



RECOMMENDATIONS OF THE INFORMATION & COMMUNICATIONS TECHNOLOGY SECTOR

with regard to the

Technical guidelines on transboundary movements of electrical and electronic waste and used electrical and electronic equipment, in particular regarding the distinction between waste and non-waste under the Basel Convention

(UNEP/CHW.12/5/Add.1/Rev.1)

May 26, 2016

Thank you for the opportunity to provide the perspectives of the Information & Communications Technology (ICT) sector on the above referenced Technical Guidelines (TGs) and in particular our views on *Appendix V: Issues for Further Work*. Our sector has been productively engaged in discussions on the disposition of used electronics under the Basel Convention for over ten years, and we reiterate our commitment to working with all stakeholders to secure meaningful outcomes that (1) confront the improper movement of waste equipment while (2) preserving beneficial trade in valuable electronic products and parts for repair and reuse (hereinafter “electronic equipment”).

The ICT Sector Supports the Work Undertaken to Date and Encourages Parties to Make Use of the TGs. The interim adoption of the TGs at COP-12 represents a substantial step forward in global efforts to control improper movements of waste electronics while encouraging beneficial trade and repair of valuable equipment. The TGs are the product of extensive technical and legal negotiations among parties and stakeholders over several years and provide the first globally recognized reference for making waste/non-waste determinations for used electronics under the Basel Convention. We are optimistic that the recent translation of the TGs into the six official U.N. languages will allow governments to assess how best to reference or implement the TGs in the context of new or existing national measures for distinguishing e-waste shipments controlled under the Convention from movements of used electronic equipment destined for legitimate repair and refurbishment (non-waste).

In accordance with paragraph 3 of Decision BC-12/5, our sector recommends that governments and other stakeholders make use of the TGs and “submit...comments on their experience in so doing” ahead of COP-13. We believe that applying the TGs in practice for a period of time will generate the practical knowledge, data and experience needed to inform whether further adjustments to the current approach and criteria in the TGs are warranted. We acknowledge that some further modifications to the TGs may be needed over time to improve the management of e-waste through more consistent classification of used equipment destined for reuse. We request that the parties gain practical experience with the approach that has been agreed to at COP-12 before proceeding with deliberations on additional criteria or approaches. In our view, parties should avoid actions that could result in delaying use or application of the more robust

criteria for distinguishing used products destined for repair from e-waste, as set forth in the current TGs.

We Encourage the Parties to be Transparent with Respect to National Conditions and Requirements. The companies represented by the Information Technology Industry Council (ITI) are committed to the proper management of used equipment and compliance with all national laws implementing the Basel Convention. We encourage all parties to inform the Secretariat about any conditions they apply in relation to used equipment that should normally be considered waste or non-waste, consistent with paragraph 8 of BC-12/5. In some instances, governments and the regulated community have encountered challenges with regard to the proper classification of used equipment destined for reuse under various national laws and regulations. Increased transparency with regard to the conditions or criteria that the parties currently use at the national level for such decisions and publication of such information by the Secretariat would greatly enhance compliance with the Convention and related national measures.

To advance the expected discussions at the Open Ended Working Group (OEWG) meeting and make the best use of our collective time and resources, the ICT sector suggests that we as stakeholders direct our focus on *Appendix V: Issues for Further Work*. As appropriate, we have provided our feedback on each of these issues directly below.

The following provides comments from the ICT sector on some of the issues proposed for discussion at OEWG-10.

1. Party notifications as per paragraphs 27 and 29

Paragraphs 27 and 29 of the present guidelines address the fact that countries may or may not wish to allow imports or exports of used electrical and electronic equipment destined for failure analysis, repair or refurbishment. The paragraphs indicate that parties should notify the Secretariat of the Basel Convention in accordance with Articles 3 and 13, paragraph 2, as appropriate, of their wishes on that issue.

Further work is needed to address those cases in which parties have not so notified the Secretariat.

Guideline references	Text discussed by the COP
27, 29	[In case a country has not communicated any such information, exports to that country are only allowed if the person who arranges the transport has obtained written confirmation from the authorities in the country of destination that the equipment is not considered to be waste.]

Further work is also needed on how to reflect the information contained in the notification from countries in the declaration made by the person who arranges the transport.

Guideline reference	Text discussed by the COP
Appendix III, box 8	[the receiving facility is covered by a notification by the authorities of the country of import indicating it may receive equipment as non-waste as published by the Secretariat of the

	Basel Convention];
--	--------------------

ICT Industry Comment: We support the approach set forth in the current TGs. We encourage parties to share information on national measures concerning the definition of e-waste pursuant to Article 3 and Article 13 (2)(c) and (d) of the Convention and Decision 12/5. The ICT sector does not support an approach where parties would be obligated to affirmatively notify the Secretariat of their use of the TGs.

2. Residual life time and age of used equipment

Three texts were discussed that relate to this subject

a) When equipment normally should be considered waste

Guideline reference	Text discussed by the COP
30	[The residual life of the equipment is no longer than 1/3 of the normal life-span of this kind of new equipment.]

ICT Industry Comment: The ICT sector recognizes the legitimate concerns that many countries have regarding the import of used electronic equipment that, while still functional, may be near the end of its useful life. Our member companies do not engage in the unrestrained business of re-selling such “near end-of-life” equipment.

As a practical matter, determining the residual life of a product is very difficult and often depends on the way it was used, the conditions of use (*e.g.*, humidity) and maintenance. We therefore view this proposal as a problematic criterion for making waste/non-waste determinations.

We note that used equipment that is put back into commerce by the manufacturer (or its contracted vendor) often carries a warranty or similar guarantee. Our companies stand behind this equipment and would not consider such products to be “near end-of-life.” This may be different from brokers who sell used equipment in bulk to other brokers or middlemen, offer no warranties and have no connection with the ultimate customer.

We would encourage those parties that have experience with the adoption of residual life criteria for used equipment to share their information and experiences with the Secretariat pursuant to Decision BC-12/5.

b) Requirements for transport of used equipment destined for root cause analysis, repair and refurbishment

Guideline reference	Text discussed by the COP
31(b)	[and that the residual life of the equipment is more than 1/3 of the normal life span of this kind of equipment]

ICT Industry Comment: It would be difficult if not impossible to establish a uniform “residual lifetime” for different categories of covered equipment.

- The TGs cover a wide range of products: everything from printed circuit boards and mobile phones to multi-million dollar installed equipment. It would take years for stakeholders to conduct the research and evaluation necessary to even suggest a range of residual life for every type of product contemplated by the TGs.
- Ours is also an innovative industry. ICT products and features are constantly changing, further complicating efforts to assign some range to a category.
- Factors that may vary significantly between individual pieces of equipment:
 - o How often is the product used: 24/7 or only occasionally?
 - o How well is it maintained by the customer (if at all)?
 - o What is the environment in which it is being used? High humidity and varying temperatures can negatively impact certain sensitive electronics.
 - o Has it been upgraded or refurbished to improve its functioning and extend its use, or is it “as is?”
 - o Within the same product category, devices from certain brands may last longer than those made by low-cost competitors. Is a residual lifetime going to be calculated for every product category, and for every brand within every product category?
- It may not be possible to determine the life of parts and sub-assemblies.

c) Documentation to be provided by the person who arranges the transport

Guideline reference	Text discussed by the COP
32	[date of production of every piece (age) (excluding for spare parts or components)

ICT Industry Comment: Parties should be aware that production dates may not be available for all products.

3. Obsolete technologies, including cathode ray tubes

Requirements for transport of used equipment destined for failure analysis, repair and refurbishment

Guideline reference	Text discussed by the COP
31(b)	[Used equipment transported across borders is compliant with applicable national legislation and relevant international rules, standards and guidelines on restrictions of the use of hazardous substances [, do not contain cathode ray tubes (CRTs)]]

ICT Industry Comment: We support compliance with relevant national measures for the restriction of hazardous substances in used equipment destined for re-use but do not see such references as appropriate criteria for waste/non-waste determinations at the international

level.

While we do not have significant concerns regarding limits on the transboundary movement of individual CRT units, we do suggest that the stakeholders recognize that CRTs embedded in larger systems should be allowed to move as necessary and appropriate.

We are also concerned with the use of the undefined phrase “obsolete technologies.” We are not aware of any recognized stakeholder or other process used to determine when a technology becomes obsolete: what is no longer in demand in certain countries or regions may remain in demand in others.

We would encourage those parties that have experience implementing measures that identify and restrict the import of certain types of obsolete equipment to share information that might inform this discussion.

4. Identification of relevant actors in the documentation

Further work is needed to assess if some additional actors should be added to paragraph 32 (a) and appendix III.

Guideline reference	Text discussed by the COP
32(a)	[Name of Original Equipment Manufacturer (name and contacts of importer)]
Appendix III	<ul style="list-style-type: none"> • [Carrier] • [Importer] • [Country of export[/dispatch] • [Country of import[/destination]

ICT Industry Comment: We encourage parties to implement the TGs using the assurances and documentation recommended in the document adopted at COP-12 and assess whether additional changes to the documentation (including the identification of additional actors or information) is needed to further the proper management of used equipment.

5. Specific exemption for medical devices

Further work is needed on specific exemptions for medical equipment in the context of transports for failure analysis, repair and refurbishment.

Guidelines reference	Text discussed by the COP
31(b)	<p>[Where used medical devices and their components¹ are sent by and to the manufacturer or a third party acting on behalf of the manufacturer, for any of the following purposes:</p> <ul style="list-style-type: none"> (i) failure analysis, diagnostic testing, (ii) refurbishment, or (iii) repair,

¹ As per definition in GHTF in SG1(PD)/N71R04.

	under a valid agreement ² and hazardous wastes resulting from these operations are shipped for environmentally sound management [to Annex VII Countries] [or to non-Annex VII countries as long as systems are in place to achieve the equivalent level of environmental protection].]
--	---

ICT Industry Comment: We recommend that any exemption provided for medical devices also be granted to ICT infrastructure systems, such as air traffic control systems, data centers, testing and measurement equipment, etc. Installed ICT capital equipment is very similar to major medical devices: both types of multi-million dollar equipment are often shipped for failure analysis, diagnostic testing, repair and/or refurbishment. It benefits the environment and is in the best interests of our government and corporate customers when major ICT manufacturers are able to transport these systems for proper evaluation and servicing or ship in replacement assemblies to extend the useful lifetime of these critical systems.

6. Specific exemption for used parts

Further work is needed on specific exemptions for used parts in the context of transports for failure analysis, repair and refurbishment.

Guidelines reference	Text discussed by the COP
31	[Used parts for service and maintenance of equipment which may contain electrical or electronic components, handled in a closed circular economy for remanufacturing ³ .]

ICT Industry Comment: The ICT sector strongly supports the inclusion of an exemption for used parts to service and maintain equipment. Facilitating the movement of used parts for servicing would maximize the use of the resources that went into manufacturing the equipment, limit demand for new resources and avoid the premature generation of e-waste by keeping the equipment in service.

7. Waste resulting from failure analysis, repair and refurbishment activities

Guideline references	Texts discussed by the COP
31 (b)	[[All equipment that after failure analysis, repair and refurbishment is still unusable will be taken back to the country of export]. All residual waste generated from the failure analysis, repair and refurbishment operation which is hazardous according to the Basel Convention

² "Valid agreement": a long-term contract between the manufacturer and the third party shipping or performing the refurbishment, repair or failure analysis identifying responsibilities and procedures for the correct handling of used electrical and electronic equipment.

³ Remanufacturing is a standardized industrial process that restores used parts to fulfill a function that is at least equivalent compared to the original part.

	<p>definitions (Article 1, 1(a) and 1(b)) or its hazardous characteristics are unknown, shall be disposed of [in an environmentally sound manner (ESM) in accordance with the Basel Convention][in an Annex VII country][in [the export country or] an Annex VII country unless accompanied by a conclusive proof that the residual hazardous waste can be treated at a facility in the importing country is ESM]. Any transboundary movements necessary shall be accomplished in accordance with the Basel Convention;]</p>
31 (b)	<p>[[All equipment that after failure analysis repair and refurbishment is still unusable [must be managed in an environmentally sound manner. If the equipment cannot be repaired or refurbished [, and was exported by an Annex VII country] it should be returned[, under the full responsibility of the country of export,] to the [country of export] [exporter] [person] [if the country of export is a non-Annex VII country, it should be dealt with in an ESM and according to the principle of proximity] [or another country where an appropriate ESM facility exists in accordance with the Basel Convention.] [will be taken back to the country of export.] All residual waste generated from the failure analysis, repair and refurbishment operation which is hazardous according to the Basel Convention definitions (Article 1, 1(a) and 1(b)) or its hazardous characteristics are unknown, shall be disposed of [in an environmentally sound manner (ESM) in accordance with the Basel Convention][in an Annex VII country][in [the export country or] an Annex VII country unless accompanied by a conclusive proof that the residual hazardous waste can be treated at a facility in the importing country is ESM]. Any transboundary movements necessary shall be accomplished in accordance with the Basel Convention;]</p>
Section VI	<p>[It is recommended to facilities receiving used equipment that is not waste and is intended for failure analysis, repair and refurbishment to, as appropriate, include provisions in the contract with the person who arranges the transport that</p> <p>a) used equipment that was destined for failure analysis, repair or refurbishment, but for which no failure analysis, repair or refurbishment has been conducted,</p> <p>b) waste generated during failure analysis, repair or refurbishment; is returned to the person who arranges the transport or disposed of in an environmentally sound manner in another country]</p>

ICT Industry Comment: The ICT sector strongly supports the environmentally sound management (ESM) of any residual hazardous wastes (including any wastes with unknown hazardous characteristics) generated as a result of permissible failure analysis, repair and refurbishment activities. We agree that such wastes must be managed in accordance with the Basel Convention.

We support the approach now set forth in the TGs concerning the use of contracts between the person managing transport and the receiving facility to ensure ESM of residual wastes from failure analysis, repair or refurbishment activities. The use of such contracts along with appropriate documentation and feedback reports reduces greatly the risk of improper management of residual wastes.

A requirement to return residual hazardous wastes to the country from which the used

equipment originates is impractical and unnecessary. In some cases, non-OECD countries may boast better ESM facilities than certain OECD countries. Rather than prescribing arbitrary practices, the common objective of all stakeholders should be to ensure that all covered wastes are managed in an environmentally sound manner. This can be accomplished in the country that hosts the failure analysis, repair or refurbishment operations or in a nearby country if the first lacks such ESM facilities.

We are pleased to see a number of parties moving forward to implement or make use of the TGs adopted at COP-12. We are concerned, however, that some stakeholders may seek to re-open the entire document for further negotiations under the OEWG-10 work programme. Such a result would appear to be outside the mandate the COP has given to the OEWG and could further delay implementation of the consensus criteria and assurances provided in the current TGs that are critical to improving the management of used equipment and e-waste.

The COP approved the TGs on an interim basis with the clear understanding that parties and stakeholders would need to consider certain unresolved issues and consider modifications as appropriate going forward. We believe those discussions are best served by gathering information on the operation and use of the interim TGs for a period of time. Re-opening the interim TGs prematurely would not only deprive the parties of the ability to collect needed data to inform future deliberations, but it would likely delay the environmental benefits that can be gained in the near term from the prompt and consistent implementation of the TGs.

Additional information on these recommendations is available from:

Rick Goss
Senior Vice President for Environment and Sustainability
Information Technology Industry Council
rgoss@itic.org
+1-202-626-5724
<https://www.itic.org/>