

Malaysia's Comments on technical guidelines on transboundary movements of electronic and electrical waste and used electrical and electronic equipment, in particular regarding the distinction between waste and non-waste under the Basel Convention

The following are the suggestion for the information requested in paragraph 5 and Annex V of decision BC-12/5 (*Comment is in italic*):

Issues for further work

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.]

Comment:

- i) Importing countries shall notify the Secretariat of the Basel Convention in accordance with Articles 3 (National Definitions of Hazardous Wastes) and 13 (Transmission of information) paragraph 2, if there is any significant changes to the information as soon as possible.*
- ii) Importing countries shall notify to the Secretariat of the Basel Convention the definition or guideline or guidance used by the importing country to define used electrical and electronic equipment and the requirements for the importation of the used electrical and electronic equipment.*
- iii) The Secretariat of the Basel Convention shall ensure the provided information by the importing country as in (i) & (ii) will be updated and available on the Basel Convention website in order for all Parties involved in the transboundary movements to be alert and comply with the requirement.*

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];

Comment:

- i) Malaysia support for the need of approval from the importing country. The information in Appendix III, box 8 shall include the following:

 - a) Approval from the authority country of import prior to every movement.*
 - b) Operational information such as operational licenses from the relevant authorities/agencies in the country of import is required.**

2. Residual life time and age of used equipment

Three texts that were discussed 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.]

Comment:

- i) Disagree with the residual life of the equipment is no longer than 1/3 of the normal life-span of this kind of new equipment.*
- ii) The used equipment shall be considered as waste by the National Legislation or national guidelines for used electrical and electronic equipment including the age of the used equipment from the date of manufactured.*

- 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]

Comment:

- i) Used equipment destined for failure analysis, repair and refurbishment is only for new electrical and electronic equipment or components which are **under warranty** that are returned as defective units for repair to the manufacturer with the intention of re-export (to be returned to the original country of export).*
- ii) All residual waste generated from the failure analysis, repair and refurbishment shall be taken back to the country of export unless the residual hazardous waste can be treated in the importing country in an environmentally sound manner (ESM) in accordance with the Basel Convention.*
- iii) In the case of the whole used equipment that after failure analysis, repair and refurbishment is still unrepairable, it shall be taken back to the country of export and disposed of in an environmentally sound manner (ESM).*

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)

Comment:

- i) The date/year of production for every used electrical and electronic equipment destined for direct reuse shall be provided by the person who arranges the transport. In addition, the certificate of inspection/ certificate of functionality test from a competent authority or certification body or any other relevant agency for the status of the items to imported/exported must be part of the mandatory documentation to be provided.*
- ii) Every used equipment destined for failure analysis, repair and refurbishment shall possess the certificate of warranty.*

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)]]

Comment:

- i) *The products using obsolete technologies such as cathode ray tube (CRT) shall be banned for the transboundary movement.*

4. Identification of relevant actors in the documentation

Further work is needed to assess if some additional actors should be added in 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]

Comment:

- i) *Agreed with the additional actors to be provided in Appendix III. The information of intended carrier(s) shall be provided in details (first carrier – last carrier).*
- ii) *Additional information should also include in the Appendix III is as following:*
- a) *Customs code(s)(HS).*
- b) *Designation for each relevant actor.*

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, <p>under a valid agreement² 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].]</p>

Comment:

- i) Any transboundary movement of used medical devices and their components shall require the clearance/permission from the Health Authority in the importing country.*

6. Specific exemption for used parts

Further work is needed on specific exemption 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 .]

Comment:

- i) All used parts for service and maintenance of equipment which may contain electrical or electronic components, handled in a closed circular economy for remanufacturing shall be certified fully functioning by Original Equipment Manufacturer (OEM) and approval by the importing country.*

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

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.

7. Waste 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 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;]
31 (b)	[[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 AnnexVII 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;]
Section VI	[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 a) used equipment that was destined for failure analysis, repair or refurbishment, but for which no failure analysis, repair or refurbishment has been conducted, 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]

Comment:

- i) *All equipment under warranty that after failure analysis, repair and refurbishment is still unusable will be returned to the county of export together with the repaired equipment that is useable for validation and tracking and to be exempted from Basel Convention.*

- ii) The text in 31 (b) (ii) a. Provisions on adherence to the principles of ESM for the treatment of any residual hazardous waste generated through the failure analysis, repair or refurbishment activities;
- a) *Additional clause for the text in 31(b) (ii) a. “All residual waste generated from the failure analysis, repair and refurbishment shall be taken back to the country of export unless the residual hazardous waste can be treated in the importing country in environmentally sound manner (ESM) in accordance with the Basel Convention”.*
- iii) The text in 31 (b) (ii) d. A provision allocating responsibility to specific persons throughout the whole process, from export until the equipment is either analysed or repaired or refurbished to be fully functional, including cases where the equipment is not accepted by a facility and has to be taken back;
- b) *Additional text for the text in 31(b) (ii) d. has to be taken back “to the country of export”.*

Appendix IV

Reference materials

The present appendix contains references to information on functionality testing for certain categories of used equipment (paragraph 37), hazardous and non-hazardous equipment and hazardous components that can be found in such equipment (paragraph 47), and information regarding health and safety aspects of inspections (paragraph 55).

Malaysia

Guidelines for the classification of used electrical and electronic equipment in Malaysia. (DOE, 2008). Available at: http://www.doe.gov.my/portal/wp-content/uploads/2010/07/ELECTRICAL_AND_ELECTRONIC_EQUIPMENTIN_MALAYSIA.pdf.

Paragraph 7 of these guidelines contains parameters that may be used when testing functionality of certain types of equipment.

Comment:

Guidelines for the Classification of Used Electrical and Electronic Equipment in Malaysia. (DOE, Second Edition, 2010). Available at: http://www.doe.gov.my/portalv1/wp-content/uploads/2010/07/ELECTRICAL_AND_ELECTRONIC_EQUIPMENTIN_MALAYSIA.pdf