Delegates are alerted to an important matter slated for the Technical Working Group at the upcoming OEWG9 meeting in Geneva, 16th – 19th September 2014.

Beware Dangerous Exemptions Proposed to Basel Trade Rules for Electronic Waste

Background

In the effort to complete a new technical guideline on transboundary movement of electronic waste, the Basel Convention Parties are being asked to consider the requests of some Parties and industry participants to deregulate and liberalize trade in some types of electronic waste.

The proposals would allow certain types of non-functioning, used electronic equipment to be defined as non-waste and therefore allow it to be sent from developed to developing countries without any controls or application of the Basel Convention and Basel Ban Amendment.

Given that e-waste is clearly one of the most traded hazardous waste streams today and one that has captured the attention of the world for the obvious harm it is causing in developing countries after being exported from rich, industrialized countries, it is surprising that e-waste is the first candidate waste for deregulation/removal from the Basel Convention.

However, such exemptions are being proposed by various stakeholders for the purpose of being able to send non-functional hazardous used electronic equipment from developed to developing countries without any of the legal or other restraints afforded other forms of hazardous waste. These exemptions are being proposed in a new Paragraph (26b) of the Draft Technical Guidelines On Transboundary Movements Of Used Electronic And Electrical Equipment And e-Waste, In Particular Regarding The Distinction Between Waste And Non-Waste Under The Basel Convention. This is being done with the stated aim of improving the environment by allowing a more economically viable channel for refurbishment and reuse.

It is expected that if these guidelines create such deregulation, what would follow are amendments to the Convention to make such changes legally binding. Clearly this is a very
serious proposal and precedent and one which we find potentially very dangerous, as countries would lose the legal right to notification and consent (or rejection) for these hazardous materials under Basel and the Basel Ban Amendment is likewise potentially undermined.

Electronic Waste dumping, such as this scene in Accra Ghana, is the result of export of electronic waste deemed to be repairable and useful for the poor. Instead it is dumped and burned in waysides and ends up as a toxic legacy in Ghana for many generations.

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As it stands without any exemptions, the draft guidelines assert that used equipment is considered hazardous waste when the used equipment is hazardous and is either tested as non-functional or not tested at all.

This, in the view of BAN, is the correct, plain reading of the Convention.

Exports for repair involve exports of bad parts that will need to be disposed of or recycled (Annex IV destinations) in the importing country and thus if such equipment or parts are hazardous, then they are hazardous waste. As such these materials should follow the normal trade rules and procedures found in the Basel Convention, giving all countries concerned the legal right to notification and consent procedures for these hazardous materials.
The Serious Concerns over Exemptions

The new exemptions proposed, on the other hand, would classify some non-functional electronic equipment as non-waste, therefore allowing this material to fall outside of the Basel Convention and all of its obligations and control procedures. They are being proposed in order to streamline trade in such used equipment to repair operations in low-wage, non-Annex VII countries. This of course sounds good, but could allow for the following impacts:

- No binding enforceable obligation to notify the receiving country;
- No ability for receiving countries to consent to or deny such imports;
- No binding enforceable mechanism for assuring Environmentally Sound Management (ESM) of such equipment going for repair, which always involves some recycling;
- No assurances that the Basel Ban Amendment will not be violated, by allowing transboundary movement of hazardous nonfunctional discarded electronic components and residues originating in Annex VII countries to be discarded in non-Annex VII countries;
- No binding ability to repatriate the waste/material should it not be managed properly; and
- No ability for the receiving country to know the quantity of such waste/materials entering the country.

At COP11, several exemptions were proposed by various delegates including the association for IT manufacturers called Information Technology Council (ITI), Japan, US, and Canada. These were written to exempt potentially large categories of electronic equipment from all Basel controls due to its repairability. This is a dangerous notion due to the concerns cited above and because anything can be deemed “repairable.” Developing countries and some European countries were not able to accept such exemptions at COP11. The reasons varied, but were due largely to the fact that the proposed exemptions were:

a) Ill defined;
b) Seemingly open-ended in scale;
c) Did not provide reliable binding controls/enforcement; and
d) Did not honor the Basel Ban Amendment.

As a result, the Draft Guideline could not be adopted and the debate over exemptions now continues at OEWG9. It will likely be the primary subject within a special technical working group.

Principles to Consider

BAN believes that there may be a necessity for some exemptions in the interests of human health and the environment -- but only if such exemptions were very limited and very carefully crafted. Below, BAN proffers its best advice on how any deregulation proposals should be considered to avoid counterproductive, dangerous consequences, particularly to developing countries. It is our strong view that the merits and acceptability of any exemptions should be judged based on the following critical principles.

Any proposed exemption in Paragraph (26b) must:
1. **Have an obvious and compelling environmental or human health benefit after all cost externalities are accounted for, particularly bearing in mind the interests and impacts on developing countries;**

Simply claiming that ‘repair is always better than recycling’ is a weak and often incorrect analysis. The impacts of repairing hazardous equipment are much more complicated than that. For example, repairing energy inefficient devices or extending the life of obsolete toxic products in developing countries, where the toxic materials will not likely be collected upon final disposition, can be far worse than simply recycling the equipment in developed countries. Savings made through resource conservation by giving products a second life need to be weighed against other means of achieving the same objectives, such as making the products last longer in the first place. Further, repair often involves depositing toxic waste and residual materials in developing countries where infrastructure, regulations, and enforcement are not able to provide for safe, long term hazardous waste management.

2. **Respect national definitions of waste and hazardous waste as required by the Convention;**

Any exemptions should be confined to those countries willing to recognize and accept them. Documentary evidence must be provided that the countries concerned have proactively agreed to consider and accept the exemption as a new national definition.

3. **Ensure that countries concerned are notified of all such trade and that it goes only to ESM repair facilities. These assurances need to be legally enforceable (see 5 below);**

The biggest problem with exemptions proposed under proposed Paragraph 26b of the Draft Guidelines is that they completely exempt material from the Basel Convention. Thus, enforcement authority is stripped away. All requirements for import notification as well as the requirement to assure ESM are removed. Either such control needs to be restored by defining the material as waste (e.g. Annex II) or there will need to be new legally-enforceable replacement mechanisms. It is very worrying for developing countries that they may never know what passes their borders as a result of proposed exemptions.

4. **Honor the spirit of the Basel Ban Amendment and not allow any hazardous residue/scrap/waste resulting from repair operations to be left in, or moved to, a non-Annex VII (developing) country;**

According to the Basel Convention, as far as possible, repair and refurbishment should take place in the country where the equipment is generated. But, if waste must move, it absolutely must move, as a minimum, in accordance with the Basel Ban Amendment. Hazardous waste generated by repair operations of used equipment originating from
developed countries must be repatriated to an ESM facility in an Annex VII country for final disposition or recycling.

5. **Provide possibilities for enforcement officers in all countries concerned to check the compliance of each transport upon entry and exit;**

Exporters should provide documentary evidence and a notification procedure that would allow enforcement officers, both in the country of export and in the country of import, to evaluate whether the used equipment being transported is truly meeting the requirements of the exemption. In the absence of such documentation or if the transport does not meet the requirements, the used equipment should be regarded as waste and the transport of it should be regarded as illegal traffic in accordance with the Convention;

6. **Not harm legitimate recycling businesses and waste management in the country where the waste is generated;**

According to the Basel Convention, waste should ideally be managed where it is generated. Thus any exemptions adopted must not competitively undercut those businesses that have invested in the environmentally sound management of wastes domestically. If all or significant volumes of electronic waste can be labelled as destined for “repair” and therefore be exempt from trade restrictions, domestic recyclers in any country will find themselves unable to compete with exporters who send everything for “repair”. Creating such exemptions that would harm domestic recyclers would not only be unfair and discriminatory, but contrary to the Basel Convention and its call for self-sufficiency in managing one’s own wastes.

7. **Assure that ownership of equipment and residual matter is maintained by the exporter until all equipment is fully functional and all residue/scrap/waste is finally disposed of in an Annex VII country;**

To prevent irresponsible actors from passing responsibility into the hands of others in the receiving country, it is vital that the used equipment that is exempted remains the responsibility and property of the owner/holder who first claimed the exemption in the state of export.

8. **Foster reuse of high-quality, long-lived products only and thus each item in any exemption export must be individually packaged and protected against shipping damage;**

To ensure against low value equipment or near-end-of-life equipment being exempted and to ensure that the aim is truly reuse, all equipment must be packaged individually against damage of all kinds.

9. **Ensure that all sensitive data contained in the electronic equipment are wiped from exempted material unless strict precautions can be assured that will prevent loss of such data in the course of transport and operations;**

It is unacceptable to have private data placed in international trade where it can be easily made public. All memory devices containing such data must be thoroughly sanitized in accordance with widely accepted data sanitization and security regulations.
and standards, and never released to unauthorized entities.

10. **Be a very small exception in scale;**

Finally and perhaps most importantly, it is essential that the basic rule of non-functional equipment being waste must be the rule. We are not embarking on this exercise to fundamentally re-write the purpose and obligations of the Convention but rather to allow for small exceptions to the basic rules when a compelling case can be made for saving human lives or providing obvious overwhelming environmental benefit. Such exceptions must be small in scale and not any kind of new rule for massive amounts of equipment that might pour across borders of unsuspecting developing countries. The Basel Convention fundamentally supports protection of human health and the environment, and undoing its rules will do far more damage than good.

**Conclusion**

All of the above principles are of vital importance. Therefore, any proposed exemption, particularly for the pernicious problem of electronic waste trade impacting developing countries, should adhere to each of these principles as a minimum. If the proposed exemptions cannot meet each of these principles, then such proposed exemptions are far too dangerous to allow, and the basic rules and procedures of the Basel Convention must be retained. It is important to note, that such an outcome will not prevent used electronics from being transported across borders but it will simply need to be done by the Basel obligations binding on all other forms of hazardous waste.

We look forward to seeing you all again in Geneva soon. We wish each of you safe travels.

Sincerely yours,

Jim Puckett, Sarah Westervelt
Basel Action Network