delegate alert

Preventing the Digital Dump: Ending Re-use Abuse

No Exceptions in New Guideline: Non-Functional/Untested Hazardous Electronics are Hazardous Waste

Written by the Basel Action Network in preparation for the Conference of Parties to the Basel Convention

Today, as electronic gadget consumption skyrockets and obsolescence renders electronic equipment useless in a matter of a few short years, we are increasingly faced with growing mountains of toxic electronic waste. These new techno-trash mountains represent a new crisis facing every country, but in particular are a threat to developing countries. They not only have their own e-waste to deal with and minimal capacity to manage it, but they are victimized by actors in developed countries that turn to export as a means to externalize their costs and avoid proper management at home.

Increasingly more and more exports are justified using the word re-use. Such exports under the label of re-use are touted as a means to increase re-use generally, or to help bridge the “digital divide”. However, there is a very ugly side to this re-use trade that officials in developing countries all over the world are facing each day at their ports of entry and in wayside dumps. Much equipment which is obsolete or in such poor condition that it should be recycled, is instead exported for "repair and reuse" presumably to "help the poor". Further, even when repair is economically feasible, the repair most often involves swapping out toxic parts such as whole circuit boards, or mercury lamps, CRTs or batteries which must then be discarded in the recipient countries. This re-use abuse has therefore become a very serious matter. It is time that we begin to be able to tell the difference between proper re-use and re-use abuse – to distinguish between exports of wastes (that must be controlled under Basel) and exports of products (that need not be controlled).

This is the task of the "Technical Guidelines on the Transboundary Movements of e-Waste and used electrical and electronic equipment, in particular regarding the distinction between waste and non-waste under the Basel Convention," and at COP11 this draft document is expected to be adopted. It is probably the most significant, far reaching action to be taken at COP11. It is very important that we get it right. This document has drawn much from the work already completed by the Partnership for Action on Computing Equipment (PACE), the Mobile Phone Partnership Initiative (MPPI), and the European Union's WEEE Directive. COP11 provides the Parties with an opportunity to improve on those earlier influential documents and make them more protective of developing countries. It is vital to ensure in these Guidelines that the Basel Convention must apply to all exports of hazardous electronic parts or equipment that are either *untested* or tested and found *not to be fully functional*.

Basel Rules are Perfectly Suited to the Task

What the Basel Convention text tells us is clear:

Export for direct re-use does not fall under Basel if the equipment is tested as fully functional. Certainly, direct re-use of goods (without any parts replacement or processing required) does not involve Annex IV recycling or disposal operations. Thus, *used electronic equipment that is functioning and is intended for direct re-use should not be considered a waste,* regardless of whether it is hazardous or not. However, from a regulatory point of view, this needs to be demonstrable and thus testing, or some other forms of verification, certification and labeling, prior to export will be required to determine that:
a) the device is fully functional as-is, and
b) it is destined for a legitimate re-use destination.

Export for repair and refurbishment will fall under Basel if parts are non-functional and hazardous or untested. While the words “repair” or “refurbishment” do not appear in the Annex IV lists, equipments sent for repair or refurbishment will, in part, be relegated to Annex IV operations when the repair or refurbishment requires that a *part* of the equipment be replaced and the old part disposed of or recycled (e.g. bad batteries, mercury lamps, cathode ray tubes (CRT) etc.). Thus such equipment must be considered waste and when hazardous -- hazardous waste.

The logic of considering a hazardous, non-functioning part that must be replaced during repair as a Basel-controlled waste becomes clear when looked at in another way. Exporting a non-functioning circuit board, mercury lamp, or CRT by itself destined for recycling is clearly a hazardous waste export. Yet this is very much the same as exporting a hazardous, non-functioning circuit board, mercury lamp or CRT as part of a computer or television sent for so-called repair/refurbishment. In both cases a hazardous waste is involved in a transboundary movement. If we were to not look at it this way, then of course all manner of useless circuit boards, mercury lamps, toxic batteries, old CRTs, could be exported to developing countries outside Basel control, via the re-use excuse.

Considering exports of repair as very possibly being export of waste (for untested or non-functional parts) was thus the logical determination of the Basel Parties that participated in the PACE and MPPI partnerships and resulted in the Decision Trees found in both of those documents. **Unfortunately, however, certain industry associations are now pressing hard on countries to abandon this clear and important distinction and intend to overturn this interpretation at COP11 through a series of exemptions. If they succeed, the new Guidelines will be weaker than the PACE and MPPI guidelines and allow massive amounts of e-wastes to flow without any controls whatsoever.**

Make No Exceptions

It is difficult to understand how a Basel Guideline can ever be used to alter or create Basel definitions of what is a waste and what is not. It is not legally permissible to do so as Guidelines are not legally binding. Only the text of a Convention is legally binding and this can only be changed via amendment. Nevertheless, numerous exemptions of certain used electronics from the Basel Convention have been proposed within this new Guideline. The ITI (Information Technology Industry Council), in preparation for COP11 have sent communiqués around the world, including to developing countries, asking for such exemptions. Your government's Information or Commerce Ministry likely has been the recipient of such lobby pressure. The ITIC and certain governments such as the U.S., Japan, and Canada have proposed many inappropriate exemptions in the Guidelines in Paragraph 26 (b) including the following examples of used equipment which would not be subject to Basel control by exemption:

- *Shipments by individual customers of their own mobile phones for repair or refurbishment (e.g. under warranty), and intended to be returned to them.*
- *Defective batches of mobile phones sent back to the producer (e.g. under warranty).*
- *Used equipment sent back as defective batches for repair to the producer or a third party acting on his*

behalf (under warranty) with the intention of receiving it back for reuse; or

- *The used equipment for professional use is sent back for refurbishment or repair under a valid contract with the intention of re-use;*
- *The defective used equipment for professional use, such as medical devices or their parts, is sent to the producer or a third party acting on his behalf for root cause analysis under a valid contract, in cases where such an analysis can only be conducted by the producer or third parties acting on his behalf;*
- *The used equipment is sent for refurbishment or repair under a valid contract with the intention of re-use to the producer or a third party facility acting on his behalf;*
- *The used equipment is administered by or on behalf of a person engaged in the business of leasing equipment and such equipment is removed from service and shipped by the lesser or third parties acting on their behalf with the intention of reuse.*

Exemptions Illegal and Dangerous

Some of the problems with these exemptions are described below.

1. Elimination from Basel's scope must be based on the Convention's science-based definitions of hazardous wastes, not on business considerations. Such definitions in any case can only be altered by amendment, not by a guideline.
2. Elimination from Basel scope means that the Basel Ban Amendment is avoided and thus undermined -- all of this hazardous electronic equipment described by the exemptions could flow as a toxic tide without any controls whatsoever to developing countries.
3. Elimination for Basel scope would mean that even where the Basel Ban does not apply, national authorities would have no means to even be aware of incoming shipments of waste, their eventual fate, nor be able to refuse their entry.
4. The term "Professional" equipment is poorly defined, not based on definitions of hazardousness and could constitute massive amounts of waste, depending on how this term is interpreted in the field.
5. Much of these exemptions are granted to manufacturers only, and thus give competitive advantage to these actors over recyclers or others wanting to also export wastes freely. As such these exemptions are discriminatory and thus difficult to defend under WTO rules.
6. The idea of exempting leased equipment would mean that *massive* amounts of off-leased electronic equipment (this is a multi-billion dollar industry) would be exempted from full functionality testing requirements, creating a major loophole for exporting significant quantities of exported wastes to developing countries.
7. The biggest problem with these exemptions is that they are simply illegal. Basel does not allow exceptions to its waste definitions simply to make one or another industry group happy, and such exceptions can only be created via amendment, not via Guidelines.

Conclusion

We have seen enough of the impacts of electronics re-use abuse already, and yet the problem is increasing daily. Re-use is a worthy aim, but it must be done according to the normally established rules and obligations of the Basel Convention. Just as we require wastes that are to be recycled to be move according to the Basel Convention control procedures, so too should exports for repair and re-use. The solution for preventing the re-use abuse lies in a proper reading of the Basel Convention, its obligations and definitions. **All Parties, and in particular those from developing countries, that are now faced with a daily onslaught of junk entering their ports, need to prevent further re-use abuse by sticking to the principle that electronic equipment that is untested or not fully-functional must be considered waste. If it contains hazardous materials it is hazardous waste. No exceptions.**

For more information on this subject see *BAN Briefing Paper #10: Preventing the Digital Dump*.

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