

## ICT Sector Comments on the Amendment Proposals before the Parties to the Basel Convention

March 17, 2021

The Information Technology Industry Council (ITI) and Electronics Product Stewardship Canada (EPSC), on behalf of the information and communications technology (ICT) sector, appreciates the opportunity to share the perspectives of the ICT sector on proposals submitted to the Secretariat of the Basel Convention in advance of the fifteenth Conference of the Parties (COP-15). The ICT sector supports ongoing effort by the Parties to promote legal clarity and further environmentally sound management of e-waste and also enable a more circular economy.

The ability to move used equipment and products around the globe to top-of-the-line facilities for repair, reuse, refurbishment and recycling, regardless of where they are located, is critical to facilitating a circular economy. Used electrical and electronic equipment is being moved in legitimate channels for repair and refurbishment throughout the world, including from non-OECD to OECD countries.

A truly global, circular economy allows for the decoupling of economic activity from the consumption of finite resources. By eliminating waste and recovering resources embedded in products, companies and consumers can continue deriving value from products while minimizing the financial, environmental and climate impacts associated with extraction, production and disposal. The Basel Convention will be a key framework to achieving the benefits of a global circular economy and sustainable materials management. By necessity, sophisticated repair and refurbishment facilities cannot be located in every country. In order to promote a circular economy and the most environmentally sound management of electrical and electronic equipment (EEE), there has to be efficient and predictable systems for moving used EEE between countries to where those facilities are located, which may require the export of used EEE. We believe it is critical for Parties to take an informed approach that furthers environmentally sound management of e-waste while avoiding unintended consequences that could increase the risk of waste mismanagement or impede circular economy initiatives and their environmental and economic benefits.

### **Summary of Key Positions on Basel Convention Proposals**

- We have significant concerns with the European Union's (EU's) R20 proposal: Preparing for reuse (e.g. checking, cleaning, repair, refurbishment). As proposed, the amendment would undermine consensus guidance in the Technical Guidelines<sup>1</sup> clarifying that EEE destined for legitimate repair, refurbishment and reuse are not waste and would impede circular economy initiatives around the globe. We encourage the Parties to clarify that this proposal is not intended to disturb the guidance in the Technical Guidelines provisionally adopted at COP-14, to finalize the Technical Guidelines, to gain experience from the implementation of the Technical Guidelines and only then to consider the benefits of addressing this issue in the context of an amendment to Annex IV.

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<sup>1</sup> 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.14/7/Add.6/Rev.1 (Technical Guidelines).

- We oppose the proposal from Switzerland and Ghana to control all non-hazardous waste EEE under Annex II of the Convention. Any action to control non-hazardous waste EEE under the Convention should include a corresponding effort to (1) update and streamline the prior informed consent (PIC) procedure and (2) limit the scope of EEE covered under Annex II to only the most problematic and high-volume waste flows.
- Switzerland and Ghana have also stated their intention to propose a Decision at COP-15 to allow Parties to choose to impose PIC procedures for imports of used EEE. We believe such a proposal conflicts with the Convention and consensus guidance reflected in the Technical Guidelines for the classification of used EEE destined for legitimate repair, refurbishment, reuse and root cause analysis.
- We support the proposal by the Russian Federation to add a 30-day time limit for Parties to review notifications submitted as part of the PIC process. We encourage the Parties to consider additional updates to Article 6 of the Convention that would further modernize and improve the reliability and efficiency of the PIC process.
- We support the full adoption of the Technical Guidelines. The Technical Guidelines represent the consensus views of Parties following many years of legal and technical review and establish important criteria and assurances for distinguishing waste EEE intended for disposal from used equipment properly managed for legitimate evaluation, repair, refurbishment and reuse (non-waste). We encourage the Parties to adopt the current Technical Guidelines with no substantive changes to paragraph 32 to provide governments and stakeholders with needed guidance for making waste/non-waste determinations. In our view, the Parties should adopt final Technical Guidelines before considering amendment proposals for a new R20 listing in Annex IV.

We provide the following additional comments for your consideration. We would welcome the opportunity to discuss these positions further.

### **EU's Preparing for Reuse Proposal**

The EU has proposed to add a new recovery operation in Annex IV of the Basel Convention – R20: Preparing for reuse (e.g. checking, cleaning, repair, refurbishment). The proposed R20 operation could expand the scope of wastes covered by the Convention to include used equipment managed for repair, refurbishment and reuse. The EU has indicated that this proposal should only cover equipment that is already waste before it is prepared for reuse (e.g., equipment brought to a community waste collection point). However, the proposed R20 text does not make that clear and could, in practice, prompt many governments to control equipment that is not yet waste (e.g., shipped for warranty repair).

Used EEE shipped for repair or refurbishment prior to reuse is not waste and, therefore, not covered by the Basel Convention. The EU's proposal would potentially lead Parties to classify most used EEE as waste, despite the need to expand the movement of used equipment for repair and refurbishment in furtherance of the circular economy. The proposal would also undermine the Technical Guidelines adopted on an interim basis at Basel COP-14, which recognize that shipments of used EEE for legitimate repair, refurbishment and reuse are not wastes. Many Parties and stakeholders are gaining experience with the Technical Guidelines and their implementation. The proposal would undermine those efforts and prematurely direct valuable equipment to the recycling and materials recovery channel, which could have the unintended consequence of increasing the amount of EEE that becomes waste, which is directly contrary to the goals of the Convention.

Accordingly, we have significant concerns the EU's R20 proposal. It calls into question consensus guidance clarifying that EEE destined for legitimate repair, refurbishment and reuse are products rather than waste. Including "preparing for reuse" in the Basel Convention would undermine circular economy objectives and cause confusion. We prefer its elimination. Barring its outright removal, it should be amended to make clear that it only applies to equipment that is already waste, such as:

*R20: Preparing an object or substance that has previously become waste to be used again.<sup>FN</sup>*

*<sup>FN</sup> This category does not include activities to repair or refurbish objects that are not waste.*

### **Switzerland/Ghana Annex II E-Waste Proposal**

Switzerland and Ghana have proposed to list all non-hazardous e-waste under Annex II of the Convention. A new Y49 entry would cover all waste EEE and its components and constituents not characterized as hazardous. The proposal would eliminate the existing B1110 and B4030 entries on Annex IX for non-hazardous electronic waste.

The Swiss and Ghanaian proposal would have the unintended effect of increasing barriers to the efficient collection and movement of non-hazardous waste EEE to facilities capable of ensuring environmentally sound management. This approach, if adopted as drafted, would inadvertently increase the risk that waste EEE will be mismanaged or simply disposed of in-country (instead of being responsibly recycled), forfeiting significant materials value present in the waste EEE. In the absence of a formal consensus to distinguish used EEE from waste EEE, this proposal would also impede the movement of used EEE for repair and refurbishment. Ongoing negotiations regarding revisions to Annex IV operations, the finalization of the Technical Guidelines and the Swiss and Ghanaian suggestion of a new waste/non-waste decision must reaffirm that used equipment and components managed for legitimate repair, refurbishment and reuse are non-wastes.

For the reasons described above, we oppose the proposal from Switzerland and Ghana to control all non-hazardous waste EEE under Annex II of the Convention. Any action to control non-hazardous waste EEE under the Basel Convention should include (1) reforming and modernizing the PIC procedure and (2) limiting the scope of EEE covered under Annex II to only the most problematic and high-volume waste flows. To limit the scope of e-waste controlled under the Convention, the ICT sector would support the following exclusions from an Annex II e-waste listing (either drafted as limitations on the Annex II listing itself and/or in the form of one or more Annex IX listings):

- Shipments of non-hazardous e-waste that are moving transboundary as part of an original equipment manufacturer's closed-loop manufacturing or materials recovery program.
- Sorted non-hazardous e-waste that consists of highly specialized equipment, i.e., professional use or B2B enterprise equipment and components of such equipment.
- Non-hazardous materials and components that have been separated from e-waste in a pre-processing step, which may still be waste, but which are themselves no longer electrical and electronic equipment but belong to another Annex IX entry.
- Exports of non-hazardous e-waste to a specialized recycling facility that the importing party has designated as pre-consented to receive such waste, in a registry to be maintained by the Secretariat.

### **Potential Proposal for COP Decision re Reuse**

Switzerland and Ghana intend to propose a Decision at COP-15 to allow Parties to join a list of countries that impose PIC procedures for imports of used EEE.

Used EEE shipped for repair or refurbishment prior to reuse is not currently covered by the Basel Convention. This distinction reflects the legal limits of the Convention text and years of negotiations to ensure the benefits of repair and reuse are encouraged while the risk of mismanagement of waste is addressed. This careful balance has allowed the ICT sector to invest in circular business models that comply with the Technical Guidelines, extend the lives of EEE and maximize the use of equipment and scarce resources. To adopt a new decision as suggested by Switzerland and Ghana would undermine the work of the Parties on the Technical Guidelines, as well as the work to amend the Annexes.

We recognize the difficulties in striking a balance between the sustainability benefits of extending the lifespan of used equipment and the risks of mismanagement of EEE. However, we urge the Parties to further consider whether the proposed amendment would actually address their concerns and the risks of mismanagement or whether it would, instead, stifle the objectives of the circular economy and its positive environmental benefits (which could lead to an increase in the amount of EEE that ends up in landfills). Companies continue to invest resources to extend their products' lifecycles and ensure the proper management of EEE. We oppose the application of full PIC procedures to all shipments of used EEE destined for legitimate repair, refurbishment, reuse and root cause analysis. We recognize that some countries may, through national legislation, choose to control the import or export of used equipment managed for repair, refurbishment and reuse regardless of its waste classification. We encourage Parties to share information on any such requirements with the Secretariat in a timely manner. We encourage the Parties to progress on existing work streams before negotiating a new decision on the topic of the waste/non-waste distinction.

### **Russian Federation Proposal to Amend the PIC Process**

The Russian Federation has proposed revising paragraph 2 of Article 6 of the Basel Convention to impose a 30-day time limit for Parties to review and respond to a notification submitted under the PIC process. The Russian proposal also includes minor clarifying revisions.

We support the proposal by the Russian Federation to add a 30-day time limit for Parties to respond to shipment notifications. We encourage the Parties to consider additional updates to Article 6 of the Convention that would further modernize and improve the reliability and efficiency of the PIC process.

At present, the PIC process is time-consuming and burdensome, making it difficult for entities shipping Basel-controlled wastes to move those wastes across boundaries to top-of-the-line recycling facilities. This is particularly concerning as Parties consider proposals to expand the universe of Basel-controlled wastes. Requiring responses to notifications within 30 days would improve the PIC process, but we encourage the Parties to consider further changes to the process that could modernize and improve the process, for example, through increased use of electronic systems.

### **Final Adoption of Technical Guidelines on E-Waste**

We support the full adoption of the Technical Guidelines as currently drafted. The Technical Guidelines are critical to enabling systems that provide for the repair, refurbishment and reuse of used EEE.

Countries have been gaining experience with the Technical Guidelines, and companies have relied on the Technical Guidelines to develop and adjust their repair and reuse programs. Finalizing the Technical Guidelines would help all Parties (regulators and customs officials) and stakeholders more readily identify used EEE managed for legitimate repair, refurbishment and reuse (non-wastes).

The Parties adopted the Technical Guidelines on an interim basis on 2019, and an expert working group has been meeting to discuss potential revisions to the Technical Guidelines. A relatively small number of Parties and observers have suggested revising the Technical Guidelines in a way that would make it more difficult to ship equipment for reuse, repair, refurbishment and failure analysis. We oppose the revisions that have been suggested as most would make it more difficult to move used EEE for these purposes. We encourage the final adoption and expanded use of the Technical Guidelines.

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