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

Third session

Geneva, 26–30 April 2004

Item 16 (g) of the provisional agenda*

**Preparation of draft decisions for consideration by the
Conference of the Parties at its seventh meeting:
national definitions of hazardous wastes**

National definitions of hazardous wastes

Note by the Secretariat

A. Introduction

1. Reference is made to decision OEWG-II/5 on national definitions of hazardous wastes (article 3 of the Basel Convention), by which the Working Group requested the Secretariat, together with interested Parties, to develop a standardized format for reporting under article 3 of the Convention for consideration by the Open-ended Working Group at its third session and for consideration and possible adoption by the Conference of the Parties at its seventh meeting. Germany volunteered to prepare a draft format for reporting information under article 3.
2. The Secretariat takes this opportunity to note that the absence of any reference to a particular provision of the Convention in notifications sent by Parties to the Secretariat and, in particular, failure to indicate whether notifications were transmitted under article 3 or article 13, paragraph 3, have often led to uncertainty and caused Parties to approach the Secretariat seeking clarification.
3. Notifications received under articles 3 and 13, paragraph 2 (b), relate to wastes not listed in Annexes I and II of the Convention but which are considered or defined as hazardous under the national legislation of a Party. A Party that wishes such wastes to be governed by the obligations and procedures for the transboundary movements of wastes provided under the Convention, such as, for example, the prior informed consent (PIC)

* UNEP/CHW/OEWG/3/1.

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procedure (article 4, paragraph 1 (c)), or a total or partial import prohibition (article 4, paragraph 1 (b)), must send a notification under articles 3 and/or 13, paragraph 2 (b), to the Secretariat for transmittal to all Parties. Once such a communication has been transmitted, the obligations arising under the Convention will apply to those wastes.

4. Communications received under article 13, paragraph 2 (c), relate to hazardous and other wastes in respect of which a Party wishes to impose a total or partial import prohibition, as is each Party's right as recognized under article 4, paragraph 1 (a). Such communications may relate to wastes included in Annex 1 and II, as well as those brought into the scope of the Convention by an article 3 notification (see above). Where a Party wishes to impose a total or partial import prohibition, this must be sent under article 13, paragraph 2 (c), to the Secretariat for transmittal to all Parties. Once such a communication has been transmitted, the obligations under, article 4, paragraph 1 (b), as well as those under other provisions, shall apply.

5. Information transmitted to the Secretariat under article 13, paragraph 3, the annual reporting requirement, cannot to be regarded as notifications under articles 3 and article 13, paragraph 2 (c).

B. Implementation

6. In January 2004, Germany assisted the Secretariat in developing a draft standard format for reporting under Article 3. The draft format was sent on 23 January 2004 to the members of the contact group, which was set up during the second session of the Open-ended Working Group, for their feedback by 6 February 2004. Further to this, written comments were received from the United States and those comments were taken into account in revising the draft format. The written comments received from the contact group and the revised draft format were posted on the web site of the Secretariat. The revised draft format was then sent for comments to all Parties and signatories, with the request that such comments be transmitted by 21 February 2004 to Germany and copied to the Secretariat. As at 22 February 2004, eight Parties, namely, Argentina, Armenia, Canada, Niger, Qatar¹, Slovakia, Slovenia and Sri Lanka, had responded.

7. The revised draft format for reporting under article 3 and written comments made by Parties and a member of the contact group are annexed to the present note.

8. The Secretariat received a communication in accordance with article 3 of the Basel Convention, dated 31 January 2004, from Malaysia, conveying its national definition of hazardous wastes, other than those listed in Annexes I and II of the Convention, considered or defined as hazardous under its national legislation and requirements concerning transboundary movement procedures applicable to such wastes. The Secretariat transmitted the communication to all Parties and signatories on 12 February 2004. The communication has also been posted on the Secretariat's web site in English and is being translated into Arabic, Chinese, French, Spanish and Russian.

C. Proposed action

9. The Open-ended Working Group may wish to submit a decision along the following lines to the Conference of the Parties at its seventh meeting:

*The Conference of the Parties,*²

Noting the standardized draft format for reporting under article 3 of the Basel Convention,

Welcoming the efforts made by Germany, in consultation with Parties, to assist the Secretariat in developing the standardized draft reporting format,

¹ Qatar completed the draft format for reporting under article 3.

Mindful of the importance of transmitting the notification of national definition of hazardous wastes pursuant to article 3 of the Convention by Parties to the Secretariat,

1. *Adopts* the standardized reporting format for reporting under article 3 of the Convention;

2. *Requests* the Parties that have not provided the Secretariat with any of the information required under article 3 of the Convention to provide such information not later than six months after the adoption of the standardized reporting format and to report any subsequent significant change of this information using the standardized format;

3. *Further requests* the Parties, when providing such information to the Secretariat, to make reference to the relevant Convention provision to avoid ambiguity;

4. *Requests* the Secretariat to make available on its web site the information received from Parties pursuant to article 3 of the Convention in the six official languages of the United Nations.

Annex I

Secretariat of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

Notification of national definitions or significant change to national definitions pursuant to article 3 of the Basel Convention

(Information reported using this form shall be regarded as formal notification pursuant
to article 3 and shall be transmitted by the Secretariat of the Basel Convention to all
Parties and signatories)

Country:

Government entity completing the questionnaire:

Address:

Telephone no:

Fax no:

Contact person:

Title:

Telephone no:
(if different from above)

E-mail:

Date when form completed(D/M/Y):

This report contains an updated national definition: Yes: No

National Definition of Hazardous Wastes		
1	Is there a national definition of <u>hazardous waste</u>?	
	Yes: <input type="checkbox"/>	No: <input type="checkbox"/> (If no, don't fill in the rest of the form)
	If yes, please provide the text of the national definition of hazardous waste (If national definition is contained in the national legislation or other document, please attach the full text of the relevant document):	
1a	Is this a significant change to the national definition that has been previously notified to the Secretariat of the Basel Convention pursuant to article 3(2)? (NB: Information transmitted annually under article 13 (3) does not represent a notification in compliance with article 3)	
	Yes <input type="checkbox"/>	No <input type="checkbox"/>
1b	What is the legal basis of this definition?	
	Basel Convention <input type="checkbox"/>	OECD-Council Acts <input type="checkbox"/> EU Waste Law <input type="checkbox"/>
	National <input type="checkbox"/>	Other <input type="checkbox"/> (specify under remarks)
	<u>Remarks, if necessary:</u>	

Annex II

Comments received from Parties² and a member of the Contact Group as at 22 February 2004 on the draft standardized format for reporting under Article 3

Parties

Argentina

Argentina wishes to congratulate the Secretariat for the development of a draft format for the report of National definition of hazardous waste and to thank Germany for taking the lead to prepare the draft.

Argentina's Competent Authority has no objections about the proposed format. Just only to suggest, that remarks regarding the definition and classification of hazardous waste should include (perhaps as a Foot Note to clarification) *de minimis* or low concentrations levels or cut-off levels of hazardous constituents in the stream under classification ej. slags, used mineral oils, asphalt, *etc.* Idem, HW cut-off levels in the stream to grant a permit for transboundary movement (Box 3).

Armenia

Draft format for reporting under Article 3 will help Parties to provide the Basel Convention Secretariat with accurate information concerning the national definitions of wastes and hazardous wastes and will enable the Secretariat to offer correct and updated information to the numerous queries received from importers and exporters of wastes. We have no special comments and suggestions on the above-mentioned document.

Canada

Canada would like to thank Germany for taking the lead on developing a draft reporting form for Party notification of national definitions of hazardous waste under Article 3 of the Basel Convention. We offer the following comments.

Page 1

- In the title we would delete "signatories" since this questionnaire will only be sent to the Parties.

Information reported using this form shall be regarded as formal notification pursuant to Article 3 and shall be transmitted by the Secretariat of the Basel Convention to all Parties and ~~signatories~~

- At the end of the page we would delete the following sentence since a party will send in the form only if it has something to report.

~~**This report contains an updated national definition: Yes: ——— No**~~

² Qatar sent the completed draft standardized format for reporting Under Article 3 to the Secretariat.

Page 2-3

- We would merge the question 1 with the question 2

National Definition of Hazardous Wastes		
1	Is this a first time report of a national definition of hazardous waste OTHER THAN THAT LISTED IN ANNEXES I, II OR VIII OF THE BASEL CONVENTION ?	
	Yes: <input type="checkbox"/>	No: <input type="checkbox"/> (If no, don't fill in the rest of the form)
	If yes, <ul style="list-style-type: none"> • Please provide the FULL text of the national LEGISLATION CONTAINING the definition of hazardous waste 	
1	<ul style="list-style-type: none"> • If yes, in the table below or as an attachment, please provide the categories of wastes covered that are not listed in Annex I, II and VIII of the Basel Convention 	
	WCO-HS <input type="checkbox"/>	OECD <input type="checkbox"/> EU-Waste List <input type="checkbox"/>
	National <input type="checkbox"/> (specify under remarks)	Other <input type="checkbox"/> (specify under remarks)
	<u>General remarks, if any:</u>	
Waste code*	Waste description	Remarks, if any:

*** Please ensure that your listing is as precise and clear as possible**

1a	Is this a significant change to the national definition that has been previously been notified to the Secretariat of the Basel Convention pursuant to Article 3(2)? (NB: Information transmitted annually under Article 13 (3) does not represent a notification in compliance with Article 3)	
	Yes	No

Page 2

We would delete question 1b. We don't think it is necessary as the Convention specifies that it has to be included in the national legislation. The other references are mostly to international treaties, which are not the same as what countries have put in their national legislation, and this is what is referred to in Article 3.1.

Page 4

We would reword the question 3.

3	Are there any requirements (procedures) concerning transboundary movements applicable to the wastes listed under question 1 above:	
	The same as for wastes of Annex I, II or VIII:	Other requirements (procedures): If other, please specify the requirements (procedures):

Niger

We have no comments on the draft format.

Slovakia

Page 1: We propose to replace “Government” entity completing the questionnaire with “Competent” entity completing the questionnaire; The Article 3 of the Basel Convention does not stipulate which entity is responsible to fulfil this duty - Competent Authority or Focal Point of the Basel Convention. It seems to us that this duty should be in the competency of the Focal Point, which submits the report in accordance with the Article 13 and 16 of the Basel Convention to the Secretariat of the Basel Convention.

We highly appreciate the activity of Germany in this matter and agree with the structure of the prepared format.

Slovenia

We would like to inform you that we do not have any comments on the proposed draft format for reporting under article 3 of the Basle Convention. May be only suggestion: We think it would be practicable if the comment that information transmitted annually under Article 13 (3) does not represent a notification in compliance with Article 3 would be added somewhere to the yearly report.

Sri Lanka

Re. question 2, I would like to propose to add a title to the table which is just below the box under question 2, to read as ‘Categories of wastes covered that are not listed in Annex I, II and VII of the Basel Convention’, in order to provide more clarity.

Contact Group**United States of America**

The U.S. would like to thank Germany for taking the lead on developing a draft reporting form for Party notification of national definitions of hazardous waste under Article 3 of the Basel Convention. We offer the following comments.

Page 1

Because government personnel change periodically, we would like to suggest changing the line that says, “Name of the person who completed the questionnaire:” to “Governmental entity completing this questionnaire:”. The idea would be that you list the actual government agency that completed the questionnaire, but list a contact further down (see the next bullet). Also, delete the “Title:” line, but keep the “Address:” line.

After the telephone/fax line, we suggest adding “Contact person:” (and perhaps “Title:” if desired). Then under the “E-mail:” line, add “Phone (if different from above):”

Finally, in the last line, we suggest breaking it into two separate lines as follows:

This report is an original submission Yes: ___ No: ___
 This report is an updated submission Yes: ___ No: ___

Page 2

It appears that box 1 goes beyond what is required under Article 3. We also believe this box is unnecessary because it would be impossible for a country to be a Basel Party if the did not have a national definition of hazardous waste. We suggest deleting this box entirely.

Box 1b asking “What is the legal basis of this definition” seems to go beyond what is required under Article 3. In addition, it doesn’t seem logical that there would be any other basis for a national definition of hazardous waste than national law. It is national law that implements the Basel Convention, the OECD Council Acts, etc. Therefore, the boxes for “Basel Convention”, “OECD Council Acts”, “EU Waste Law”, and “Other” are unnecessary. We suggest deleting this box entirely.

We agree that boxes 1a and 2 are consistent with Article 3. We question whether it is necessary to include the lined box for “Waste Code”, “Waste Description”, and “Remarks, if any” since most Parties will generate this information as an attachment to the reporting form, but we have no problem with keeping it if that is what others prefer.

Box 3 – suggest changing the first word from “Which” to “Specify any”. The sentence would then read, “*Specify any* requirements (procedures) concerning transboundary movements *that* are applicable to the wastes listed under question 2 above.”
