



The Centre For Business Relationships,  
Accountability, Sustainability and Society

## **Comment and Analysis**

Should WEEE welcome India's first  
Draft Bill on e-waste?



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## **Should WEEE welcome India's first Draft Bill on e-waste?**

Regulating the management of unwanted mobile phones, computers, MP3 players and televisions and other waste electrical and electronic equipment (WEEE, also referred to as e-waste) in India is at last being addressed. Faced, to some extent, with the same challenges addressed almost a decade ago at the European Union through the WEEE Directive, on 30<sup>th</sup> March 2010 the Ministry of Environment & Forests (MoEF) put out for consultation the Draft E-Waste (Management & Handling) Rules 2010 (Draft Rules).

The current e-waste crisis in India has developed from a number of significant factors which together pose some familiar and some unfamiliar problems to those faced by western societies. First, the volume of e-waste, also referred to as waste electrical and electronic equipment (WEEE) generated domestically is rising at an as yet uncalculated amount. These products and their components contain hazardous metals and toxic substances capable of both significant harm to human health and the environment. However, and perhaps of more concern, is the volume of e-waste arriving often in violation of international law by container from the EU, North America, Australia and Japan into the ports of Mumbai and Ahmedabad. Second, much of this e-waste is exported under the guise of equipment for reuse only to reach unregulated Indian scrap yards in places such as Meerut, Chennai and Bangalore where unauthorised recovery of precious metals and components is carried out informally by tens of thousands of men, women and children. This so-called informal sector uses rudimentary techniques such as acid leaching, open air burning and manual stripping of wires to extract the resources from WEEE. These activities are mostly conducted without any safety equipment or control and have significant implications for human health and the environment. Third, up until recently policy-makers have shown little interest in introducing legislation for the management of e-waste. As a result, there is currently no separate collection, treatment and disposal infrastructure for e-waste in India and no reliable data on the quantity of e-waste generated and disposed of each year. Lastly, the lack of regulation of WEEE in India enables global producers of electrical and electronic products to abandon the extended producer responsibility obligations imposed upon them in other countries such as the

European Union. The regulation of e-waste in the EU is established through the WEEE Directive (2002/98/EC amended by 2003/108/EC). This directive places responsibility on the producers of electrical and electronic products to finance the collection, transport, treatment and ultimate disposal of e-waste according to their market share. By internalising the costs associated with these products throughout their lifecycle, the intention of the Directive is to promote patterns of sustainable production and consumption.

In India, the Hazardous Waste (Management & Trans boundary Movement) Rules 2008 makes a reference to e-waste and its constituent elements and the MoEF's *Report of the Committee to Evolve Road Map on Management of Wastes in India* in March 2008 included the publication of voluntary guidelines for e-waste management in India. However, these are not legally binding in nature. Together, these measures do not tackle the challenges posed by the e-waste problem. The Draft E-Waste (Management & Handling) Rules 2010 (hereafter, the Draft Rules) is the first piece of proposed legislation to expressly seek to regulate and control the management of e-waste in India.

The primary focus of the Draft Rules is to enable the reuse, recycling and recovery of e-waste and prevent inappropriate disposal of unwanted electrical and electronic items and their component parts. Categories of e-waste to be regulated under the Draft Rules include: large and small household appliances; toys, leisure and sports equipment; electrical and electronic tools, medical devices; monitoring and control equipment; IT and telecommunications equipment and consumer electronics. Furthermore, the Draft Bill refers to the reduction in the use of hazardous substances (RoHS) in the manufacture of EEE. The Draft Bill provides threshold limits for the use of certain hazardous substances to be complied with within three years from the date of commencement of the Rules by the producer of EEE such as lead, cadmium, cadmium oxide, mercury, antimony trioxide, beryllium metal and liquid crystal.

#### *Responsibilities - Key Actors*

The Draft Rules establish responsibilities on producers, dealers, refurbishers, collection centres, recyclers and consumers. The producer will be responsible for collecting e-waste generated both during the manufacture of EEE and at the point of

disposal. In this way, the Draft Rules reflect the principle of EPR as adopted in the EU WEEE Directive by making producers responsible for the products they manufacture during its entire life including the point at which the product is no longer wanted or needed. In order to achieve this the Draft Rules set out that producers will be responsible for financing and organising a system, either individually or collectively, for the collection, transport and environmentally sound treatment of their own products. Part of the duty includes that they must ensure that all e-waste is sent to either a registered refurbisher, dismantler or recycler. The effectiveness of these systems will be reliant on consumer awareness and this is addressed in part by providing an obligation on producers to raise awareness of the impacts associated with inappropriate disposal of e-waste and the return/collection schemes in operation to dispose of e-waste suitably,

Responsibilities have also been attributed to dealers in the Draft Bill. Dealers are those who sell to and receive from consumers EEE or components of EEE, referred to in the WEEE Directive as distributors or retailers. They are required to “provide a box, bin or demarcated area” to deposit e-waste collected from consumers and must submit details to the producer or authorised collection centre of the e-waste collected. Those repairing EEE, known as refurbishers, have a duty to ensure that any e-waste produced through the refurbishment of products and equipment are separately collected and transported in a safe manner to registered recyclers or authorised collection centres. The collection centres, whether operated individually by a producer or collectively must be authorised by the State Pollution Control Board and must ensure that no damage is caused to the environment by establishing secure storage for e-waste prior to it being transported either to the producer, refurbisher, registered dismantler or recycler.

Every dismantler and recycler of e-waste must register with the Central Pollution Control Board and is required to ensure that the facility and processes used in dismantling or recycling do not have a detrimental affect on human health or the environment and comply with relevant standards and guideline laid down by the Central Pollution Control Board. They should also make available all records for inspection by the concerned authorities.

Further to these responsibilities, the Draft Bill also lays down explicit obligations on private consumers and bulk consumers such as public sector undertakings, educational institutions, banks, private companies and multinational organisations. These provide that consumers must take their e-waste to the dealer, authorised collection centre whereas bulk consumers may auction their e-waste, deposit it with a dealer, authorised collection centre, registered dismantler, recycler or utilise any collection services available direct from the producer.

#### *Authorization, Registration and Penalties*

It is mandatory for every producer, collection centre, dismantler and recycler of e-waste to make an application to the State Pollution Control Board (SPCB) for authorisation to handle e-waste. On receipt of application, the SPCB will make enquiries on the operation and on being satisfied that the applicant possesses appropriate facilities, technical capabilities and equipment to handle e-wastes, may grant a conditional authorisation for a period of five years which may be renewed. Similarly, dismantlers and recyclers must be registered with the Central Pollution Control Board. This is a welcome priority having regard to the fact that in India 95% of recycling is done in the informal /unauthorised sector. For effective e-waste governance the introduction of a permit system for granting registration for recycling of e-waste is significant.

Undoubtedly, the Draft E-waste (Management and Handling) Rules 2010 should be welcomed as a significant step towards sustainable management of e-waste. However, there are a number of aspects within the draft which the MoEF should revisit to ensure full and effective implementation is achieved.

#### *The importance of prevention*

In regulating waste for the achievement of sustainable waste management the objective must be to prevent waste from arising. Waste prevention requires a proactive approach to manufacturing processes and lifecycle assessment of products. However, nowhere in the Draft Rules is the prevention of e-waste established as the principal aim or aspiration for the regulation and management of e-waste in India. Establishing EPR fully in the draft rules can promote and encourage all businesses to

consider the end-of-life impact of their products at the design stage thereby reflecting a precautionary approach to e-waste management.

#### *Individual or collective systems approach?*

Whether the Draft Rules seek to establish a collective or individual producer responsibility system approach is questionable. As it stands, many of the provisions, appear to leave it to the producer to decide whether they wish to join a collective scheme or undertake the more burdensome Individual Producer Responsibility (IPR) activities. As it stands, the Draft Rules entitle producers to meet their obligations shall by setting up collection centres or take back system either individually or collectively for all WEEE. This raises several uncertainties. First, the term “setting up” indicates that the producers’ responsibilities go further than merely financing the establishment of schemes for the separate collection and treatment of e-waste. The provision does not recognise the role of authorities in locating, managing or supporting such infrastructure, nor does it acknowledge the opportunities for third parties to establish these schemes on behalf of producers of EEE. Second, producers have the option to set up collection centres or take back systems, although no detail is provided on the number of centres needed in each region, where these centres should be situated and how the establishment of such infrastructure should be managed to deal with e-waste.

The Rules should introduce initial measures, which ensure adequate infrastructure is in place for the collection, transport, treatment and disposal of e-waste through EPR before moving to a more complex and costly system for producers under IPR. This could be phased in through a provision in the Rules which acknowledges the benefits of IPR over and above CPR. Furthermore, the provision could commit the MoEF Ministry to a review of the system with a view to establishing IPR at a future date.

#### *Missing Targets and Awareness Raising*

Apportioning responsibility must be coupled with both enforcement for non-compliance and the specification of targets to which all agents should be focused. Placing targets on the collection and recovery, recycling and reuse of WEEE ensures producers and dealers are encouraged to alter current consumer behaviour patterns in the disposal of their unwanted WEEE.

Underpinning the ability to meet increased targets, separate collections of WEEE and changes to product choices at the point of sale is consumer behaviour. Key to achieving sustainable e-waste management (and prevention) is awareness raising and education. In the Draft Rules the responsibility for raising awareness is placed upon producers. Although the type and timing of such promotion is not established, it is vital to the effectiveness of the Rules that campaigns publicity and public engagement begins early and that various types of media are used in order to reach the widest possible spectrum of the population – bearing in mind that the vast majority of e-waste is currently dismantled and processed in uncontrolled and unauthorised scrap yards.

Altering consumer behaviour to support the legal duties on producers in terms of e-waste is critical since sustainable consumer choices not only stimulate greater life-cycle thinking and encourage eco-innovation in the design, manufacture, use and disposal of products but also ensure that e-waste is separated out from residual waste and materials are kept within a closed loop economy, thereby reducing extraction and natural resource use. Section 8 of the Draft Rules is a promising start. However, the provision is isolated from the other requirements of the Draft Rules and is not mentioned as a factor which producers must address when fulfilling their responsibilities in relation to creating awareness. Nevertheless, it is a much-needed inclusion in the Rules for effective e-waste management and one that can be considered to be ahead of other e-waste regulatory frameworks in operation elsewhere.

Due to the increasing volumes of e-waste generated and the glaring inadequacies in its management, there is, more than ever, a necessity to introduce e-waste in India. Evolving a regulatory framework that mandates clear-cut responsibilities and requirement would go a long way in ensuring that there is adequate investment and appropriate action by responsible actors. Whilst there are limitations and weaknesses to the Draft Rules, they should still be considered as a progressive step towards managing e-waste in India. Overall, the Draft Rules set the tone for future legislative and regulatory developments and bolsters the importance of EPR in future waste management measures.