

## **Comments of the ICT Industry on Paragraph 26(b) of the Draft 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**

December 5, 2014

The principal trade associations representing the global electronics and information and communications technology (ICT) sectors in Europe and the United States are pleased to put forward the following joint comments on paragraph 26(b) to the above referenced draft Technical Guidelines. Digital Europe (DE) and the Information Technology Industry Council (ITI) together represent the world's leading ICT manufacturers. Our member companies are committed to ensuring the environmentally sound use, repair, reuse and end-of-life management of our products throughout their life-cycle.

### **General Comments**

- Our companies have participated constructively in the Convention's work on electronics for many years, beginning with the adoption of the Annex VIII and IX waste lists, through the Mobile Phone (MPPI) and PACE partnerships, and more recently through our active participation in the negotiation of these Technical Guidelines.
- In our view, the adoption of final Technical Guidelines at COP-12 clarifying the distinction between waste and non-waste, together with the expanded use of the MPPI and PACE Guidance on the environmentally sound management of used and end-of-life mobile phones and personal computers, will provide governments and the private sector with much needed legal, technical and policy guidance for ensuring the proper classification and management of used and end-of-life electrical and electronic equipment.
- We recommend that the Technical Guidelines include criteria for identifying legitimate shipments of used equipment as non-waste for testing, repair and refurbishment/ remanufacturing that can be applied globally. Such an approach will ensure governments are able to identify suspect shipments of used electronic equipment that should be classified and managed as e-waste. Uniform criteria will be particularly valuable to developing countries that may not have the capacity to develop and apply national measures in the absence of adopted Basel Convention Technical Guidelines.
- The ICT Industry has a strong preference for the approach set forth in the "Preferred Option." We recognize that further drafting work remains, but we are optimistic that members of the Small Intersessional Working Group (SIWG) can resolve these issues ahead of COP-12. In our view, the Preferred Option presents the best opportunity for ensuring



environmentally beneficial repair and refurbishment can continue, while clarifying the applicability of the Convention over transboundary movements of e-waste.

- We note that further discussion and drafting work remains to address issues related to certain shipments of equipment for root cause analysis or warranty returns that do not necessarily anticipate the reuse of equipment.
- The ICT Industry does not support the “Fall Back” option as it would likely lead to a patchwork of differing national approaches and requirements among exporting, transit and importing countries, placing new burdens and in some instances trade prohibitions on legitimate repair, refurbishment and reuse activities. The Fall Back option would also represent failure to deliver a document that responds to the COP mandate for the development of Technical Guidelines that will help parties distinguish waste from non-waste with regard to used electronics.

The ICT Industry supports the ongoing work by governments to address the classification, control and management of electronics under the Basel Convention. Our specific comments on paragraph 26(b) are attached. We look forward to working with governments and stakeholders to complete work on paragraph 26(b) and related portions of the text so that the Technical Guidelines can be adopted at COP-12 in May 2015.

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## Comments of DE and ITI on paragraph 26(b).

26. Used equipment should normally not be considered waste:

(a) Where the criteria in paragraph 24 (a) to (d) above are met and it is not destined for any of the operations listed in Annex IV of the Convention (recovery or disposal operations) and is directly reused for the purpose for which it was originally intended or presented for sale, or exported for the purpose of being put back to direct reuse or sold to end consumers for such reuse; or

(b) [When an exporter of used equipment and their components exports such equipment for testing, repair and refurbishment and all of the following conditions are met<sup>1</sup>:

*The ICT Industry supports the “Preferred Option” over the “Fall Back Option” reproduced below. Although we see the need for further discussion (and offer some comments here) we are optimistic that a consensus on needed criteria can be reached at the face-to-face meeting in January. We note that there appears to be support for the “Preferred Option” among various countries across all regions and among multiple industry and NGO stakeholders.*

(i) Equipment and their components are exported only to Parties that have notified the Secretariat of the Basel Convention via Article 13(2) that they do not consider used equipment subject to the conditions included in paragraph 26b to be waste. Further restrictions made on a national basis can be so noted (e.g. import bans for certain types of used equipment). In the same transmission these Parties shall indicate which facilities are permitted to receive and process the used equipment under the conditions in paragraph 26b. Such information will be publicly available on the SBC website and be kept up to date;

*The outcome of discussions at OEWG-9 appears to reflect a view among parties and stakeholders that the Convention should not classify legitimate shipments of used equipment for service (\*) as “wastes” provided certain criteria or assurances are satisfied.*

*We note that countries have some discretion to consider materials as “waste” under national legislation and the Convention directs parties to notify the Secretariat and each other of these national measures. See Article 3 and Article 13(2)(c) and (d) of the Convention.*

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<sup>1</sup> For medical equipment a review should be undertaken to assess if the conditions mentioned would be applicable or that modifications would be needed. The information provided by DITTA could be used as first basis for this review. *The ICT Industry also sees a need for addressing certain warranty returns and shipments for root cause analysis that may not anticipate the reuse of returned equipment in all instances. (\*) to simplify the text, we are using the term ‘service’ as a summary of ‘testing, root cause analysis, repair, refurbishment and remanufacturing’. We suggest clarifying this in the glossary of terms.*



*The ICT Industry favors the adoption of consistent criteria at the global level for identifying legitimate shipments for service so that governments are better able to identify and control movements of waste equipment (e-waste). In light of the Convention's existing notice obligations, the ICT Industry recommends an approach that would recognize specific criteria for "non-waste" shipments in 26(b) and request parties to notify the Secretariat if they consider used equipment imported in conformance with the criteria in paragraph 26(b) to be "waste."*

*We also agree with comments put forward by the EU that it may be difficult for governments to develop and maintain a list of approved repair and refurbishment facilities and recommend deletion of this part of text.*

- (ii) **Exported equipment and their components are compliant with legislation on Restrictions of the Use of Certain Hazardous Substances (RoHS)<sup>2</sup> compliant and do not contain cathode ray tubes (CRTs);**

*A RoHS criterion may, as a practical matter, be difficult to develop and apply given the range and ongoing evolution of national RoHS measures and the variations within national legal schemes on scope and requirements. As a practical matter, it is also unclear how governments would be able to implement and enforce such a requirement on shipments of used products.*

*However, if compliance with RoHS legislation would be considered a criterion under paragraph 26(b), it should reference compliance with RoHS at the time the product was manufactured.*

- (iii) **Used equipment and their components and any residual waste, materials, and products shall continue to be owned or controlled by the exporter (with or without third parties involved in implementation) throughout the export, transit, import, testing, repair, and refurbishment processes, until they are either tested, fully functional equipment or components and are made available for direct reuse, or as resulting scrap/waste disposed of according to vi below;**

*The ICT Industry supports criteria under which the exporter would demonstrate continued accountability or control (with or without third parties) from export, through transit, import, and service operations. Further discussion is needed to detail the form such assurances should take and the expectations of parties with regard to proof of such arrangements. We also recommend that references to resulting scrap/waste and disposal be deleted here as the residual waste issue is addressed in paragraph vi below.*

- (iv) **Each shipment is sent under a valid contract between the exporter and the importing facility, requiring the importing facility to complete all applicable requirements in paragraph 26b. The exporter shall perform regular on-going due diligence to ensure importing facility(s) and any other third parties involved are consistently meeting the requirements of paragraph 26b;**

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<sup>2</sup> A reference to the scope of ROHS may be needed.



*Some transboundary movements of used electronics are intra-company shipments of used goods to regional testing or repair hubs. For such shipments, a formal contract is unlikely to exist. We recommend reference to “a valid contract (or equivalent arrangement in the case of intra-company transfers of equipment) . . .” We may have further comments once the 26(b) criteria are clarified.*

- (v) Each shipment is accompanied by a written and signed declaration by the exporter which is readily available in full to all relevant government authorities. The declaration by the exporter shall declare that all of the criteria of paragraph 26 b are met. A standard form (Appendix II) can be used for such a declaration;

*The ICT Industry supports the suggestion put forward by Norway that this text could be deleted if appropriate references are made to compliance with paragraph 24(c) and (d).*

- (vi) All residual waste generated from the testing/repair/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 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; and

*The ICT Industry agrees with comments put forward by the EU that a requirement for residual waste generated from repairs to be treated in an Annex VII country seems inappropriate. This is a particular concern where treatment according to recognized ESM standards is available in country or a ‘non Annex VII country’ nearby. We suggest that the criteria place more emphasis on transparency and the obligation of exporters to demonstrate that any residual wastes generated from repair will be managed in an environmentally sound manner. Furthermore, an obligation to export residual wastes from testing/repair/remanufacturing to an Annex VII where facilities capable of ensuring ESM are available locally (or in a country nearby), appears to be inconsistent with the Convention’s goal of minimizing the quantities of hazardous waste transported internationally.*

- (vii) [Each piece of equipment and their components is individually packaged to prevent hazards and loss of value, including protection against abrasion, static charges, ignition, loss of fluids or toxic contaminants, or breakage.] [Appropriate protection against damage during transportation, loading and unloading, in particular through sufficient packaging 3 and stacking of the load] ]

*We agree with comments put forward by several parties that the packaging and transportation obligation here can be aligned with the obligations of*

<sup>3</sup> With regard to computing equipment, see the packaging guidelines developed under PACE.



*paragraph 24(d) concerning the transportation of fully functional equipment destined for direct reuse.*

Alt 26(b) [ For cases of transboundary transports of used equipment other than the case referred to in paragraph 26, Parties may define their own conditions, such as on

- accountability of the exporter,
- compliance with legislation on hazardous substances in products ,
- packaging,
- import restrictions, and
- management of residues arising from the repair, refurbishment or testing operations in line with the provisions of the Convention

upon which such equipment may not be waste. Parties should inform the Secretariat about any such conditions. It should be documented by conclusive proof that these conditions are met and the transport should be accompanied by appropriate documentation. In the absence of such documentation, the transboundary transport of such equipment should be considered as a transboundary movement of waste.]

*The ICT Industry prefers the “Preferred Option” above for paragraph 26(b) over the “Fall Back Option” referenced in Alt. 26(b). The Fall Back Option would, in our view, fail to respond to the COP mandate for the development of Technical Guidelines that will help parties distinguish waste from non-waste with regard to used electronics. The text as proposed would not ensure the adoption of a uniform or consistently applied criteria for distinguishing waste from non-waste. As a result, environmentally beneficial repair, refurbishment and reuse activities would face new uncertainties with potentially inconsistent national requirements in exporting, transit and importing countries, creating barriers to reuse.*

*We note that the text appears to take the view that in the absence of action at the national level to identify conditions under which used equipment may not be viewed as waste, transboundary transport of used equipment should be considered a transboundary movement of waste. Such an approach would mark a dramatic departure from how governments have interpreted the Convention to date and would disrupt established trade flows of used equipment and parts for beneficial repair, refurbishment and reuse. We are unclear on whether such an assumption could be reconciled with the current text of the Convention in Annex IV (repair is not listed as a disposal operation) and Annex IX (waste listing B1110 notes that some parties do not consider used equipment exported for direct reuse, including reuse after repair or refurbishment, to qualify as waste). In our view, there is some risk that the Fall Back Option as proposed could be viewed as modifying current legal obligations under the Convention.*

## ABOUT DIGITALEUROPE

**DIGITALEUROPE** represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies.

**DIGITALEUROPE** ensures industry participation in the development and implementation of EU policies. DIGITALEUROPE's members include 58 corporate members and 36 national trade associations from across Europe. Our website provides further information on our recent news and activities: <http://www.digitaleurope.org>

## ABOUT ITI

The Information Technology Industry Council (ITI) is the global voice of the tech sector. As the premier advocacy and policy organization for the world's leading innovation [companies](#), ITI navigates the relationships between policymakers, companies, and non-governmental organizations, providing creative solutions that advance the development and use of technology around the world. Visit [www.itic.org](http://www.itic.org) to learn more. Follow us on Twitter for the latest ITI news [@ITI\\_TechTweets](#).