asterisk (*); references from UELG study only are denoted by a double asterisk (**).

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2. Brazil
2. Canada
3. Central African Republic
4. Chad
5. Colombia
6. The European Union and its member States
7. Ivory Coast
8. Japan
9. Lithuania
10. Malaysia
11. Montenegro
12. Morocco
13. Nicaragua
14. Paraguay
15. St. Lucia
16. Yemen
17. Zambia

B. Information Communicated by Signatories to the Convention

1. United States of America**

C. Information Communicated by Stakeholders in Response to 2012 Questionnaire

1. BCRC Tehran**
2. Information Technology Industry Council**
3. Phillips Medical**
4. PC Rebuilders and Recyclers, LLP**

D. Other communications from Parties and Stakeholders

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 - b. *Inter-Environment Wallonie ASBL v Région Wallonne*, Case C-129/96 [1997] ECR I-7411.*
 - c. *Palin Granit Oy*, Case C-9/00 [2002] ECR I-3533*
2. European Union
 - a. Directive 2011/.../EU of the European Parliament and of the Council on Waste Electrical and Electronic Equipment (WEEE), Articles 4-6, 11-13.
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 - d. Correspondents’ Guidelines No.1 on WEEE, http://ec.europa.eu/environment/waste/shipments/pdf/correspondents_guidelines1_en.pdf. (Retrieved 12 Apr. 2012.)*
 - e. Correspondents’ Guidelines No. 9 on Used Vehicles, http://ec.europa.eu/environment/waste/shipments/pdf/correspondents_guidelines9_en.pdf. (Retrieved 12 Apr. 2012.)*
3. Hong Kong SAR, “Environmental Protection Department Advice on Import and Export of Used Electrical and Electronic Equipment Having Hazardous Components or Constituents” (3d ed., Nov. 2011), http://www.epd.gov.hk/epd/english/environmentinhk/waste/guide_ref/files/advice_on_e-waste.pdf. (Retrieved 11 April 2012.)*
4. United States Environmental Protection Agency, Final Rule (Cathode Ray Tubes) 71 Federal Register 42928 (28 July 2006) and EPA Fact Sheet, available at <http://www.epa.gov/wastes/hazard/recycling/electron/crt-fs06.pdf>. (Retrieved 15 May 2012.)*

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ii National hazardous waste definitions provided in response to a Question 2(b) of the 2009 Questionnaire are not repeated here except to the extent they relate to the hazardous waste/non-hazardous waste issue.

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- v "Llei 25/2004, del 14 de desembre, de residus", article 3.
- vi Response to 2012 Questionnaire and 2009 Complilation.
- vii Executive Decree 181/92, Art. 3.
- viii *Id.*, Art. 4.
- ix Article 2°, National Law 24.051.
- x Response to 2012 Questionnaire, citing National "Law on Wastes" (Part one, article 4 "Definition"), adopted on November 24, 2004 (AL-159-N).
- xi See Articles 2, 4, 3 of the Federal Waste Management Act (Federal Law Gaz. I 2002/102 as amended) in combination with the Ordinance on a Waste Catalogue (Federal Law Gaz. II 2003/570 as amended).
- xii It is not clear that this definition is intended to exclude from the definition of "waste" substances that are destined for disposal in operations listed in Basel Convention Annex IV. Bolivia has indicated its intent to develop a regulation specifically defining the term "waste."
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- xxxii Response to 2012 Questionnaire, also 2008 Compilation, citing National Decree No. 4741 of 2005, art.3.
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- lxii National Policy on Integrated Solid Waste Management. Decree No. 47-2005 of 21 July 2005. Official Gazette No. 163 of August 23, 2005.
- lxiii Pollution Control Act, Chapter 5 A translation of the Pollution Control Act may be found at <http://www.regjeringen.no/en/doc/Laws/Acts/Pollution-Control-Act.html?id=171893> (NB! The translation is for information use only).Section 27 also contains definitions of household waste, industrial waste, and special waste (including hazardous waste).
- lxiv Para. 27(b) of the draft guidance provides that equipment returned as defective batches for repair to the producer (under warranty) with the intention of receiving it back for re-use is not a waste if: (i) a declaration made by the exporter of the equipment that none of the equipment within the consignment is waste as defined by national law of the countries involved in the movement; and (ii) appropriate protection is provided against damage during transportation, loading and unloading, in particular through sufficient packaging and/or stacking of the load.
- lxv Norway, letter of 28 June 2011, “BSC technical guidelines on TBM of E-waste - comments from Norway,” http://archive.basel.int/techmatters/e_wastes/guidelines/comments/2011-02-21norway.pdf
- lxvi Compilation (2009)
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- lxviii Te original documento uses te terma “reciclaje,” defined as follows: Proceso mediante el cual se tratan los residuos sólidos en condiciones técnicas, sanitarias y ambientales, permitiendo su reincorporación como materiales que todavía tienen propiedades físicas y químicas útiles, después de servir a su propósito original y que; por lo tanto, pueden ser reutilizados como materia prima. It is not clear that “refurbishment” was envisioned.
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