Additional Note by the Secretariat

On the 8 May 2012 Draft Technical Guidelines

Revision of the draft guidelines on transboundary movement of e-waste

In February 2011 a revised version of the draft guidelines on transboundary movement of e-waste was published on the web-site of the Secretariat for comments. The comments from stakeholders and reactions were also posted on this web-site. These were analyzed by a consultant with a view to producing the next draft, as required in COP Decision BC-10/5.

The current draft has incorporated drafting suggestions proposed in the reactions insofar they contribute to clarifying the current content. There are also a number of comments and suggestions that would introduce new concepts or ideas into the paper. These have been highlighted in comments, but have not yet been included into this version of the paper. Before doing so the views of Parties and others are requested on those modifications, as they may alter the direction of the guidelines.

I. Modifications requiring considerable additional drafting

However, other suggestions would require considerable additional drafting when pursued. Before doing that work it is necessary to get feedback if these modifications would get support and in some cases it would require Parties and others to provide additional information in order to be able to do that.

Issues that would require considerable additional drafting are:

- New appendix with non-hazardous equipment and hazardous components and substances

Colombia suggested adding an indicative, non-limitative appendix with equipment that normally would be non-hazardous to the guide. This would facilitate the work of the enforcement authorities considerably.

Question:

Does this idea get support and if so, are there suggestions for items that could be included in this appendix?

The United States does not support a new appendix with non-hazardous equipment and hazardous components and substances. Overall, the subjective nature of the appendix would result in the Parties expending too many resources agreeing what should be listed and what should not. Further, a non-hazardous list would always be evolving and changing, which would prevent it from being a useful tool to authorities. Additionally, the point of this current exercise is to develop general guidance that parties can use to help them make case-by-case determination on the distinction between hazardous and non-hazardous waste, not a fixed, binding list.
- New appendix on hazardous components and substances

BAN has developed a table identifying hazardous substances and components and suggests adding this to the guidelines. The draft as prepared by BAN has been included in the revised draft for information.

*Question:*

Does this idea get support and if so, are there suggestions for modification or addition?

As stated above, we do not support the addition of BAN’s text and associated table providing examples of hazards in electronic equipment. First, there are a number of inaccurate entries based upon assumptions that are not agreed upon by the Basel Parties within BAN’s table. Additionally, there is an overarching CLI initiative that is currently working on legal clarity with regards to terms and definitions under the Convention that are lacking or ambiguous. The CLI initiative effort is broader in scope; the proposed appendix by BAN pre-empts these efforts. These technical guidelines should focus on transboundary movement procedures pursuant to those defined within the PACE and MPPI and not aspire to classify waste versus non-waste.

- Functionality testing

Colombia suggested that the current Appendix II contains only a limited indication of the tests that could be done to demonstrate full functionality. Others indicated that the Appendix would require updating to reflect the latest state of play in the guidance developed under PACE. The EU recommended deleting the current Appendix and include only references to the source material (from MPPI and PACE).

*Question*

Should the Appendix II be further developed, and if so, which additional tests would be available apart from the updated material from PACE?

Or, alternatively, would it be better to delete the Appendix and refer to the source material as suggested by the EU?

**The United States agrees with the EU. We support deletion of Appendix II and only making references to the sources in Paragraph 31.**

- Specification of the documentation that should accompany movements

The guidelines indicate that there are several documents that should be prepared to accompany movements of equipment. Colombia suggested including an appendix in which these documents are listed. PACE has developed several model documents that may be included in this appendix.

*Question*

Should such an appendix be added and should forms such as developed by PACE and adapted as appropriate be included in that Appendix?

**We believe that it would be useful to include the model documents carefully drafted by the PACE Technical Stakeholder Experts in the appendix.**

- Additional guidance on health and safety precautions during inspections
Colombia requested additional practical guidance on the health and safety precautions to be taken when inspecting containers.

**Question**

Could examples of such guidance be provided or sources of information be identified?

The United States suggests consulting with the International Labour Organization about existing guidance. We are concerned that the development of practical guidance on the health and safety precautions to be taken when inspecting containers is outside of the expertise of the Basel Convention.

**II. Conflicting reactions**

When analyzing the reaction, it became clear that there are two main issues where there are conflicting views. The first is about the determination when equipment that is not fully functional nevertheless is not to be considered as being waste, as specified in section III B. The second issue is about the way how to address exports of used equipment destined for repair or refurbishment in cases it is not considered to be waste (Section IV B of the draft guidelines).

1. **Situations that used equipment moved for repair is normally not waste**

The section III B of the draft of February 2011 indicates that equipment that is sent for repair under warranty with the intent to reuse the equipment would normally not be waste. Apart from BAN, that wants to delete this reference altogether, all reactions agreed that this should be maintained.

In a number of contributions, several other cases were suggested (sometimes with slightly different wording) to be added in this context. The next table gives an overview of those.

<table>
<thead>
<tr>
<th>Situation in which equipment would not be waste if moved with the intention of subsequent reuse</th>
<th>Suggested by</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asset management or servicing programs</td>
<td>ITI</td>
</tr>
<tr>
<td>Leasing programs</td>
<td>ITI, US, US industry coalition</td>
</tr>
<tr>
<td>Demonstration equipment</td>
<td>ITI</td>
</tr>
<tr>
<td>Product recalls</td>
<td>ITI</td>
</tr>
<tr>
<td>Equipment for professional use for under a valid after-sales service maintenance contract</td>
<td>ITI, US Industry coalition, Healthcare industry, EU</td>
</tr>
<tr>
<td>Equipment for professional use for root cause analysis</td>
<td>ITI, Philips, Healthcare industry, EU</td>
</tr>
<tr>
<td>Returns to the original manufacturers or its specialized repair or refurbishments centers</td>
<td>US, US Industry, Philips,</td>
</tr>
</tbody>
</table>

Before suggesting any modifications of Section III B Parties and others are invited to specifically express their views on the appropriateness of maintaining the reference to warranty and/or including additional references for situations where used equipment moved for repair or refurbishment would not be waste.

The United States continues to support the inclusion of leased items being returned to its owner under the section on used equipment that would normally not be considered waste. We also support cases where used equipment is sent back as defective.
batches for repair, refurbishment, or upgrade to the producer (including under warranty). While legitimate shipments of used equipment need to be differentiated from non-legitimate, there are important environmental and economic benefits to reusing electronics.

2. The procedure to follow for equipment that is moved for repair and refurbishment

The procedure that is indicated for transboundary movements for equipment suitable for direct reuse cannot be used for this equipment, because this requires that the equipment is fully functional, which is not the case with equipment that has to be repaired or refurbished. The guidelines recommend in section IV B a voluntary procedure specifically designed for movements for repair and refurbishment in cases where none of the Parties consider the equipment being waste. As an alternative it is suggested that, Parties involved in such movements may also decide applying the control procedure of the Basel Convention to such shipments if the equipment contains hazardous substances or components and any other procedure they would normally apply movements of non-hazardous waste for equipment that does not contain them.

Also on this issue the reactions are conflicting as indicated in the next table.

<table>
<thead>
<tr>
<th>Suggested way forward</th>
<th>Suggested by</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delete Section IV B and apply caste control procedures to all movements of equipment for repair and refurbishment</td>
<td>EU, Norway</td>
</tr>
<tr>
<td>Mandatory application of a notification procedure</td>
<td>Colombia</td>
</tr>
<tr>
<td>Application of the Basel control procedure as preference and the voluntary procedure as alternative (to be put in an appendix)</td>
<td>BAN</td>
</tr>
<tr>
<td>Improve underpinning of the rationale for the voluntary procedure and some modifications of the procedure</td>
<td>US</td>
</tr>
<tr>
<td>Delete alternative procedure and make some modifications to the voluntary procedure</td>
<td>ITI</td>
</tr>
</tbody>
</table>

Before suggesting any modifications of Section IV B Parties and others are invited to specifically express their views on the preferred way forward regarding the procedure to be applied to movements of equipment for repair and refurbishment.

As included in our June 2011 comment, we recognize the concern related to potential cases of used equipment being transported to countries as destined for repair or refurbishment but is in fact intended for disposal. Voluntary notification procedures would help countries promote transparency and assist in efforts to distinguish between legitimate transboundary movements of equipment and illegal transports of potentially hazardous waste under Article 9. One benefit of the procedure would be to provide information to help facilitate legitimate commercial transactions while simultaneously helping to stop illegal traffic. Caution should be exercised in creating such a procedure, however, so as not to create burdens on trade by countries that are not participating in the procedure, lest the “voluntary” procedure be converted into one that is effectively mandatory.

III. Way forward

On the basis of the reactions on the current draft and the issues raised in this note a new version of the guidance will be produced by 31 July 2012. In this connection, pursuant to paragraph 4 of decision
BC-10/5, Parties and other stakeholders are invited to provide written comments on this draft by **15 June 2012**. With that version also an assessment will be made on the issues where these more general guidelines and the guidance in section 3 of the guidance on ESM as developed under PACE would be appropriate. A teleconference of the small intersessional working group may also be arranged during the end of June 2012 or the first week of July 2012 to address any outstanding issues.