



delegate alert

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The Swiss-Ghana Amendment: A Step Towards Closing the Last e-Waste Dumping Pathways

Need to Tackle "Repairables" Next

The Need to Extend Annex II Again -- This Time for e-Waste

In 2019, the Parties to the Basel Convention agreed to important new amendments to control for the first time, problematic plastic wastes whether they are hazardous or not.

This was done by expanding Annex II, an Annex which for years had been confined to only two listings -- Y46 -- Wastes collected from households, and Y47 -- residues arising from the incineration of household wastes with a new Y48 for certain plastics.

Annex II listings require, as a minimum, the basic control procedure of "prior informed consent" (PIC) even when wastes are not definitely defined as hazardous.

With the Swiss-Ghana proposal then, the same assurance of transparency and right of refusal provided by hazardous electronic waste (PIC) is required for electronic waste, even when it is non-hazardous or it is difficult to prove whether it is hazardous or not. The proposal removes the Annex IX (non-hazardous) listing for electronic waste (B1110) and replaces that with a new listing (Y49) under Annex II.

Annex II acknowledges that sometimes, due to material ambiguity or the harm created by the likelihood of poor management, it is vital to control wastes other than those definable as intrinsically hazardous. These two types of wastes are what the Convention seeks to control and that is why the Convention speaks of Hazardous and "other" (Annex II) wastes in almost all its legal obligations.

The case for creating such an Annex II listing for e-wastes not found on Annex VIII (hazardous waste) is compelling for the following reasons:

1. When managed poorly or informally, as history has shown is likely to be the case, e-Wastes have a high likelihood of creating extremely hazardous pollution (e.g., the highest levels of dioxins found on earth from the burning of electronic waste in Ghana).
2. The most common driver for export to weaker economies lies in the lower labor costs, but also in the commensurate lack of wealth to provide environmental and societal safety nets. In other words, the wastes move to externalize real costs to countries least able to afford to mitigate them.
3. Much of the content of electronic waste is, in fact, plastic waste which by default is contaminated and mixed; thus, it can be argued there is already a precedent for controlling this e-waste under the 2019 now Plastics Amendment listing Y48. The addition of Y49 for e-waste removes classification confusion -- they both will be controlled consistently.
4. Ensuring controls for all e-waste, whether hazardous or not, will save considerable time and prevent confusion for all stakeholders and border control agents as nobody will be faced with having to prove it is hazardous or not. The expense of sophisticated lab analysis is a greater burden for developing countries.
5. The proposal is a timely safeguard for an expected future of less-hazardous, but nevertheless increasing volumes of complex, difficult-to-safely-process, low-value e-wastes. These will likely be dumped in developing countries as plastic waste is now if we don't require the PIC procedure.

Two Changes to Existing Amendment Needed to Improve Clarity

It is important though to make two alterations to the proposed amendment before it is adopted.

- 1) As the Annex VIII definition of electronic waste is currently being proposed for changes by virtue of the Review of Annexes work, the new Y49 entry should be a mirror entry (opposite) of that new A1180. Indeed the revised Swiss-Ghana Amendment can simply refer to the new A1180 and ensure that Y49 covers all e-wastes not referred to by that listing.
- 2) Further, we must ensure that the Swiss-Ghana proposal does not have the unintended consequence of harming legitimate recycling by preventing the trade of processed, non-hazardous, commodity fractions, produced by the recycling operation that already enjoy a unique Annex IX (such as B3011 (unmixed, uncontaminated, non-halogenated polymers) and B1010 (non-hazardous metal fractions)).

A newly proposed Swiss-Ghana proposal then could read as follows:

Y49 Waste electrical and electronic equipment and components not listed on related entry A1180.

Note: Non-hazardous waste fractions derived from processing waste electrical and electronic equipment or their components which are listed in another Annex IX entry – e.g., B3011, or B1010, are excluded from this listing.

The Remaining e-Waste Loophole Still to be Closed

After the passage of the Swiss-Ghana proposal, it will remain vital to close the one last but vast remaining loophole which continues to allow unscrupulous traders to simply export hazardous, unprocessed, non-functional equipment anywhere in the world outside of the controls of the Basel Convention. We refer to the "repairables loophole" that has unfortunately and inappropriately been placed into the e-Waste Guidance Document's Paragraph 32.

Without concern for the environmental consequences to developing countries, this paragraph allows an easy escape from the Convention by allowing exporters to simply make a contract (unenforceable) with an importer and claim that the e-Wastes are moving to be repaired. Sadly, this massive and obvious loophole will be exploited by many unscrupulous waste brokers and not just the Manufacturers who pressed so hard for this pathway of circumvention in the Guidance document.

Clearly, paragraph 32 must be removed or alternatively replaced with a transparent regime similar to the Swiss-Ghana proposal. As it stands, this "repairables loophole" runs counter to what was concluded in the earlier PACE and MPPI guidelines and recent decisions passed by the Parties to the Bamako Convention in their COP3. The "repairables loophole" is the reason the e-Waste Guideline has only been adopted on an "interim basis" and, as it was never a consensus document, should not have been passed even as an interim proposal.

Conclusion

To once and for all solve the e-Waste export and dumping tragedy we have witnessed around the world in the last two decades, the Basel Convention Parties at COP15 must:

- 1) **pass the Swiss-Ghana proposal** to place all unprocessed e-wastes under control procedures of the Convention.
- 2) **do nothing to further legitimize the mistaken e-Waste Technical Guideline's Paragraph 32**, but rather consider steps to reform that guideline to prevent wholesale exports of e-wastes under the name of "repair".

END