Comments of the United States of America

Draft Technical Guidelines on Transboundary Movements of Used Electronic and Electrical Equipment and E-Waste

June 2011

The United States once again appreciates the opportunity to provide comments on these technical guidelines. We have some general comments and have also provided suggestions and comments in a marked up version of the text, below.

One point that should be kept in mind in developing guidance in this area is the scope of the Basel Convention. As noted at various points in the draft guidelines, the Convention does not apply to used equipment that is not waste. Caution should therefore be exercised in identifying “requirements” that might be asserted for addressing transboundary movements of such equipment. Indeed, as noted elsewhere in the draft guidelines, legitimate commerce in used equipment should be facilitated, not hindered. A contrary approach could be inconsistent with parties’ obligations under other international agreements, such as those addressing trade. Similarly, in describing the requirements of the Convention with respect to wastes, it is important to clarify that those requirements apply to “hazardous wastes and other wastes” as defined in the Convention; this is done in some but not all places.

Another issue of scope arises from the terminology in the guidelines. The category of “electronic and electrical equipment” could be read to include anything with a plug or battery, including not only computers and telephones but also toasters, lamps, cars, and toothbrushes. Among other issues, it is unclear whether the manufacturers, users, exporters, and importers of such items have been consulted in developing this guidance. If the intention is to address the type of equipment that, if waste, would be commonly characterized as “e-waste,” it might be appropriate to define the category more narrowly.

Finally, at some places in the text, the distinction between used equipment (to include equipment destined for re-use, repair, refurbishment, or upgrade) and waste is not as carefully drawn as in other places. We have provided some specific comments in the text to address the potential for confusion on this very important point, which in some respects is the entire reason for these guidelines.

We appreciate again the opportunity to provide these comments.
DRAFT TECHNICAL GUIDELINES ON TRANSBOUNDARY
MOVEMENTS OF USED ELECTRONIC AND ELECTRICAL
EQUIPMENT AND E-WASTE, IN PARTICULAR REGARDING THE
DISTINCTION BETWEEN WASTE AND NON-WASTE UNDER THE
BASEL CONVENTION

Draft for consultation
(Version 21 February 2011)
**Acronyms and Abbreviations**

<table>
<thead>
<tr>
<th><strong>Acronym</strong></th>
<th><strong>Description</strong></th>
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<tr>
<td>AQSIQ</td>
<td>Administration of Quality Supervision, Inspection and Quarantine of People’s Republic of China</td>
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<tr>
<td>BAN</td>
<td>Basel Action Network</td>
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<tr>
<td>BFR</td>
<td>Brominated Flame Retardant</td>
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<tr>
<td>CCIC</td>
<td>China Certification &amp; Inspection Group</td>
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<tr>
<td>CFC</td>
<td>Chlorofluorocarbon</td>
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<tr>
<td>CMR</td>
<td>Convention Relative au Contrat de Transport International de Marchandises par Route (Convention on the Contract for the International Carriage of Goods by Road)</td>
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<td>CRT</td>
<td>Cathode Ray Tubes</td>
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<td>EC</td>
<td>European Community</td>
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<tr>
<td>HS</td>
<td>Harmonized Commodity Description and Coding System (or short: Harmonized System)</td>
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<tr>
<td>kg</td>
<td>Kilogram</td>
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<td>LCD</td>
<td>Liquid Crystal Display</td>
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<td>mg</td>
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<td>MPPI</td>
<td>Mobile Phone Partnership Initiative</td>
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<td>PACE</td>
<td>Partnership for Action on Computing Equipment</td>
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<tr>
<td>PBB</td>
<td>Polybrominated biphenyls</td>
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<td>PCB</td>
<td>Polychlorinated biphenyls</td>
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<td>PCN</td>
<td>Polychlorinated naphthalenes</td>
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<td>PCT</td>
<td>Polychlorinated terphenyls</td>
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<td>PVC</td>
<td>Polyvinylchloride</td>
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<tr>
<td>UNECE</td>
<td>United Nations Commission for Europe</td>
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<td>UNU</td>
<td>United Nations University</td>
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<td>WCO</td>
<td>World Customs Organisation</td>
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I. Introduction

A. Scope

1. The present technical guidelines provide guidance for transboundary movements of used electrical and electronic equipment (further used equipment), in particular on the distinction between waste and non-waste pursuant to decisions IX/16 of the Conference of the Parties to the Basel Convention on the control of Transboundary Movement of Hazardous Wastes and Their Disposal (further: the Convention) and VII/5 of the Open-ended Working Group of the Convention.

2. These guidelines focus on the aspects related to transboundary movements of used equipment. In particular the distinction between electrical and electronic equipment destined for repair, refurbishment or direct re-use and waste electrical and electronic equipment (further e-waste), destined for recovery or final disposal has proven to be problematic for authorities to define and to evaluate. Therefore it is difficult for enforcement agencies to assess if the provisions of the Basel Convention for transboundary movements apply, as the Convention only applies to hazardous wastes and other wastes.

3. For the purpose of these guidelines e-waste is considered to consist of electrical and electronic equipment that according to the definition of the Convention or according to national legislation is considered to be waste. Since these guidelines focus on the distinction between waste and non-waste only whole equipment or intact components are considered to be relevant for these guidelines. Materials removed from e-waste e.g. metals, plastics, batteries, PVC-coated cables or activated glass are not relevant in that context. For such materials removed from e-waste this distinction does not pose particular problems that have to be addressed here.

4. The present technical guidelines provide:
   a) information on the relevant provisions of the Convention applicable to transboundary movement of e-waste;
   b) guidance on the distinction between waste and non-waste when used equipment is moved across borders
   c) guidance on the distinction between hazardous waste and non-hazardous waste; and
   d) general guidance on ways to facilitate transboundary movements of used equipment and as distinguished from e-waste and enforcement of the control provisions of the Convention with respect to e-waste.

5. These guidelines are intended for government agencies including enforcement agencies that wish to implement, control and enforce legislation and provide training regarding transboundary movements. They are also intended to inform all actors involved in the management of used equipment to be aware of these provisions, guidelines when preparing or arranging for transboundary movements of such items and who wish to avoid non-compliance with issues under the Basel Convention and related legislation.

6. Their application should help facilitate trade in non-waste electronics and reduce transboundary movements of hazardous waste, to the minimum consistent with the environmentally sound and efficient management of such wastes and to reduce the environmental burden of e-waste that is currently being exported to countries and facilities that cannot handle it in an environmentally sound manner.

7. The procedures suggested in these guidelines would be subject to further review at specific time intervals in order to ensure that the objective of environmentally sound management is upheld and to reflect the knowledge and experience gained.

8. These guidelines do not cover other aspects of environmentally sound management of e-wastes such as collection, treatment and disposal. These aspects will be covered where appropriate in other guidance documents. In particular a series of guidelines were developed in the context of the Mobile Phone Partnership Initiative (MPPF) including guidelines on:
   a) Awareness raising and design considerations (MPPF, 2009a)
b) Collection (MPPI, 2009b)
c) Transboundary movement (MPPI, 2009c)
d) Refurbishment (MPPI, 2009d)
e) Material recovery and recycling (MPPI, 2009e).

Similarly, guidelines covering other aspects of the management of used and end-of-life computing equipment are being developed within the Partnership on Computing Equipment (PACE).

B. About e-waste

9. E-waste consists of electrical and electronic equipment that is no longer suitable for use or that the last owner has discarded with the view of its disposal i.e. final disposal, recovery or recycling. The amounts of e-waste are growing rapidly, due to the wide use of this equipment, both in developed countries and in developing countries. The total amount of e-waste in 2005 was estimated to be 40 million tonnes. The amount of e-waste in the EU was estimated between 8.3 and 9.1 million ton in 2005 and expected to reach some 12.3 million ton in 2020 (UNU, 2007). In developing countries and countries with economies in transition the sales of electrical and electronic equipment are increasing rapidly. Therefore the domestic arising of e-waste is likely to increase significantly in those countries. Moreover, e-waste is exported from developed countries to developing countries, that are not likely to possess the infrastructure and societal safety nets to prevent harm to human health and the environment, due to factors such as exports being less expensive than managing the waste domestically, the availability of markets for raw materials or recycling facilities, and the location of manufacturers of electrical and electronic equipment, typically for re-use, repair or recovery of materials. However it must be recognized that exporting the waste takes place to avoid costs of more diligent environmentally sound management at home by allowing the waste management to take place in weaker economies that are not likely to possess the infrastructure and societal safety nets to prevent harm to human health and the environment.

10. The magnitude of these exports is difficult to assess. BAN (2002) suggested that 50 – 80% of the e-waste from industrialized countries is exported, mainly to China and other East Asian countries for cheap recycling and final disposal or residues due to the low labour costs and less stringent environmental regulations in this region. Yu Xiezhi et al (2008) confirm these practices and suggest similar percentages of export.

11. E-waste may contain hazardous substances such as lead, mercury, PCB, asbestos and CFC’s that pose risks to human health and the environment when improperly disposed of or recycled and that require specific attention as to their environmentally sound waste management. In most developing countries and countries with economies in transition capacity to manage the hazardous substances in e-waste is lacking. As an example, the informal recycling industry in Asia supplies manufacturers with recycled raw materials. There is clear evidence that the practice exploits women and child labourers who cook circuit boards, burn cables, and submerge equipment in toxic acids to extract precious metals such as gold (Schmidt, 2006). Moreover, the techniques used by the informal sector are not only damaging human health and the environment; often they also perform poorly as to their efficiency in recovering valuable resources.

12. E-waste contains also valuable materials that can be recovered for recycling such as copper and scarcer metals, such as molybdenum and palladium. The extraction of all of these metals from the Earth has significant environmental impact. And the use of such waste materials as a resource can lead to conservation of energy and reduction in greenhouse gas emissions when adequate technologies and methods are applied. Even management of in principle non-hazardous wastes can cause significant harm to human health and the environment if not managed in an environmentally sound manner.

13. Direct re-use or re-use after repair or refurbishment can contribute to sustainable development. Re-use extends the lifetime of the equipment and provides for access to such equipment for groups in society that otherwise would not have access to it. However, re-use can also have negative impacts if not done properly. The lack of clarity in defining when used equipment is waste and when not has led to a number of situations where such equipment was exported to, in particular, developing countries ostensibly for re-use where a large percentage of these goods in fact were not suitable for further use and had to be disposed of in the developing country as waste. Due to the frequent presence of hazardous substances and components in this equipment and the lack of adequate installations to treat those in an environmentally sound manner.
manner this has led to serious problems for human health and the environment in the countries receiving this e-waste.

II. Relevant provisions of the Basel Conventions

A. General provisions of the Basel Convention

14. The Convention was adopted on 22 March 1989 and entered into force on 5 May, 1992. It emphasizes, amongst other principles, environmentally sound management of hazardous wastes, which is defined as taking all practicable steps to ensure that hazardous wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes. It stipulates a number of objectives, including the following:

a) prevention and minimization of the generation of hazardous wastes and other wastes;
b) reduction of transboundary movements of hazardous and other wastes subject to the Convention to a minimum consistent with their environmentally sound and efficient management;
c) provision of adequate capacity to manage wastes within the country of export;
d) active promotion of the transfer and use of cleaner technologies;
e) environmentally sound management of hazardous wastes and other wastes.

B. Control procedure for transboundary movements

15. The Convention has established a control procedure for transboundary movements of hazardous wastes and other wastes. If used equipment meets the definition of hazardous wastes or of other wastes the following provisions apply.

16. Hazardous wastes and other wastes should, as far as is compatible with their environmentally sound management, be disposed of in the country where they were generated. Transboundary movements of such wastes are only permitted if (1) conducted in a manner that will protect human health and the environment from adverse effects that may result from such movement, (2) such wastes, if exported, are managed in an environmentally sound manner in the country of import or elsewhere, and (3) one of under the following conditions

(a) the transboundary movement should be conducted under conditions that do not endanger human health and the environment;
(b) the treatment in the country of import or final destination will be managed in an environmentally sound manner;
(c) the country of export does not have the technical capacity and the necessary facilities to dispose the wastes in question in an environmentally sound and efficient manner;
(d) the wastes in question are required as a raw material for recycling or recovery industries in the country of import;
(e) the transboundary movements in question are in accordance with other criteria decided by the Parties.

17. Any transboundary movements of hazardous and other wastes are subject to prior written notification from the exporting country and prior written consent from the importing and, if appropriate, transit countries. Parties shall are required to prohibit the export of hazardous wastes and other wastes if the country of import prohibits the import of such wastes. The adoption of decision III/1 by a consensus of the Parties in 1995, calling for an amendment to the Convention banning the export of hazardous wastes from OECD/EU countries and Liechtenstein (proposed Annex VII) to non-Annex VII countries, and its subsequent implementation by many countries has led to numerous national prohibitions, even while it is not as yet in global force as an amendment to the Convention. These national bans, if notified to Parties pursuant to Articles 4 and 13, must be respected by all Parties under the rules of the Convention.

18. The Convention also requires that information regarding any proposed transboundary movement is provided using the accepted notification form and that the approved consignment is accompanied by a movement document from the point where the transboundary movement commences to the point of disposal.

Comment [US4]: Corrections in this section are suggested for consistency with Article 4(2), 4(8), and 4(9) of the Convention. As written, the guidelines suggest that criteria c, d, and e must all be met for a movement to be permitted, but this is not true. It is important that the legal requirements of the Convention are not misstated in a guidance document.
19. Furthermore, hazardous wastes and other wastes subject to transboundary movements should be packaged, labelled, and transported in conformity with international rules and standards.\(^1\)

20. When transboundary movements of hazardous wastes and other wastes to which the consent of the countries concerned has already been given cannot be completed, the country of export shall ensure that the wastes in question are taken back into the country of export for their disposal, if alternative arrangements that would ensure treatment of the wastes in an environmentally sound manner cannot be made. In the case of an illegal traffic (as defined in article 9, paragraph 1), the country of export shall ensure that the wastes in question are taken back to the country of export for their disposal or disposed of in accordance with the provisions of the Basel Convention if the illegal traffic is the result of the conduct on the part of the exporter or the generator (article 9, paragraph 2). In case the illegal traffic is the result of the conduct on the part of the importer or disposer the country of import shall ensure such action (article 9, paragraph 3). In all cases the countries involved shall cooperate to resolve such situations.

21. No transboundary movements of hazardous wastes and other wastes are permitted between a Party and a non-Party to the Basel Convention unless a bilateral, multilateral or regional arrangement exists as required under Article 11 of the Basel Convention.

C. Definitions of waste and hazardous waste

22. The Convention defines waste as "substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law" (article 2, paragraph 1). It is important to note that national provisions concerning the definition of waste may differ and, therefore, the same material may be regarded as waste in one country but as a non-waste in another country.

23. Hazardous waste is defined in the Convention as "wastes that belong to any category contained in Annex I, unless they do not possess any of the characteristics contained in Annex III; (definition in article 1 paragraph 1.a) and wastes that are not covered under paragraph 1.a but are defined as, or considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit" (definition in article 1 paragraph 1.b). The definition of hazardous waste therefore incorporates domestic law such that material regarded as a hazardous waste in one country but not in another country is defined as hazardous waste under the Convention. The Convention also requires that Parties inform the other Parties, through the Secretariat of their national definitions (article 3). Providing detailed and specific information on the national definitions of hazardous waste can avoid ambiguity concerning the applicability of national definitions.

24. To aid distinguishing hazardous wastes from non-hazardous wastes for the purpose of Article 1.1.a the Convention has adopted two Annexes. **Annex VIII** includes wastes considered to be hazardous according to Article 1.1 (a) of the Convention unless they do not possess any of the characteristics of Annex III. Annex IX includes wastes that are not covered by Article 1.1 (a) unless they contain Annex I material to an extent causing them to exhibit an Annex III characteristic. More information on the distinction between hazardous and non hazardous e-waste is included in section V B of these guidelines.

24 bis. In addition to hazardous wastes, the Convention’s requirements apply to “other wastes” as defined in Annex II of the Convention. Electronic and electrical equipment that is waste but neither “hazardous waste” nor “other waste” would be beyond the Convention’s coverage.

III. Guidance on the distinction between waste and non-waste

A. General considerations

25. To determine if used equipment is waste it may be necessary to examine the history of an item on a case by case basis. However, there are characteristics of the equipment that are likely to indicate whether it is waste or not.

26. Where the exporters of used equipment claim that this is intended to be or is a movement of used equipment intended for re-use and not e-waste, the following should be provided to back up

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\(^1\) In this connection, the United Nations Recommendations on the Transport of Dangerous Goods (Model Regulations) (UNECE, 2009 ) or later versions should be used.
this claim to an authority on its request (either generally and prior to the transport, or on a case-by-case basis):

a) a copy of the invoice and contract relating to the sale and/or transfer of ownership of the equipment which states that the equipment is destined for direct re-use and fully functional and proof of the final destination of the equipment;

b) evidence of evaluation/testing in the form of copy of the records (certificate of testing – proof of functional capability) on every item within the consignment and a protocol containing all record information (see Section IV A);

c) a declaration made by the exporter of the equipment that none of the equipment within the consignment is waste as defined by national law of the countries involved in the movement (countries of export and import, and, if applicable countries of transit) and;

d) appropriate protection against damage during transportation, loading and unloading, in particular through sufficient packaging and/or stacking of the load.

B. Situations where used equipment would normally be considered waste, or not

27. Used equipment would normally not be considered waste:

a) where the criteria in paragraph 26 (a) to (d) are met and if it is fully functional and is not destined for any of the operations listed in Annex IV of the Convention (recovery or disposal operations) and is directly re-used for the purpose for which it was originally intended or presented for sale or exported for the purpose of being put back to direct re-use or sold to end consumers for such re-use or is a leased item being returned to its owner, or

b) where the criteria in paragraph 26 (c) and (d) are met and if it is sent back as defective batches for repair, refurbishment, or upgrade to the producer (including under warranty) with the intention of receiving it back for re-use.

28. Used equipment would normally be considered waste if the following factors are present:

a) the equipment is not complete - essential parts are missing and the equipment cannot perform its essential key functions;

b) it shows a defect that materially affects its functionality and fails relevant functionality tests;

c) it shows physical damage that impairs its functionality or safety, as defined in relevant standards;

d) the protection against damage during transport, loading and unloading operations is inappropriate, e.g. the packaging or stacking of the load is insufficient;

e) the appearance is particularly worn or damaged, thus reducing the marketability of the item(s);

f) the item has among its constituent part(s) hazardous components that are required to be discarded or are prohibited for use in such equipment under national legislation;

g) the equipment is destined for disposal or recycling instead of re-use;

b) there is no regular market for the equipment

i) it is destined for cannibalization (to gain spare parts);

j) the price paid for the items is significantly lower than would be expected from working equipment intended for re-use; or

k) it is part of a large shipment that is not itemized it is destined for disposal operations.

Comment [US6]: This suggestion is important for two reasons: (1) to make clear that this list is not exclusive...there may be other reasons to suggest that a particular shipment is waste; and (2) consistent with paragraph 27(3), there are likely many situations where equipment would not meet some of these criteria (e.g., would fail functionality tests or be missing a key part precisely because it is being sent for repair/refurbishment/upgrade, and this would not mean that the equipment is waste.

Comment [US5]: The document at many points uses these terms as well in distinguishing between waste and non-waste; they should not be omitted here.

Comment [US7]: Note that this criterion may be difficult for national authorities to apply/enforce on the ground, as it is situational and evolves over time. The ultimate concern may be whether the equipment is obsolete by any reasonable standard; for this some countries use a cut-off date for the year of manufacture, but this must be constantly updated.

Comment [US8]: This is repetitive of criterion "g"

2 Equipment or components are “fully functional” when they have been tested and demonstrated to be capable of performing the essential key functions they were designed to perform. Essential Key Functions are the originally-intended function(s) of a unit of equipment or component that will satisfactorily enable the equipment or component to be re-used.

3 The facilities should apply relevant guidelines for repair and refurbishment facilities. Such guidelines are not yet available under the Convention. Work is being done in PACE to produce such guidelines.

4 E. g. asbestos, PCBs, CFCs. The use of these substances is phased out or prohibited in the context of multilateral environmental agreements or in national legislation of certain countries for certain applications.
IV. Procedures for transboundary transport of used equipment that is not waste

29. For exports of used equipment for repair under warranty meeting the conditions in III B paragraph 27 b) the exporter should provide a declaration that none of the equipment within the consignment is defined as waste in any of the countries involved and appropriate protection against damage should be provided. For all other used equipment that is not waste, i.e. for direct re-use or for repair or refurbishment use of a specific procedure is recommended.

A. Recommended procedure to follow in case of transboundary transport of used equipment suitable for direct re-use without repair or refurbishment

30. Prior to any export of used equipment the exporter should be in a position to provide information to any relevant state authorities (e.g. customs, police or environmental agencies) that proves that the criteria in paragraph 26 are met. Failure to meet these criteria would generally indicate to the relevant authorities that the material is e-waste. In some jurisdictions, however, it remains for the state authorities to prove that the used equipment at issue is e-waste.

31. Exporters that prepare an export of used equipment rather than e-waste are therefore recommended to take the following steps:

Step 1: Evaluation / testing

32. Evaluation of the potential suitability for re-use and testing of the items that are evaluated as potentially suitable for re-use should be undertaken to ensure that used equipment is suitable for re-use. The tests to be conducted depend on the kind of equipment. Functionality should be tested and presence of hazardous substances or components should be evaluated. The completion of a visual inspection without testing functionality is unlikely to be sufficient. For most of the equipment a functionality test of the key functions is sufficient. Section V B of these guidelines provides for guidance on the evaluation of presence of hazardous substances and components. Appendix II gives examples of functionality tests for certain categories of used equipment.

Step 2: Recording

33. Results of evaluation and testing should be recorded and a record (certificate of testing, displaying/stating functional capability) should be placed on each tested piece of equipment.

34. The record should contain the following information:
   a) name of the item;
   b) identification number of the item (type no.), where applicable;
   c) year of production (if available);
   d) name and address of the company responsible for evidence of functionality;
   e) result of tests (e.g. naming defective parts and defect or indication of full functionality);
   f) kind of tests performed.

35. The record should accompany the transport and should be fixed securely but not permanently on either the used equipment itself or on the packaging so it can be read without unpacking the equipment.

Step 3: Appropriate protection against damage

5 In one of the reactions on the previous draft it was suggested that one procedure could cover both export of used equipment suitable for direct re-use and for exports destined for repair and refurbishment. Sections IV A and IV B should be merged or one of the two procedures should be chosen if this would be decided during the further consultation process section. As this suggestion was only mentioned in one reaction both sections were retained in this draft.

6 In the reactions on the first draft the question was raised who should perform such tests and who would be entitled to issue the evidence of the testing. No suggestions on this issue were provided. If specifying this issue is appropriate this has to be included in the next version of the guidelines.
36. The used equipment should be appropriately protected from damage during transportation, loading and unloading. Insufficient packaging or stacking of the load is an indication that the equipment may be waste. In general, the observation of poor packaging or stacking of the load should lead enforcement agencies/authorities to make further enquiries regarding an item being transported.

37. A flow scheme representing the recommended procedure for equipment destined for direct re-use is given in figure 1.

38. Certain Parties consider electrical and electronic equipment destined for repair, refurbishment or upgrading to be waste, while others do not. If one of the countries concerned considers this equipment to be waste the procedures on transboundary movement of e-waste as indicated in section V A of this guidance should be followed.

39. If, following Article 2.1 of the Basel Convention and national legislation, none of the Parties involved in a transboundary movement has determined that used equipment destined for repair or refurbishment in the importing country are classified as hazardous or other wastes, the Basel Convention control procedure will not apply. However, Parties have expressed concerns that used equipment has been transported to their countries as destined for repair or refurbishment but in

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Comment [US9]: There is a typo in the box on the bottom right – on the last line, “of” should be “or”
fact intended for disposal, and such waste could enter their country without them knowing this and therefore without a possibility to oppose or to identify conditions to such transports in case this would create environmental problems. Therefore the voluntary notification procedure, described in this Section should be considered by the countries involved to promote transparency and help countries distinguish between legitimate transboundary movements of equipment and illegal transports of potentially hazardous wastes under Article 9. One benefit of the procedure would be to provide information to help facilitate legitimate commercial transactions while simultaneously helping to stop illegal traffic. Caution should be exercised in creating such a procedure, however, so as not to create burdens on trade by countries that are not participating in the procedure, lest the “voluntary” procedure be converted into one that is effectively mandatory. Ensure that such movements are being monitored, and the importing country is given an opportunity to react (consent, object, or identify conditions) to such movements. Alternatively, the countries involved may also consider to applying the procedure applicable for transboundary movements of waste to such transports, even though the equipment is not considered to be waste.

Voluntary Notification Procedure

40. In cases where used equipment is exported regularly to the same repair, refurbishment or upgrading facility by the same exporter, and if there is no existing agreement between the exporter and the governmental authorities (importing and exporting countries), the exporter will provide a Statement of Evaluation and Intent to Re-use (“the Statement”) to the Governmental Authority of the countries of export, import, and transit (if any), by means of email, fax or other agreed method, prior to the departure of the transport from the country of export. The Statement is intended to promote transparency and assist governments in distinguishing legitimate transboundary transports of equipment for environmentally sound refurbishment, repair and re-use from illegal transports of (potentially hazardous) e-waste for recycling that an exporter attempts to move under the guise of “re-use” so as to avoid legal controls on waste movements. One Statement will be sufficient for transports within a defined time period for up to one year, or other time period as agreed by the Parties involved.

41. In the case of single transport greater than a specific quantity as agreed to by the parties involved (especially of trial transports to a new repair or refurbishment facility), that have been evaluated and assessed to be likely suitable for re-use, the exporter will provide a Statement to the Governmental Authority of the countries of export, import, and transit (if any), by means of e-mail, fax, or other agreed to method, prior to the departure of the transport from the country of export. In this case, the Statement would substitute an actual amount of material for the transport instead of the maximum amount as would be the case for a Statement of equipment that is regularly exported to the same facility.

42. Statements, as described in paragraphs 40 and 41 above, should include the following:
   a) a reference that the load is not regarded to be waste by any of the countries involved;
   b) a commitment by the exporter that applicable guidelines for the environmentally sound management of the equipment are to be followed and assurances that such transported equipment destined for re-use and will be managed in an environmentally sound manner;
   c) a description of the transport, in particular, content, maximum count, packaging to ensure safe transport and adequate protection of the equipment;
   d) an indication whether the information is for a single transport or multiple transports, and estimated frequency at which such transports are to take place;
   e) an indication of the proposed date of the first and the last transport during the defined time period;

8 Governmental Authority: means a governmental authority designated by a Party or Signatory to be responsible, within such geographical areas under the legal jurisdiction of the Party or Signatory, as the Party or Signatory thinks appropriate for implementing relevant rules and regulations and to receive information related to exports of used equipment destined for re-use, possibly after repair, refurbishment or upgrading.

9 For mobile phones the guidance document of the MPMI mentions an indicative number of 200 items.

10 It was suggested that third party certification of facilities could provide added assurance to authorities that the proposed exports would meet these requirements. If including such reference is considered to be appropriate this could be added in the next version of the guidelines.
f) identification of the route (including ports of export and import);
g) identification of and contact information (name, address and phone number) of the importer and exporter;
h) a description of the evaluation used to determine that the used equipment in the transport are suitable for re-use, possibly after repair, refurbishment or up-grading;
i) identification of and contact information (name, address, and phone number) of local persons associated with the importer and exporter who can provide any additional information about the transport;
j) information on how residues and wastes arising from repair, refurbishment or upgrading operations will be managed.

43. All pieces of used equipment, individually or in partitioned batches, must be appropriately documented with reference to the above-mentioned Statement, or other suitable method, so that recipients in the importing country are properly informed.

44. The Governmental Authorities should acknowledge by e-mail, fax or other agreed method the receipt of the Statement within the 3 working days, or other agreed time period, and should send this acknowledgement to the states concerned and to the exporter and the importer. After this time period has elapsed, any evidence of effective delivery of the Statement to the Governmental Authorities will be deemed as the acknowledgement date. If the Governmental Authorities have provided authorization or have not responded within the 14 calendar days from the acknowledgement date, transboundary movement may commence for the single transport or the transports within the period of time defined in the Statement. An updated Statement might be submitted at any time. However:

a) if further information is requested by the Governmental Authority of the state of export, import or transit, such information should be provided before commencement of the transport, until the re-quoted information has been provided;
b) if the response indicates that there is no objection, but suggests conditions, then the transport may commence only after necessary conditions have been taken into account.

45. The Statement is provided solely for use by the Governmental Authority and is not for disclosure to third parties if the statement is marked as business confidential.

Alternative procedure

46. Alternatively the Parties involved may want to decide that, on a voluntary basis the procedures applicable for waste as indicated in Section V A would be applied.

47. The Basel Convention procedure for hazardous waste controls could be utilized for equipment that contains hazardous components or substances that would need to be disposed of as a result of the repair or refurbishment operations. The voluntary procedure for non-hazardous waste could be utilized for transboundary movements if the equipment does not contain hazardous components or substances.

48. A flow scheme representing the recommended alternative procedure for equipment destined for repair or refurbishment is given in figure 2.

11 Such information may indicate that more stringent provisions to be applied like the provisions of the Basel Convention.
Figure 2 Alternative procedure for used equipment destined for repair or refurbishment.

IV. Guidance on transboundary movements of e-waste

A. General considerations

49. When e-waste is considered to be hazardous waste according to Article 1.1.a. of the Convention or by national legislation (Article 1.1.b) national import or export prohibitions should be respected. Where no such national prohibitions are implemented the procedure of prior informed consent as mentioned in Section II B of these guidelines applies. For e-waste that is not considered to be hazardous the Basel Convention does not foresee a specific procedure. However, certain Parties have implemented procedures in those cases, such as those applicable for transboundary movements of ‘green’-listed waste under EU legislation or the procedure for pre-transport inspection of recycling materials as applicable for China.

50. In case a competent authority involved in transboundary movements of e-waste considers a specific item to be hazardous waste according to its national law, while the other authorities would not, the control procedure for hazardous waste would apply. The same mechanism is suggested for differences of opinion between competent authorities on the assessment of the equipment.

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13 PSI for recycling materials is established by the General Administration of Quality Supervision, Inspection and Quarantine of People’s Republic of China (AQSIQ). Information on the procedure can be found on the web-site of the China Certification & Inspection Group (CCIC), who is authorized to handle this procedure in various countries worldwide, e.g. on the website of the CCIC in Europe: http://www.ccic-europe.com
constitutes a waste or not. In those cases the applicable voluntary procedures for transboundary movements of waste could be applied. Should this not be done, the movement has to be regarded as illegal because it would be illegal in at least one of the countries involved in the movement.

B. Distinction of hazardous waste and non-hazardous waste

51. E-waste is included in Annex VIII of the Convention with the following entry for hazardous wastes:

A1180 Waste electrical and electronic assemblies or scrap containing components such as accumulators and other batteries included on list A, mercury-switches, glass from cathode-ray tubes and other activated glass and PCB capacitors, or contaminated with Annex I constituents (e.g. cadmium, mercury, lead, polychlorinated biphenyl) to an extent that they possess any of the characteristics contained in Annex III (note the related entry on list B, B1110).

52. E-waste is also included in Annex IX of the Convention with the following entry for non-hazardous wastes:

B1110 Electronic and electronic assemblies:
- Electronic assemblies consisting only of metals or alloys
- Waste electrical and electronic assemblies or scrap (including printed circuit boards) not containing components such as accumulators and other batteries included on list A, mercury-switches, glass from cathode-ray tubes and other activated glass and PCB capacitors, or not contaminated with Annex I constituents (e.g., cadmium, mercury, lead, polychlorinated biphenyl) or from which these have been removed, to an extent that they do not possess any of the characteristics contained in Annex III (note the related entry on list A A1180).

53. Electronic equipment will often contain hazardous components examples of which are indicated in the entry A1180 of Annex VIII. E-waste should therefore be presumed hazardous unless it can be shown that it does not contain such components and in particular:

a) lead-containing glass from cathode ray tubes (CRTs) and imaging lenses, which are assigned to Annex VIII entries A1180 or A2010 “glass from cathode ray tubes and other activated glass”. This waste also belongs to category Y31 in Annex I; lead compounds and is likely to possess hazard characteristics H6.1, H11, H12 and H13 included in Annex III;

b) nickel-cadmium batteries, which are assigned to Annex VIII entry A1170 “unsorted waste batteries...”. This waste also belongs to category Y26 in Annex I; cadmium compounds and is likely to possess hazard characteristics H6.1, H11, H12 and H13;

c) selenium drums, which are assigned to Annex VIII entry A1020 “selenium; selenium compounds”. This waste also belongs to category Y25 in Annex I; selenium compounds and is likely to possess hazard characteristics H6.1, H11, H12 and H13;

d) printed circuit boards, which are assigned to Annex VIII entry A1180 “waste electronic and electrical assemblies...”, and entry A1020 “antimony; antimony compounds” and “beryllium; beryllium compounds”. These assemblies contain brominated compounds and antimony oxides as flame retardants, lead in solder as well as beryllium in copper alloy connectors. They also belong in Annex I, to categories Y31, lead, lead compounds, Y20, Y18.

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Comment [US15]: Note that a transboundary movement of waste that is not hazardous waste or other waste cannot be defined as “illegal traffic” under the Convention (Article 9). Whether it is contrary to a particular state’s domestic law is a different question, but care should be exercised not to apply Basel Convention terms in a way that may be misleading.

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14 This entry does not include scrap assemblies from electric power generation.
15 PCBs are at a concentration level of 50 mg/kg or more.
16 This entry does not include scrap from electrical power generation.
17 Re-use can include repair, refurbishment or upgrading, but not major reassembly.
18 In some countries these materials destined for direct re-use are not considered wastes.
19 The following list of components or constituents are non-exhaustive examples.
beryllium, beryllium compounds and Y27 antimony, antimony compounds and Y45, organohalogen compounds other than substances referred to elsewhere in Annex I. They are likely to possess hazard characteristics H6.1, H11, H12 and H13;

e) fluorescent tubes and backlight lamps from Liquid Crystal Displays (LCD), which contain mercury and are assigned to Annex VIII entry A1030 “mercury; mercury compounds”. This waste also belongs to category Y29 in Annex 1, Mercury; mercury compounds and is likely to possess hazard characteristics H6.1, H11, H12 and H13;

f) plastic components containing Brominated Flame Retardants (BFRs) which are assigned to Annex VIII entry A3180 “Wastes, substances and articles containing, consisting of or contaminated with polychlorinated biphenyl (PCB), polychlorinated terphenyl (PCT), polychlorinated naphthalene (PCN) or polybrominated biphenyl (PBB), or any other polybrominated analogues of these compounds, at a concentration of 50 mg/kg or more.” This waste also belongs to category Y45 in Annex I, Organohalogen compounds other than substances referred to elsewhere in Annex I and to category Y27 Antimony, antimony compounds, and is likely to possess hazard characteristics H6.1, H11, H12 and H13;

g) other components containing or contaminated with mercury, such as mercury switches, contacts, thermometers, which are assigned to annex VIII entry A 1010/1030/1180. This waste also belongs to category Y29 in Annex 1, Mercury; mercury compounds and is likely to possess hazard characteristics H6.1, H11, H12 and H13;

h) waste oils/liquids, which are assigned to annex VIII entry A 4060 “Waste oil/water, hydrocarbons/water mixtures, emulsions”. The waste also belongs under category Y8, Y9 and is likely to possess hazardous characteristics H3, H11, H12 and H13;

i) components containing asbestos, such as in wires, cooking stoves and heaters, which are assigned to annex VIII entry A 2050. The waste also belongs under category Y 36 and is likely to possess hazardous characteristic H 11.

VI. Guidance on control of transboundary movements of used equipment and e-waste

54. Inspections are undertaken by competent bodies of state authorities (e.g. police, customs and (environmental) inspectors) at facilities and during the transport. Exporters of used equipment should ensure that it is accompanied by proof of adequate testing and that is appropriately protected against damage during transportation, loading and unloading in order to demonstrate that the items concerned are not e-waste as indicated in section IV A. For practical reasons of control it is recommended that every load of used equipment is accompanied by a CMR document20. This document contains a description of the goods transported using the Harmonized Commodity Description and Coding System (normally referred to as “Harmonized System”) developed by the World Customs Organization (WCO). The Secretariat of the Basel Convention has cooperated with the WCO to establish a correlation between the entries in Annexes VIII and IX and the codes of the Harmonized System. The correlation table is included in Appendix III. This table can facilitate comparison of the CMR documents with the documents that should accompany the transport of used equipment or e-waste according to the procedures in these guidelines.

55. When e-waste is exported as non-hazardous waste the exporters should ensure that it is accompanied by evidence of appropriate testing or assessments to demonstrate that the waste that is being exported is non-hazardous and that the treatment of this waste is environmentally sound. When e-waste is exported as hazardous waste the documentation required under the control procedure of the Convention should be present during transport.

56. In the absence of appropriate documentation and protection against damage during transportation, loading and unloading authorities are likely to presume that an item is (potentially

Comment [US16]: Should spell out acronym upon first use.

20 Document containing the information as required under the UN Convention on the Contract for the International Carriage of Goods by Road (CMR Convention). Although the form in which the information should be presented is not mandatory it is recommended to use the standard CMR forms to facilitate communication in case of a control. An extract of the correlation table between codes used in customs documents to describe goods and entries in the Basel Convention Annexes VIII and IX has been included in Appendix III.
hazardous) e-waste and, in the absence of consents in accordance with the requirements of the Basel Convention, investigate whether the export is a case of illegal traffic as specified in Article 9 of the Convention. In these circumstances, if illegal traffic is found, the relevant competent authorities will be informed and the provisions of take back as foreseen in Article 9 will be applied. The exporters may be liable to a criminal sanction. In those jurisdictions where the burden is on the state authorities to prove the items are e-waste rather than used equipment, absence of the appropriate documentation and protection against damage during transportation, loading and unloading is likely to lead to significant delays to the onward transport of the equipment whilst the necessary investigations are carried out to establish the status of the equipment.

57. Health and safety issues and potential risks for enforcement agents (such as customs officers) are a key priority for any inspection of transports of e-waste or used equipment. Enforcement officers should have had specific training before doing such inspections. Particular care should be applied when opening containers. In particular if the transport consists of waste the items may not have been stacked in a stable way and items may fall out of the container when opening it for inspection. The load may also contain hazardous substances that could be released when inspecting the load.
Appendix I Glossary of Terms

**Note:** These terms were developed for the purpose of the guidelines on transboundary movement of used electrical and electronic equipment and e-waste and should not be considered as being legally binding, or that these terms have been agreed to internationally. Their purpose is to assist readers to better understand these guidelines. Insofar appropriate the use of these terms has been aligned with terms used in other guidelines developed under the Basel Convention.

**Basel Convention:**

**Component:**
Element with electrical or electronic functionality connected together with other components, usually by soldering to a printed circuit board, to create an electronic circuit with a particular function (for example an amplifier, radio receiver or oscillator).

**Direct reuse:**
Continued use of electrical and electronic equipment and components by another person without the necessity of repair, refurbishment, or (hardware) upgrading, provided that such continued use is for the intended purpose of the equipment and components.

**Disposal:**
Any operations specified in Annex IV of the Basel Convention (Article 2, paragraph 4 of the Convention).

**Environmentally sound management:**
Taking all practicable steps to ensure that used equipment and e-wastes are managed in a manner which will protect human health and the environment.

**Equipment:**
Electrical and electronic equipment which is dependent on electric currents or electromagnetic fields in order to work properly.

**Essential key function:**
The originally intended function(s) of a unit of equipment or component that will satisfactorily enable the equipment or component to be re-used.

**E-waste:**
Electrical and electronic equipment that is no longer suitable for use or that the last owner has discarded with the view of its disposal.

**Final disposal:**
Relevant operations specified in Annex IV A of the Basel Convention.

**Fully functional:**
Equipment is fully functional when it has been tested and demonstrated to be capable of performing the essential key functions it was designed to perform.

**Recovery:**
Relevant operations specified in Annex IV B of the Basel Convention; recycling operations are part of this Annex.

**Refurbishment:**
Process for creating refurbished or reconditioned equipment including such activities as cleaning, data sanitization, and (software) upgrading.

**Repair:**
Process of fixing specified faults in equipment.

**Re-use:**
Process of using again used equipment or a functional component from used equipment in the same or a similar function, possibly after refurbishment, repair or upgrading.

**Used equipment:**
Equipment which its owner does not intend to use any longer that is not new.

**Waste:**
Substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law (Article 2, paragraph 1 of the Basel Convention).

[Note: Remainder of Document omitted; no specific changes suggested]