

BC's Interim Guideline on Transboundary Movement of e-Waste

-- Facts & Recommendations --

FACTS

- At COP12, the draft Technical Guideline on TBM of e-Wastes was adopted “on an interim basis”, despite there being no consensus to adopt it. During the final debate, Argentina disassociated itself from the proceedings and a number of other countries, including Pakistan, Egypt, India and Yemen did not agree to adopt. Nevertheless the chair brought the gavel down.
- There was objection for good reason. Never before in the history of the Convention have Parties been asked to adopt a document so fundamentally unfinished, especially one which has the most controversial and dangerous section (i.e. exempting e-waste from any Basel controls if destined for repair) unresolved.
- Even worse, instead of just leaving this section empty with brackets saying (this section is to be completed later), conditions, which were so weak as to have no objections or controversy attached to them, were listed and all of the conditions that could be meaningful in terms of protecting the environment, were left out.
- The resulting interim guideline has, in the critical paragraph 31(b) simply allowed exports of broken, untested, or non-working equipment for repair without any Basel controls whatsoever, if the export meets the most minimal set of requirements (see below).
- For the very first time in the history of the Basel Convention a Guideline is advocating exports of hazardous waste without prior informed consent or a binding requirement for environmentally sound management. The Guideline is actually advocating illegal traffic.
- And once the Ban Amendment is in force, where it applies (exports from Annex VII to non-Annex VII), the Ban Amendment is violated.
- This is not an exaggeration because export of equipment for repair involves the export of hazardous parts that will be discarded upon arrival in the importing country. This by definition is transboundary movement of hazardous waste without prior informed consent.
- As the New Guideline exempts hazardous e-waste from the Convention with the claim of repair, any unscrupulous actor in a developed country that wanting to export e-waste to a developing country only has to do the following to be exempt from the Convention:
 1. Make the claim that the waste is going to be repaired. (Do this even if it will not be because nobody has the ability to check).
 2. Establish a partner in a developing country and sign a contract with this partner that assures environmentally sound management, proper management of residuals, provide a final report etc. (Because this is simply a contract between you and your accomplice, it does not matter if it's really upheld because there is no third party that has a legal interest.)
 3. 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 non-governmental operative to make a declaration of law. They cannot possibly know how to interpret the laws of any given government and if they are caught making the wrong determination they can simply claim ignorance).

4. Ensure that each piece of equipment is individually protected against damage (plastic shrink wrap is very cheap)
 5. Documentation is to accompany the shipments as to the origin and nature of the equipment, the existence of the contract and declaration described above. (Such documentation is quite easy to provide, once one has an accomplice, but who has the job and authority to check to see if it is true?).
- The guideline does not even say if NOT doing these things constitutes illegal traffic.
 - The guideline provides no ability for the importing or transit states to know what e-wastes they are receiving and thus they have no ability to conduct enforcement of any of the stated conditions unless they open each and every possible transboundary shipment. This turns the concept of prior informed consent on its head. Further by the time enforcement is possible, the shipment has already been made and is likely to be abandoned if found to be illegal.
 - The Guideline provides no formal registry of where these activities will take place – its all in a cloak of contractual secrecy.
 - The Guideline requires far stricter conditions for exports of fully functional equipment than it does for exporting broken equipment!
 - In sum, any form of hazardous non-functional electronic equipment considered by the exporter to be 'repairable' can be exported completely outside of any Basel Convention controls.

RECOMMENDATIONS

1. First, no government should make use of the guideline until and unless the dangerous loophole 31(b) is fundamentally changed. In the meantime, Parties should make rules immediately to ensure that non-functional hazardous equipment is always considered waste.
2. Work should be undertaken to either remove 31(b) entirely, with a small medical equipment exemption; or undertake to provide the conditions that will preserve the fundamental principles of the Convention and the Ban Amendment as follows:
 - a. Preserve the concept of prior informed consent by ensuring that any Party wishing to exercise the 31(b) exception, must so notify the Secretariat in accordance with Articles 3 and 13, paragraph 2, as appropriate, and stipulate any conditions or limitations as well as list the nationally approved ESM repair facilities that will be approved for the exemption. This list will be maintained on the Basel Convention website. Contracts must only be accomplished with such government approved facilities.
 - b. Ensure that highly problematic imports will not take place. CRTs, mercury, asbestos, toners and inks, and organic solvents, as well as PCB containing devices, will not be allowed to be sent under 31(b).
 - c. Preserve intent of Ban Amendment. All un-repairable equipment, parts or residues derived from the imports that are hazardous under the Convention and coming from an Annex VII country, must be repatriated to that country, or by arrangement with the original exporter sent to an ESM facility in another Annex VII country.
 - d. Give this exemption some teeth to combat fraud. Any persons found to be in breach of the conditions of Paragraph 31 should be considered to be engaged in illegal traffic under the Convention and therefore subject to criminal prosecution.

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