**Summary record of the physical meeting of the small intersessional working group (SIWG) on E-waste**

**19 and 20 January 2015, Konstanz, Germany**

**Attendance**

The meeting was attended by the following members of the small intersessional working group (SIWG):

|  |  |
| --- | --- |
| **NAME** | **REPRESENTING** |
| Mr. Alberto Capra | Argentina |
| Mr. Yorg Aerts | Belgium |
| Ms. Sabrina de Andrade | Brazil |
| Ms. Julie Croteau | Canada |
| Mr. Joost Meijer | Chile |
| Ms. Angela Patricia Rivera Galvis | Colombia |
| Mr. Adel Shafei Mohamed Osman | Egypt |
| Mr. George Kiayias | European Union |
| Mr. Michael Ernst | Germany |
| Mr. Darren Byrne | Ireland |
| Ms. Sachiko Tsukahara | Japan |
| Mr. Francis Kihumba Njuguna | Kenya |
| Ms. Lilija Dukalska | Latvia |
| Ms. Zuraini Ahmad Tajudin | Malaysia |
| Ms. Miranda Amachree | Nigeria |
| Ms. Silje Johannessen | Norway |
| Mr. Iftikhar-ul-Hassan Shah Gilani | Pakistan |
| Mr. Marco Buletti | Switzerland |
| Mr. Ali Abdullah Al-Dobhani | Yemen |
| Ms. Kimberly Cochran | United States of America |
| Mr. Moustafa Hussein Kamel Ahmed | BCRC Egypt |
| Ms Lixia Zheng | BCRC China |
| Mr. Jim Puckett | BAN |
| Ms. Sarah Westervelt | BAN |
| Ms. Imogen Pua Ingram | Island Sustainability Alliance |
| Mr. Sieghard Kugel | 4Square Return |
| Mr. Peter Bartel | APRA |
| Mr. Ross Bartley | BIR |
| Mr. Salvador Munoz Zarate | CLEPA |
| Mr. Riccardo Corridori | COCIR |
| Mr. Klaus Hieronymi | Digital Europe |
| Mr. Eric Harris | ISRI |
| Mr. Rick Goss | ITI |
| Mr. Shuzo Katsumoto | Rep. of Four Electrical and Electronic Industry Associations in Japan |
| Mr. Thorsten Schneider | VDA |
| Mr. Dadan Wardhana Hasanuddin | BRS/UNEP |
| Mr. Ibrahim Shafii | BRS/UNEP |
| Ms. Susan Wingfield | BRS/UNEP |
| Ms. Yvonne Ewang-Sanvincenti | BRS/UNEP |
| Ms. Leslie Angeles | BRS/UNEP |
| Mr. Kees Wielenga | FFact Management (BRS Consultant) |

1. **Opening of the meeting**

The meeting was officially opened by Mr. Ibrahim Shafii, Senior Programme Officer of the Secretariat of the Basel, Rotterdam and Stockholm Conventions (BRS). Mr. Shafii welcomed the delegates to the meeting and emphasized that the objective of the meeting was to advance the work on the development of the technical guidelines, in particular on paragraph 26(b) in advance of the twelfth meeting of the Conference of the Parties in May 2015. He thanked the Government of Germany for hosting the meeting which is taking place back-to-back with the third meeting of the Expert Working Group on Environmentally Sound Management (21-23 January) and the Second meeting of the Small Intersessional Working Group on Legal Clarity (25-26 January). He also recorded the Secretariat’s appreciation to the generous financial contribution made by the Government of Japan which enabled the meeting to take place and to fund the attendance of developing country participants.

1. **Organizational matters**

Based on the proposal made by the Secretariat, the meeting agreed by consensus that Mr. Prakash Kowlesser of Mauritius who is the technical co-chair of the Open-ended Working Group (OEWG) would chair the meeting.

1. **Adoption of the agenda**

The provisional agenda was adopted without modifications.

1. **Discussions of the draft technical guidelines on transboundary movements of e-waste, in particular on paragraph 26(b)**

**Introduction**

The objective of the meeting was to advance the work on the development of the technical guidelines on e-waste; in particular to discuss and obtain agreement on paragraph 26(b).

Mr. Kees Wielenga, the BRS consultant, indicated that the comments received prior to the meeting were included in the discussion document. Canada indicated it also wanted its comments previously submitted in October 2015 to be part of the discussion. The United States of America had transmitted additional comments and suggestions at a very late stage that was asked to be taken into account during the discussion.

The meeting was reminded by the consultant and via a presentation from the expert from Japan that paragraph 26 b is to be understood within its wider context in the guidelines. In paragraph 24 it is mentioned that the burden of proof that export of used equipment is a non waste is on the holder and not on the competent authorities. Paragraph 25 lists a number of indications when such equipment would normally be considered to be waste. Paragraph 26 addresses situations where equipment would normally be considered to be non waste. In paragraph 26 two cases are mentioned. In paragraph 26a it is specified which assurance holders should provide to demonstrate that their claim that export of used equipment destined for direct reuse is justified. In paragraph 26b the same is specified for exports of used equipment destined for reuse after testing, repair and refurbishment. The three paragraphs are linked and this linkage should be understood when looking for solutions for avoiding duplication and inconsistency among those paragraphs.

In the general discussion, the merit of the guidelines was highlighted and a strong interest was expressed to adopt the guidelines at COP12. In addition, a discussion took place on the merits of the criteria that were presented in paragraph 26 (b) and that there was a need to discuss in more depth the rationale behind those criteria and the way they were formulated. Some also mentioned that implementation on the ground should be considered, including how paragraph 26(b) would be used by enforcement officers. Another participant raised that the guideline can only serve to interpret or clarify existing provisions of the convention and is not the place to create new obligations on Parties. If these are needed then others options must be considered outside the technical guidelines.

The rest of the meeting was dedicated to discussing the different provisions in detail, mainly in plenary and for some issues in smaller groups that reported back to plenary.

The discussions on 19 and 20 January 2015 indicated that there is wide support for some elements of what is presented as the ‘preferred option’ by the Open-ended Working Group, while on other elements there are still differing views.

According to the discussion below, the issues on which there seems to be wide support include:

* Remanufacturing
* Testing
* Criteria (iv) and (V): Contract and declaration
* Criteria (vii) on packaging

1. **Detailed summary of discussion and way forward**

|  |  |  |
| --- | --- | --- |
| **Issues** | **Discussion** | **Proposed way forward** |
| Parts from vehicles destined for remanufacturing | Since some of these parts may contain electronic sensors they might be understood as being covered by the guidelines. However, the solution for non-functional equipment as proposed in paragraph 26b does not fit with the type of activities that take place with remanufacturing of parts from vehicles. The type of actors involved and their business models differ considerably from the testing, repair and refurbishment activities with electrical and electronic equipment the guidelines aim to address.  The idea to include ‘remanufacturing’ as additional operation into 26b as such is not contested. Transboundary movements TBM) of parts to these activities should not be considered to be waste if there are safeguards that the parts will be remanufactured and the operations are conducted responsibly.  However, the time was too short to evaluate if the provisions that are currently proposed for repair and refurbishment would be suitable for remanufacturing. It was also difficult to oversee if adaptation of the provisions to better address the specific situation of remanufacturing would have negative impacts on the repair and refurbishment activities.    Some expressed their concern about excluding specific industrial sectors from the scope of the guidelines. | In view of the lack of time to carefully assess solutions it was considered to exclude these parts, at least on a temporary basis, from the scope of the guidelines. |
| Para 26.b Chapeau - Testing | The current wording in the chapeau of paragraph 26(b) is not very specific on testing. Therefore it could be understood that functionality testing in the context of direct reuse would be included, which was not originally intended. There were explanations given regarding failure analysis and root cause analysis. In addition, the role of field test used when developing new equipment types was addressed. | A small group drafted a new text for the header incorporating these notions. This will be included in the revised draft for comments (during the meeting there was no time to review this text). |
| Criterion (i), Information from Parties on the status of repair and refurbishment | This discussion was begun but was cut short. It was hoped that the group would have time to return to this topic but that was not possible during the two days.  Some participants expressed the view that it would be good if information on how the countries that host repair and refurbishment activities consider the status of TBM for repair or refurbishment is made available on the web-site of the SBC. It is also needs to be clear that, should the COP decide to request such information to be published, the SBC would be in a position to do so. It was discussed that the reference to Article 13(2) was not correct but other delegates found references elsewhere in Article 13 that were more useful. Some identified that the national report could be used as a tool to convene the information on facilities. No conclusions were made how to address this.  Some believed strongly that for transparency sake each facility needed to be identified but others wondered if requiring identification of all installations individually might make the establishment and the maintenance of the database burdensome and difficult. Some argued that it should be considered that if countries could indicate that all installations within their jurisdiction would be allowed receiving equipment that might be acceptable. The views on what the status is of installations in countries that did not reply were different (opt-in or opt-out). Also the issue that it may be necessary to address the status of non-Parties was raised. | The SBC will prepare a revised text reflecting the discussions during the meeting and stating several options. |
| Criterion (ii), old equipment with high content of hazardous substances and old technologies | Some participants expressed sympathy for the idea to address the issue of old equipment with high content of hazardous substances but it was considered that a reference to RoHS was not practicable and enforceable. It was suggested to make a reference to national and international legislation (comparable with paragraph 25 (g)). A suggestion was made to include a reference to the age of the equipment, but that did not get support by all participants. Also the reference to cathode ray tube (CRT) equipment was considered problematic by some, as certain equipment (e.g. medical equipment) contains CRTs but for those it should remain possible to repair the equipment. It was indicated that TVs and monitors with CRTs actually is the biggest problem. Others questioned the rationale of excluding CRTs altogether. | The SBC will prepare a revised text reflecting the discussions and stating several options. If consensus on this point would be reached it may be necessary to reflect this in the text that refers to the contract and declaration (point 2). |
| Criterion (iii), accountability | There was discussion on the practicability and enforceability of this criterion, in particular related to the requirement on waste. Also the idea to merge this criterion with the criteria (iv) and (v) was supported by some but not by all. A member mentioned that this criterion imposes responsibilities on exporters for activities that would occur outside their control and outside the country of origin which is therefore not implementable. | This criterion remains as it is in the current text of the guidelines. |
| Criteria (iv) & (v): contract and declaration | The need for documentation accompanying the transport, including a declaration, to be provided by the person who initiates the export and a contract between this person and the receiving facility were seen to be essential. The contract should contain reference to the purpose of the export, e.g reuse after repair or refurbishment. It may also contain a feedback report from the facility to the person who initiates the export and address residual waste management and should also make reference to the other criteria that are included in paragraph 26 (b) in the form that reflects agreement on them by the COP. The declaration in the document accompanying the transport would be signed by the person that initiates the export and would indicate that the transboundary transport is not subject to be controlled. The documentation accompanying the transport, including the declaration is a tool to be used by enforcement officers. In case of doubt the contract and other supporting documentation may be consulted. In a small group, the following options for elements in this respect were drafted:   * Legal requirements for operations are checked and met * Intention of transboudary movement (e.g. repair, refurbishment, root cause analysis) * Contract exists and it contains elements asked for in para XX; exporter will provide a report on what happened with equipment and management will be done in a specific manner. * In case there is a doubt, the exporter will provide verifiable supporting documents on request * exporter declares accountability for the entire process * The person that signs would need to be identified e.g. via a sign or stamp indicting his name and function in the company | Develop the text of the merged criteria (iv) and (v) with elements that should be included in the contract and the declaration and amend Appendix II that provides for a model for the declaration to reflect the criteria. |
| Criterion (vi): take back of residual waste | Some argued that, if broken components are removed from the equipment during repair or refurbishment and if these components are hazardous waste, the export would in effect circumvent the Ban Amendment as without the 26b criteria these would be considered TBM of e-Waste and violate the Ban where exports of equipment from Annex VII countries to non-Annex VII countries.  Others indicated that this was incorrect. If the export of equipment does not meet the definition of waste under the Convention, using the criteria to help make such a determination, it would be an export of a product and not of a waste. This would imply that the waste generated during the repair or refurbishment process would be a waste that is generated in the country of destination regardless of where the equipment originally comes from. The Convention and any amendments would not apply to the export of the equipment. However, the provisions of the Basel Convention would apply to the waste that is generated during repair or refurbishment and this should go to facilities that apply ESM. In case of export of such waste the PIC procedure of the Convention should apply.  However others felt that this argument was circular and if the 26b stipulated criteria requiring that the Ban Amendment be respected, then the material would indeed be waste if it did not meet this criteria.  Some indicated that the current wording of the take back obligation for hazardous waste to an Annex VII country would also apply to equipment that was exported from a non-Annex VII country and thus goes beyond what is intended to be covered by the Ban Amendment. However others felt that the wording could be changed to make it reflect a more strict reading of the Ban Amendment.  Finally there was a discussion on the question if it would be practicable for the repair and refurbishment facilities to keep waste generated from equipment that originated from different countries separate and return those to the respective countries. Some argued that this was difficult while others indicated it was common practice to track every piece of equipment coming into repair facilities.  It was mentioned that the importing country does have the possibility to include strict provisions regarding the waste generated by the repair and refurbishment operations e.g. in case they issue a permit for these activities in their country. Including a specific section in the guidelines on such possibilities for importing countries might be considered. It was also indicated that requirements regarding the management of the waste could be included in the contract between the exporter and the importer. Reference to such requirements in the contract and the declaration as mentioned under criteria iv and v could be envisaged.  The Group disagreed on the issue of including Ban Amendment-like language in the 26b criteria for residual waste arising from the importation and subsequent refurbishment or repair operations. | As the discussion did not lead to specific proposals to amend the current wording of the criterion, the current text of the draft technical guidelines will remain as it is. Inclusion of a reference to waste management in the contract and declaration and the possibility to make reference to possibilities for importing countries to provide for specific requirements regarding waste when issuing permits for repair facilities will be included as options in the draft. |
| Criterion (vii) on packaging | It was agreed that the way how equipment is protected against damage during transport is an important indication on its status as waste or non waste. Regarding the discussion on ‘individual packaging’ or ‘appropriate protection’ it was indicated that it was difficult to understand why for non-functional equipment destined for repair the packaging should be individual, a requirement that is different than the agreed requirement for fully functional equipment. | It was suggested that the current text of paragraph 24 (d) is used both for equipment destined for direct reuse as well as for equipment destined for reuse after repair or refurbishment. |

**Other issues**

The following additional issues were flagged by some participants:

* It is necessary to address the specific issue of medical devices destined for root cause analysis. The original proposal as formulated by DITTA should be reconsidered for inclusion in the text.
* There is a need to look into the position of non-Parties and transit countries in the context of paragraph 26 (b).

1. **Next steps**

* The secretariat will prepare a report of the meeting for participants and SIWG members and later post it on the website
* The text of the guidelines will be adapted to reflect the discussion during the meeting and will be on the website for further comments by 28 February 2015
* Two teleconferences of the SIWG will be organized in March 2015 (one on paragraph 26(b) and another on the remaining issues of the technical guidelines)
* Next draft of the technical guidelines will be published by 20 March 2015 for COP12 consideration (in English only)
* It is expected that a contact group on technical matters will consider the guidelines at COP12 in May 2015.

1. **Closure of the meeting**

The meeting was declared closed by the chair at 6.10pm with thanks to all participants for their valuable contributions and excellent cooperation.