Basel Convention Update and Outlook: Electronics and the Circular Economy

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Technology Recycling Conference – ISRI and ITI

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Agenda

Basel Convention and the Circular Economy

Management of used equipment for repair and refurbishment

Recent and Proposed Amendments: plastics, e-waste, and hazardous waste classifications

Opportunities to accelerate the circular economy

Managing business and legal risk
Basel Convention and the Circular Economy

- Basel Convention (189 parties) informs national waste legislation world-wide
- Imposes controls and trade bans on covered waste shipments – plastics, electronics, batteries
- Implications for EPR, recycling and sourcing of recycled content
- Legal uncertainty around shipments for repair, refurbishment, reuse
- Circularity goals must account for current and future Basel waste listings and controls on covered recyclables
Big Changes Underway

• New listings covering most plastic wastes (effective Jan. 1, 2021)

• Proposed amendments
  – Waste classification for waste equipment managed for repair and reuse (EU and others)
  – Waste classification and control of all non-hazardous e-waste – Annex II (CH/GH)
  – Expansion of “hazardous waste” categories and characteristics (Annexes I and III with focus on lithium batteries)

• Outcomes will determine viability of circular economy world-wide

• U.S. uniquely disadvantaged
Implications for Sustainability, Circularity and Trade

- Repair/remanufacture of equipment
- Electronics recycling
- EV battery recycling
- Automobile recycling
- Plastics recycling
- PV panel recycling, etc.
Trade Disruption Risks

• Covered wastes subject to PIC trade controls world-wide.
• Covered wastes subject to party to non-party trade ban with U.S. absent Art. 11 agreement.
• Covered “hazardous waste” subject to OECD to non-OECD trade ban.
• Legal uncertainty for recyclables shipped within OECD.
Basel Convention - Quick History

- Global concern over dumping of hazardous waste in developing countries (1980s)
- Basel Convention signed in 1989, entered into force in 1992
- 189 Parties to the Convention
- United States signed but is not party
- Parallel agreement governs trade in recyclables among OECD countries
Basel Convention – Overview

Parties to control certain transboundary waste shipments (exports, imports, transit)

- Prior informed consent (PIC)
- Wastes shipped for:
  - Final disposal
  - Recovery/recycling
- ESM, movement documents, contract, insurance, duty to re-import

Framework for controlled wastes and domestic waste laws

- "waste" definition
- "hazardous waste" classifications
- "other waste" classifications

Various Trade Bans

- Ban on trade with non-parties absent “Art. 11” Agreement (hazardous and other wastes)
- Recognizes right of parties to ban waste imports
- "Ban Amendment" prohibits exports from OECD to non-OECD (hazardous waste only)
Electronics for Repair, Reuse
Used Equipment Managed for Repair, Refurbishment, Reuse

- Legal clarity on “wastes”
- Technical Guidelines: criteria to demonstrate shipments of used equipment for failure analysis, repair and refurbishment are non-wastes
- Provisionally adopted at COP-14
- Country approaches evolving
EU Amendment – Preparing for Re-use

- EU amendment proposal for Annex IV:
  - **R20: Preparing for re-use (e.g. checking, cleaning, repair, refurbishment)**

- Would expand scope of “waste operations” to include certain types of repair and refurbishment activities.

- Increases risk that shipments for re-use, repair, refurbishment will be covered waste shipments (subject to PIC controls and trade bans).

- To be considered for adoption at COP-15 (June 2022)
What Are *Hazardous* Wastes?

### Wastes Deemed Hazardous by Convention

- Wastes containing *constituents* listed in Annex I, (e.g., lead) or listed as Annex I waste stream
- *unless* the *waste* does not possess *hazardous characteristics* listed in Annex III (e.g., corrosive, toxic)

### Wastes Deemed Hazardous Under National Law

- Parties can include additional wastes via national law
- National definitions and testing procedures govern hazardous classifications

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**E-wastes and batteries listed on Annex VIII are *presumed hazardous***

**E-wastes and batteries listed on Annex IX are *presumed non-hazardous***
Review of Annexes

- Mandate for Expert Working Group
- EWG-RA to meet in January 2022
- COP-15 (2022): Expected to update e-waste listings (Annexes VIII A1180 and IX B1110)
- COP-16 (2023) Expected to update Annex I (hazardous constituents) and Annex III (characteristics)
  - Proposals to add cobalt, lithium, aluminum compounds
  - Proposal to categorically list e-waste
  - Revise hazard characteristics to align with GHS
- Attention to waste classification for lithium-ion batteries
What are *Other* Wastes?

- Annex II “other” wastes requiring special consideration
  - Y46: Wastes collected from households
  - Y47: Residues arising from the incineration of household wastes
  - Y48: New plastics listing
- Note – Annex II “other” wastes are subject to:
  - Prior notice and consent
  - Ban on shipments to/from non-parties
  - (But not subject to Ban Amendment)

Controlled the same way as hazardous wastes for most purposes.
New Plastics Amendment

July 2018: Norway Proposes Amendment

May 2019: Basel Parties Adopt

January 2021: Entry into Force
### Plastic Wastes After Amendment

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<td>Y48 Other</td>
<td>Controlled</td>
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</table>
| All Plastic Waste not in Annex VIII or IX | If waste contains Annex I constituent and possess Annex III characteristic | Almost exclusively consisting of single polymer, destined for recycling* in an environmentally sound manner and almost free from contamination:  
- Non-halogenated polymers (illustrative list)  
- Resins & thermosets (illustrative list)  
- Fluorinated polymers (exclusive list - no PTFE or ETFE)  
| Mixed waste, only if PE, PP, or PET destined for “separate recycling” almost free from contamination |  
| *Recycling defined as R3 operation in Annex IV does not include “use as a fuel” | Not Controlled |
Swiss/Ghana CH-GH Proposal (COP-15 June 2022)

Current e-waste listings

- A1180 presumptively hazardous entry in Annex VIII
- B1110 presumptively non-hazardous entry in Annex IX

Swiss/Ghanaian proposal

- Revised but remains in Annex VIII
- Becomes Y49 controlled “other” waste in Annex II

Not controlled  Prior informed consent  PIC + Ban Amendment
Possible PIC Improvements?

• Russia Amendment Proposal (Par. 2, Art. 6):
  – 30-day time limit for Parties to review PIC notifications
  – To be considered at COP-15 (June 2022)

• E-Notification:
  – Work program exploring options for e-notification and documentation
    – more robust work plan expected after COP-15

• Basel PACE Partnership:
  – Developing work plans, pilot programs, guidance documents, and trainings aimed at improving the management of e-waste
Basel Article 11 Agreements

• Parallel agreements to Basel Convention
  – Alternative shipment controls
  – Provisions not less environmentally sound
  – Can include parties and non-parties

• OECD Decision on waste destined for recovery

• Particularly important to the U.S.
  – U.S.–Canada and U.S.–Mexico bilateral agreements
  – U.S. “Import only” bilaterals with Malaysia, Philippines, Costa Rica
  – U.S.–Canada Arrangement on non-hazardous wastes
OECD Decision

  – Trade facilitation (tacit consent, pre-consented facilities, approvals covering shipments over 3 years)
  – Broad green list entries for e-waste
  – Automatic incorporation of Basel annex amendments unless member objects

• Recent challenges with incorporation of Basel Y48 plastic waste listings
EU Implementation of Basel Convention and OECD Decision

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<th>Waste Shipment Regulation</th>
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<td>• Governs waste shipments within, into, and out of the EU for recovery</td>
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<td>• Includes special provisions for shipments to/from countries subject to the OECD Decision</td>
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<td>• Incorporates waste lists from Basel Annexes II, VIII, IX and the OECD Decision</td>
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<td>• Ban on exports of hazardous and Basel Annex II wastes to non-OECD countries for recovery</td>
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<th>Annex VI of the WEEE Directive</th>
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<td>• Addresses waste / non-waste issue</td>
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<td>• Preceded Basel Technical Guidelines</td>
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<th>Correspondents’ Guidelines No 1</th>
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<tr>
<td>• Provides more detail on waste / non-waste issue</td>
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<td>• Adapts Basel Technical Guidelines to the framework in the WEEE Directive</td>
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Recent U.S. – Canada Success

- Expansion of Basel Annex II threatened to close the U.S. – Canada border for shipments of plastic for recycling
- Governments announced a new arrangement to allow continued trade in non-hazardous waste between the U.S. and Canada
  - Will operate as a Basel Article 11 arrangement
  - Covers all non-hazardous waste, including Annex II plastic
- Broad scope successfully future proofs the arrangement
  - Anticipates and protects against potential amendments to Basel Annex II
  - U.S. – Canada trade in e-waste will continue regardless of Basel amendments
- Challenges with U.S. – Mexico shipments (recycling and repair)
# US Ratification of Basel Convention

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<tr>
<th>History</th>
<th>Benefits</th>
<th>Challenges</th>
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<td>• Several efforts at implementing legislation, but none have been adopted</td>
<td>• US no longer subject to party/non-party trade ban</td>
<td>• Limited political interest to date – although several trade groups and NGOs supportive (in concept)</td>
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<td>• None got traction but now renewed interest</td>
<td>• US would have a seat at the table for negotiations</td>
<td>• PIC for Annex II wastes?</td>
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<td></td>
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<td>• Ban Amendment?</td>
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<td>• Amendments to RCRA?</td>
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## Domestic Process

- 1992 Senate advice & consent to original treaty
- Impact of BAN Amendment
- New U.S. authority needed:
  - Broader universe of controlled wastes
  - Authority to stop exports when reason to believe will not be subject to ESM
  - Re-importation of wastes illegally trafficked

## History

- Several efforts at implementing legislation, but none have been adopted
- None got traction but now renewed interest
Reducing Business Risk

- Attention to national UEEE and WEEE classifications and requirements
- Evolving hazardous waste classifications for lithium batteries
- Hazardous waste classifications typically country-specific determinations
- Watch for new HS 2022 Customs Codes for e-waste
- Anticipate new pathways or barriers to recycling trade (e.g., new Basel waste listings, expanded OECD membership)
Looking Ahead

• Special EWG-RA meeting on e-waste listing (Jan. 13, 2022)

• COP-15 (cont’d in-person June 2022)
  – Review and adoption of technical guidelines
  – EU amendment on “preparing for re-use”
  – EWG-RA revisions to current e-waste listings
  – CH/GH amendment for new Annex II listing for non-hazardous e-waste
  – Russia amendment on PIC notices

• For COP-16 (2023)
  – Amendments to Annexes I and III (IV?)
  – Classification of lithium and other batteries

BRS MEAS
https://www.flickr.com/photos/63284352@N08/4487973871/in/album-7215760994000852771/
Future-proofing the Circular Economy for Electronics

• Parties will need to balance control with unintended barriers to circularity
• Companies and trade groups need to advance new trade facilitating measures with transparency and guard rails that ensure environmentally sound reuse and recovery:
  – Retain Annex IX (non-hazardous) listings for certain e-wastes
  – Legal clarity and Technical Guidelines on shipments for repair
  – Modernize PIC process
  – Identify materials for “end-of-waste” status
• Consider new Art. 11 arrangements - environmentally sound management with efficient and transparent movement
• Consider benefits of U.S. ratification of the Basel Convention
Questions

Thank you!

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