AmCham EU input for the WEEE FAQs			
article	**Question**	**Answer**	**Justification**
Art 2 Scope			
2.3 (b)	**What is meant by the 'specifically designed and installed' exclusion in Article 2.3(b)?**	If equipment is marketed specifically for out-of-scope EEE, and can only be used for that EEE, such equipment is therefore 'specifically designed'. Specifically designed EEE normally means that it is tailor made; it is designed to meet the need of a specific application. For example, for EEE to be specifically designed to a LSFI it needs to be designed, dimensioned and customized according to the need of the application. Examples of specifically designed include sensor equipment designed to fit inside drill heads and galley equipment designed for an individual aircraft or range of aircraft. Examples that are not specifically designed include standard electronic racking systems, and other non-standard equipment intended to be fitted to an automobile such as hands-free phone systems and satellite navigation devices. The Article 2.3(b) exclusion applies to specifically designed	Clarify the distinction between WEEE and RoHS. Consistent with draft of FAQs for the RoHS Recast.

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		equipment that is installed on excluded or out-of-scope equipment at the time the finished product becomes waste. For example, the electronic control module installed on excluded non-road mobile machinery at the end of that machine's life will be out of scope of this Directive.	
2.4 (c)	**What is a 'fixed installation'?**	'Fixed installation' in the broadest sense is defined as a 'combination of several equipment, systems, finished products and/or components assembled and/or erected by an assembler/installer at a given place to operate together in an expected environment to perform a specific task, but not intended to be placed on the market as a single functional or commercial unit. A fixed installation is equipment that is permanently fixed in a location before operation, and is not intended to be moved once installed. For example, generating set products that are sold with the intention of being installed permanently require specialised and professionally installed cooling, air handling, exhaust, fuel, electrical auxiliary and other systems, and are therefore fixed installations.	Some of the proposed language is used in the existing FAQs. This is also consistent with the Gaseous Emissions Directive, which defines fixed as not being able or not intended to be moved.
2.4 (d)	**Are commercial and recreational watercraft excluded from the scope of this Directive as 'means of transport' under Article 2.4(d)?**	Yes, commercial and recreational watercraft are means of transport. Accordingly, watercraft and their specifically designed EEE are excluded from the scope.	This interpretation is consistent with the Commission's position on the exclusion of watercraft from the Machinery Directive and RoHS.

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2.4 (e)	**How should 'made available exclusively for professional use', as set forth in the Article 2.4(e) exclusion, be interpreted?**	Whether a machine is made available exclusively for professional use will be judged by the intent of the machine manufacturer (as evidenced by the original equipment manufacturer's marketing materials, for example). In order for EEE to be marketed for 'professional use', its intended end user has to be a professional. The sole fact that non-road mobile machinery is made available in the rental market does not mean that the machine is not made available exclusively for professional use. Mobile machinery is often rented exclusively for professional use.	The ultimate use of the machine is out of the control of the manufacturer. Consistent with the draft FAQs for the RoHS Recast.
	Does my product fall outside the scope?	This FAQ document provides criteria for determining whether a product falls under the scope of the Directive. For a product to be in scope it must fulfill the definition of EEE. The definition of EEE includes the following elements: 'dependent on electric current or electromagnetic fields in order to work properly, and equipment for the generation, transfer and measurement of such currents and fields'. 'Dependent' means that the equipment needs electricity (e. g. not petrol or gas) as its primary energy to fulfill its basic function. It also means that when the electric current to it is off, the appliance cannot fulfill its basic (primary) function. If electrical energy is used only for support or control functions this type of equipment is not covered by the recast	The WEEE Recast does not contemplate a new, specific definition for 'dependent'. Accordingly, the current interpretation, set forth in the existing FAQs should remain.

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		Directive. A lighting teddy bear whose secondary function is to light, therefore does not fall under the scope of the WEEE recast Directive. For example, certain non-road mobile machines contain electronic operator controls and monitors, which are provided to facilitate the operation in a safe, economic and compliant manner. However, the basic function of the machinery is to transport, excavate or spread materials. Accordingly, the machinery is out of scope of this Directive because the primary function is not dependent on electricity. In contrast, however, the electronic control modules themselves may be considered EEE if sold individually as finished products because they rely on electromagnetic fields to fulfill the basic function.	
	Does the WEEE Directive apply to ink cartridges?	Article 3(a) of the WEEE Directive defines electrical and electronic equipment (EEE) as 'equipment which is dependent on electric currents or electronic-magnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields and designed for use with a voltage rating not exceeding 1000 Volt for alternating current and 1500 Volt for direct current.' The WEEE Directive defines WEEE as 'electrical or	This answer remains unchanged from the answer provided in the Commission's FAQ document published to accompany the original WEEE Directive • The defintion of EEE and the defintion of WEEE have not changed since the first WEEE Directive • The concept of a consumable has not changed since the first WEEE Directive; printer cartridges are still consumables

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		electronic equipment which is waste within the meaning of Article 3(1) of Directive 2008/98/EC, including all components, subassemblies and consumables which are part of the product at the time of discarding'. According to the definition of EEE, the printer itself is EEE because it falls under Category 3 of Annex I and Category 6 of Annex III of the WEEE Directive. If a printer is discarded, it becomes WEEE. This means that if an ink cartridge is inside a discarded printer, the cartridge becomes part of the WEEE because it is a consumable which is part of the printer at the time of discarding. However, the cartridge itself does not fall under the definition of EEE, but is considered to be a consumable.	The European Parliament clearly voted against amendments proposing to include printer cartridges within the scope of the WEEE Directive • Amendments tabled were rejected at both first and second reading • It is clear from the definition of WEEE that consumables are only in scope when they are installed in the printer at the time of discarding. The RoHS recast Directive and WEEE recast Directive have been intentionally delinked so that they can have a different scope and interpretation. The WEEE Recast Directive clearly distinguishes consumables from WEEE and therefore also EEE. Given that there has been no change in the definitions from the original WEEE Directive to the WEEE recast Directive there is no basis on which to change the interpretation under the WEEE recast Directive.
Art 3 Definitions			
3.1 (c)	**Art 3.1(c) What does large Scale fixed Installation mean (LSFI)? LSFI: need consistency as**	If, by virtue of its volume, weight or dimensions, EEE would not be disposed of easily in the municipal waste stream, it is considered 'large scale'.	For a unified implementation, we need alignment with e RoHS FAQ on this definition.

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	appropriate with RoHS guidance.	An industrial tool or fixed installation can be large scale depending on its rated output. For example generators above 10 kW in rating cannot be manually handled and are considered large scale.	
3.1 (h)	**Article 3.1(h) requires that Waste from EEE likely to be used by both private households and users other than private households shall in any case be considered to be WEEE from private households. How should Member States determine which products should be defined as 'Waste from EEE <u>likely</u> to be used by both private households and users other than private households'**	Waste from EEE likely to be used by both private households and users other than private households shall <u>not</u> be classified as waste from private households if when placing a product on the market producers can demonstrate the following criteria: a) Evidence in the form of signed contract between the business user and the Producer (or party representing the producer, e.g. reseller under contract), that clearly assigns responsibilities for end-of-life collection and treatment costs, ensuring that the EEE will not be disposed of through municipal waste streams, or b) EEE that due to its features is not used in private households and that will therefore not be disposed of through municipal waste streams. This criterion should be supported by at least one of the following criteria: i. EEE that is operated by specialised software as for example an operating system or system environment requiring a special configuration for professional use. ii. EEE is sold through professional distribution channels that are not accessible to individual	The term 'likely to be used by both private households and users other than private households' requires proper definition in order to prevent different interpretations by Member States. There are many products within WEEE that are 'likely to be used by both private households and users other than private households' but will never enter the municipal waste stream because of the nature, the quantity, distribution channels and collection schemes of these products. In order to comply with the WEEE Directive, each producer must be able to consistently and transparently classify its products as B2C or B2B. The most accurate way to harmonise these definitions and establish consistency across the EU is to enable producers to determine whether a product is declared as Business to Business WEEE according to criteria set out above. Consistent criteria should be established within the Commissions FAQ guidance document to classify dual use equipment and avoid that producers pay twice for treating

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		consumers, or under contracts used only for business customers. EEE operating at a voltage or having a power consumption or generating electricity outside of the range available or needed in private households, eg large scale ground mount and rooftop photovoltaic systems iii. EEE requiring professional licenses or entry-intro-service authorisations to operate, e.g. base stations requiring the license of the telecommunication regulator iv. EEE of large size or weight requiring to be installed and de-installed or transported by specialists v. EEE that requires a professional environment and/or professional education (e.g. medical X-ray equipment) vi. EEE in category 10 of Annex I of the RoHS recast Directive vii. EEE outside of the scope of the General Product Safety Directive for Consumer products c) EEE provided to a consumer but by its nature once used has to be returned to commercial facilities for processing and hence never appears in the domestic waste stream. (for example one time use cameras.)	products in the business waste streams, as well as in the municipal scheme because of lacking clarity.
3.4	**Are university and hospital equipment considered Large Scale**	Yes, the article's reference to R&D setting will apply to university and hospital equipment.	There is a need for consistency with the RoHS FAQs on this definition.

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	Stationary Industrial Tools (LSSIT) as understood by Art 3.4(b)LSSIT?		
Art 7 **Collection rate**			
7.1	**Who is responsible for the achievement of the collection target in Article 7.1?**	Article 7.1 is addressed to Member States. Member States shall ensure that the collection rates referred to in paragraphs 7(1) are achieved. Individual Producers do not have collection or other targets such as for processing and re-use in this Directive.	**Article 7.1 clearly assigns responsibility for the collection targets to Member States** • Article 7.1 states that Member States shall ensure that the collection rates referred to in paragraphs 7(1) are achieved. **Member States should be responsible for meeting the collection target** • Member States are in control of the key instruments to both organise and enforce the collection target, and therefore should retain responsibility for achieving these targets. • Producers cannot control all the other actors who collect WEEE to make for profit. In addition producers do not have enforcement powers.
7.1	**How should the choice for a Collection Target based on 85% of**	Article 7.1 states that from seven years after entry into force the minimum collection rate to be achieved annually shall	**Establishing a WEEE Generated Target was a key priority of the European Parliament. Establishing the**

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	WEEE generated in Article 7.1 be interpreted?	be 65% of EEE placed on the market in the three preceding years, or alternatively 85% of WEEE generated on its territory. Article 7.1 is addressed to Member States and therefore this provision providing a choice between a placed on the market and a WEEE generated target should be transposed by Member States.	**alternative between a Placed on Market and a WEEE Generated target was the means for the Parliament and Council to reach agreement.** • A WEEE Generated Collection Target received overwhelming support from the European Parliament • A calculation method on the basis of *WEEE Generated* will ensure that all Member States are incentivised to identify and analyse the currently unreported flows such as, illegal exports, sub standard treatment and landfilled, which is not the case with a *Put on Market* based methodology. **A *WEEE Generated* target will also ensure that an achievable target is set for each Member State, since it is based on the available WEEE.** • A *placed on Market* (PoM) collection target would also lead to the setting of a collection target that in some Member States would be impossible to achieve due to the large increases in sales and insufficient WEEE being available in the waste stream. Large decreases in sales would lead to a lower then desirable collection target. • 2006 data shows that PoM targets will be impossible to achieve for potentially 6 countries. 2008 EuroStat data shows that PoM targets will be impossible to achieve for potentially 13 countries. • For example, in Poland a report by PWC shows that collection target based on 65% of EEE placed on

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			market is estimated to be 8.29 kg. This target would be higher than the amount of WEEE generated (5.78 kg) and therefore not possible to achieve.
7.2	**How should achievement of the Collection Target be measured according to the Article 7.2**	In Article 7.2 the WEEE Directive requires that Member States gather information on all WEEE that has been separately collected. Article 7.2 requires that Member States at least collect information from collection and treatment facilities; distributors; and producers or third parties acting on their behalf. Article 7.2 states that it is the responsibility of the Member States to collect this information. The information should be transmitted free of charge. It is therefore clear that no charge should be imposed for transmitting this data by treatment facilities; distributors; and producers or third parties acting on their behalf. Member States should also note their obligation in Article 16(4) to collect information including substantiated estimates on WEEE collected through all routes as well as EEE placed on their markets, prepared for re-use, recycled and recovered within the Member State, and on separately collected WEEE exported, by weight.	**There are significant flows of WEEE outside the producer owned WEEE systems.** • It is important that all waste streams count towards the collection rate as there are significant flows of WEEE outside the producer owned WEEE systems. • With the increasing value of WEEE, linked to the increasing raw material prices, we are witnessing more and more WEEE collected and recycled by actors operating outside of the producer controlled systems. • These so called 'complementary WEEE flows' are being collected by an array of actors, operating from small-scale door-to-door collectors to large scale scrap dealers and recyclers. • In April 2008 the combined Dutch WEEE recycling systems published a research report[1] that showed that out of a total of 18.5 kg of WEEE that is generated per inhabitant per year, 14.8 kg (80%) is recycled but only 5.7kg (31%) is recycled by the producer funded WEEE systems, with the majority of WEEE recycled

[1] **Witteveen+Bos** (2008) Onderzoek naar complementaire afvalstromen voor e-waste in Nederland, 10 April 2008

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		Given the complexity of WEEE flows, Member States may opt to use substantiated estimates of WEEE collected through all routes to demonstrate or aid to demonstration of meeting the targets laid down in article 7.1. Substantiated estimates must be supported by independent scientific methodologies and based, as far as possible, on real market data.	by commercial collectors. • A study by UNU[2] in 2012 found similar results for the Netherlands with 75% - 80% of WEEE being collected but only 36% reaching producers WEEE recycling systems. • In the UK a study by WRAP[3] found that only half of the WEEE treated was recorded through the WEEE compliance schemes. • A study by Okopol[4] of WEEE flows in Germany found that only 32% of WEEE reached producers recycling systems. **The challenge is to ensure that these 'complimentary flows' are properly measured.** • It appears that we are already achieving a high level of separate collection and recycling of WEEE in many European countries due to the intrinsic value of WEEE, albeit these volumes are not all fully documented by official reporting systems • In order to account for all flows of WEEE recycled, not only those managed by Producers, there is a need to establish a mechanism to document also the complementary flows of WEEE.

[2] **UNU** (2012), The Future Flows, 2011 Dutch E-waste Quantification (http://www.wecycle.nl/uploads/futureflows/Press/Report_Dutch_WEEE_Flows.pdf)
[3] **WRAP** (2012) Market Flows of WEEE Materials (http://www.wrap.org.uk/content/model-market-flows-electrical-products)
[4] **Okopol** (2011) *WEEE Flows in Germany.* (Short Analysis for Hewlett Packard).

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			Producers cannot control these commercial collectors. • Producers do not have enforcement powers to force WEEE or evidence of WEEE collection and recycling to be given to producer schemes. • Producer would be forced to purchase WEEE or evidence from commercial collectors. • Member States, on the other hand, are the only ones in control of the key instruments to require data on all WEEE flows to be reported to Member States. **Measuring the collection rate according to only WEEE collected by producers would lead to profiteering and for the costs of WEEE compliance to dramatically increase with no environmental benefit.** • Measuring the collection rate according to only WEEE collected by producers will mean that municipalities and B2B end users will sell their WEEE to third party actors who can then sell this onto producers at a later date when they need to comply with the collection target. • This will mean that producers will be forced to pay a much higher price for compliance. In the UK profiteering led to costs being inflated by 36 per cent for IT and 50 per cent for display equipment. • Based on the experiences of the UK, the profiteering as a result of the Commission's proposal could cost producers an extra €4.6 billion increasing the total costs of the WEEE Directive to €10.2 billion. • A recent report has shown that in the UK profiteering

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			has cost up to 50 million GBP per year (360 Environmental, 2011[5]). **Member States should ensure that all WEEE flows are measured and included in the collection rate.** • It is essential that Member states also fully implement the requirements of article 16.4
7.2	**What is meant by a 'collection facility' in Article 7.2**	In accordance with the Waste Framework Directive, a collection facility is any facility that facilitates the gathering of waste, including the preliminary sorting and preliminary storage of waste for the purposes of transport to a waste treatment facility. This does not mean that a facility which performs a test or repair function on equipment is a waste collection facility. Such a facility would, however, be obliged to return any non-repairable equipment to its owner or send it to a recognised collection facility as WEEE.	**The Waste Framework Directive defines the term collection** • Article 10(3) 'collection' means the gathering of waste, including the preliminary sorting and preliminary storage of waste for the purposes of transport to a waste treatment facility
7.1 &7.6	**Should the Collection Target be applied to specific product categories?**	The collection rate referred to in Article 7(1) does not set individual collection rates for specific product categories. Article 7(6) states that the Commission shall examine setting individual collection rates for one or more categories set out in Annex III. The report shall, if appropriate, be	The the collection rate referred to in Article 7(1) does not set individual collection rates for specific product categories. Individual collection rates for specific product categories shall only be set after a review by the European Commission and a further legislative proposal.

[5] **360 Environmental** (2011) Cost Impact of WEEE Evidence Trading (Project report for Hewlett Packard by 360 Environmental).

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		accompanied by a legislative proposal.	Such a review is critical to ensure that collection rates are achievable and sensitive to differences in product lifetimes and patterns of waste generation.
7.1 & Articles 5 and 6	**How does the Collection Target in Article 7.1 relate to WEEE from users other than private households (Business to Business WEEE)?**	The collection rate applies to the total of WEEE from private households and WEEE from users other private households. Article 7(1) states that the collection rate shall be calculated on the basis of the total weight of WEEE collected in accordance with Articles 5 and 6. Article 5 refers to both WEEE collected from private households and WEEE collected from users other private households. Article 7(1) does not establish separate or individual targets for WEEE collected from private households and WEEE collected from users other private households.	**The WEEE Recast does not establish separate or individual targets for WEEE collected from private households and WEEE collected from users other private households.** Therefore the collection targets established by Article 7 apply to the total of WEEE collected from private households and WEEE collected from users other private households.
	What is the responsibility of the producer for WEEE from users other than private households (Business to Business WEEE)?	According to Article 5 producers, or third parties acting on their behalf, are required to provide for the collection of WEEE other than WEEE from private households. The financing of WEEE other than WEEE from private households is set out by Article 13. The obligation to finance the collection of WEEE other than WEEE from private households does not require producers to finance the collection from the premises of each end user. The collection target in Article 7 is the responsibility of the Member States and applies to the total both WEEE from household and WEEE other than from private households.	Producers are required to provide for the collection and the financing of said collection of WEEE other than WEEE from private households. However users other than private households unless they conclude agreements stipulating other financing methods. While users other than private households are not compelled to return WEEE to producers, it is important that all WEEE separately collected is reported to Member States according to Article 7(2). These imperatives need to match the requirements of Article 13, which determines the financing arrangements in respect of WEEE from users other than private households.

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		Member States should put in place mechanisms to ensure that users other than private households cannot withhold or charge for the release of information necessary for the purpose of article 7.2 In either case, the data may be reported via an independent collection or reprocessing scheme.	
Annexes			
Annex VI			
§1 (a) & (b) & §3	**Does the derogation from the requirements listed in point 1 (a) and (b) and point 3, apply when EEE is sent for re-calibration?**	Yes, EEE sent for re-calibration is exempted from the requirements in Annex VI point 1 (a) and (b) and point 3.	The shipment of EEE for re-calibration is taking place in a business-to-business framework with the intention of re-use. Re-calibration is typical for category 8 and 9 EEE, which have long lifetimes. These EEE are frequently calibrated against set parameters so they can be re-used with the insurance that they will perform in the same accurate way during their entire lifetime. The activity of calibration is defined in EU legislation and standards such as NEN-EN-ISO/IEC 17025:2005 General requirements for the competence of testing and calibration laboratories, and ISO/IEC 17020: General criteria for the

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			operation of various types of bodies performing inspections.
§ 2 (b)	**Does the term 'professional use', when used in Paragraph 2(b) of Annex VI, include used EEE shipped to a producer, a third party acting on its behalf or a third party if the producer or third party is engaged in the business of leasing EEE?**	Yes. For the purpose of Paragraph 2(b) (concerning shipments to countries to which the Decision C(2001)107/Final of the OECD Council concerning the revision of Decision C(92)39/Final on control of transboundary movements of wastes destined for recovery operations applies), used EEE shipped by or on behalf of a person engaged in a business of leasing EEE will be considered professional use equipment.	It is imperative for lessors to be able to move equipment quickly to its repair/refurbishment centres. If they are unable to do so, there is a significant risk that large volumes of valuable equipment will be prematurely diverted to recycling or disposal rather than managed for continued use. The consequential social and environmental results would be overwhelmingly negative. The negative economic impact on leasing businesses would also be significant. We understand that used and obsolete electronics can be mishandled, in particular consumer products, and as such transparency and enforcement are needed. We do not believe, however, that inordinately broad waste classifications will achieve the desired end. Instead, these actions will shut down legitimate operations while illicit actors continue their practices. This runs counter to every tenet of sustainable development. Overall, the positive environmental impact of the schemes described in this submission is compelling. The schemes: • Ensure that salvageable used EEE is responsibly refurbished and re-used whenever possible; • Ensure that truly obsolete used EEE is recycled responsibly;

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			• Do not threaten the intent of the legislation given the exception is limited to OECD locations (in the case of paragraph 2(b) and shipments to producers (in the case of paragraph 2(c); • Provide unique opportunities to reduce the generation of e-waste by promoting the continued use of leased equipment through documented commercial channels; • Reduce energy and greenhouse gas impacts that would otherwise arise from the sourcing, production and transportation of materials that would be needed in the manufacture new equipment; • Conserve resources; • Facilitate investment in regional facilities that are efficient and capable of managing incidental waste that may be generated from repair activities in an environmentally responsible and legally compliant fashion; • Provide employment opportunities at centralized facilities operating at scale with the resources needed to ensure reuse is maximized and while maintaining environmentally sound operations (particularly in comparison to ad-hoc activities in the informal sector); and • Expand access to EEE by individuals, businesses and communities who may not otherwise be able to acquire new equipment.

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§ 2 (c)	**Does the term 'professional use', when used in Paragraph 2(c) of Annex VI, include used EEE shipped to a producer or a third party acting on its behalf if the producer is engaged in the business of leasing EEE?**	Yes, for the purpose of Paragraph 2(c) (concerning shipments for the purpose of root cause analysis), used EEE shipped by or on behalf of a producer engaged in a business of leasing EEE will be considered professional use equipment. The Directive should recognise that leased equipment returned to its owner (the lessor) or to third parties acting on its behalf under a valid contract would not typically qualify as waste subject to the controls of the EU Waste Shipment Regulation.	This clarification is necessary because: • The Directive's definition of 'producer' is very narrow and does not include a financier of EEE (unless the financier also acts as a 'producer' within the meaning of that term in the Directive, which is not normally the case for a financier); and • The application of the term 'professional use' to leased equipment is unclear.
§ 5	**'In the absence of proof' – appears to bring back in the documentation of the sections which are part of the derogations.**		We would like clarification that not all the documentation in all sections 1, 2, 3 and 4 must be met.
	Clarify the minimum requirements for shipments of used EEE taking place in the framework of a business-to-business transfer where the used EEE is sent to the producer or third parties acting on his behalf		For manufacturers shipping used EEE to non-OECD countries for remanufacturing or refurbishment, the functionality test does not require the used EEE to function on its own. Rather, the functionality test is a determination by the receiving business that it is feasible to refurbish or repair the used EEE for re-sale or re-use.

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	in countries outside the OECD.		
	What is 'used EEE' and how does it differ from WEEE?	Used EEE is EEE that has been previously made available on the market and used by an end user, and is now being considered for direct re-use, or for refurbishment, remanufacture or repair under a valid contract with the intention of re-use. Used EEE can include: • functional EEE • non-functional EEE Used EEE is: • not scrap or waste • may be recycled, refurbished or re-used • has residual value WEEE is EEE that is: • no longer suitable for use, and is incapable of repair, remanufacture or refurbishment, or that the last owner has discarded with the view of its disposal, the disposal of which provides no economic value to the last owner.	
	Do the terms "in the framework of a business-to-business transfer agreement" and "Under	Yes, the term "Under Warranty" includes such similar agreements such as "extended warranty", "maintenance" or "service" agreements, or single investigation, repair and	

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	Warranty", when used in Paragraph 2 of Annex VI, include any used EEE shipped to a producer or a third party when there is a valid contract or agreement for the purpose of investigation and repair with the intention of re-use.	return contracts even though these may not be held with the original producer. This would also apply to shipments and transfers from any end user to a producer or a third party when there is a valid contract or agreement (as described above) for the purpose of investigation and repair with the intention of re-use.	

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