

**Conference of the Parties to the Basel Convention
on the Control of Transboundary Movements of
Hazardous Wastes and Their Disposal**

Thirteenth meeting

Geneva, 24 April–5 May 2017

Agenda item 4 (b) (i)

**Matters related to the implementation of the Convention:
scientific and technical matters: technical guidelines**

**Way forward towards the finalisation of 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 adopted on an interim basis by
Conference of Parties at its twelfth meeting**

Submission by India

Note by the Secretariat

The annex to the present note sets out a submission by India on the way forward towards the finalisation of 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 adopted on an interim basis by Conference of Parties at its twelfth meeting. The submission is reproduced as received. The present note, including its annex, has not been formally edited.

Annex

Way forward towards the finalisation of 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 adopted on an interim basis by Conference of Parties at its twelfth meeting

Concept paper by India

Introduction

1. The technical guidelines provide guidance on waste electrical and electronic equipment (e-waste) and used electrical and electronic equipment (used equipment) that may or may not be e-waste, in particular on the distinction between waste and non-waste. COP-12 in its decision BC-12/5 adopted, on an interim basis, the technical guidelines on the understanding that the technical guidelines are of a non-legally binding nature and that the national legislation of a Party prevails over the guidance provided within the technical guidelines, in particular in paragraph 31, 42 and 43 thereof. The decision further acknowledged the need to look further into the guidance on the distinction between waste and non-waste, in particular with reference to paragraphs 31 a and 31 b of the technical guidelines. The decision agreed to include the further elaboration of work on that issue in the work programme of the OEWG for 2016-2017 in order to prepare draft revised guidelines.

2. The technical guidelines as per document UNEP/CHW.12/5/Add.1/Rev.1, at Appendix V acknowledged that certain issues addressed in the present guidelines require further consideration and that relevant information should be obtained. The appendix referred to contain an overview of the issues and specific texts that were discussed by COP-12 but on which no agreement was reached. Further work will be undertaken on the guidelines in accordance with COP decision BC-12/5. The issues referred were (i) Party notifications as per paragraphs 27 and 29; (ii) Residual life time and age of used equipment as per paragraphs 30, 31(b) and 32; (iii) Obsolete technologies, including cathode ray tubes as per paragraph 31(b); (iv) Identification of relevant actors in the documentation as per paragraph 32(a); (v) Specific exemption for medical devices as per paragraph 31(b); (vi) Specific exemption for used parts as per paragraph (31); and (vii) Waste resulting from failure analysis, repair and refurbishment activities as per paragraph 31(b).

3. Document UNEP/CHW/OEWG.10/5 acknowledged the decision BC-12/5 of COP-12 that the technical guidelines are of a non-legally binding nature and that the national legislation of a party prevails over the guidance provided within the technical guidelines, in particular in paragraphs 31, 42 and 43 thereof.

4. As referred to in document UNEP/CHW/OEWG.10/5 of OEWG-10, parties and others were invited to provide comments on the issues mentioned in paragraph 5 of decision BC-12/5 and on Appendix V of the interim technical guidelines on transboundary movements of e-waste and used equipment, in particular regarding the distinction between waste and non-waste under the Basel Convention. The Secretariat compiled the comments and made it available during OEWG-10 meeting as document UNEP/CHW/OEWG.10/INF/22.

5. In the report of OEWG-10 as in document UNEP/CHW/OEWG.10/13, there was consensus that the guidelines should be practical and implementable, and there was broad agreement that they needed further work before they were ready to be finalised. It was further acknowledged that there was an urgent need to deal with the issues for further work listed in Appendix V of the interim guidelines and resolution of those issues was critical in making the guidelines useful to all Parties, especially developing country Parties.

6. The report also refers to the view that it was also necessary to discuss and finalise issues other than those listed in Appendix V, some of which were reflected in decision BC-12/5 but were not addressed in the guidelines.

7. The report also acknowledges the challenges faced by Parties, particularly developing country Parties, in implementing the guidelines, including a lack of strong regulatory frameworks, technical infrastructure, capacity and know-how necessary for the environmentally sound disposal of e-waste.

8. Decision OEWG-10/5 of OEWG-10 acknowledged that certain elements of the technical guidelines may require further elaboration, and mandated the small intersessional working group, to further explore options for addressing outstanding issues, in particular those listed in Appendix V of the technical guidelines.

9. Accordingly, as per discussions and views that are available since COP-12, May 2015 to OEWG-10, June 2016 following forms the crux of the technical guidelines on e-waste:

i. The technical guidelines have been adopted on an interim basis on the understanding that the guidelines are of a non-legally binding nature and that the national legislation of a party prevails over the guidance provided

- within the technical guidelines, in particular in paragraphs 31, 42 and 43 thereof.
- ii. The guidelines should be practical and implementable, and further work is needed before these are ready to be finalized.
 - iii. Certain elements of the technical guidelines may require further elaboration.
 - iv. All the outstanding issues including those listed in Appendix V of the technical guidelines need to be addressed.
10. **ANNEX** to this document provides suggested way forward towards the adoption of technical guidelines during COP-13 in line with discussion during OEWG-10; while addressing issues referred in Appendix V and other outstanding issues.

ANNEX**SUGGESTED ADJUSTMENTS TO UNEP/CHW.12/5/Add.1/Rev.1****APPENDIX V ISSUES FOR FURTHER WORK****1. Party notifications as per paragraphs 27 and 29**

- a) **Paragraph 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.

Revise the suggested text of COP-12 in the following manner:

"In case a country has not communicated any such information, exports to that country are only allowed if the importer has obtained written permission from the authorities in the country of destination for the import of such specific consignment of equipment and in case it will be re-exported back after such failure analysis, repair and refurbishment then the confirmation that the equipment is not considered to be waste."

- b) **Appendix III, box 8.** 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.

- i. Revise the suggested text of COP-12 in the following manner:

*"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 in case the equipment is to be retained in the country of import; or
Declaration along with tentative time for re-export, which shall not be more than one year, after failure analysis, repair or refurbishment."*

- ii. It is suggested to insert the following text after the existing sentence in point (a) of box 8:

"The transport of the equipment complies with applicable national legislation of importing and exporting country; international rules and standards; and Basel Convention guidelines."

- iii. It is suggested to delete the existing text in point (b) of box 8 and replace it with the following sentence:

"Permission from the concerned authority of the country of import, in cases where the equipment has to be retained in the country, is there."

- iv. It is suggested to revise the existing text in point (c) of box 8 in the following manner (suggested new text is underlined):

"Upon request from the relevant authorities, I will make available underlying documentation (e.g., necessary permission from authority, copy of applicable contract or equivalent documents) that can be used to verify the statements contained in subparagraphs (a) and (b) above."

2. Residual life-time and age of used equipment

Note: As has been the apprehensions of some of the Parties in terms of deciding upon the residual life since it depends on many factors as environmental condition, maintenance, etc., the factors may be indicated as conditions subject to which the residual is depended upon. However, the tentative or expected residual life subject to certain conditions need to be indicated, specifically when import is for direct re-use in the importing country as in para 31(a) with no scope of re-export.

a) When equipment normally should be considered waste

- i. Normal life-span of some of the consumer equipment as mobile phone, tablet, etc. may not be more than 2-3 years. Thus, excluding those used equipment having more than 1/3 of the normal life span of these equipment from waste category won't be feasible approach as the residual life span in such circumstances may vary from few months to 1 year; obliging to categories them as waste. Accordingly, replace the suggested text of COP-12 with the following text in paragraph 30:

"Residual life of equipment is less than 5 years and date of manufacture is more than 7 years from the date of proposed import in case of refurbished equipment and more than 5 years for non-refurbished equipment";

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- ii. In line with above, include following under paragraph 31 (a):

"It has residual life of five or more than five years and date of manufacturing, which is five or less than five years for non-refurbished equipment and seven or less than seven for refurbished equipment. In case, the used equipment is deviating from these criteria and is functional on the basis of functionality test, necessary approval of competent authority of country of import is in place."

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

Under the Paragraph 31 (b)(ii), minimum set of provisions in the contract shall also comprise of following:

"(i) Used electrical and electronic assemblies are imported for root cause analysis, repair or refurbishment and to be re-exported back within one year of import; or if to be retained in the importing country then necessary permission from competent authority in the importing country, is in place, if applicable.

(ii) That the management of hazardous wastes resulting from failure analysis, repair and refurbishment operations in countries may focus on environmentally sound management and that the transboundary movement of such hazardous wastes shall be responsibility of the exporter, in case of the non-availability of environmentally sound management facility in the importing country."

Note: Replacement of "person who arranges the transport" with "exporter" is in line with text of Basel Convention.

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

- i. It is suggested to insert the following text after the existing sentence in paragraph 31(a) (iii):

"and necessary approvals from competent authority of importing country are in place, if applicable."

- ii. The text at 32(b) of the guideline to be modified as follows:

"Description of the equipment including name, function, date of manufacturing of every piece (age) (excluding for spare parts or components) and expected residual life";

- iii. Include an additional provision as given below under paragraph 32:

"Expected date of re-export after completion of failure analysis, repair or refurbishment, if applicable;"

3. *Obsolete technologies, including cathode ray tubes*

- i. The issue of obsolete technologies, including cathode ray tubes is being discussed and referred only in reference to para 31(b) of the guidelines pertaining to transboundary movements of used equipment destined for failure analysis, repair and refurbishment as a non-waste without reference or discussion of the issue in reference to para 31(a) pertaining to transboundary movement for direct reuse, or extended use by the original owner. Further, the reference to obsolete technologies is limited to cathode ray tubes. An elaborate discussion on these two issues of (i) obsolete technologies in reference to para 31(a); and (ii) elaboration on the list of obsolete technologies would be useful in finalizing their status as waste or non-waste. Thus as in decision OEWG-10/5, the concept of obsolete technologies, including the link with subparagraph 5 (d) of decision BC-12/5, which refers to preparation of draft revised guidelines in reference to paragraphs 31 a and 31 b of the technical guidelines, should be further clarified, taking into consideration other relevant multilateral environmental agreements and country-level criteria.
- ii. Cathode Ray Tubes (CRTs) are also used in some medical and broadcasting equipment for public purposes, and many of them are expensive and have a long product life to ascertain environmental and economic feasibility of such sectors. Occasionally, CRTs in these equipment need to be repaired to extend their life. Thus uniform ban on the movement of used equipment containing CRTs for repair and refurbishment may lead to increase in e-waste by curtailing their extendable life. Thus with reference to para 31(b), transboundary movement of CRT containing non-consumer equipment may be continued for root cause analysis, repair and refurbishment; subject to that condition that they will be re-exported to exporting country after completion of such repair and they are to be considered as non-waste. As far as para 31(a) pertaining to transboundary movement for direct reuse, or extended use by the original owner is concerned, it should be subject to necessary permission from importing country and declaration about meeting the necessary country-level criteria.

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- iii. Replace the suggested text of COP-12 with the following text *in both paragraph 31 (a) and (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.”

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.

- i. Delete the suggested text of COP-12 in point (a) of paragraph 32 and replace it with the following text:

“Name and contact details of importer, exporter and carrier;”

- ii. Revise the suggested text of COP-12 in the following manner in Appendix III:

“carrier, importer, exporter, country of export, country of import, transit country, if any”

- iii. Further, *“person who arranges the transport”* needs to be replaced with *“exporter”* in Appendix III.

5. **Specific exemption for medical devices**

India is not in favour of specific exemption for specific sector till the time any of such import of used electrical and electronic equipment for root cause analysis, repair or refurbishment is compliant with provision of re-export within one year of import; or if to be retained in the importing country than necessary permission from competent authority in the importing country, is in place, and all the conditions as in para 31 (b) are followed, if applicable. Further, the management of hazardous wastes resulting from failure analysis, repair and refurbishment operations should focus on environmentally sound management and the transboundary movement of such hazardous wastes should be responsibility of the exporter, in case of the non-availability of environmentally sound management facility in the importing country.

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.

- i. Revise the suggested text of COP-12 in paragraph 31 as follows:

"Used refurbished parts for service and maintenance of equipment which may contain electrical or electronic components, handled in a closed circular economy for remanufacturing provided that the transboundary movement of defective or non-functional part and other hazardous wastes generated should be responsibility of the exporter, in case of the non-availability of environmentally sound management facility in the importing country."

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

- i. Replace the suggested text of COP-12 with the following suggested new text in paragraph 31(b):

"The transboundary movement of defective or non-functional equipment or their part and other hazardous wastes resulting from failure analysis, repair and refurbishment activities should be responsibility of the exporter, in case of the non-availability of environmentally sound management facility in the importing country."

- ii. Revise the suggested text of COP-12 in Section VI as follows:

"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, in case of the non-availability of environmentally sound management facility in the importing country transboundary movement of a) used equipment that was destined for failure analysis, repair or refurbishment, but for which no failure analysis, repair or refurbishment has been conducted, and b) waste generated during failure analysis, repair or refurbishment; is responsibility of exporter."

OTHER OUTSTANDING ISSUES

1. Paragraph 31 (b) (ii)

The content of the legal contract need not be part of the guideline; or the following amendments need to be incorporated:

- i. Paragraph 31 (b) to be amended as, “*when the carrier or exporter of the used equipment claims that the equipment is destined for failure analysis, or for repair and refurbishment with the intention of reuse, or extended use by the original owner, for its originally intended purpose, provided that the criteria set out in sub-paragraphs (a) (iii) and (a) (iv) of paragraph 31 above and all of the following conditions are met*”.
- ii. Paragraph 31 (b) (ii) to be amended by replacing “*person who arranges the transport*” with “*exporter*”. The paragraph will accordingly be revised as given below:

“A valid contract exists between the exporter and the legal representative of the facility where the equipment is to be repaired or refurbished or undergo failure analysis in the importing country. The copy of this contract containing following minimum set of provisions shall be carried by the Carrier.”

As stated above w.r.t. Appendix V, under the Paragraph 31 (b)(ii), minimum set of provisions in the contract shall comprise of following:

- a) *Used electrical and electronic assemblies are imported for root cause analysis, repair or refurbishment and to be re-exported back within one year of import; or if to be retained in the importing country then necessary permission from competent authority in the importing country, is in place, if applicable.*
- b) *Para 31 (b)(ii)(b) is to be modified as “That the management of hazardous wastes resulting from failure analysis, repair and refurbishment operations in countries may focus on environmentally sound management and that the transboundary movement of such hazardous wastes shall be responsibility of the exporter in exporting country, in case of the non-availability of environmentally sound management facility in the importing country”.*
- c) *Para 31 (b)(ii)(d) to be modified as “A provision allocating responsibility to exporter 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”.*
- d) *Existing para 31(b)(ii)(a) to remain unchanged and para 31 (b)(ii)(b) and 31 (b)(ii)(e) to be removed.*

2. Paragraph 42 and 43

The text given in para 1 of decision BC-12/5 that the technical guidelines are of a non-legally binding nature and that the national legislation of a party prevails over the guidance provided within the technical guidelines, in particular in paragraphs 31, 42 and 43 thereof shall form part of the text in guideline.

3. Definition of “**person who arranges the transport**” in Appendix I.

The inclusion of a new terminology i.e., a “person who arranges the transport” which is not part of the Basel Convention text is creating ambiguity w.r.t. the whole procedure for transboundary movement of hazardous and other wastes, specifically when the number of other actors viz. carrier, importer, exporter, generator are already defined in the text of the convention.

The aforesaid new terminology gives the impression of a transporter whereas actually the transporter does not have any concrete role in the whole transboundary movement and the “transporter” is already included in the text of Basel Convention as “carrier”.

Furthermore, during any such transboundary movement of hazardous and other wastes, authorities and any other relevant stakeholders are much more conversant with generally used terminology as carrier, importer and exporter.

Accordingly, it is proposed to remove the use of this particular terminology from the guidelines completely and replace this with either “carrier” or “exporter”, as applicable. This will also be in line with the existing movement document as being provided by the Basel Convention as Annex V B.

Further, in line with the above, “person who arranges the transport” needs to be replaced with “exporter” in Appendix III. Similarly, “person who arranges the transport” needs to be replaced with “exporter” in Appendix II.