

Our position

Basel Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3.4 trillion in 2021, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Executive summary

The Basel Convention is an international treaty that controls cross-border movements of hazardous and certain ‘other’ waste to promote environmentally sound management (ESM) of those materials within the Convention’s signatory countries. The Basel Parties – the 190 global governments that have ratified the Convention and implemented its provisions through national legislation – are convening at two key meetings in 2023. In the context of the recent expansion of materials subject to Basel controls and current proposals to amend the Convention, governments must use these meetings to strike the right balance between ensuring the proper management of wastes and facilitating the movement of valuable used equipment to support the circular economy.

The below key recommendations to Basel Parties would ensure that the Basel Convention does not create legal uncertainty and is consistent with circular economy approaches:

1. Endorse final adoption of the Basel Technical Guidelines on E-Waste, which clarify the distinction between waste electronics and electrical equipment (WEEE), which is covered by the Convention, and used electric and electronic equipment (UEEE), which is not covered by the Convention.
2. Reject proposals to classify ‘preparing for reuse’ or ambiguous ‘catch-all’ activities as waste activities under Basel to avoid erecting obstacles to product reuse, repair, remanufacturing and refurbishment operations.
3. Reject proposals to classify all WEEE as presumptively hazardous under the Convention.
4. Ensure further legal clarity in the definition of ‘hazardous characteristics.’
5. Improve and modernise Basel’s antiquated primary control system, the Prior Informed Consent (PIC) procedure.
6. Advance discussions on the waste classification of lithium batteries.

Introduction

The Basel Convention is an important legal regime for circular economy efforts at the global level, with the potential to promote or hinder circularity investments and activities. The international agreement has been ratified by 190 government Parties and controls transboundary movement of hazardous waste and a growing discretionary category of ‘other’ waste (eg non-hazardous WEEE that was recently brought under the Convention and many household plastics).

The Convention seeks to meet several policy objectives by controlling these materials, including:

- Reducing hazardous waste generation.
- Promoting ESM of hazardous and other wastes, wherever the place of disposal.
- Restricting transboundary movements of hazardous wastes to destinations without ESM capacity.
- A government-to-government regulatory consent system to control and track transboundary movements when they are permissible.

The Convention does not cover products or used equipment that are not waste. Today, under the Basel Convention, used electronic goods shipped for legitimate repair, refurbishment, remanufacturing or reuse are not waste, while obsolete electronic goods sent for recycling or disposal

(eg to a landfill) are considered waste. The Convention's primary mechanism for controlling covered waste shipments is the PIC procedure, which requires pre-shipment consent from the governments exporting, importing and of any transit countries.

That process is managed by most Parties today through outdated paper-based systems, which cause long delays for shipments and significant business interruptions and costs. The time it takes PIC notifications to be processed and the costs associated with awaiting approval can be a barrier for recyclers to ship e-waste, especially where multiple transit authorities are involved. For example, it can take several months – and sometimes over one year – to clear shipments in some regions. The Convention also imposes certain outright trade bans, including barring hazardous waste shipments from Organisation for Economic Co-operation and Development (OECD) countries to non-OECD countries. Notably for American Chamber of Commerce to the EU (AmCham) members, it prohibits shipments of covered wastes to and from non-Basel Party countries like the US without a special bilateral or multilateral trade agreement.

Recently, the Convention has become increasingly impactful for global economic operators moving WEEE transboundary. The 15th meeting of the Conference of the Parties (COP-15) to the Basel Convention held in June 2022 adopted amendments to the Convention that expanded the control of transboundary movements of e-waste, making all electronic and electrical waste – hazardous and non-hazardous – subject to the PIC procedure and to the trade ban with the US, beginning 1 January 2025.

In addition, the Open-Ended Working Group (OEWG), a subsidiary body of the Basel Convention, is currently addressing a number of proposed Convention amendments and other proposals. The OEWG assists the Conference of the Parties by laying out the preparatory work, drafting formal proposal text and discussing policy, technical, scientific, legal and institutional issues relating to any proposals ahead of COP-16.

Some of these proposed amendments could blur the line between WEEE and non-waste used electronic products (eg UEEE, which is outside of Basel's scope), which presents a real risk of stifling WEEE and UEEE trade flows to destinations capable of putting those materials to their highest and best circular use. They could have a major impact on the global electronic sector, the information and communication technology sector and international companies that seek to move Basel-controlled wastes around the world. If adopted, they could severely affect global reverse logistics, create more legal uncertainty around Basel compliance and interfere with corporate circular economy programmes and commitments.

It is critical that these risks be considered and addressed at the OEWG meeting on 21-23 February and at COP-16 on 1-12 May, both in Switzerland. Key recommendations to prevent these outcomes are outlined below.

Recommendations

Reject the proposal to add ‘Preparing for reuse’ and a ‘catch-all’ waste activity to Annex IV of the Convention

The EU proposes to add a new waste operation, ‘R20: Preparing for reuse (eg checking, cleaning, repair, refurbishment)’ to Annex IV of the Convention, which covers waste disposal and recovery operations. The EU’s proposal is not limited to electronics and would impact all used materials and products that undergo these activities and potentially reclassify them as ‘waste.’ Currently, they are considered non-waste used products, which are not subject to Basel controls.

As proposed, this amendment contradicts the approach of the EU’s Circular Economy Action Plan and implementing legislation. It creates legal uncertainty and could lead national authorities to classify used goods as ‘waste,’ and therefore subject them to burdensome controls (eg the PIC procedure). This could substantially chill movement of used products shipped for reuse, refurbishment, remanufacturing and repair – all high-value circular activities.

The EU’s amendment also contradicts the Basel Technical Guidelines on e-waste, adopted on an interim basis by the Parties, which specifies that UEEE destined for legitimate repair, refurbishment, remanufacturing and reuse are products, not wastes, when managed in accordance with the Guidelines. The Technical Guidelines already clarify the distinction between UEEE managed for reuse (not subject to Basel controls) and e-waste. The Guidelines were developed pursuant to difficult and lengthy negotiations among the Parties and as of today, provide a comprehensive and consistent framework for the proper classification of UEEE.

The same issues apply to the proposal from the EU and other Parties to add a ‘catch-all’ waste operation (ie a vague entry left up to the individual Parties) to Annex IV of the Convention. This would create legal uncertainty and a great amount of discretion for governments’ waste/non-waste classifications with no scientific basis. Like the EU’s ‘preparing for reuse’ proposal, this approach could chill shipments of valuable used materials for circularity purposes by creating unpredictability and imposing burdensome and costly regulatory obstacles. The EU has indicated that the proposal should only cover equipment that is already waste before it is prepared for reuse (eg equipment brought to a community waste collection point). However, the proposed R20 text does not make that clear and could, in practice, prompt many governments to control equipment that is not yet waste (eg equipment shipped for warranty repair).

Driven by national policy goals and internal sustainability strategies, over the years companies across the globe have invested in and implemented practices to promote more circular business models based on robust reuse, repair, remanufacturing and refurbishment operations to increase materials efficiency and reduce carbon emissions. The proposals under consideration by the Basel Convention would nullify these investments for no legitimate environmental reason.

Reject the inclusion of all WEEE – hazardous and non-hazardous – and certain commonly used constituents as presumptively hazardous material under Annex I of the Convention

The proposal to include a new category under Annex I, 'Z1: Waste electrical and electronic equipment including scrap,' would define all e-waste as presumptively hazardous, which contradicts the more nuanced e-waste listings for hazardous and non-hazardous WEEE in Annexes VIII, II and IX of the Convention.

Furthermore, adding new hazardous listings under Annex I for ubiquitous constituents – such as aluminium and alkaline earth metals, many of which are generally benign – seems scientifically unjustified and has the potential to weaken the main purpose of hazardous waste listings. Parties proposing these amendments should provide comprehensive technical information supporting the rationale for these changes and their benefits before the Conference of the Parties considers them.

Clarify the definitions of hazardous waste characteristics on all Basel Parties

Some proposed amendments to Annex III aim to align the Basel Convention's hazardous waste characteristics with the Globally Harmonized System of Classification and Labelling of Chemicals. The leading proposal would replace Basel's Annex III with Annex III of the EU Waste Framework Directive (WFD), establishing the current EU definition of each hazardous characteristic as legally binding worldwide. Most WFD definitions use threshold concentrations to determine whether a given waste exhibits a given characteristic and directly apply the European Chemicals Agency's substance classification. If this model were incorporated into the Basel Convention, it would permanently redefine most hazardous waste characteristics as essentially quantitative measures, regardless of any waste's actual capacity to cause the designated harms. Global adoption of the WFD definitions would prejudge empirical questions that are appropriately answered through scientific research and would supersede the policymaking authorities of individual Parties. As a better alternative with all of the same benefits and none of the unintended consequences, the Parties could instead adopt substance-specific concentration thresholds through technical guidelines or other guidance documents that can be updated as new scientific information becomes available.

Modernise the Prior Informed Consent (PIC) procedure

The Parties' renewed focus on improving the PIC process is an important step to modernising a heavily burdensome administrative process for both national authorities and entities seeking to move goods. The PIC process is a government-to-government notice and consent procedure that provides transparency into requested transboundary movements of hazardous and other waste. Developed decades ago, the PIC procedure still relies primarily on paper documents, leading to long delays in approvals, if requests are processed at all. Applying this process to products moving for reuse and materials moving for recovery would undermine circular economy efforts.

An expanded mandate and work plan for the small intercessional working group on electronic PIC (e-PIC) systems and notifications are a positive improvement. E-PIC pilot projects led by Parties with the participation of non-government stakeholders present an opportunity to develop a standardised, efficient and effective approach to PIC. Broader reforms to modernise and expedite the PIC system

(eg re-examining the role of transit countries' approval, standardised content and usage of forms) across jurisdictions would also be beneficial.

Advance discussions on lithium batteries

Following relevant legislation recently adopted in the EU (Regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020), discussions on the waste classifications for lithium batteries within the Expert Working Group on Review of the Annexes are particularly timely and important and should progress as much as possible to provide industry with more legal clarity for compliance.

Conclusion

Moving waste for recovery in compliance with the Basel Convention is a top priority to ensure the ESM of such waste and achieve the circular economy. A key to furthering this effort is modernising the Basel control system to ensure it functions efficiently and effectively, instead of as an impediment to sustainability efforts. Additionally, promoting clear and consistent adoption of the Convention's rules in countries' national implementing legislation is essential to minimising unnecessary regulatory burdens, compliance costs and business disruptions.

Industry is eager to participate in the Parties to the Basel Convention's ongoing discussions. If adopted, the above recommendations would better enable both the public and private sector to responsibly manage transboundary movements of hazardous and other waste and to drive a more circular economy globally.