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**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

Item 4 (b) (i) of the provisional agenda*

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

**Compilation of comments on issues mentioned in paragraph 5 of
decision BC-12/5 on 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**

Note by the Secretariat

As referred to in the note by the Secretariat on technical guidelines (UNEP/CHW.13/6), the annex to the present note sets out a compilation of comments received from Parties and others on the issues referred to in paragraph 5 of decision BC-12/5 on 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. Comments submitted by India, Norway and the Information Technology Industry Council (ITI) pursuant to paragraph 6 of decision OEWG-10/5 are compiled in the annex to the present note. A further compilation of comments on the same issues prepared for the tenth meeting of the Open-ended Working Group of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal pursuant to paragraph 6 of decision BC-12/5 is set out in document UNEP/CHW/OEWG.10/INF/22. The present note, including its annex, has not been formally edited.

* UNEP/CHW.13/1.

Annex

Compilation of comments received from Parties and others on issues mentioned in paragraph 5 of decision BC-12/5 on 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

Submitter	General Comments	Specific suggestions
India	<p>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.</p> <p>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).</p>	<p>SUGGESTED ADJUSTMENTS TO UNEP/CHW.12/5/Add.1/Rev.1</p> <p>APPENDIX V ISSUES FOR FURTHER WORK</p> <p>1. <u>Party notifications as per paragraphs 27 and 29</u></p> <p>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.</p> <p>Further work is needed to address those cases in which parties have not so notified the Secretariat.</p> <p>Revise the suggested text of COP-12 in the following manner:</p> <p><i>“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.”</i></p> <p>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</p>

	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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:</p> <p>i. The technical guidelines have been adopted on an interim basis on the understanding that the guidelines are of a non-legally binding</p>	<p>who arranges the transport.</p> <p>i. Revise the suggested text of COP-12 in the following manner: <i>“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.”</i></p> <p>ii. It is suggested to insert the following text after the existing sentence in point (a) of box 8: <i>“The transport of the equipment complies with applicable national legislation of importing and exporting country; international rules and standards; and Basel Convention guidelines.”</i></p> <p>iii. It is suggested to delete the existing text in point (b) of box 8 and replace it with the following sentence: <i>“Permission from the concerned authority of the country of import, in cases where the equipment has to be retained in the country, is there.”</i></p> <p>iv. It is suggested to revise the existing text in point (c) of box 8 in the following manner (suggested new text is underlined): <i>“Upon request from the relevant authorities, I will make available underlying documentation (e.g., <u>necessary permission from authority, copy of applicable contract or equivalent documents</u>) that can be used to verify the statements contained in subparagraphs (a) and (b) above.”</i></p> <p>2. Residual life-time and age of used equipment</p> <p><i>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.</i></p> <p>a) When equipment normally should be considered waste</p>
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	<p>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.</p> <p>ii. The guidelines should be practical and implementable, and further work is needed before these are ready to be finalized.</p> <p>iii. Certain elements of the technical guidelines may require further elaboration.</p> <p>iv. All the outstanding issues including those listed in Appendix V of the technical guidelines need to be addressed.</p>	<p>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:</p> <p><i>“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”;</i></p> <p>ii. In line with above, include following under paragraph 31 (a):</p> <p><i>“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.”</i></p> <p>b) Requirements for transport of used equipment destined for root cause analysis, repair and refurbishment</p> <p>Under the Paragraph 31 (b)(ii), minimum set of provisions in the contract shall also comprise of following:</p> <p><i>“(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.</i></p> <p><i>(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.”</i></p> <p><i>Note: Replacement of “person who arranges the transport” with “exporter” is in line with text of Basel Convention.</i></p>
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		<p>c) Documentation to be provided by the person who arranges the transport</p> <p>i. It is suggested to insert the following text after the existing sentence in paragraph 31(a) (iii):</p> <p><i>“and necessary approvals from competent authority of importing country are in place, if applicable.”</i></p> <p>ii. The text at 32(b) of the guideline to be modified as follows:</p> <p><i>“Description of the equipment including name, function, date of manufacturing of every piece (age) (excluding for spare parts or components) and expected residual life”;</i></p> <p>iii. Include an additional provision as given below under paragraph 32:</p> <p><i>“Expected date of re-export after completion of failure analysis, repair or refurbishment, if applicable;”</i></p> <p><u>3. Obsolete technologies, including cathode ray tubes</u></p> <p>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.</p> <p>ii. Cathode Ray Tubes (CRTs) are also used in some medical and broadcasting</p>
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		<p>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.</p> <p>iii. Replace the suggested text of COP-12 with the following text <i>in both paragraph 31 (a) and (b)</i>:</p> <p><i>“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.”</i></p> <p>4. <u>Identification of relevant actors in the documentation</u></p> <p>Further work is needed to assess if some additional actors should be added to paragraph 32 (a) and Appendix III.</p> <p>i. Delete the suggested text of COP-12 in point (a) of paragraph 32 and replace it with the following text:</p> <p><i>“Name and contact details of importer, exporter and carrier;”</i></p> <p>ii. Revise the suggested text of COP-12 in the following manner in Appendix III:</p> <p><i>“carrier, importer, exporter, country of export, country of import, transit country, if any”</i></p> <p>iii. Further, <i>“person who arranges the transport”</i> needs to be replaced with <i>“exporter”</i> in Appendix III.</p>
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		<p>5. <u>Specific exemption for medical devices</u></p> <p>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.</p> <p>6. <u>Specific exemption for used parts</u></p> <p>Further, work is needed on specific exemptions for used parts in the context of transports for failure analysis, repair and refurbishment.</p> <p>i. Revise the suggested text of COP-12 in paragraph 31 as follows:</p> <p><i>“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.”</i></p> <p>7. <u>Waste resulting from failure analysis, repair and refurbishment activities</u></p> <p>i. Replace the suggested text of COP-12 with the following suggested new text in paragraph 31(b):</p> <p><i>“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.”</i></p> <p>ii. Revise the suggested text of COP-12 in Section VI as follows:</p>
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		<p><i>“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.”</i></p> <p>OTHER OUTSTANDING ISSUES</p> <p>1. Paragraph 31 (b) (ii) <i>The content of the legal contract need not be part of the guideline; or the following amendments need to be incorporated:</i></p> <p>i. Paragraph 31 (b) to be amended as, <i>“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”.</i></p> <p>ii. Paragraph 31 (b) (ii) to be amended by replacing <i>“person who arranges the transport”</i> with <i>“exporter”</i>. The paragraph will accordingly be revised as given below:</p> <p><i>“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:”</i></p> <p>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:</p> <p>a) <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</i></p>
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		<p><i>authority in the importing country, is in place, if applicable.</i></p> <p>b) <i>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”.</i></p> <p>c) <i>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”.</i></p> <p>d) <i>Existing para 31(b)(ii)(a) to remain unchanged and para 31 (b)(ii)(b) and 31 (b)(ii)(e) to be removed.</i></p> <p>2. Paragraph 42 and 43</p> <p><i>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.</i></p> <p>3. Definition of “person who arranges the transport” in Appendix I.</p> <p><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.</i></p> <p><i>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”.</i></p> <p><i>Furthermore, during any such transboundary movement of hazardous and other</i></p>
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		<p>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.</p> <p>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.</p>
<p>Norway</p>	<p>Norway strongly believe further work on the Basel Convention guideline on E-waste is needed, because there are outstanding parts of the guideline that are necessary for further use of the guideline. The guideline was adopted on an interim basis because there was no agreement on one essential part of the guideline; exports of used goods for repair. The guideline as it currently stands provides stricter provisions for export of functional used equipment for direct reuse then it does for non-functional equipment exported for repair or refurbishment. We believe this is worrying since export for repair always implies that waste is generated in the process, because non-functioning parts and components of the object will be discarded. These parts may contain hazardous substances.</p>	<p>The following are Norway's positions on the outstanding issues:</p> <p>1. Party notification as per paragraph 27 and 29</p> <p><i>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.</i></p> <p>The general procedure in Norway if it is unclear whether the receiving country regards the object as waste or not, is that the exporter must contact the importing country competent authority and facility and ask for their opinion. If there is disagreement on the classification of waste or not, the object have to be exported as waste. We believe this procedure provide greater protection of both countries involved and suggest this as a way forward.</p> <p>2. Residual Life Time</p> <p>We believe that residual lifetime concept is useful and interesting, but to set specific limitations are difficult in a guideline. We therefore believe it is useful to give general guidance that used products intended for export shall have adequate residual lifetime. In our Norwegian guidance for exporters of used goods (available here: http://www.miljodirektoratet.no/old/klif/publikasjoner/2516/ta2516.pdf) we clarify, among other criteria, that in order to ship used goods from Norway in a legal way, the exporter should check that the age of the item is reasonable (relatively new technology), and the item is highly marketable. When inspecting shipments in Norway, age and appearance of the used good are part of the subjective evaluations done by inspectors when determining if an object is waste or not. We would be ready to work further on these issues with other interested parties.</p> <p>3. Obsolete technologies including CRTs</p>

		<p>We support the suggested text in para 31(b) that CRTs cannot be exported for repair, because it is an obsolete technology. We do not support a general text on obsolete technologies, as this may impair future reuse and waste minimization. But for the particular case of used CRTs which is an obsolete technology that contains a large amount of toxic lead, we believe that not allowing the export for repair as non-waste can prevent dumping of hazardous waste.</p> <p>4. Identification of relevant actors in the documentation</p> <p>This is unclear to us, and we have no further suggestion.</p> <p>5. Specific exemption for medical devices</p> <p>We support the exemption for medical devices.</p> <p>6. Specific exemption for used parts</p> <p>We support the exemption for used parts.</p> <p>7. Waste resulting from failure analysis, repair and refurbishment activities</p> <p>We are of the opinion that if the receiving repair facility cannot document environmentally sound management of the residual waste, the export for repair shall not be allowed. We believe it should be a prerequisite for exporting for repair that you can document the sound treatment of residual waste.</p> <p>Norway has previously provided some compromise text suggestions on this, and we can support text along the following line:</p> <p><i>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. The residual hazardous waste should be taken back to the country of export unless the facility can provide conclusive proof that the residual hazardous waste can be treated in an environmentally sound manner in a facility in the importing country.</i></p>
Information Technology Industry Council (ITI)	Submitted one document that is reproduced hereafter.	



**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];
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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].]
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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> <ul style="list-style-type: none"> 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]

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:

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