

BAN Intervention on the e-Waste Guideline and Repair Loophole

Thank you Mr. President.

Distinguished Delegates:

The basic concept found with the Technical Guidelines for the Transboundary Movement of e-Waste is a sound and correct one – and that is the idea that if things are broken, non-functional or untested – they are to be considered waste.

The problem we face, and the debate now raging, is over an effort to create a paragraph numbered 26b – that turns that basic concept on its head. This 26b plan is to exempt a very broad general category of broken non-working equipment from the Convention itself by declaring those wastes destined for repair -- as non-waste.

This new notion is clearly very dangerous and in fact runs counter to the policies, norms and rules of many Parties.

EU law for example asserts in many directives and regulations that non-functional equipment is in fact waste and should not be exported to developing countries when it is hazardous. How can the EU be willing to undermine its own laws and the Ban Amendment they have ratified?

Likewise in Africa, this new exemption runs completely counter to one of the first Bamako Convention decisions 1/15 that, quote:

“Calls upon, Parties and other African states that have not already done so to legally consider all non-functional or untested used electronic equipment as hazardous waste and prevent their importation into the African Continent.” Unquote. How can Africa be asked to undermine its own continental decisions?

And by allowing the export of the very same materials which would otherwise be forbidden from export by the Ban Amendment, were it in force, 26b as currently envisaged, defeats the object and purpose of the Ban Amendment -- an instrument that 81 Parties have ratified. And doing that would be a direct violation of the Vienna Convention on the Law of Treaties' Article 18. How can we ask 81 Parties to defeat the object and purpose of the Ban Amendment and thereby violate their Vienna Convention obligations?

Repair sounds good and it is good -- until it is used as an excuse to export harm. Just like “recycling”, which the Convention to its credit, never agreed to use as a reason to escape the Convention rules, reuse too, can be an excuse for abuse.

First, export for repair almost always involves export of a hazardous waste part that will need to be replaced. That old lead-laden motherboard, or mercury laden flat screen, or POPs impregnated plastic housing, these will all be transferred through

this 26b loophole.

Second, we must realize that virtually anything can be deemed repairable. Thus it is that what was meant to be a small exemption is likely to become the rule rather than the exception.

Finally, it must be realized that as soon as you claim repairables as non-waste then all of the binding Basel and Basel Ban Amendment safeguards and obligations keep people and the environment safe, disappear. There will no longer be an obligation for ESM; nor an obligation to notify. Countries no longer will know what crosses their borders. No binding enforcement would be possible.

Anything can be done right or wrong, including reuse. If repair and reuse is a worthy goal why is it not worth doing it right – that is, within the framework and rules of the Basel Convention?

The world needs a reasoned and environmentally protective e-waste guideline. And with the exception of 26b – which has unfortunately ballooned out of control, our guideline is an excellent product. Unless the exemption carved in 26b is dramatically narrowed, and respectful of the Ban Amendment, we must simply say no to 26b at this time. It would be wrong to hold the entire guideline hostage over what was meant to be a small exemption to the basic rule.

Distinguished delegates, the world has already seen enough broken junk characterized as used goods arriving by the boatload in developing countries. We don't need a new paragraph 26b that would open the floodgates to more exploitation by waste criminals and traffickers. One does not solve the e-Waste crisis by removing e-waste from the Convention.

We are confident that we can conclude this meeting with a guideline in hand that does not contradict its basic thesis that non-functional equipment is waste. This should be our goal. Lets not end this long process with a large loophole we will surely regret for a long time to come.

I Thank you.