

**Information Technology Industry Council Comments
in response to the OEWG request for Comments on Agenda Item 3 (c)(ii)
Providing Further Legal Clarity**

September 15, 2020

The Information Technology Industry Council (“ITI”) is pleased to provide these further summary comments on the documents discussed at the twelfth meeting of the Open-Ended Working Group (“OEWG-12”) in relation to the ongoing work of the expert working group on the review of the annexes (“EWG-RA” or “EWG”). We reiterate our commitment to promoting legal clarity in furtherance of legitimate repair and reuse of electronic products and components to reduce the generation of e-waste and advance circular economy goals. We are also committed to promoting the environmentally sound management (“ESM”) of WEEE destined for recycling and have the following comments on key information documents and the interventions on a draft Annex II proposal from Switzerland and Ghana. We note that the ICT sector has already provided more detailed comments on many of these issues in advance of OEWG-12.

References to “direct re-use” in the titles of Annex IV. As noted in the co-chairs’ report, both sections A and B of Annex IV include a reference to “direct re-use.” ITI supports the recommendation of the EWG to delete these references from the titles in furtherance of legal clarity. Consistent with the work completed on the Glossary of Terms and Technical Guidelines¹ on e-waste, properly managed used equipment destined for reuse, including reuse following repair or refurbishment, are not wastes under the Convention.

Proposal to include “Preparation for Reuse” in Annex IV.B. ITI strongly opposes the inclusion of a new operation “R14: Preparing for re-use (e.g. checking, cleaning, repair, refurbishment)” in Annex IV. Expanding Annex IV Section B to include this new operation would undermine recent work on promoting legal clarity with regard to the distinction between wastes and non-wastes. Concerns raised by a number of participants attending the EWG-3 meeting are highlighted in paragraph 57 of the EWG-3 report. *See* UNEP/CHW/RA_EWG.3/8.

- We share the concerns of many parties that the new operation, as proposed by the European Union, could have the unintended consequence of increasing legal uncertainty with regard to the proper classification of used equipment destined for legitimate repair and re-use.
- The new R14 entry would undermine the recent progress the parties have made under the revised Technical Guidelines adopted at COP-14, which recognize that shipments of used electrical and electronic products for legitimate repair, refurbishment and reuse are not wastes. Many parties and stakeholders are gaining experience with the Technical

¹ 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, adopted on an interim basis at COP-14 (“Technical Guidelines”).

Guidelines and their implementation. To introduce a new R14 entry as drafted would undermine those efforts and the extensive commitments and investments already made.

ITI supports the policy view expressed in the co-chairs' report that "waste prevention should be the preferred option in any waste management policy, and it may include preparation for reuse, e.g., through repair." In our view, activities such as legitimate repair, refurbishment and reuse should not qualify as waste management operations under Annex IV of the Convention. We encourage parties to explore alternative approaches for assessing this proposal at the national level in different regions or through guidance before expanding the Annex with a new R14 entry. That experience could then be shared, and the parties could consider its relevance at the global level.

Revisions to A1180 and B1110 e-waste listings. ITI encourages the parties to continue making progress toward agreement on changes to the e-waste entries in Annexes VIII and IX to further legal clarity. ITI supports the proposal made by the European Union and supported by Canada in the EWG-RA discussions, identified as "Option 1" in Appendix III to the Annex of UNEP/CHW/RA_EWG.3/8. ITI supports the work of the EWG focused on improving legal clarity with respect to the listings for e-waste in entries A1180 and B1110. Of the options under consideration, the Option 1 text would provide the greatest legal clarity in furtherance of the COP's mandate to the EWG. This text appears to enjoy the support of several governments and a number of stakeholders active in the EWG discussions.

E-waste Annex II Discussion Proposal from Switzerland and Ghana. ITI takes note of the alternative proposal presented by Switzerland and Ghana to place all non-hazardous WEEE into Annex II. ITI does not support the proposal to control all non-hazardous e-waste under Annex II of the Convention as we believe doing so could have the unintended effect of erecting new barriers to the environmentally sound management of WEEE, particularly in developing countries that may lack state of the art recycling facilities.

ITI fully supports the ESM of all WEEE regardless of whether it is hazardous or non-hazardous under the Basel Convention. We also agree that ESM and material efficiency are best achieved by ensuring both hazardous and non-hazardous WEEE is recovered at "state of the art treatment" facilities. In practice, however, ESM will require transboundary movement of WEEE to high-performing recovery facilities. For this reason, we are concerned that the proposed amendment to extend Basel Convention controls and trade bans to all WEEE will, as drafted, have the unintended effect of increasing barriers to the efficient collection and movement of WEEE to facilities capable of ensuring ESM. This will in turn increase the risk that non-hazardous WEEE will be mismanaged or simply disposed of in-country (instead of being responsibly recycled), forfeiting significant materials value present in the WEEE.

There is also some risk that, in the absence of further clarification in the Convention text, the proposed Annex II listing could also impede the movement of used electrical and electronic equipment for repair and refurbishment if ongoing negotiations regarding revisions to Annex IV operations and related text in Annex IX do not reaffirm that used equipment and components managed for legitimate repair, refurbishment and reuse are non-wastes.

For these reasons, we do not support the Swiss/Ghanaian proposal as initially outlined and look forward to working with both governments and other parties on alternative approaches to achieving our shared goal of ensuring ESM for all WEEE while also advancing the benefits of a more circular economy.

Use and Implementation of the Technical Guidelines. Many ICT companies have adjusted their operations around the management of used equipment for repair and refurbishment to align with the recommendations set forth in the Technical Guidelines for managing used electronics as non-wastes. We recommend that the parties finalize and implement the Technical Guidelines to help all parties (regulators and customs officials) and stakeholders more readily identify used electrical and electronic equipment managed for legitimate repair, refurbishment and reuse (non-wastes). The documentation and criteria set forth in the Technical Guidelines will allow parties to more readily identify imports and exports of WEEE covered by the Convention, as well as any improper e-waste shipments.

Advancing the Circular Economy. Consistent with government efforts around the world, many ICT companies have announced ambitious circular economy goals that will only succeed if governments allow for the efficient collection and movement of WEEE to advanced recovery facilities capable of ensuring ESM. Many ICT companies have already begun making progress towards those goals, investing in facilities and logistics systems around the world that optimize the opportunities for the reuse of equipment and components as well as the ESM and recovery of e-waste.

To further efforts by governments, the private sector and other stakeholders to advance a more circular economy, we recommend that the parties prioritize implementation of recent amendments to the Convention on plastics and complete WEEE-related work mandated by COP-14 for changes to Annex IV and the updated e-waste listings in A1180 and B1110 at COP-15.

* * * * *

ITI is the global voice of the tech sector. We advocate for public policies that advance innovation, open markets, and enable the transformational economic, societal, and commercial opportunities that our companies are creating. Our members represent the entire spectrum of technology: from internet companies, to hardware and networking equipment manufacturers, to software developers. ITI's diverse membership and expert staff provide a broad perspective and intelligent insight in confronting the implications and opportunities of policy activities around the world. Visit <http://www.itic.org/> to learn more. Follow us on Twitter for the latest ITI news @ITI_TechTweets.

For additional information, please contact Chris Cleet, ITI Vice President of Policy, Sustainability and Regulatory, at ccleet@itic.org or Paul Hagen, counsel to ITI, at phagen@bdlaw.com.