

and other paper products) subject only to normal commercial transaction controls if any.<sup>21</sup>

Yet, the scope of this obligation is less clear that it appears at first, providing room for "creative" interpretations and consequent disputes. The OECD Council Decision was concluded pursuant to Article 11 of Basel and thus is relevant for understanding the issue of "other" wastes in that context.<sup>22</sup> The Decision states that even if wastes are "green-listed", an OECD country can nonetheless control trade in such materials "as if these wastes had been assigned" to the more restrictive lists, if a Member country believes such action to be necessary to protect human health and the environment. Moreover, the OECD Decision also recognizes that all household wastes (not just those that are hazardous) will be subject to the more restrictive amber regime.<sup>23</sup> A Member country can claim that the importance of recycling used newspapers and other paper products to protect the environment (whose environment is not specified) is sufficient to merit the amber regime, which includes the right of the exporting country to prohibit or otherwise restrict the export of the waste in question.<sup>24</sup>

Moreover, Parties to Basel have provisionally approved technical guidelines on wastes collected from households which clearly cover reusable material such as bottles and cans, and recyclable material such as paper, and refer to segregating recoverable from hazardous wastes, including through "separate"/"sophisticated" collection and recovery programmes.<sup>25</sup> This could well be interpreted to include the increasingly important newspaper recycling business (to the degree it depends on a distinct household collection programme) within the scope of Basel's controls.

There are other ambiguities. Each Party must take "appropriate" measures to ensure the availability of "adequate" disposal facilities.<sup>26</sup> An exporting State must not allow the export of hazardous or other wastes "if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner" in the

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<sup>21</sup> OECD, C(92) 39/FINAL, adopted March 30, 1992 - see Annex 1, Section II(2) and Appendices 3 and 4.

<sup>22</sup> See also UNEP/CHW.1/24, Annex II, Decision I/9, pp. 27-8 for a related decision by the Parties to Basel.

<sup>23</sup> OECD, C(92) 39/FINAL, Annex 1, Section II (6), and Appendix 4, 3rd footnote.

<sup>24</sup> *Ibid.*, Annex 1, Section IV, Case (1)(c) and Case (2) (d).

<sup>25</sup> See "Framework Document and Technical Guidelines", Na. 93-7758/190793, p. 51, paragraphs 4-5, 8-9.

<sup>26</sup> Article 4(2)(b).