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

Tenth meeting

Nairobi, 30 May–2 June 2016

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

**Matters related to the work programme of the
Open-ended Working Group for 2016–2017:
legal, governance and enforcement matters:
providing further legal clarity**

**Views received from parties and others on the review of
Annexes I, III and IV and related aspects of Annex IX to the
Basel Convention**

Note by the Secretariat

As referred to in the note by the Secretariat on providing further legal clarity (UNEP/CHW/OEWG.10/8), the annex to the present note contains views received from parties and others in relation to the review of Annexes I, III and IV and related aspects of Annex IX to the Basel Convention. Views were received from Canada, the European Union and its member States, the United States of America, Bureau of International Recycling and Hazardous Waste Europe. The present note, including its annex, has not been formally edited.

* UNEP/CHW/OEWG.10/1.

Annex

Views received from parties and others on the review of Annexes I, III and IV and related aspects of Annex IX to the Basel Convention

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1. Canada



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December 4, 2015
Secretariat of the Basel, Rotterdam and Stockholm Conventions
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1219 Châtelaine (Geneva). Switzerland

Subject: Canada's comments on the options identified in section II.A and section II.B of Annex II to document UNEP/CHW.12/INF/52 as requested by Decision BC-12/1

Dear Ms. Kohler,

I am pleased to submit Canada's views on the review of Annexes I, III, IV and related aspects of Annex IX launched at the Conference of the Parties in May 2015. In addition to suggestions on possible revisions to the Annexes, we are also providing some thoughts on the path forward to conduct this work.

This work is of high importance because the world of chemicals and waste has changed greatly since the early 1990s, when the Basel Convention was established and such a significant review of the Annexes has not been undertaken since that time. We welcome this opportunity to be engaged in forward looking work that considers if the current scope of the Convention is broad enough to capture and control new wastes streams that are posing a threat to the environment and human health and how we can strengthen the effectiveness of currently controlled waste streams.

First, we would like to encourage a structured and evidence-based approach to support Parties in their review of the Annexes and guide collective discussions to identify key issues for each Annex, objectives and rationale for addressing the problems, and pros and cons of options. A well-structured approach would guide information collection efforts and set the stage for productive and informed discussions at the Open-Ended Working Group meeting in May 2016.

Second, the review of the Annexes should be supported by a technical working group to ensure continuity and consistency in the approach and principles guiding the work ahead. Looking back in history at amendments to the Convention, in particular the addition of Annexes VIII and IX, we note that a technical working group was mandated to support the work. As there is currently no lead country and no working group established for the current work, we are concerned that the absence of a leading group will hamper timely progress.

Keeping in mind the above considerations, we have undertaken a preliminary analysis of the Annexes with the following two objectives in mind:

1. Improving the characterization of wastes that are already within the scope of the Convention to facilitate the implementation of the Convention and improve the clarity of national reporting.
2. Improving environmental controls by expanding the scope of the Convention to include new waste streams or clarifying the applicability of the Convention to specific waste streams.

We would like to share with you some initial findings from our assessment of these Annexes without proposing firm solutions at this time.

- For Annex I, some changes could be made to improve the characterization of wastes that are already within the scope of the Convention. One example is Y29: *Mercury; mercury compounds*. It would be valuable to consider if additional Y codes are necessary to differentiate between the various types of mercury wastes as presented in the *Basel Technical guidelines on the environmentally sound management of wastes consisting of, containing, or contaminated with mercury or mercury compounds* and the Minamata Convention. New entries to reflect this would not enlarge the scope of the Basel Convention but it would improve the classification of the waste captured, overall tracking of different mercury waste streams and clarity of national reporting.
- We also see a need to control and add some new wastes such as lithium batteries and non-hazardous compressed gas. These waste streams are controlled by Canada's legislation and we would like to discuss the needs and benefits of controlling them under the Basel Convention. Discussion of potential codes to improve the ease of classification of wastes containing persistent organic pollutants (POPs) is also of interest to us.
- For Annex III, we see value in adding one hazardous characteristic that would capture gas for the same reasons as adding it to Annex I.
- Annex IV.A, would benefit from a review of the language and descriptors where appropriate to determine if they remain environmentally sound disposal operations as described. New entries could also be considered, for example; 1) "waste used in the testing of new technology", and 2) "release, including the venting of compressed or liquefied gases". Adding these disposal operations would enlarge the scope of the Convention and enhance the environmental controls of the Convention.
- For Annex IV.B, operations could be added for the recovery or regeneration of a substance not otherwise covered in the other R operations. In relation to electronic and electrical equipment, taking into account guidance on the definition of waste and non waste, some operations to capture the reuse and/or the repair and/or the refurbishment of a piece of electronic and electrical equipment could be added.

We hope these comments will be useful and we look forward to participating in subsequent work and discussions at the upcoming meeting of the Open-Ended Working Group concerning this issue.

Yours sincerely



Gwen Goodier
Basel Convention Competent Authority and Focal Point
Director, Waste Reduction and Management Division
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2. European Union and its member States

Attachment 1

2 December 2015

Submission from the EU and its Member States

Decision BC-12/1, Providing further legal clarity, legally binding options identified in section II.A and section II.B of annex II to document UNEP/CHW.12/INF/52

According to paragraph 24 of the above Decision BC-12/1, Parties are invited to submit to the Secretariat their views on the legally binding options identified in section II.A and section II.B of annex II to document UNEP/CHW.12/INF/52.

With reference to the above decision, the EU and its Member States are pleased to submit the following general and specific comments.

General comments

We consider that a review of Annexes I, III, IV and IX of the Basel Convention to update them is appropriate. This will involve an in-depth analysis of possible amendments, and their consequences. As a first step, we would propose that the existing legislation of Parties that is relevant to these Annexes should be analyzed as it will show how Parties have addressed the issues relevant to these Annexes.

For example, the EU Waste Framework Directive¹ contains lists of recovery and disposal operations in its Annexes I and II, respectively. In addition, this Directive contains some definitions in its Article 3 that may be relevant to the review of Annex IV to the Basel Convention, for example of the terms “recovery”, “recycling”, “disposal”, “preparing for re-use” and “re-use”. Furthermore, the draft glossary of terms agreed by the small inter-sessional working group on legal clarity at its meeting on 21-22 September 2015 may be taken into account in the review of Annex IV to the Basel Convention².

Annex III of the EU Waste Framework Directive contains a list of properties of waste which render it hazardous, through which this Annex has been adapted to the Globally Harmonized System of Classification and Labelling of Chemicals (GHS).³ This is in line with, and relevant to, the option set out in section II.B of annex II to document UNEP/CHW.12/INF/52.

As regards existing legislation of other Parties, we have for example noted that Schedules 1, 2 and 3 of the Canadian “Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations” (<http://laws-lois.justice.gc.ca/PDF/SOR-2005-149.pdf>) may also be analyzed. Schedules 1 and 2 include additional descriptions of disposal and recovery operations.

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0098>; a consolidated version is available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1443602085118&uri=CELEX:02008L0098-20150731>

² See the report of the meeting (document UNEP/CHW/CLI_SIWG.3/3, available at www.basel.int)

³ Please see further <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R1357>.

Finally, to help understand activities as they occur in practice, existing studies may be also taken into account in the review, for example a study from 2004 on the R and D operations commissioned by the European Commission.⁴

Specific comments on Annex IV in relation to paragraph 6 and the first sentence of paragraph 7 of Annex II to document UNEP/CHW.12/INF/52

a) A review to update the description of certain disposal operations in Annex IV and extend the list to include final disposal and recovery operations as they occur in practice

The definition of disposal is limited to operations specified in Annex IV to the Basel Convention. It is therefore important for the effectiveness of the Convention that the list of operations is able to describe operations as they occur in practice in a manner which enables them to be identified easily. The current text does not do so and we would therefore support a review.

In our view, there are inter alia the following issues in relation to which Annex IV may be improved:

1. The existing list is not comprehensive which has resulted in national regimes adding additional operations or providing for generic terms that capture operations not listed explicitly.
2. The list is also unclear as there are several potential overlaps, for example D1 'deposit into or onto land' and D5 'specially engineered landfill' or R9 '...other reuses of previously used oil' and R1 'use as a fuel'.
3. The two sections of the Annex do not allow for a clear distinction between Annex IVA operations and Annex IVB operations either in terms of their general nature, or in individual cases, for example D10 'incineration on land' and R1 'use as a fuel'.

In terms of how a review might be conducted, as explained above, national legislation may give some helpful indications. It may also be useful to conduct a study of operations conducted in practice at the moment. This would provide a better background against which to refine the existing descriptions of operations and provide for new ones. Existing studies such as the one referred to above may be useful.

b) A review to define relevant terms in the Annex

We think it would be useful to further look into the option of defining certain terms in Annex IV. This would be limited to terms that are not already defined in the Convention text.

An important question will be 'generic terms'. The Convention's definition of disposal covers all operations listed in Annex IV. The OECD defines Annex IVA and IVB operations as 'disposal' and 'recovery', respectively, which makes a clearer distinction between the two. We consider that we should keep the definition of disposal in the Convention text but that it would be helpful to address a clearer distinction between Annex IVA and IVB in Annex IV.

⁴ http://ec.europa.eu/environment/waste/studies/recovery_disposal.htm

In relation to a term for operations in Annex IVA, we would favour ‘final disposal’.

In relation to the term of operations in Annex IVB, we would favour ‘recovery’. This is consistent with the OECD Decision. It is also consistent with the approach taken in many decisions under the Basel Convention. Where the waste hierarchy is addressed, it is necessary to distinguish between different types of Annex IVB operations, in particular between ‘recycling’ and ‘other recovery, e.g. energy recovery’. This is much easier if ‘recovery’ is used as the generic term to cover all these operations. A recovery operation can be understood as an operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. We see this as the key distinction between Annex IVA and IVB operations.

It may also be useful to look at the option of defining certain terms as they are used in Annex IV to clarify the nature of the listed operations. The way the term ‘reuse’ is used in R9 in Annex IVB to refer to recycling of waste oil would be one possible case. As explained above, the draft glossary of terms may be helpful in this context.

c) Comments in relation to captions of Annex IV A and Annex IV B

It follows from our response above, that we believe a more comprehensive amendment to the captions of Annex IVA and IVB would be appropriate. The captions at present do not help explain the key distinction between Annex IVA and IVB operations. We think it might be an option to keep the captions short, i.e. e.g. to use “Final disposal operations” for Annex IVA and “Recovery operations” for Annex IVB, and to expand the introductory text (currently one sentence in both Annexes IA and IVB).

We also agree that the references to “direct reuse” and “reuse” should be addressed.

In relation to the final disposal operations described in Annex IVA, direct reuse is not relevant as any waste submitted to one of these operations will not be reused.

Annex IVB describes operations (recovery operations) that make use of resources as they will obtain some useful benefit from the waste, either by bringing it back into productive use or recovering energy from it. An object or substance that is certain to be used for the purpose for which it was conceived is not waste and is not subject to any disposal operation. References to ‘reuse’ and ‘direct reuse’ should recognize this and care should be taken to distinguish them from recovery operations that lead to reuse.

Specific comments on Annex IX in relation to the second sentence of paragraph 7 of Annex II to document UNEP/CHW.12/INF/52

The references to reuse and direct reuse in entry B1110 in Annex IX and footnotes 20 and 21 should be addressed. Annex IX lists types of waste which are generally non-hazardous. In this case, it concerns electrical and electronic assemblies. There is a related entry A1180 in

Annex VIII to cover such assemblies which are hazardous, but which does not contain any references reuse or direct reuse. The entry appears to indicate that assemblies destined for direct reuse may be waste. This is not consistent with the approach that has now been agreed in the technical guidelines on e-waste and we would therefore suggest deletion of the references to reuse and direct reuse, including the footnotes 20 and 21, as the simplest approach.

3. United States of America



United States Department of State

*Bureau of Oceans and International
Environmental and Scientific Affairs*

*Office of Environmental Quality
and Transboundary Issues*

**Comments from the United States of America on
the legally binding options for further steps towards the consistent interpretation of
terminology under the Basel Convention**

November 30, 2015

We appreciate the opportunity to comment on the legally-binding options for further steps towards the consistent interpretation of terminology under the Convention and we appreciate the work of the small intersessional working group (SIWG) to produce options for consideration. We understand the objective of this effort is to provide legal clarity to those provisions of the Convention that are interpreted and applied differently by parties under their respective national laws. In particular, Parties identified in Decision 10/3 the need for a clear distinction between wastes and non-wastes for some used equipment and second hand goods. We believe that any amendments to the Basel Convention should take into consideration the on-going discussions on the technical guidelines and should be thoroughly considered through an established review process. We also encourage Parties to provide guidance for situations where some Parties control materials as hazardous wastes and others do not, as these situations will likely continue to emerge in the future as countries transition to a sustainable materials management approach (or a circular economy).¹

Options Described in Section II.A of UNEP/CHW.12/INF/52

Any amendments to Annexes IV and IX, including amendments regarding the terms “reuse” and “direct reuse,” should take into consideration the final agreement on the *Technical Guidelines on transboundary movements of electrical and electronic waste and used electrical and electronic equipment, in particular regarding the distinction between waste and non-waste under the Basel Convention* (technical guidelines on e-waste). The guidelines adopted on an interim basis at COP-12 allow for flexibility in determining whether equipment destined for repair, refurbishment, reuse, and direct reuse should be considered a waste. The Annexes should reflect this flexibility if it is retained in the final version of the guidelines. Since more discussions are planned on outstanding issues in the context of the guidelines, any amendments to Annexes IV and IX should be made after there is final agreement on the guidelines.

¹ “Sustainable materials management” and “circular economy” are related terms. Sustainable materials management is a systemic approach to using and reusing materials more productively over their entire lifecycles in order to find new opportunities to reduce environmental impacts, conserve resources, and reduce costs. A circular economy is one which works to reduce waste before it is produced, but which treats waste as a resource when it is.

We also note that amendments to the text of Annexes IV and IX should go through a thorough review process. Amendments to the text of Annex IX must follow the process further described in Decision VIII/15. Annex IV has not been revised since the Basel Convention was adopted. Given the implications of amendments to Annex IV, we believe that Parties should establish a process for amendments to Annex IV that is similar to the process used for amendments to Annexes VIII and IX. This process should identify the scope of the review. In UNEP/CHW.12/INF/52, the SIWG identified some amendments to text in the headings and list of operations in Annex IVB, but did not mention changes to Annex IVA. Therefore, it seems that the scope of the review should be limited to amendments to the text of the headings and list of operations in Annex IVB.

We recommend that OEWG-10 also consider options to help countries ensure the appropriate management of materials that are considered to be a hazardous waste by some Parties, but not by others. Some countries will seek to eliminate trade barriers to reuse and recycling as they transition to a sustainable materials management approach, while such barriers will continue to be vital to protect human health and the environment in other countries. Parties have not agreed on the circumstances when used electrical and electronic equipment should be considered hazardous waste within the scope of the Basel Convention, and there are likely other materials for which there exists a similar disagreement. The Basel Convention prescribes a process that allows Parties to have different levels of control. Parties can control additional materials beyond those identified by the Convention through notifications pursuant to Articles 3, 4(1), and 13(2) and obligations pursuant to Articles 4(1) and 6(5). During the process to develop the technical guidelines on e-waste, some Parties made it clear that they have difficulty in submitting notifications pursuant to Articles 3, 4(1), and 13(2). Other Parties asserted difficulties in ensuring compliance with requirements under Article 4(1) and Article 6(5). A compilation of best practices utilized by Parties in these cases of different levels of control could help the Parties ensure that such materials are managed in an environmentally sound manner.

Options Described in Section II.B of UNEP/CHW.12/INF/52

Additional information is needed to determine the appropriateness and necessity of amendments to Annex I and III. Information should be provided on:

- the suggested text amendments to the annexes,
- the challenges parties are facing that would be resolved from these amendments, and
- how the amendments will provide legal clarity for the provisions of the Convention that are interpreted differently by parties.

The lists in Annexes I and III have not been revised since the text of the Convention was adopted. Given the potential implications to the implementation of the Basel Convention as a result of amendments to Annexes I and III, we recommend that Parties develop a process for evaluating amendments to these annexes. The procedure for the review or adjustment of the lists of wastes contained in Annexes VIII and IX in Decision VIII/15 could be used as a basis to develop the procedure for Annexes I and III. The procedure should make clear the scope of the review to avoid unnecessarily opening text that does not need to be amended.

4. Bureau of International Recycling



Sent by Email: juliette.kohler@brsmeas.org

Juliette VOINOV KOHLER
Legal and Policy Advisor
Head of the Legal and Governance Unit

30 November 2015

Re COP-12 Decision BC-12/1: comments on Annex IV

Here below we provide our initial comments and proposed text changes for rewording the UN-EP Basel Convention Annex IV, particularly as terms have evolved since the late 1980ies, and the terms used to describe Annex IV "Operations" are focussed on materials rather than on articles. Proposed text changes are highlighted in the Annex Title, the Section titles and the content of Section B as:

Annex Title
ANNEX IV
DISPOSAL **or RECOVERY** OPERATIONS

Section A Title
Option 1
A. **FINAL DISPOSAL** OPERATIONS

Option 2
A. **FINAL DISPOSAL** OPERATIONS WHICH DO NOT LEAD TO THE POSSIBILITY OF RESOURCE **REGENERATION**; **RECYCLING**; **RECLAMATION**; OR ALTERNATIVE USES

Section B Title
Option 1
B. **RECOVERY** OPERATIONS

Option 2
B. **RECOVERY** OPERATIONS WHICH MAY LEAD TO RESOURCE **REGENERATION**; **RECYCLING**; **RECLAMATION**; OR ALTERNATIVE USES

Content of Section B
R1 Use as a fuel (other than in direct incineration) or other means to generate energy
R2 Solvent reclamation **or** regeneration
R3 Recycling **or** reclamation of organic substances which are not used as solvents
R4 Recycling **or** reclamation of metals and metal compounds
R5 Recycling **or** reclamation of other inorganic materials
R6 Regeneration of acids or bases
R7 Recovery of components used for pollution abatement
R8 **Regeneration or** reclamation of components from catalysts
R9 Used oil re-refining or other **uses** of previously used oil
R10 Land treatment resulting in benefit to agriculture or ecological improvement
R11 Uses of residual materials obtained from any of the operations numbered R1-R10
R12 Exchange of wastes for submission to any of the operations numbered R1-R11
R13 Accumulation of material intended for any operation in Section B

The respective UN-EP Basel Convention Technical Guidelines descriptions and explanations should be considered when elaborating the above "R list" e.g. for R4 see: "Technical guidelines on the environmentally sound recycling/reclamation of metals and metal compounds (R4)" - Adopted by decision VII/14 of the seventh meeting of the Conference of the Parties to the Basel Convention (Geneva, October 2004)

Yours sincerely,

Ross Bartley
Trade & Environment Director

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5. Hazardous Waste Europe

From: [Alain HEIDELBERGER](#)
To: [Juliette Kohler](#)
Cc: [Astrid Freynet](#); [Huques Levasseur](#); [Nicolas Humez](#)
Subject: HWE - Basel Convention - vues on options IIA and IIB of annex II
Date: lundi, 30. novembre 2015 19:35:49

Dear Mrs Juliette Voinov Kohler

We thank you for your mail dated November 11, 2015.

HWE supports options IIA and IIB of annex II of UNEP/CHW.12/INF/52 document.

In addition, HWE would like to make following comments :

- annex III: needs to be compared with hazardous characteristics used today by the different countries
- annex IV: is the annex which needs the maximum to be updated considering actual technologies (some of them are not used any more in the world).

HWE would be very happy to help by sending its data and detailed information about hazardous waste management and treatment to the Basel Secretariat.

Kind regards,

Alain Heidelbergger
General secretary

HAZARDOUS WASTE EUROPE (HWE)

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HAZARDOUS WASTE EUROPE (HWE), established in April 2011, represents more than 150 hazardous waste treatment installations in Europe operating a wide variety of processes with a total capacity of 4,5 million tons per year. HWE aims at promoting high quality treatments of hazardous waste, environment and human health protection and safety of workers in the legislation.