

US-ABC RECOMMENDATIONS FOR ASEAN ENGAGEMENT IN

BASEL CONVENTION INITIATIVES TO ADVANCE THE CIRCULAR ECONOMY

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US-ABC Recommendations for ASEAN Engagement in Basel Convention Initiatives to Advance the Circular Economy

The U.S. ASEAN Business Council (US-ABC) commended the initiative taken by the ASEAN Economic Community (AEC) Council to adopt A Framework for Circular Economy for the AEC in 2021. The Council and our member companies are supportive of ASEAN's transition towards a greener and sustainable economy that hinges on the five strategic priorities.

In concert with the Framework's Strategic Priority 1 on Standards Harmonization and Mutual Recognition of Circular Product and Services; and Strategic Priority 2 on Trade Openness and Trade Facilitation in Circular Goods and Services, we are pleased to share these recommendations for ASEAN Member States' (AMS) engagement in key initiatives underway within the Basel Convention that will impact the circular economy and trade among the AMS. We hope that these recommendations will provide a valuable industry perspective to the ASEAN Economic Ministers (AEM) in implementing the ASEAN Circular Economy Framework.

Many US-ABC member companies are advancing more circular business models for products and materials. Companies in the electronics, telecommunication, plastics, automotive, healthcare, logistics and energy sectors have ambitious circularity goals that seek to extend the useful life of products and recover materials for use in new manufacturing. These initiatives have the potential to advance sustainability while contributing to more resilient supply chains. Further, a study by the Economic Research Institute for ASEAN and East Asia (ERIA) has estimated that the adoption of circular economy principles could lead to economic growth of US\$324 billion and create 1.5 million jobs in Asia over the next 25 years.¹

ASEAN can play a critical role in the growing move toward circularity and host important manufacturing, repair and refurbishment and material recycling operations relevant to a variety of products, critical minerals, metals, and other recoverable materials. Newly launched initiatives under the Basel Convention have the potential to either accelerate or hamper these emerging economic processes. The AMS have an opportunity in the near term to shape emerging trade rules and other requirements of the Basel Convention in ways that align with the sustainability, investment, and trade goals of the region.

Background on the Basel Convention. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal is a global agreement governing trade in certain wastes. All AMS are among the 190 Parties to the Convention. The Basel Convention provides a legal framework for the classification and control of transboundary movements of waste to ensure environmentally sound management. In recent years, the Convention has become the primary legal framework governing the trade flows of valuable recyclables.

We encourage AMS to actively engage with Basel work groups to maximize opportunities to further circularity in the ASEAN Region. Following the Conference of Parties (COP) – 15 meeting of the Basel Convention in June 2022, Parties agreed to continue work on several initiatives and launched new work that has the potential to impact trade flows and the operations of companies conducting business in ASEAN. The U.S. business community requests the ASEAN Economic Ministers (AEM) to take note of these initiatives and their importance to future investment and business activity in the region. We also

¹ Economic Research Institute for ASEAN and East Asia. (2018) [Industry 4.0: Empowering ASEAN for the Circular Economy](#).

request that AMS actively engage within relevant Basel work groups to ensure decisions taken under the Basel Convention align with the broader sustainability and socio-economic goals of the region. Some of those key work streams are described below.

Avoiding disruptions to trade in used products managed for repair and reuse should be a top priority to advance sustainability and circularity in the region. The Basel Convention covers certain “wastes” destined for final disposal or recycling/recovery operations and imposes robust prior informed consent (PIC) procedures and trade bans on certain waste shipments. Negotiations in the months ahead will determine whether these controls on “waste” trade will be expanded to cover the growing trade in non-waste used products managed for repair, refurbishment, and reuse.

- **We urge AMS to help retain the current Basel Technical Guidelines on E-Waste to protect legitimate trade in non-waste used electronics.** The Technical Guidelines², adopted by the Parties on an interim basis, provide that properly documented and managed used electrical and electronic equipment shipped for repair or refurbishment prior to reuse is not waste and, therefore, not subject to Basel Convention controls. The Parties have agreed to review and update these Technical Guidelines to reflect the recently adopted amendments for electrical and electronic wastes entries A1181 and Y49. US-ABC believes it is important to preserve the criteria included in the Guidelines for differentiating “wastes” subject to the controls and trade bans of the Convention from used products and components managed for repair, refurbishment and reuse that are not wastes. We ask that AMS support updates to the Guidelines that retain these separate criteria and promote legitimate trade that extends the useful life of products and key components.
- **AMS should actively participate in upcoming negotiations on European Union Amendment Proposals to Annex IV of the Convention to ensure the proposals do not unnecessarily restrict the movement of used products managed for repair, refurbishment and reuse in the region.** The European Union amendment proposals for Annex IV would add a new waste recovery operation under the Convention – “R20: Preparing for reuse (e.g. checking, cleaning, repair, refurbishment)” – and potentially a “catch-all” waste operation entry that would not be clearly defined, but rather, subject to different interpretation and implementation by each Basel Party.

The R20 “preparing for reuse” proposal presents new trade disruption risks for AMS. The EU proposal is not limited to electronics but would capture a full range of manufactured products. Materials shipped for the purpose of an operation listed in Annex IV are “wastes” presumptively controlled under the Convention. Collectively, this proposed amendment, along with the recently adopted Swiss/Ghana amendment to control all e-waste under the Convention (hazardous and non-hazardous), threatens to restrict trade in non-waste used electronics in unintended ways.

The EU’s intent in proposing R20 is to incentivize recovery and reuse of used products, including electronics, *that have already become waste*. This is distinct from reuse of electronics as part of waste prevention, where products or components that are not waste are used again. The current proposal to add the R20 operation is overly broad and should be amended to reflect that it only applies to products *already deemed waste*, in parallel to the approach the EU takes in its own regulations. As proposed, the amendment would introduce confusion and legal

² UNEP/CHW.14/7/Add.6/Rev.1

uncertainty into the Convention's definition of waste, and it threatens to undermine the progress made by Parties in developing the consensus guidance clarifying that used electrical and electronic equipment destined for legitimate repair, refurbishment and reuse are products rather than wastes.

The EU's R20 amendment proposal has raised concerns among many Parties, and similar concerns arise from the EU's potential proposal of a "catch all" waste operation in Annex IV. A "catch-all" entry would not include clearly defined waste operations, but rather, would be an open-ended category that Parties could interpret and utilize to categorize certain shipments as waste. The confusion and legal uncertainty around this type of entry would, as with the R20 proposal, stifle trade in non-waste used electronics and other products and disrupt productive circular economy activities.

We urge AMS to participate in Basel work streams and to advance efforts in the region to modernize the PIC procedure. The Parties have also taken decisions to expand work on possible improvements to the PIC procedure governing covered Basel waste shipments. These actions have the potential to facilitate the transition to a more circular economy while improving environmental and economic outcomes. Two new work streams have the potential to expand trade and recycling in the ASEAN region and globally.

- At COP-15, the Parties established a small intersessional working group (SIWG) to consider electronic approaches to the notification and movement documents governing covered waste shipments. Parties and observers are invited to nominate experts to the working group and countries are encouraged to work on pilot projects regarding electronic PIC notifications. Updating the resources and electronic systems available to Parties to fulfill their PIC obligations could significantly improve the efficiency and transparency of the PIC procedure. We encourage countries from the region to participate in the new working group to advance approaches that would facilitate the recycling trade in the region.
- The Parties have also signaled interest in considering broader legal and policy discussions that might advance initiatives to improve the operation of the PIC procedure and thereby reduce trade frictions. Parties and observers are invited to submit comments to the BRS Secretariat by 30 November 2022 on current challenges and possible approaches to improving the current PIC procedure. The US-ABC encourages AMS to participate in this early discussion and consider options for improving the PIC procedure. Options might include additional capacity-building support, new administrative commitments, or new agreements among interested Parties to expedite PIC procedures, facilitate the movement of defined types of recoverable materials or the identification of approved receiving facilities.

We also invite AMS to participate in the Basel negotiations as part of remit of the SIWG on plastic wastes. The group is currently working on the finalization of the technical guidelines for the environmentally sound management (ESM) of plastic wastes, ahead of the expected endorsement during the Open-Ended Working Group meeting in February 2023. The guidelines under discussion underwent several changes throughout 2022. These guidelines are considered by the industry as key to enabling chemical recycling as an effective solution for the sound management of plastic waste and complementary to mechanical recycling. Despite the recognition in the document that "certain types of plastic waste are not suitable for mechanical recycling", the latest version of the document also

mentions a lack of evidence to understand the viability of chemical recycling at a large scale and its life-cycle impacts.

It is therefore fundamental that the overall benefits of chemical recycling and its rapid technological progress be understood at the Basel Convention. This will ensure support for the development of the technology across ASEAN, which is a critical region for the future and success of managing plastic waste through the option of chemical recycling. To that extent, it is also important to aim to achieve a degree of harmonization in defining the End-of-Waste status for plastics, to fully implement strategies for the deployment of chemical recycling.

Finally, we also encourage AMS to engage in Basel negotiations on hazardous waste classifications, which have the potential to significantly impact material flows in the region. Parties are also actively considering options for amending Annex I (hazardous constituents and waste streams) and Annex III (hazardous characteristics) that together are expected to redefine the scope of wastes deemed “hazardous” under the Basel Convention. These negotiations are taking place within an Expert Working Group on the Review of Annexes (EWG-RA), which will meet again in early December 2022. As this work could impact the classification and trade flows of various types of materials managed for recycling in the region, we encourage AMS to participate in these ongoing negotiations.

In addition to the priority work streams mentioned above, early work on the classification, management and trade in various types of waste batteries will also take place under a new working group on batteries that will develop environmentally sound management guidelines for lithium-ion and other batteries. Parties are also continuing to address technical and legal uncertainties arising from the recent expansion of the Convention to cover most types of plastic and electronic wastes. Collectively, these work streams have the potential to inform the obligations of AMS under the Convention and shape future trade in recoverable materials, metals and minerals in the region. For these reasons, we urge active participation in the EWG-RA and other work groups focused on matters relevant to existing and future recovery operations for waste batteries, plastics and electronics.



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