

**RECOMMENDATIONS OF THE ELECTRONICS AND ICT SECTORS FOR FURTHER WORK ON PARAGRAPH 26(B): CRITERIA AND MEASURES FOR IDENTIFYING LEGITIMATE SHIPMENTS OF USED ELECTRICAL AND ELECTRONIC EQUIPMENT (EEE) EXPORTED FOR TESTING, REPAIR, REFURBISHMENT AND REUSE**

March 6, 2015

The principal trade associations representing the global electronics and information and communications technology (ICT) sectors in Europe, the United States and Japan are pleased to put forward the following joint comments on paragraph 26(b) of the draft Technical Guidelines on E-waste and Used Electronics.<sup>1</sup> Digital Europe (DE) the Information Technology Industry Council (ITI) and the Four Electrical and Electronic Industry Associations in Japan together represent the world's leading electronics and ICT manufacturers. The electronics and ICT sectors have supported initiatives under the Basel Convention to improve the management of e-waste. Our member companies are committed to ensuring the environmentally sound testing, repair, refurbishment, reuse and end-of-life management of our products. The electronics and ICT sectors are also committed to the goal of minimizing illegal trade in e-waste.

Parties to the Basel Convention are preparing new Technical Guidelines to clarify the circumstances under which used electronic products and parts will qualify as "non-wastes" or as "wastes" under the Convention. Specifically, governments are developing criteria that will be used to distinguish used equipment exported for legitimate testing, repair, refurbishment and reuse ("non-wastes") from shipments of used equipment destined for recycling or disposal that qualify as "wastes" under the Convention.

- We are encouraged that parties to the Convention recognize testing, repair, refurbishment and reuse to be essential practices that extend the useful life of products, reduce e-waste generation, conserve material resources and advance sustainable business practices.
- The repair and reuse model of original equipment manufacturers ("OEMs") also helps to ensure electronics and ICT technology is more affordable and therefore available to a wider-range of people and communities.
- OEMs and their qualified repair partners have established testing and repair facilities for products and used parts that employ the same quality and environmental standards used in the production of new products.

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<sup>1</sup> See [Draft Technical Guidelines on Transboundary Movements of E-Waste and Used Electrical and Electronic Equipment, in Particular Regarding the Distinction Between Waste and Non-Waste Under the Basel Convention, Nov. 20, 2014 version.](#)

- Shipments for testing, repair, refurbishment and reuse of parts and equipment comprise movements of valuable assets that are closely monitored -- the progress of each individual product or part shipped for testing and repair is documented along the entire servicing process to protect its reuse value and to avoid any diversion of the equipment to the illegal waste trade.
- Although not fully reflected in the summary record of the January 2015 meeting of the Small Intersessional Working Group (SIWG), we believe governments and stakeholders have made important progress toward agreement on specific criteria and assurances that can help parties distinguish used equipment and parts destined for legitimate testing, repair, refurbishment and reuse from used equipment destined for disposal or materials recovery (i.e., e-waste).
- We recommend that the members of the SIWG clarify and confirm those areas where agreement has been reached on elements of 26(b) and narrow the remaining issues that should be addressed ahead of COP-12 or in a subsequent work plan.

### **The November Draft of the Guidelines Reflects General Agreement on the Overall Framework for Making Waste/Non-waste Determinations**

We note that governments participating in the Contact Group at OEWG-9 and in the Small Intersessional Working Group meeting in Konstanz appear to be in general agreement around the following approach to making waste/non-waste determinations.

- **The Technical Guidelines should not change the legal obligations of parties under the Convention.** The Technical Guidelines should not be used to expand the legal obligations of parties to the Convention to control used equipment exported for legitimate reuse, including reuse following repair, as such shipments do not readily qualify as wastes.<sup>2</sup> Similarly, the Guidelines must not be used to create potential loopholes or exemptions from the existing definition of waste. Instead the Guidelines should clarify and bring consistency to the approach governments take to making waste/non-waste determinations under the Convention.
- **Case-by-Case Determinations.** Waste/non-waste determinations should be made on a case-by-case basis through an examination of the history of an item and its proposed fate. Often there are characteristics of used equipment and parts that will indicate whether it is a waste or not. *See Draft Technical Guidelines at para. 23.*

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<sup>2</sup> Refurbishment and repair activities are not listed among the operations in Annex IV. In addition, the Convention provides in a note to the B1110 listing in Annex IX that some parties do not consider shipments for direct reuse, including reuse following repair to be wastes. Read together the current text of the Convention would not appear to classify used equipment exported for repair, refurbishment and reuse as waste. The development of consistent criteria and assurances for demonstrating that used equipment and parts are being exported for *legitimate* repair would clarify the current reach of the Convention. As such it should not be characterized as a proposed “exemption” to the Convention.

- **Equipment and parts exported for Direct Reuse without the need for repair are not wastes.** Where the holder of used equipment claims that the equipment or parts are used equipment intended for *direct reuse* and not e-waste, agreement has been reached on assurances and documentation that should be provided or be in place to back up this claim to an authority upon request. *See Draft Technical Guidelines at para. 24(a)-(d).*
- **Circumstances surrounding a shipment often indicate when Used Equipment is not suitable for reuse and likely qualifies as waste.** While some issues remain open for discussion, agreement has generally been reached with regard to the circumstances in which used equipment should normally be considered waste based on specific considerations and criteria. *See Draft Technical Guidelines at para 25(a)-(k).* Moreover, exports of e-waste that exhibits Annex III characteristics should be controlled under the Convention as “hazardous wastes.”

**There is also general agreement on several critical elements for determining the circumstances in which shipments of used equipment for testing, repair, refurbishment and reuse are non-wastes**

The electronics and ICT sector also sees important areas of consensus emerging with regard to the classification of used equipment and parts exported for testing, repair, refurbishment and reuse. Specifically, based on recent discussions within the OEWG and the SIWG, most participants support the view that the holder of used equipment claiming that the equipment or parts exported for testing, repair, refurbishment and reuse are not wastes should *at a minimum* be prepared to provide the following documentation and assurances in support of the non-waste classification:

- A declaration that none of the equipment within the consignment is defined as or considered to be waste in any of the countries involved in the transport (countries of export and import, and, if applicable countries of transit);
- Each shipment is sent under a valid contract between the exporter and the importing facility: expressly stating that the product is sent for testing, repair, refurbishment and reuse; requiring the importing facility to properly manage any residual wastes; and requiring the importing facility to complete all applicable and relevant requirements specified in para. 26(b);
- The equipment or parts are shipped with appropriate protection against damage during transportation, loading and unloading, in particular through sufficient packaging and stacking of the load; and
- The shipment complies with any additional measures adopted by parties at the national level with respect to the import or export of used equipment or parts for testing, repair, refurbishment and reuse.

Important drafting work remains on these criteria but, as a matter of principle, these criteria for making non-waste determinations enjoy wide support. We note also that these measures alone, if adopted in the Guidelines, would provide governments with new and unprecedented tools at the global level for ensuring that only legitimate shipments of used equipment for testing, repair, refurbishment and reuse are exported as non-wastes. Shipments of used, non-working equipment not meeting these requirements would be presumptively regarded as wastes subject to the Convention's controls and trade prohibitions.

**Further negotiations or a future work plan should explore the need for additional criteria and assurances for making waste/non-waste determinations under paragraph 26(b)**

Some stakeholders have proposed additional criteria for inclusion in paragraph 26(b) that have some limited support but remain under consideration. Questions have been raised about the practicality, need and legal basis for several of these additional measures.

- Additional measures under consideration include provisions related to compliance with EU RoHS; the control of used CRTs not embedded in other equipment; the take-back or export of incidental wastes generated from repair activities to Annex VII countries; and, consideration of the age of the equipment or parts to be exported.
- We recommend that the SIWG focus on these and other proposals for additional criteria and measures to determine whether such approaches are needed to distinguish used equipment exported for legitimate testing, repair, refurbishment and reuse (i.e., non-waste) from equipment or parts destined for recycling or final disposal (i.e., waste).
- If agreement cannot be reached on these additional measures at COP-12, parties may wish to develop a work plan to explore current practices among governments and evaluate the need for additional measures that could be included in paragraph 26(b) or in other parts of the Technical Guidelines.<sup>3</sup>
- To the extent some parties wish to expand the reach of the Convention to cover shipments of used equipment or parts destined for testing, repair, refurbishment and reuse as "wastes" we would recommend (consistent with the proposal put forward by Switzerland) that consideration be given to the need for new amendments to the Convention's definition of waste, the operations listed in Annex IV, and the waste listings in Annexes VIII and IX to ensure new legal obligations are clear and grounded in the provisions of the Convention text, rather than in technical guidelines.

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<sup>3</sup> As a general matter, ICT companies may be able to support demonstration projects or pilot programs intended to evaluate the sufficiency of the Guidelines in identifying shipments of used equipment that qualify as wastes and those that are properly regarded as non-wastes.

In the coming weeks, it is critical that governments consider and support a balanced approach to defining criteria and assurances that can distinguish waste from non-waste. We are, however, concerned that the time available for resolving outstanding issues ahead of the COP is becoming limited. We look forward to working with governments, stakeholders and the Secretariat to complete work on paragraph 26(b) and related portions of the text so as to ensure its timely completion and adoption.

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