

RECOMMENDATIONS OF THE INFORMATION TECHNOLOGY INDUSTRY FOR THE BASEL CONVENTION DRAFT E-WASTE TECHNICAL GUIDELINES

DECEMBER 5, 2012

Summary. Parties to the Basel Convention (178 governments worldwide) are in the final stages of drafting *Technical Guidelines on Transboundary Movements of Electronic and Electrical Waste (E-waste), in Particular Regarding the Distinction Between Waste and Non-waste* (Draft Guidelines). The Guidelines are intended to inform the approach governments will take toward expanded regulation of international movements of e-waste. The Guidelines will also define the universe of used equipment and parts that governments are to consider “waste” for purposes of the Convention and its trade restrictions.

IT Industry Request. The Information Technology Industry Council (ITI) supports the work of governments and stakeholders aimed at improving the collection and environmentally sound recycling of end-of-life equipment under the Convention. ITI is encouraged by the recent progress made in the negotiations toward the development of criteria and assurances for distinguishing legitimate shipments of used goods for reuse (e.g., warranty returns, shipments for repair or root cause analysis and lease returns) from shipments of “e-waste” that may be banned or restricted under the Convention. **The information technology industry requests that governments support those drafting options contained in the current draft Guidelines that would enhance the Convention’s controls over “e-waste” while avoiding new approaches that threaten to disrupt environmentally sound and economically beneficial trade flows in used equipment and parts destined for legitimate repair, refurbishment and reuse.**

- The information technology industry continues to view legitimate repair, refurbishment and reuse of equipment and parts as critical to reducing the generation of e-waste, conserving material resources and expanding the ability of all global communities to access information and communications technology and needed medical equipment.
- In the coming weeks, it is critical that governments contact the Secretariat and members of the Small Intercessional Working Group (SIWG) to support approaches that will preserve existing international trade in used equipment and parts for reuse, repair and refurbishment.
- Following the release of revised draft Guidelines in late December, countries and stakeholders with an interest in preserving these existing legitimate trade flows should prepare to submit comments on the draft Guidelines before February 28, 2013.
- In the event the revised draft Guidelines do not provide sufficient balance or clarity with respect to the distinction between e-waste destined for materials recovery/disposal and legitimate shipments of used goods for reuse (i.e., non-wastes), ITI asks that the Parties refrain from adopting the Guidelines at COP-11 and instead direct the Secretariat to continue working towards a more refined approach that will address the e-waste issue without disrupting economically beneficial and environmentally sound trade in used equipment.

Timing for Decisions. The Basel Secretariat will reconvene the SIWG in December 2012 to discuss further revisions to the Draft Guidelines. The SIWG will work with the Secretariat to produce a revised draft document for public comment by December 22nd. Following further consultations and comment early next year, it is expected that the draft Guidelines will be put forward for final adoption at the Eleventh Conference of the Parties in April 2013.

Discussion. The information technology industry supports the following proposed drafting options contained in the current text of the Draft Guidelines (Version 27 September 2012).

- General Approach: Governments should ensure that the Technical Guidelines make clear that used equipment and parts managed for continued use are not “wastes” subject to the Convention’s controls and trade bans. ITI is confident that assurance mechanisms in the form of documentation, transparency, and packaging can distinguish legitimate shipments for reuse from suspect shipments of e-waste destined for materials recovery or disposal.
- Warranty Returns: Several helpful proposals have been put forward to exclude warranty returns from the scope of e-waste covered by the Convention and Guidelines. ITI has a preference for an approach that tracks the text put forward by BAN and the U.S. for para. 26(b)(i), below. ITI also recommends that governments *do not* subject warranty returns to a requirement that such shipments take place “in the framework of a business to business transfer agreement.” Such an approach could disrupt some direct customer/consumer returns to manufacturers.

Proposal BAN and the U.S.

i) - Shipments by individual customers of their own defective equipment under warranty or subject to a law allowing for a right of return of the equipment, for repair and refurbishment [and where the same type or similar product is intended to be returned to the customer]. This does not include equipment from take back programs.

- Batches of defective equipment under warranty that have been collected from individual customers or consolidated by manufacturers, original component suppliers, or their contractual agents, sent back to the manufacturer, original component suppliers, or their contractual agents, and for which the same type or similar product has been or will be returned to the customer. This does not include equipment from take back programs.

- Shipments of Used Equipment for Refurbishment and Repair: ITI members routinely move many types of used equipment and parts across international borders for legitimate repair, refurbishment and reuse. Companies often employ a global network of specialized facilities to ensure equipment can be properly assessed, repaired and returned to the market for continued use. These existing operations (many of which are located in developing countries) reduce the generation of e-waste by extending the useful life of electrical and electronic equipment and also make important contributions to local and regional economies. To ensure such trade can continue, ITI primarily supports the ITI and COCIR proposed text (which *does not* limit this exclusion to “professional use” equipment). Secondarily, we support the proposed text from Japan with the removal of the term “service.”

Proposal ITI and COCIR

ii. The used equipment is sent for refurbishment or repair under a valid contract with the intention of re-use to:

a. the producer or a third party facility acting on his behalf; or

b. a third party facility as long as such export does not involve exports from Annex VII to non-Annex VII countries;

Proposal Japan

ii. the used equipment is sent to the producer or a third party acting on his behalf for refurbishment or repair under a valid ~~service~~ contract for re-use; or

- Exports for Root Cause Analysis: Recognizing an exclusion for the export of professional use equipment for root cause analysis is particularly important for medical device manufacturers and for manufacturers and users of enterprise ICT equipment. ITI supports further discussions on the necessary wording for this exclusion, which is in part drawn from the recent EU WEEE recast. (ITI suggestions and preferences shown in red.)

iii. the defective used equipment for professional use, such as medical devices or their parts, ~~enterprise Information and Communications Technology (ICT) equipment (e.g. networking and infrastructure equipment)~~ is sent to the producer or a third party acting on his behalf for root cause analysis under a valid contract, in cases where such an analysis ~~is required under national law can only~~ ~~is needed for corrective and preventative actions as required by industry standards to~~ is to be conducted by the producer or third parties acting on his behalf; or

- Exports of Equipment under Lease: ITI is pleased that several Parties and stakeholders continue to support a clear exclusion for equipment managed for reuse under lease arrangements. Some participants in the SIWG and in the contact group at OEWG-8 have suggested that this exclusion is not necessary as (1) governments would not typically view lease returns as waste, and, (2) because other exclusions under consideration would cover lease returns in most instances. To avoid uncertainty and potential disruption to existing regional leasing operations that often rely on the cross-border movement of equipment to sophisticated assessment and repair facilities, ITI requests that the Parties retain a clear exclusion for equipment managed by lessors, below. Excluding equipment managed by lessors for reuse will extend the operational life of equipment, reduce the generation of e-waste and allow companies to maintain existing repair and refurbishment facilities both in developed and developing countries.

iv. the used equipment is administered by or on behalf of a person engaged in the business of leasing equipment and such equipment is removed from service and shipped by the lessor or third parties acting on their behalf with the intention of reuse.

Conclusion. ITI urges the Parties to continue working toward the development of Guidelines that will ensure the environmentally sound management of e-waste while also promoting a common understanding among governments that movements of used equipment for legitimate repair and reuse are not wastes. Appropriate documentation and other assurances should be provided to verify that used equipment exported for repair and reuse is not e-waste destined for recycling or disposal. Additional information on these recommendations is available in the ITI written submissions to the Secretariat and from Rick Goss, Vice President for Environment and Sustainability at the Information Technology Industry Council, at rgoss@itic.org or +1-202-626-5724.