

U.S. comments on the draft 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.

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The United States believes that the environmentally sound management of all waste, including electronic waste, is important for the protection of human health and the environment, and we appreciate the opportunity to comment 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” (e-waste technical guidelines).

We support e-waste technical guidelines that are balanced: encouraging the environmentally sound management of wastes within the scope of the Convention, while not impeding the trade in products, including used equipment destined for direct reuse as well as used equipment destined for repair and refurbishment for eventual reuse. We encourage Parties to develop practical and implementable guidelines that recognize that equipment destined for repair, refurbishment, and failure analysis are not considered wastes under the Convention. Guidelines that consider reusable goods as wastes could significantly impede trade in used equipment legitimately sent for repair or refurbishment by subjecting such trade to unnecessary procedures. As a result, repair and refurbishment activities would be less cost-efficient, discouraging reuse and resulting in a poor environmental outcome. Improperly treating reusable equipment as waste discourages reuse, which is contrary to the Convention’s goal of waste minimization.

In terms of the specific criteria identified in the guidelines, we agree that the elements described in paragraph 31(a) should help countries identify shipments of non-waste. These include a copy of the invoice, contract, and protective packaging. However, we continue to have concerns about many of the other criteria identified in the draft guidelines. In particular, we are concerned about paragraphs 30-32 and Appendix V that seek to identify waste shipments, and paragraphs 27 and 29 that suggest a cumbersome procedure for Party notifications of transboundary movements of used equipment sent for repair, refurbishment and failure analysis.

We provide our specific comments on these concerns below:

Main body of the draft guidelines

1. Notifications regarding waste destined for repair, refurbishment, and failure analysis: Paragraphs 27 and 29 should be revised to be consistent with Convention provisions. The text indicates that Parties should notify the Secretariat about whether or not they consider used equipment sent for repair and refurbishment as waste, and if they allow its import or export. This is inappropriate, as the Convention does not impose obligations on shipments of non-waste. As explained in the Secretariat’s preliminary legal advice in UNEP/CHW.13/INF/17, for Convention provisions to apply to shipments of used equipment, Parties would have to define it as hazardous waste under their national legislation, as provided in Article 1(1)(b), and notify the Secretariat pursuant to Article 3.
2. Application of the Convention in situations where only one country considers used equipment as waste. Paragraph 28 and Figure 1 imply that all countries involved in a transboundary shipments of used equipment sent for repair, refurbishment, and failure analysis should consider it as waste

even if only one country involved in the shipment considers it as waste. We agree that exporters should determine whether used equipment is a waste in the importing country and ensure that the shipment follows applicable rules in each country. However, this does not mean that shipments of used equipment are necessarily subject to Convention provisions. As explained in the Secretariat's preliminary legal advice in UNEP/CHW.13/INF/17, to bring a waste into the scope of the Convention, a country would have to define it as hazardous waste under its national law, as provided in Article 1(1)(b) and notify the Secretariat accordingly. Then, depending on whether the State is the exporter, importer, or State of transit, Article 6, paragraph 5 would define the required notification activities. We support efforts to revise the text of paragraph 28 in accordance with the relevant Convention provisions.

3. The criteria to identify shipments that are not waste outlined in paragraph 31 should be conditions that can be objectively determined on a consistent basis. We agree that paragraph 31 includes criteria that should help countries identify shipments that are not wastes. However, we have concerns about criteria which are difficult to implement in practice, such as a damaged appearance and price paid for the equipment. Damage is relative and does not account for the ability to economically repair for reuse. Determining whether the price paid for the equipment is "significantly lower" than the market value of functional equipment would be difficult to verify and enforce by a government. Similarly, determining whether markets exist for used equipment would also be difficult to implement in practice.

Appendix V

4. Party notifications as per paragraphs 27 and 29 (Appendix V, Issue 1). See explanation #1 above.
5. Residual life and age of used equipment (Appendix V, Issue 2): Some Parties propose that older equipment or used equipment that is near end-of-life should be considered waste because it is unlikely to have a market. However, we believe the refurbishment of used equipment significantly extends its lifetime, and so imposing a "one size fits all" residual lifetime for all used equipment is not practical. Furthermore, the date of manufacture is often unknown, making it difficult or impossible to determine age for most equipment. Overall, residual life is nearly impossible to define for categories of equipment, and we do not believe residual life and age are indicators of the usefulness of equipment.
6. Presence of CRTs and hazardous substances (Appendix V, Issue 3): Though some Parties have suggested that the presence of CRTs could be an indicator of waste, we have found that in many countries, older technologies such as CRTs are readily used and are currently in circulation. We are also aware that some medical and other equipment contains CRTs that are still in use and are frequently sent across borders for repair and refurbishment. Thus, we believe that the presence of CRTs in a shipment is not indicative of waste and a ban on such shipments is unacceptable. We disagree that the presence of hazardous substances is indicative of waste. Many products have hazardous substances (e.g. lead acid batteries) that are not waste, and products containing hazardous substances may still be destined for repair or refurbishment.
7. Exclusions or different treatment for equipment from specific sectors (e.g. the medical and automotive industries (Appendix V, Issue 5). The medical and automotive sectors have sought specific exclusions for equipment from their industries since COP-11. We are opposed to a document that would treat equipment differently by sector, as it would suggest that some used equipment destined for repair or refurbishment is likely waste, while other used equipment is not.

We also do not know of a way to identify shipments that are more likely to be waste solely based on the sector of origin.

8. Exemption for used parts (Appendix V, Issue 6): We do not agree that specific exemptions should apply for subsets of equipment, such as used parts. It would be impractical to expect that shipments of used parts can be distinguished from other equipment at the border. We believe that all equipment should be treated the same in paragraph 31(b), and thus, a separate set of criteria is not needed for a subset of equipment.
9. Ban amendment language and waste resulting from failure analysis, repair and refurbishment activities (residual waste) (Appendix V, Issue 7).¹ We strongly support the idea that all waste should be managed in an environmentally sound manner and believe that is more important than where the waste is managed. We do not agree with the proposal that the waste generated by repair and refurbishment facilities should be shipped back to the country that originally exported the equipment. The geographic destination or origin of used equipment does not indicate whether a material is a non-waste, a properly managed waste, or an unsafely disposed of waste. The premise behind this proposal is that any materials shipped from OECD countries to non-OECD countries are destined for unsafe disposal. On the contrary, we are aware of refurbishment and repair facilities in non-OECD countries that have environmentally sound management (ESM) capacity. Additionally, we believe it would not be cost-efficient to require that wastes be shipped back to the country that originally exported the equipment. It is also unrealistic to expect that facilities receiving equipment from many countries could track waste generated throughout the repair, refurbishment and failure analysis processes. We support proposals that prioritize finding a way to properly manage waste domestically or regionally over exports back to country of origin since this aligns with the Convention's goal of minimizing and reducing such transboundary shipments.

¹ While we appreciate the efforts of the Secretariat to provide guidance to parties as noted in document UNEP/CHW.13/INF/17, we would like underscore that, contrary to paragraph 11 of that document, the amendment set out in decision III/1 is not legally binding on any Parties, even those that have already consented to be bound by it, unless and until it enters into force.