



# E-Waste Exports: Closing the Remaining Loopholes

June 7 | 6:15 pm | Room 3

Organized by: **Basel Action Network**

Featuring: **Jim Puckett, Executive Director**



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## **Tonight's Program**

- **Welcome**
- **e-Waste Chronology 2002-2022**
- **Swiss-Ghanaian e-Waste Amendment**
- **Closing the Repairables Loophole**
- **The Need to Streamline the PIC Procedure**
- **Questions / Discussion**



# **e-Waste/ Basel Chronology 2002-2022**

**20 Years in Brief**

# 2002 / Exporting Harm: The High-Tech Trashing of Asia



# 2002-2006 / Partnerships -- MPPI/PACE and STEP

MPPI



# 2009 – 2012 / Voluntary Recycler Certifications



# 2005 / The Digital Dump: Exporting High-Tech Reuse and Abuse to Africa



2006 / Nairobi  
Declaration COP8

2008 / African e-Waste Project

# 2015 / Guiyu Closes



# 2014 -2017 / e-Trash Transparency Project / USA to Hong Kong



2018 / Hong Kong Closes e-Junk Yards





**2016-2020 / China Trade Moves to Southeast Asia**

**2017 / China's National Sword Policy**

**2020 / Thailand Bans e-Waste Imports**

# 2011 / Repairables Loophole Proposed -- Technical Guideline



# 2015 / Technical Guideline Battle – Interim Adoption





**2020 / Swiss-Ghana Amendment Proposed**



# **Swiss-Ghanaian e-Waste Amendment**

**Proposal for a new Entry on Annex II for  
non-hazardous e-Waste**

**Basel Annex II  
“wastes for  
special  
consideration”  
a.k.a. “other  
waste”**

- Neither asserted as being hazardous or non-hazardous.
- But in need otherwise of trade controls to protect the environment and provide transparency.
- This is usually due to the likelihood of improper management (e.g. informal recycling or dumping due to proper recycling being uneconomic)
- Not covered by the Basel Ban Amendment.
- The default control procedure is Prior Informed Consent (PIC).
- But in the EU, Switzerland and Liechtenstein, Annex II is banned from export to non-OECD countries
- Trade with the US (other non-parties) will be illegal for Basel Parties (e.g. countries importing from the US).

# Basel Annex II

## “wastes for special consideration”

Y46 -- Wastes collected from households

Y47 -- Residues arising from the incineration of household wastes

Y48 – Mixed and Contaminated Plastics



# Proposal for a New Entry -- Y49

from CRP3

## Waste electrical and electronic equipment

- a) **not** containing and **not** contaminated with cadmium, lead, mercury, organohalogen compounds or other Annex I constituents to an extent that the waste exhibits an Annex III characteristic and
- b) **without any component** containing or contaminated with Annex I constituents to an extent that the component exhibits an Annex III characteristic, **such as without the following components:**

# Proposal for a New Entry -- Y49

from CRP3

- glass from cathode ray tubes or a battery included on list A, a mercury switch, a lamp containing mercury, a fluorescent tube containing mercury, a background lighting of display devices containing mercury, a capacitor containing PCBs or a component containing asbestos, and
- certain circuit boards, display devices or plastic components containing a brominated flame retardant;

**Waste components** of electrical and electronic equipment **not** containing and **not** contaminated with Annex I constituents to an extent that the waste exhibits an Annex III characteristic, **unless covered by another entry on list B**; or



# Proposal for a New Entry -- Y49 from CRP3

Wastes from the treatment of waste electrical and electronic equipment or waste components of electrical and electronic equipment not containing and not contaminated with Annex I constituents to an extent that the waste exhibits an Annex III characteristic (e.g. fractions from shredding, breaking, dismantling), unless covered by another entry on list B or the entry Y48.

## Revision of A1180 (hazardous e-waste) will alter final language

- CRP3 -- Y49 and includes a revised A1180 as well.
- Y49 will simply be a mirror entry for A1180.
- The new A1180 and Y49 proposal based on the CRP was worked on together in last night's contact group on legal clarity.
- So far nobody on the room is objecting to the concept of the proposal, most of the discussion is how to present the examples.

# Concern / fractions that already exist on on Annex IX are exempted

- The part of the agreement that states: “unless covered by another entry on list B or the entry Y48”

Solves addresses this concern

For example:

B3011 – non-hazardous plastic (e.g. single polymer, clean)

B1010 – non-hazardous metal (e.g. aluminum, steel)

# What Y49 means for EU

- WEEE (e-waste) cannot be exported to non-Annex VII (e.g. non-OECD) countries unless it is processed into an Annex IX waste.
- WEEE (e-waste) of all kinds can be imported from Basel Parties into EU or traded within EU with the PIC procedure.
- If the OECD adopts the new Y49 listing, then trade can take place with OECD countries in accordance with the OECD Council Decision (tacit consent PIC). If not, trade with US if Y49 would not be allowed.

# What Y49 means for the US (non-Party)

- Basel Parties will not be able to legally import e-Waste from the US unless it is processed into Annex IX waste.
- If the OECD adopts the new Y49 listing, then trade within OECD countries (with tacit consent PIC) in accordance with OECD Council Decision would be allowed.

# What Y49 means for the OECD

- OECD will automatically adopt this new rule if Basel does, unless there is an objection.
- This will allow OECD trade (tacit consent PIC) in Y49 including with the US under the OECD Council Decision.
- Exports of Y49 from the OECD group to non-OECD will require Basel PIC procedure.

# What this means for non-OECD

- Non-OECD will only be able to import Y49 from Basel Parties with the PIC procedure unless it has first been pre-processed into an Annex IX waste.
- Non-OECD will only be allowed to export Y49 to Basel Parties with the PIC procedure unless it has first been pre-processed into an Annex IX waste.

## Why Swiss-Ghana Proposal?

- Very similar to the logic behind the Plastics Amendments passed at COP14. Indeed, a lot of the e-waste is full of Y48 plastic.
- Even non-hazardous e-waste has a track record and high risk of causing harm in developing countries. Similar to plastic exports, much of this e-waste will only be partially recycled, the rest likely dumped and burned.
- Places more e-waste exports under the control procedures allowing countries transparency to know what is being imported and providing the right of refusal.



## Why Swiss-Ghana Proposal?

- Avoids a requirement for expensive testing to prove whether traded e-waste is hazardous or not. All will be controlled. Such expense for enforcement is more burdensome on for developing countries.
- Looks to a future where it is expected electronic waste will be less hazardous, but like household and plastic wastes, still present a serious environmental problem due to poor management and sheer volumes.
- Benefits legitimate recyclers by ensuring they will not having to compete with the “load and ship” brokers/traders (“fake recyclers”).



# Persistent Organic Pollutants (POPs) in Eggs: Report from Africa

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– Gilbert Kuepouo – Peter Behnisch – Lee Bell – Joseph DiGangi

APRIL, 2019





# Closing the Repairables Loophole

**Technical Guideline's Paragraph 32b Must  
be *Improved* or *Removed***



## History of the e-Waste Technical Guidelines' Export for Repair Question

- **Mobile Phone Partnership Initiative (MPPI)**
- **Partnership for Action on Computing Equipment (PACE)**
- MPPI and PACE established Guidelines with two possible procedures.
- A **Decision Tree Approach** for Parties that believed it is clear under the Convention that non-functional repair involves TBM of waste.
- And a **Voluntary Notification Procedure** for those that felt it was ambiguous.



## History of the e-Waste Technical Guidelines' Export for Repair Question

- **Voluntary Procedure and Decision Tree**
  - Both methods gave governments prior notification / right to consent or refuse
  - Thus, there was the ability to enforce the fundamental principles of the Convention
  - Including PIC procedure, right of refusal, and ESM.
- **Then a Decision was made to Create a New Party-led Technical Guideline for TBM of e-Waste**



# History of the e-Waste Technical Guidelines Export for Repair Question

- **TBM Technical Guideline was Debated (2010 – 2015) Why so long?**
- Electronics Manufacturers and EU promoted a new viewpoint turning functionality standard for waste on its head.
- The wanted non-functional hazardous equipment to fall outside of Convention scope with a claim of repair. (para 32b)
- **Despite Lack of Consensus – Guideline with 32b Adopted ( “Interim Basis”) COP12 (2015)**



# COP15: Massive Loophole Remains

## New Expert Working Group formed (2015 - 2022)

- Mandate: to solve outstanding questions regarding criteria for calling repairables non-waste with a view to achieve full adoption
- Some new language was added but does not change 32(b) loophole's fundamental flaws.
- Widescale disagreement regarding 32(b) remains.

# Bamako Convention COP3 Decision



- **Bamako Convention passed Decision at their COP3 calling on Parties to:** *“promote the removal of the exception found in Paragraph 32, of the technical guidelines on transboundary movements of electrical and electronic waste and used electrical and electronic equipment that will allow non-functional, hazardous e-wastes to be exported as non-waste and thus outside of the control procedures of the Basel Convention and in contradiction to the Bamako Convention;”*



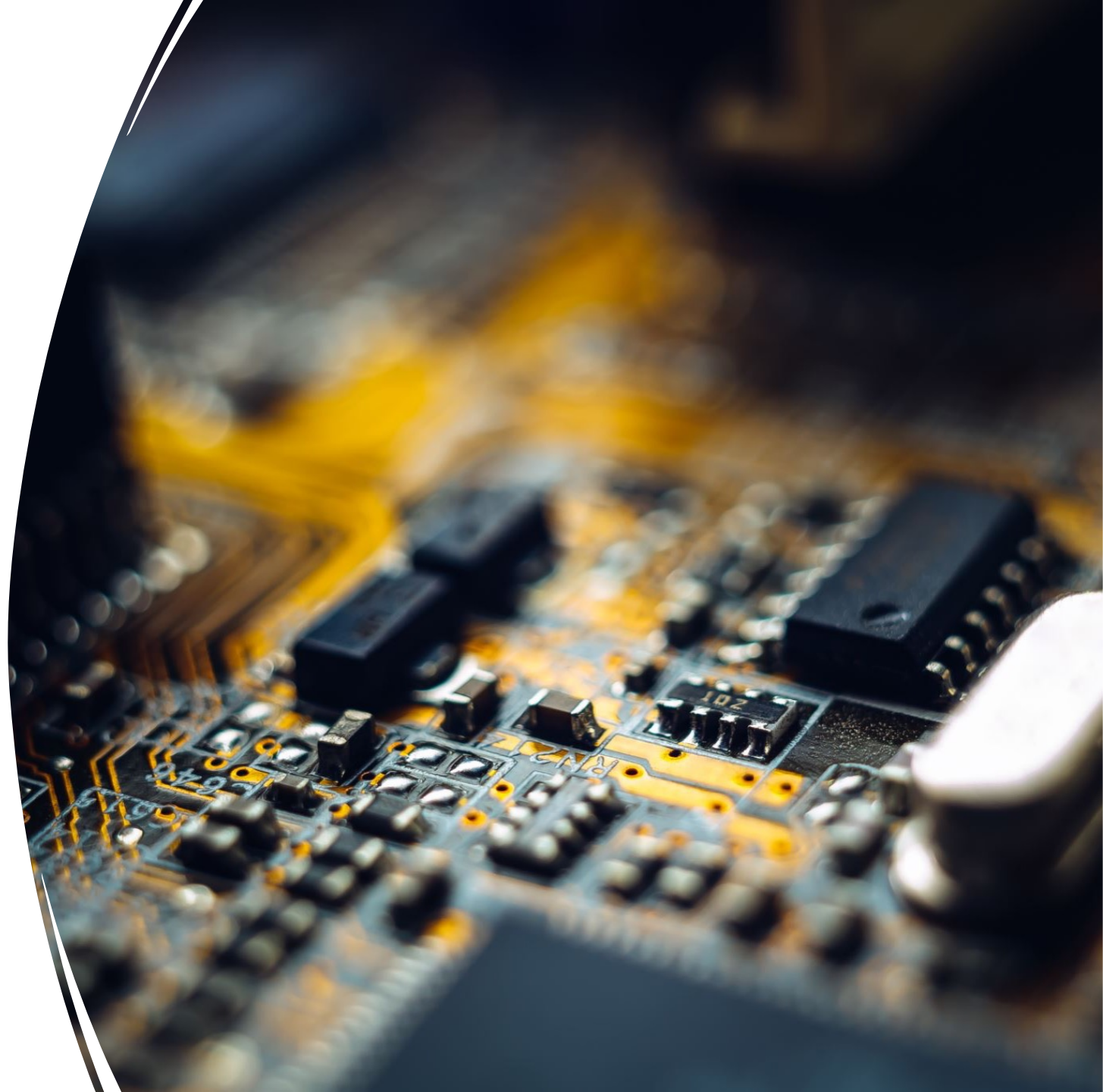
COP15:  
Massive  
Loophole  
Remains

→ 32(b), declares that *broken, untested, or non-working equipment* that are claimed to be destined for failure analysis, repair or refurbishment can fall outside of the scope of the Basel Convention, without requiring any Basel controls as long as the export arrangement meets 5 minimal requirements.

# Only Requirements to Export as Non-Waste

**1. The trader must claim that the non-functional electronic equipment is being exported for failure analysis or repair.**

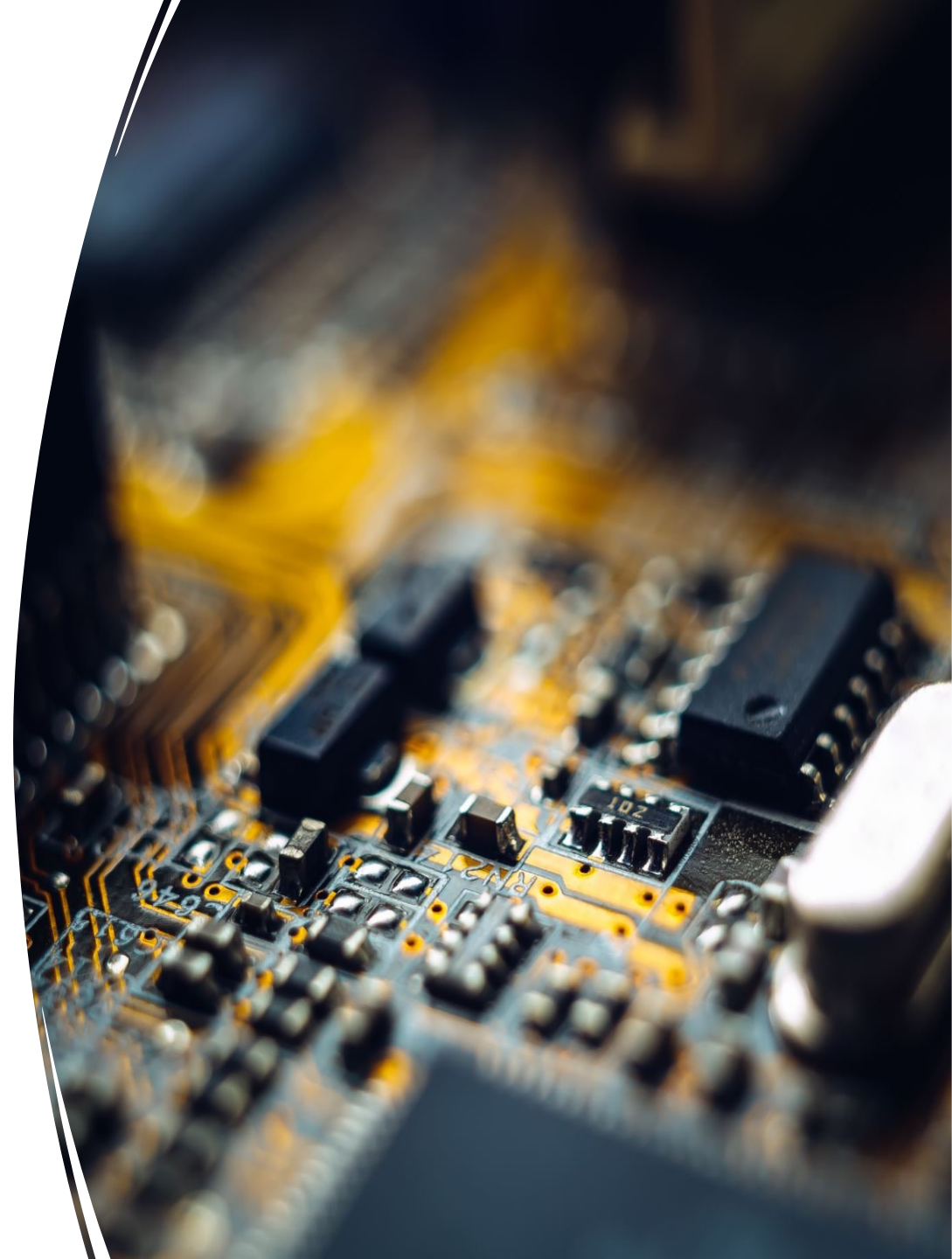
→ One can do this even if it will not be repaired because it will be very rare that anybody will even have an opportunity to check.



# Only Requirements to Export as Non-Waste

**2. The exporter needs to sign a contract with importing country partner asserting ESM, proper management of residuals, and make a final report.**

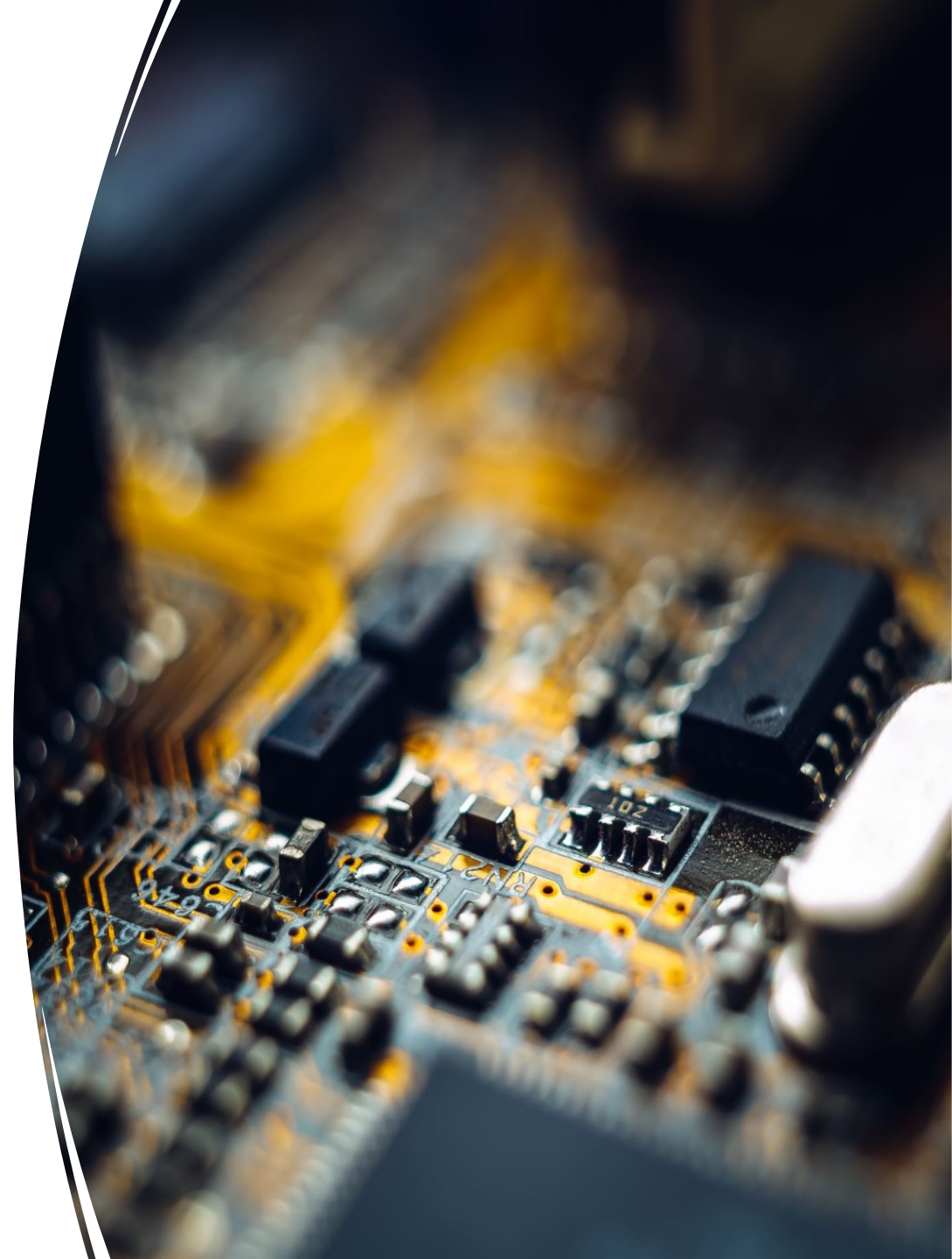
→ Its simply a contract between two private parties so nobody knows if it will ever be upheld. No government is likely to see it. And, violation of a contract is a matter of civil law and not criminal asper Basel.



# Only Requirements to Export as Non-Waste

**3. The exporter must make a declaration, that none of the equipment within the consignment is defined as or considered to be waste in any of the countries involved in the transport.**

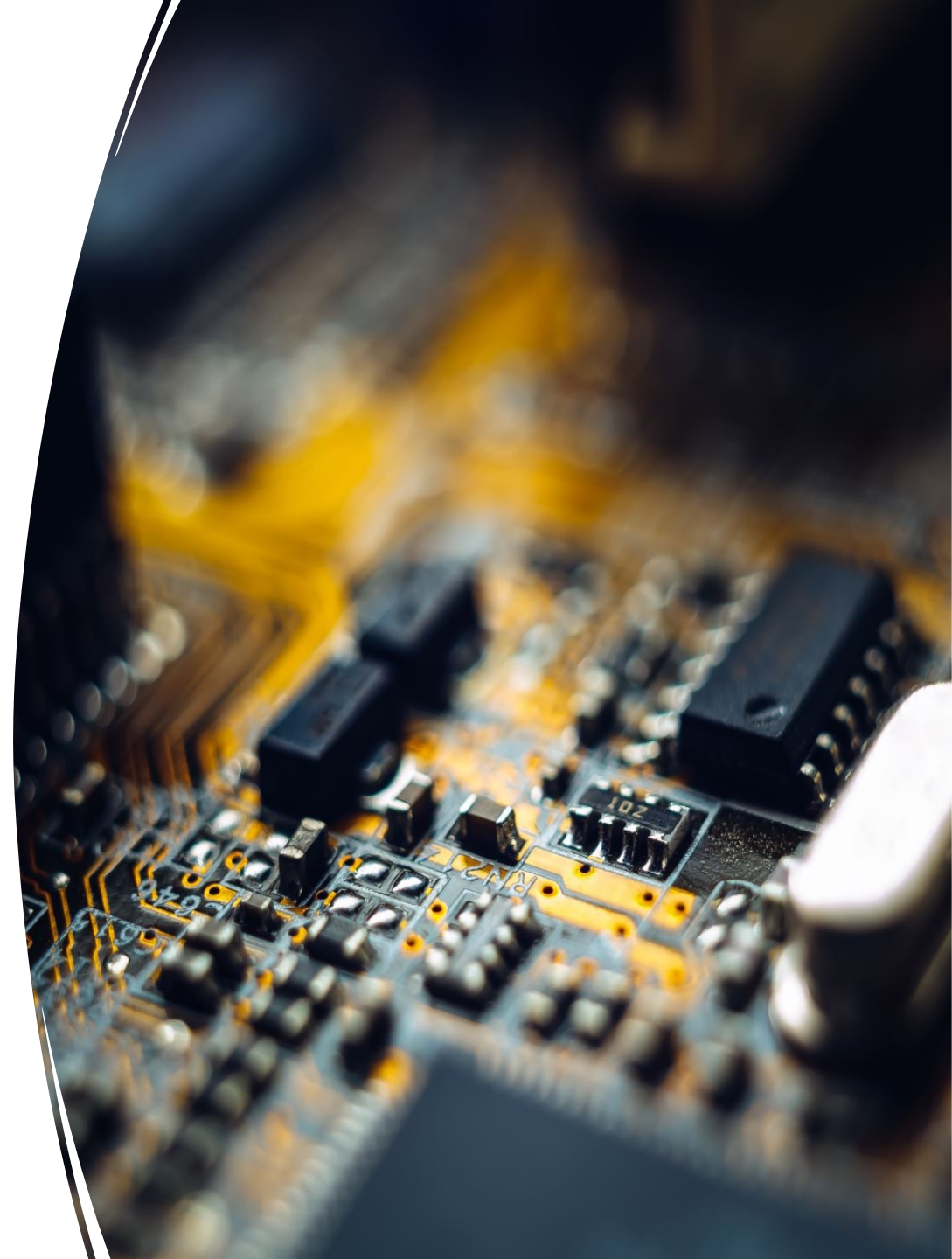
→ It is entirely inappropriate for a private business (e.g. a broker or recycler) to make a declaration of law and assert compliance. If caught they can plead ignorance.



# Only Requirements to Export as Non-Waste

## **4. Ensure that each piece of equipment is individually protected against damage**

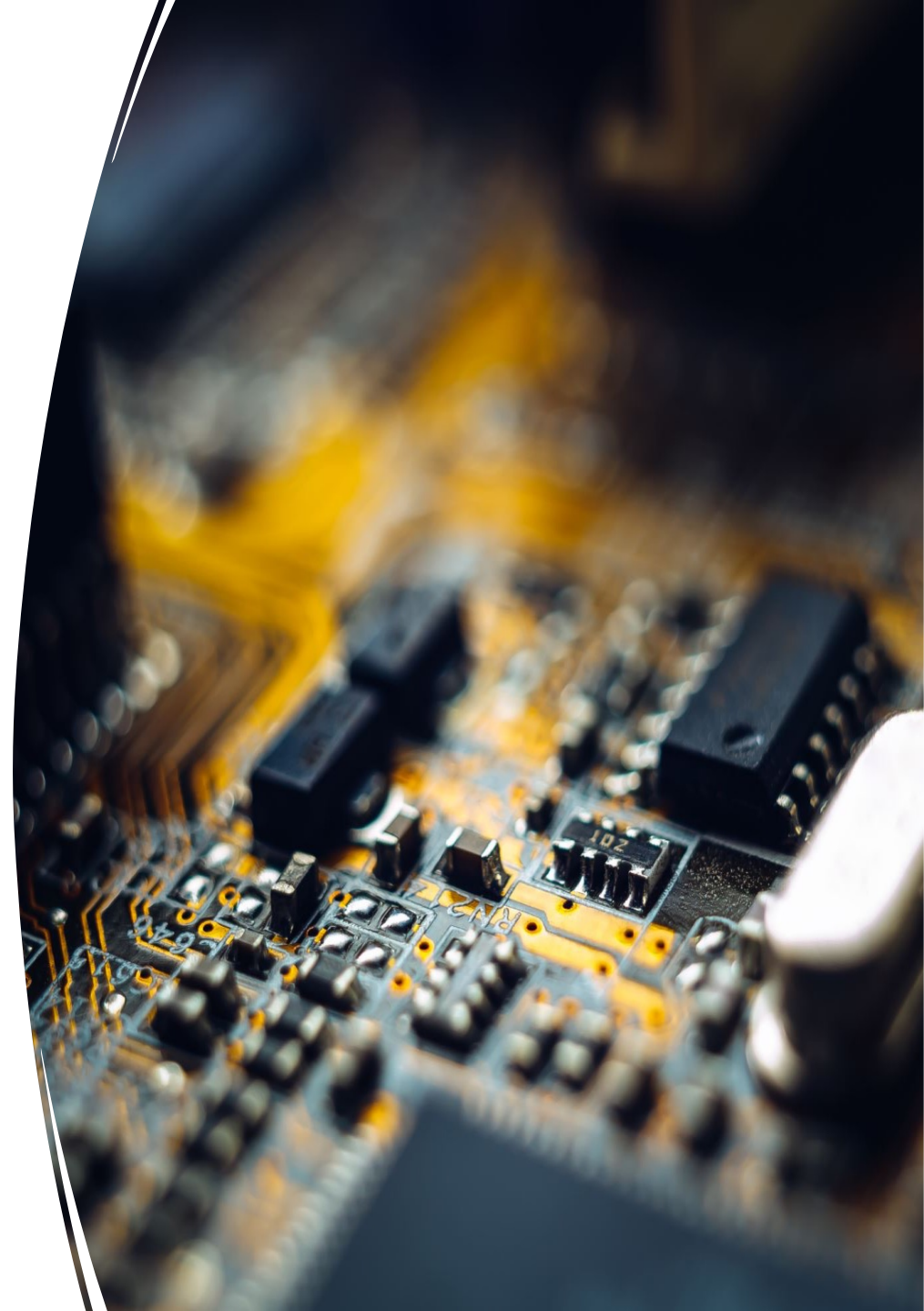
→ Plastic shrink wrap or cardboard separators are very cheap so this requirement is easily accommodated and not an insurance policy against receiving shipments of junk toxic scrap equipment that will never be reused.



# Only Requirements to Export as Non-Waste

**5. Documentation is to accompany the shipment as to the origin and nature of the equipment, the existence of contract and declaration.**

→ Such documentation is easy to provide but what good is it really? Parties will not have prior notification of the shipment meaning the burden is placed on them to somehow detect such shipments and then they would need to verify veracity of claims.



## Current Guideline:

### *Fatal Flaws*

- **No PIC:** Fundamental principle of right to know and right of refusal denied.
- **No ability to check on exporters:** The obligations that Basel places on Parties to ensure that their exporters do things correctly is gone.
- **No ability to check repair operations:** There is no formal registry of where these repair activities will take place – it's all in a cloak of contractual secrecy.
- **Violates Intent of Ban Amendment:** Exports of repairables from Annex VII to non-Annex VII countries violates the Ban Amendment's intent.

*The  
Responsible  
Guideline to  
Promote an  
Ethical  
Circular  
Economy*

**The Responsible Guideline on  
Transboundary Movements of Used  
Electronic Equipment to Promote an Ethical  
Circular Economy under the Basel  
Convention**

25 April 2019



Basel Action Network  
Seattle, WA, USA  
[www.ban.org](http://www.ban.org)





# Key Conclusions

- **Guidelines are not to change meaning, intent and purpose of a Convention**
- **Parties should always choose an Ethical Circular Economy, not a Circle of Poison**
- **Parties should not ignore the views of Bamako Parties, India and others**
- **We must not dishonor these views by fully adopting the e-Waste Guideline until 32b is improved or removed.**

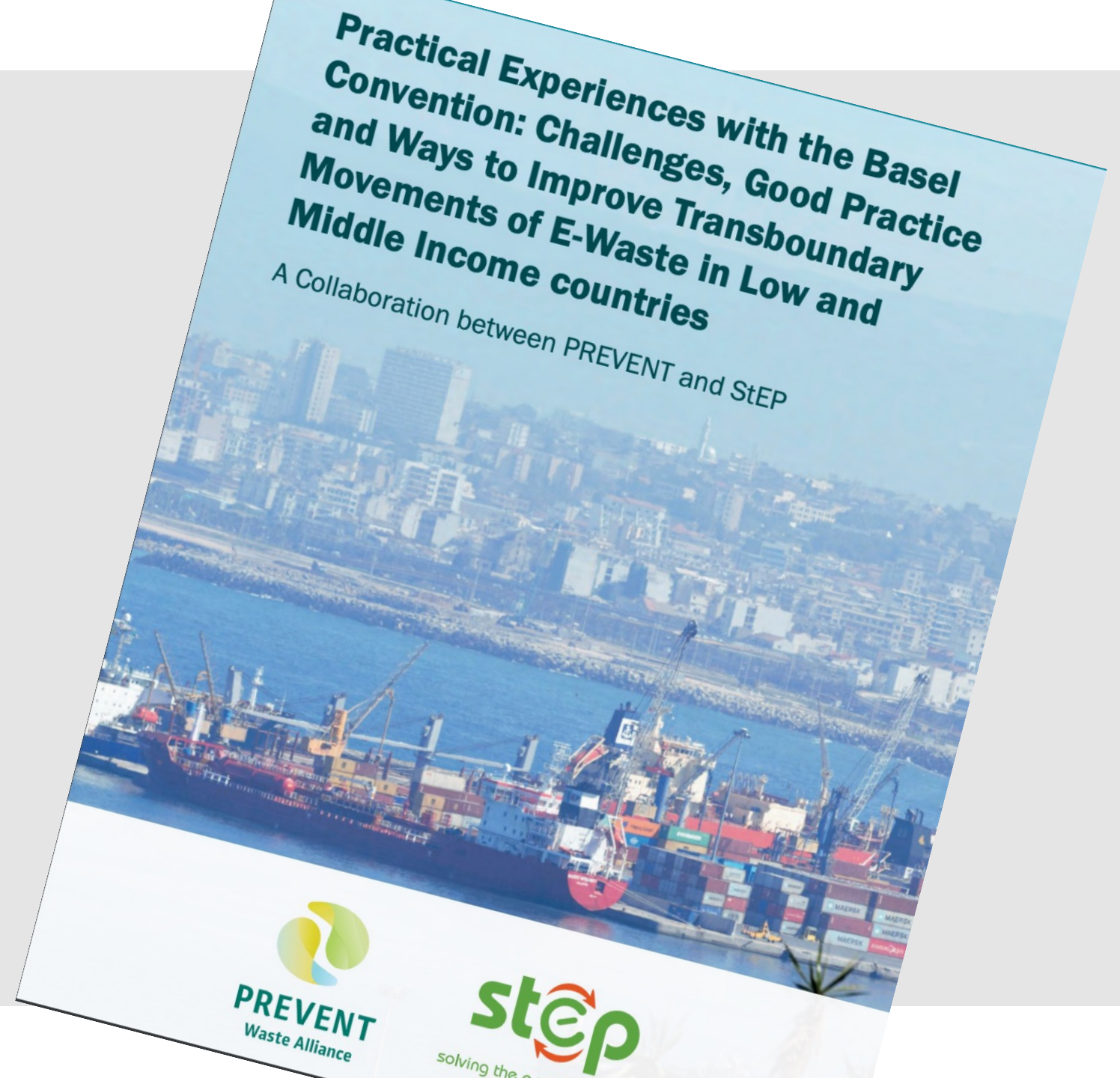


# **The Need to Streamline the PIC Procedure**

**Encourage Private Sector Pilot Projects to  
Create a Digital PIC**

PIC  
Procedure  
Needs  
Improvement

New  
Independent  
Review



**PIC  
Procedure  
Needs  
Improvement**

- **Article 6 has some Ambiguity and a lack of Urgency**
- **However, its best not to try to Amend the Convention as this would take years**
- **So, no new definitions or obligations**
- **Better instead to do two things:**
  - **Create a Digital PIC Procedure**
    - **That makes things easy (and fun) to fill out**
    - **And includes Real Time Reminders and Transparent Reporting to Parties via Secretariat on Functionality.**
  - **Then we can further elaborate Guidance on how to use the Digital Procedure.**

PIC  
Procedure  
Needs  
Improvement

- There is a Paper and Draft Decision to create a digital PIC procedure here at COP15 (UNEP/CHW.15/9)
- It creates a Small Intercessional Working Group (SIWG to do the work.
- However, in my view, to avoid needless bureaucracy we should encourage the Private Sector to move forward with a Pilot Project.
- Indeed, various electronics manufacturers would like to do this. They wish to call the project e-PIC. They have the resources and skills to do this.
- So lets make that possible for them in the draft decision.

# Proposal for Draft Decision 15/9 Here at COP15

*6. Invites Parties and others willing to do so to work on pilot projects on electronic approaches to the notification and movement documents, taking into account the experiences of other Parties and others ~~of non-Parties~~, and the work carried out by other international organizations, and to submit their projects and lessons learned to the Secretariat;*

# Thank You!



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