



# delegate alert

## Preventing More Dumping of Electronic Waste in Developing Countries

### *The Basel TBM of e-Waste Guidelines Debate*

Prepared by the Basel Action Network, May 2015

#### What is at stake

In our view, there is perhaps no other issue of greater significance for the upcoming COP than the proposed adoption of the Technical Guidelines on the Transboundary Movement of Electronic Wastes.

While the issue seems like a small detail – a little subparagraph (26b) in a guidance document, it is nevertheless of monumental importance.

In recent years there has been a great deal of progress made to free the Basel Ban Amendment for rapid entry into force, and to better enforcement efforts, *particularly* on the trade of electronic waste. Now however, seemingly to undo all of that progress, we are witnessing an effort by some powerful countries to simply remove what is likely to be massive amounts of electronic equipment from the Convention and the Ban Amendment entirely simply because it might be repaired.

It is time to question why we would ever do this for we have far more to lose than we do to gain from such an action.

Electronic waste or scrap is the most significantly traded hazardous waste today and its negative impact on human health and the environment is irrefutable. Advocating for repairable waste to not be considered waste **at all**, would remove most of the international controls now available for countries to combat the e-waste problem and would in effect, render much of the illegal or uncertain trade – legal and yet uncontrolled.

In the past, we have seen efforts to exempt waste being recycled from being called waste, but they have been rebuffed. Now we are seeing a similar effort to liberalize trade in hazardous waste in the name of fostering *reuse*.

But just as we have seen with recycling, trade for re-use can be done badly or well, but without Basel Controls we can never be able to assert that it be only done well. On the contrary, once it is outside of legal controls we can be assured that it will be done very badly, with further exploitation and abuse of developing countries becoming the even more commonplace.

## Current status of the Guideline

The proposed guideline is, but a guideline, but it nevertheless seeks to interpret the Convention and decides what is in and out of the scope of the Convention. The legality of a guideline doing this is suspect, but many see it as a harbinger of future binding amendments.

As it stands the document is very good. Up through paragraph 26a, the unbracketed text rightly asserts that used electronic equipment should be considered waste unless it is tested and shown to be fully functional. If the equipment is to be exported, it must be tested and proven to be fully functional prior to export. A declaration of the equipment's full functionality must accompany the shipment. That all makes perfect sense as countries have been inundated with toxic broken electronics that exporters *claim as non-waste*.

## The problem with the Guideline

The dangerous situation has arisen in the document because certain countries such as Japan, Canada and the US, and now, surprisingly backed by the EU, have sought to create a very large exemption to the above rule in a new paragraph 26b for electronic equipment *destined for repair operations*. This paragraph seeks to exempt such equipment from the Basel Convention entirely by declaring it as non-waste.

This would mean that suddenly, for very large amounts of broken used hazardous electronic scrap deemed to be "repairable," Basel obligations would no longer apply. The obligations that would fall away include: the prior-informed-consent notification system; the right for countries to know what is entering their country, the right to refuse entry of this scrap; criminal prosecution of illegal traffic; the duty to reimport shipments that go wrong; as well as even the obligation for environmentally sound management of the waste equipment.

A free trade in exports for repair *might sound reasonable* until one thinks of two facts:

- 1) Repairs almost always involve replacing and disposing of parts, many of which will be toxic waste. Thus, export for repair involves transboundary movement of hazardous waste.
- 2) All broken equipment can be claimed as repairable. Thus, once you allow this exemption from export controls it will be exploited by countless traders wishing to simply externalize real costs and harm via a new "repairable" channel, and countries will be left with little legal ability to do anything about it. You will not be able to confine this exemption to a handful of responsible manufacturers.

The guideline can and should be passed. We desperately need to provide countries with guidance on how to distinguish waste equipment from non-waste equipment. However, those demanding an exemption are holding the entire guidance hostage stating they could never accept it without a major export-for-repair exemption. Instead of pushing for a narrowly defined pragmatic exemption that might be benign (e.g. for large medical equipment), they are trying to delist almost all repairable electronics from the Basel control regime.

An initial set of 7 strict criteria were proposed by BAN. However, these criteria now being debated have been steadily weakened at every subsequent meeting. These criteria no longer provide the necessary protections to protect developing countries and do not provide any semblance of control to make up for losing Basel Controls.

The EU counter-proposal to allow all countries to basically do what they want as long as they report it to the Secretariat is also unacceptable. It is shocking but the EU, which has in recent years always supported the principle that developing countries should not receive hazardous scrap and wastes from developed countries, is now advocating for a broad exemption which is currently illegal under EU law!

Due to this over-reaching by developed countries, the debate over the scope and controls of an exemption has dragged on now for over 2 years with little progress. Most developing countries cannot accept giving up the little controls they have to stem this toxic tide and we agree with them.

### **The way forward**

**1. Any exemption should be the exception and not the rule.** The current text has been weakened to the point where it is no longer acceptable and little progress is being made. If an exemption is to be created, we need to go back to the original intent of such an exemption( e.g. for large medical equipment) and cease work on the existing 26b language. We cannot afford to lose Basel controls on this most pernicious waste stream. The original intent is that only very narrowly defined exemptions can be allowed.

**2. Any exemption must honor the Basel Ban Amendment.** Any exemption (e.g. for large medical equipment) must also ensure that any hazardous parts or residues left-over from the export-for-repair operation that takes place in developing countries (non-Annex VII) should only be disposed of in an Annex VII country. Otherwise the Ban Amendment is circumvented and dishonored and that is unacceptable.

**→ We strongly urge all developing countries and countries with economies in transition to hold fast to maintaining Basel Controls and reject the current text being discussed regarding a 26b exemption.**

**→ We strongly urge the European Union to cease sabotaging its own principles and legislation and to support the developing countries in only allowing very limited exemptions if any at all.**

**→ Those industry sectors such as the medical industry which wish to make a carefully crafted narrow exemption can make such proposals available for consideration for Paragraph 26b. At the COP these can be considered on their merits one by one.**

**→ We must reject the idea of a blanket exemption open to any exporter.**

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