

Background

SIRIM QAS International (“SIRIM”) issued a draft on Guidelines for Importation & Inspection of Metal Scrap (“Guideline”). Accordingly, industrial players / stakeholders are encouraged to forward suggestions and comments by 9th March 2021 (which was extended to 15th March 2021) to cserviceqas@sirim.my.

In the pursuit to ensure that such Guideline is sensible and practical prior to its formalization, **Malaysia Non-Ferrous Metals Association (“MNMA”) had organized an online meeting with SIRIM on 12th March 2021** inviting members, players and associations related to non-ferrous industry locally and internationally to provide feedback on such Guideline.

Invited members and participants representing a full spectrum of stakeholders from non-ferrous metal scrap industry ranging from established exporter (Stena Metal International AB from Sweden), international traders (Dowa Eco-System, Hanwa, Itochu and Mitsui from Japan), logistic service provider association (Selangor Freight Forwarders & Logistics Association) to our local manufacturer (Metco SMI industries, Metrod Group, Sumimetal Industries (M) Sdn Bhd, just to name a few) to understand and to give their feedback. **In addition, it is the honor of MNMA to invite international scrap society and associations such as ISRI and BIR to give their view pertaining to this Guideline.**

Purpose of this Paper

In light of time limitation for online meeting, participants who are not able to express their view / feedback are encouraged to write in to MNMA. **The purpose of this paper is gather all the feedbacks from participants and to forthwith these feedbacks to SIRIM in regard to this Guideline from three major perspectives:**

- a) Practicality of this Guideline from industrial ground along the supply chain; and
- b) Legality from relevant Act and Basel Convention; and
- c) Comments and inputs from international scrap society and association.

Assessment Method

Feedbacks and comments from participants on this Guideline are generally assessed and evaluated from the following perspectives:

- a) Basis and conceptual of Guideline
- b) Practicality and sensibility of Guideline relating to nature and operational aspect of non-ferrous metal industry including its impact to Malaysia economy as a whole.
- c) Legal framework and impact on international trade
- d) Clarification requisitions

Feedback

First of all, we would like to take this opportunity to express our appreciation and gratitude to SIRIM for allowing us to contribute our inputs. ***We would also like to apologize for the choice of words (if any) and our comments that might have offended our respected officers, but we trust this is the concerted efforts from all parties to preserve our environment while ensuring healthy growth of the industry.*** Besides, we truly hope that SIRIM after incorporating feedback from industrial players and stakeholders, the revised Guideline could be tabled again prior to its implementation. Append below are our deliberations:

Basis to draw up the Guideline

We guess the purpose and intention of this Guideline is to curb the importation of e-waste and scheduled waste into Malaysia. Exporting e-waste and scheduled waste from OECD countries to developing countries are strictly prohibited under Basel Convention. ***In an efforts to safeguard the environment of our beloved nation, we welcome and encourage the authorities to impose more stringent measures to regulate such importation.***

Thus, we urge the authorities to focus and to emphasize on measures to prevent importation of e-waste and scheduled waste. However, we do not agree with certain unnecessary measures to curb importation of non-ferrous metals into Malaysia that do not serve any purpose to prevent importation of e-waste and scheduled waste.

Authorities shall focus on players that import e-waste and scheduled waste through illegal means instead of causing unrest to non-ferrous metal industry. ***Officers in drafting Guideline shall also consider about catastrophic implication that may have on non-ferrous industry and its downstream players. The collapse of local non-ferrous industry apart from its negative implication to our nation's economy in the long run, the immediate disaster brought to industrial players and their workers as well as the multiplier impact along the supply chain and eco-system shall be duly considered.***

Append below are our further comments and feedbacks on basis of drafting this Guideline:

1. We welcome the imposition of a system to regulate the industry to ensure healthy growth in the future. However, we urge the ***Guideline to be drafted based on strict adherence to Basel Convention with sensible and practical ground particularly from commercial aspects.*** The purpose of Guideline is to play a balancing role between safeguarding our environment whilst ensuring minimal disruptions to the industry locally and internationally.

Frequency of Guideline issuance should take into account its commercial implication as there was a recent Guideline issued by DOE in January last year before Covid-19 pandemic. ***Frequent change in Guideline would result to major disruption to the industry and diversion of foreign direct investment to other countries.*** Guideline issuance shall go through a series of careful analysis with industrial inputs on all detail aspects including frequent dialogue and discussion with stakeholders as well as allowance for grace period / cooling period prior to its final adoption. ***Guideline shall not be implemented in a rush that may cause the industry unprepared. As highlighted by Ms Adina, Vice President of Advocacy, ISRI that The World Trade Organisation ("WTO") requires new regulation be given certain amount of time industry to understand and change the processes before implementation.***

2. Certification, inspection and testing services offered by SIRIM QAS International are conducted in accordance with international standards and applicable rules and regulations.

We are not able to identify manner of import as per Customs (Prohibition of Imports) Order 2017 that requires all metal scrap intended to be imported into Malaysia are subject to inspection process and issuance of Certificate of Approval (CoA). Besides, Basel Convention does not require pre-shipment inspection (even for hazardous waste) at port of loading.

Legal framework for Imposition of pre-conditions (including pre and post shipment inspection) for scrap metals importation shall be effected into Schedule 4 of Custom (Prohibition of Imports) Order 2017 that clearly define import manner base upon CoA on respective HS Code.

Ms Adina pointed out that WTO, which Malaysia is a member, does require new regulation must be transparent, communicated, clearly set out in accordance to international standards and it reflects the relevant rules and regulations.

We were told that any amendment to the Act requires parliamentary approval and any departure from Basel Convention shall notify Basel Secretariat prior to adoption as Malaysia is one of the signatories.

3. The Guideline ***shall not be seen as a hurdle or stumbling block to discourage development of ferrous and non-ferrous industry*** that are strategic for downstream manufacturing activities. Indeed, it shall be a point of references to regulate and to ensure healthy growth of the industry. Thus, ***the objective, practicality and clarity of Guideline is rather important.***

As revealed from World Bank's 2017 report, "The Growing Role of Minerals and Metals for a Low Carbon Future" points out a ***possible ten-fold rise in demand for metals including copper by year 2050 as world moves toward a low carbon energy future.*** Without argument, metals mining involved substantial amount of energy cost that is not environmental friendly would definitely foster the development of metal scraps (for your information, these metal scraps are now termed as "***valuable recoverable materials***" in new era terminology).

Prosperity at upstream would certainly induce further investment from downstream players. This is the rationale why many manufacturers choose to set up manufacturing plant at countries with easy access to raw materials. ***We would like to suggest to authorities to consider encourage the formation of complete and mature eco-system for non-ferrous industry that are beneficial to development of downstream activities in the long run.*** For example, the marching toward low carbon energy future has seen initiatives from various established car makers to explore and to develop electric car. Malaysia being a nation that have established solid footage in car manufacturing shall take initiative to solidify the whole supply chain that encourages investment from automobile parts vendor into Malaysia where they are able to achieve competitive advantages derived from prosperity at upstream.

As reveal from proposed Guideline's procedures for importation of metal scraps, there is a presentation of traceability for quality accountability on imported metal scraps that is sufficient to prevent unscrupulous importers (if any) to take advantage of current loophole to bring in e-waste and scheduled waste. Such procedures include:

- a) Identity of importer is known prior to incoming shipment;
- b) Post-shipment inspection would be carried out; and
- c) Bank guarantee is required.

Therefore, the requirement for pre-shipment would be unnecessary and redundant that do not serve any purpose whilst inducing unnecessary pressure to industrial operators in term of cost, competitiveness in procurement and willingness of shipper transporting cargo to Malaysia.

As pointed out by Mr David, President of BIR Non-Ferrous Division, we shall trust the current technology that is capable enough to segregate and to treat non-ferrous metal scraps in accordance to Basel Convention’s requirements prior to its exportation. The inspection cost particularly for pre-shipment attracts substantial unnecessary cost especially for non-ferrous industry that imports through container mode. ***The approximate cost of RM8,000 per container would certainly wipe off bottom line of profit and loss statement forcing manufacturers left no choice but to cease manufacturing operations.*** Besides, grievances between inspection report at port of loading and port of entry (in the event that the arriving cargo failed the post-shipment inspection) would certainly attract substantial amount of demurrage charges. ***How if the grievances take months to resolve?***

4. The Guideline should be drafted base upon in-depth understanding of ferrous and non-ferrous industry to warrant its applicability and practicability in order to avoid unnecessary confusion in the market.
 - a) Source of scraps – for example, copper are mainly extracted from ***copper cable, shredded electric motors / amature and depolluted transformer core.*** The mix-scraps would have different level of ferrous and non-ferrous metal scraps. ***The criteria grouping % under the HS Code had failed to address the importation for these copper scraps.***
 - b) Nature of scrap - ***it is impossible for metal scraps to have zero tolerance level for hazardous or scheduled waste in recognition of the nature of metal scraps.*** It real world, it is impossible for metal scraps to be 100% free from any debris and SW104 specify that dust is considered to be a hazardous waste. Thus, the criteria grouping % has by itself revealed that it is not practical.
 - c) Mode of processing - ***one of the common scraps handling process would go through shredding and crushing particularly for non-ferrous scraps.*** However, it was stated in the Guideline that ***“crushed form” of metal scrap is not allowed for importation.***
 - d) The Guideline should preserve and safeguard importance of ***unified (same language) codes and terms*** used in international trade.
 - e) ***Criteria grouping % is base on weight of solid metal contents than % of recoverability.*** This is contradicting to current understanding of valuable recoverable materials and basis underlying the circular economy.

Therefore, we would like to request SIRIM ***to justify the purpose and rationale for these criteria grouping % for HS Code 7204, 7404 and 7602 as well as its departure from international standards and practices.***

5. As stated in the Guideline, “inspection is required to ensure that the metal scrap does not contain or is contaminated with hazardous materials that allow it to be subjected to hazardous materials or any waste under the Basel Convention”. ***As specified in Basel, assessment on hazardous magnitude is needed in order to ensure that it will not to an extent that it causes hazardous to the environment. We would appreciate if SIRIM could make available to us on your criteria for hazardous assessment.***

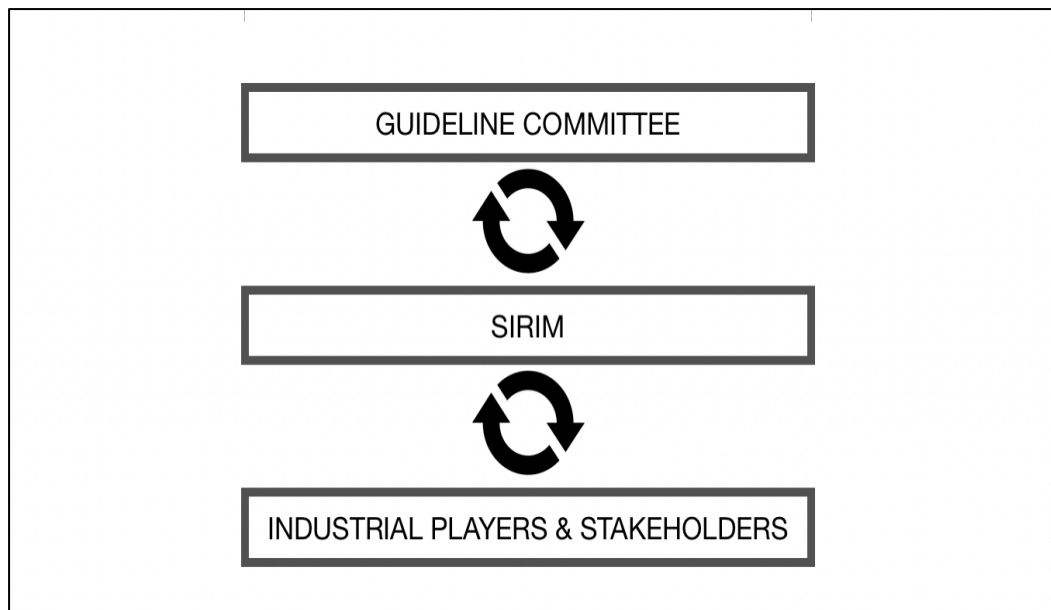
For your information, we have brought up this matter during previous Guideline issued by Jabatan Alam Sekitar (DOE). We would like to suggest for a holistic revision base on terminology below:

- According to Basel’s requirement, there are **4 (four) criteria to be satisfied for the purpose of hazardous waste classification** namely:
 - a) Waste stream (source of waste)
 - b) Hazardous characteristics
 - c) Type of wastes
 - d) Content of hazardous substances in waste (its related concentration)

- We are of the view that *on the basis of substance over form*, classification of wastes shall take a step further to identify and to analyse possible hazardous characteristics of a particular waste and its related concentration so that comprehensive conclusion can be derived on its impact towards our environment.

- In addition to the need of assessing hazardous characteristics, the related magnitude of its impact shall be taken into consideration. ***Basel Convention reiterate its practicality by stressing that “.....to an extent to render them hazardous.”*** Therefore, in the case of scrap metals that are contaminated with insignificant amount of e-waste and hazardous waste, the whole lot of container should not be classified as SW422 in view of its insignificant impact to the environment.

6.



Objective and purpose of the Guideline shall be made clear and it should be developed jointly with the stakeholders to render the said Guideline legal, effective, practical and delivering values to the industry and nation as a whole. If the Guideline is not reflective from technical and sensible ground, it is likely to cause confusion in the market and hence jeopardizing the image of our authorities, government and thus the name of our beloved nation at international front. Indeed, the Guideline shall be developed to complement industrial development, national interest and welfare of Rakyat while balancing and regulating its unfavorable impact to the environment for example disposal of marginal e-waste and scheduled waste under EQA. Again, we wish to reiterate that in recognition of nature of metal scrap, even Basel Convention is practical enough to allow certain tolerance level so long as it is not to the extent that cause hazardous to the environment.

We opine that **development of Guideline should have incorporated the followings:**

- a) Invitation of relevant stakeholders to the committee
- b) Table to public for comments and feedback
- c) Justification, explanation and revision
- d) Sufficient grace period and collection of comments and feedback from ground

Please correct us if we are wrong. The mode of Guideline as revealed above with SIRIM interacting with industrial players and stakeholders would deter the practicality and sensibility of Guideline as **SIRIM may not be in position to discuss the conceptual framework for the said Guideline as their expertise rest on inspection and certification.**

Besides, **a one time online briefing is not sufficient to iron out detail aspects with industrial stakeholders.** We recognize that it is the prerogative of authorities to have final say on the Guideline. However, a one time feedback for Committee to decide on Guideline terms and conditions would be **rather risky in light of its major implications** to the industry and future economic development of the industry.

We would be grateful if the Committee could discuss this Guideline with industrial stakeholders or alternatively to invite representative (associations) from ferrous, non-ferrous and freight & forwarding industry to the committee to ensure that the **Guideline is drawn up base on practical and sensible ground with conformity to international standards and practices. Provision of due time / grace period is really necessary for industrial players to prepare themselves before final adoption of the Guideline.**

We trust it is a justifiable request. As highlighted by Selangor Freight Forwarders & Logistics Association, previously when MITI implemented guidelines for pre-inspection, CoA and post-inspection rules for import of iron and steel, the problems that arose became so untenable that the Ruling was subsequently revised and relaxed, to the extent that the original Ruling could not implemented in its original spirit and intent. That ruling was also implemented without proper engagement with the industry players and more importantly, the Terminal operators; where without available capacity to hold the cargo, it precluded the successful implementation of the new Ruling for iron and steel. Guideline should not be implemented when parties involved are not prepared.

ISSUES AND CHALLENGES

1. Applicants need **to provide Bank Guarantee that is determined based on imported value** that is meant to be used by SIRIM for transportation and incidental costs particularly in the case of returned cargo. Unlike foreign plastic waste, metal scrap cargo value is far higher than cost of transportation and therefore the Guideline should be drafted base on metal scrap industrial knowledge. We hereby propose the **Bank Guarantee to be determined upon cost of return cargo**. Details of the cost covered by Bank Guarantee, its related timeline and refund policy shall be **made clear with standard operating procedures and discussed with affected / related stakeholders**.
2. How would SIRIM **determine allowable imported quantities that is based on importer's annual production capacity**. If it is derived from inspection / verification services from SIRIM, how much is the cost incurred per annum and associated formula in determining the allowable imported quantities.
3. **It is impractical to assign 0% on scheduled and hazardous waste as criteria for metal scrap importation**. This is attributed to the nature of scrap metal as it would not be able to be 100% free from scheduled and hazardous waste. **It is also impractical to reject the whole cargo or container merely due to its insignificant impact to the environment**. Besides, we trust none of the industrial operators are able to assure that scraps are 100% free from any debris.
4. As SIRIM requires on board inspection and conformity to allowable imported solid ferrous, non-ferrous and plastic, **we would appreciate if SIRIM could enlighten us methods to certify % of criteria grouping. For example, how would SIRIM ensure that under HS Code 7204, solid ferrous achieved minimum 94.75% without cargo offloading**. How would the **requirement for pre-shipment inspection to satisfy the said 94.75% ?**

Some of our scrap cargo usually **come in jumbo bags with only top portion visible and accessible for inspection/ sampling**. Also after stuffing, there will be **NO room for someone to enter the container**. Practicality of inspection has to be verified.

As for on-board inspection, we have already stressed during the dialog that it is impossible for anyone to do that on the vessel, considering variable kinds of metal scrap compositions (for example, cable is not possible to be dragged out manually) and sampling/sorting (of materials in shredded/crushed/loose forms) **required skilled sorters and adequate space. This will attract additional cost.**

SIRIM explained that the inspection onboard would be based on segregation and visual inspection. **If segregation is involved, how would this be done ?** The method has to be specified clearly for us to assess its practicability and is it commercial viable considering the time and cost involved. The segregation work would have to be done at the point of inspection. Where is the point to segregate the cargo onboard the ship? **Safety and access at the ship is paramount and prior arrangement has to be made with the Ship Master for permission and the designation of a place for the segregation to be done**, presumably by a team of workers and onboard inspection.

5. **HS Code 7404 has capped maximum % of plastics at 0.25% implying that copper cables are not allowed to be imported. This is a major deviation from Basel Convention whilst both copper and plastics are recoverable resources. For your information, copper cables are allowed for trans-boundary movement under Basel Convention B1115** – waste metal cables coated or insulated with plastics. Whereas, **B1040** allows for scrap assemblies from electrical power generation not contaminated with lubricating oil, PCB or PCT to an extent to render them hazardous. **B1050** specify mixed non-ferrous metal, heavy fraction scrap, not containing Annex I (Basel Convention) materials in concentrations sufficient to exhibit Annex III characteristics.
6. **Shredded electric motors** that mainly consist of (ferrous and non-ferrous) are common metals scraps that can be found internationally and accepted by Basel signatory countries. However, it does not feed into SIRIM definition of HS Code 7204 and HS Code 7404. **The definition of HS Code shall be strictly aligned to Basel Convention in order to reduce confusion among industrial players and stakeholders. The same difficulty apply to mix-scrap and de-polluted scrap transformer core.**
7. Crushing and shredding are a common process in dealing with metal scraps and **both are worldwide acceptable methods**. Please enlighten us the rationale for not allowing crushed form of metal scraps.
8. Effectiveness of Guideline implementation. **We would like to highlight that there should be a grace period prior to implementation**. Early notice would be helpful to mitigate confusion in the market locally and internationally.
9. **We would like to seek your justification for the need of pre-shipment and post-shipment inspection as worldwide practices do not require pre and post shipment inspection and these are not required by Basel Convention as well (even for hazardous waste). Pre-shipment would attract additional RM8,000 per container which as mentioned earlier, it is a cost that is beyond financial capability for manufacturer to bear with. The exorbitant rate for inspections and CoA will make non-ferrous metal scraps import commercially non-viable.**

Physical inspector coming to exporter's yard to inspect the materials before or during the loading **is simply not practical and appears to be troublesome; as any well-established supplier could have export containers to Malaysia every week (or even everyday during a week)**. How can anyone expect an inspector to come in-time every time to inspect the goods and then the containers can leave the plant to catch the vessel ? **Not to mention that nowadays it is rather difficult to get sufficient container bookings and the exporter can not afford to postpone the shipment (and consequently re-booking of vessel) in case pre-shipment inspection can not be done in time or well-scheduled. This would also pro-long cash cycle time for exporter.**

Certain importers get free storage period at Port between 3-5 days which includes weekends. **Will SIRIM be carrying out inspection services on weekends ?** If so, is it without additional charges ? **Also 100 scrap containers arrives at a time for different buyers, how equipped SIRIM will be in terms of manpower deployment for timely inspection and issuance of CoA.** Insufficient inspectors would add more difficulties to an ill-thought and unnecessary initiative for new guidelines for import of scrap metals. This can have major impact on supply chain in terms of timely raw material availability and unnecessary storage related charges.

Container ships are turned around within 10-12 hours and all import containers have to be discharged quickly. There will be no time for onboard inspection for scrap metals in containers, nor space onboard container ship to do inspection as it is high danger zone with many cranes working simultaneously. There is also shortage of space for containers in the Container Yard as it would take SIRIM 3-5 days to conduct/complete an inspection, based on guidelines.

Furthermore, local industrial competitiveness at international front (including implication at downstream activities) got to be taken into account and whether such imposition are **commercially viable considering the timeline required for inspection, possible demurrage charges, cost relevant for inspection, cash cycle time, practicality to conduct inspection eg on board segregation.** Besides, how would SIRIM resolve grievances when pre-shipment inspection is satisfactory while post-shipment inspection requires applicant to return cargo / container.

Rejection of cargo at Malaysia and return back of cargo even after inspection and certification has been done by SIRIM authorized party at loading port seems practically challenging since **this can complicate the contracting process between the Buyer and the Seller of scrap.** This also can have significant commercial impact.

On the other note, if post-shipment inspection is carried out at factory site **implying that containers have been cleared from the Port.** In this case, **“returning cargo” would become “exporting cargo”** whereby it may subject to export tax that have imposed on metal scraps exportation. How would this grievances been resolved ?

10. **Regarding the quality standard and criteria of permitted metal scraps, at least in last 20 years, all responsible exporters and importers within the world scrap industry have been following the ISRI standards and specifications in their transactions** (a copy of latest circular can be provided).

Among EU member states, the supervision from the government side has always been very stringent and movements of any scrap materials are strictly subject to their respective Basel code classifications. Take Stena’s shipment of cables to Malaysia for example, there is rather rigorous export procedures to follow so to ensure that Stena is exporting materials of right qualities to Malaysia. Please refer to attachment I for an example of so-called Annex VII document, which is an official export document and under full control by the EU authority.

All in all, **we think the Basel codes classifications together with the ISRI specifications can already well serve authorities’ requirements** in terms of METAL SCRAP CRITERIA.

11. Import of scrap to Malaysia via road will not be allowed and all cargo has to come via sea route only. Some of our members’ scrap supplies are routed via road considering faster deliveries and cost effectiveness. **Changing this to sea mode will have significant impact on our supply chain.**

ANNEX VII

CNF25070-37739-22945844502

INFORMATION ACCOMPANYING SHIPMENTS OF WASTE AS REFERRED TO IN ARTICLE 3 (2) AND (4)

Consignment information ⁽¹⁾

1. Person who arranges the shipment Name: Stena Metal International AB Address: P.O. Box 4088, SE-400 40 Gothenburg, Sweden Contact person: Songul Seffo Tel.: +46-10-4450000 Fax: +46-31-145776 E-mail: songul.seffo@stenametalinternational.com		2. Importer/consignee Address: Tel.: E-mail:			
3. Actual quantity: Tonnes (Mg): <u>52.200 kg</u>		4. Actual date of shipment: <u>2021-03-02</u>			
5.(a) 1st carrier (2) As per enclosed Annex VII		5.(b) 2nd carrier Name: MSC SWEDEN Address: Box 264, 401 24, Göteborg Contact person: EXP DKP Tel.: +46 31 339 49 00 Fax: +46 31 339 49 10 E-mail: sc229-export.east@msc.com Means of transport: (S) <u>Valdina</u> Date of transfer: <u>2021-03-02</u> Signature: <u>Mikal Ojff</u>		5.(c) 3rd carrier Name: Address: Fax: E-mail: Means of transport: Date of transfer: Signature:	
6. Waste generator (3) Original producer(s), new producer(s) or collector: Name: Stena Recycling AB/SR Veddesta Address: Äggelundavägen 7, 175 62 Järffälla, SE Contact person: Jimmy Breisch Tel.: +46 10 445 0000 E-mail: Jimmy.Breisch@stenarecycling.se		8. Recovery operation (or if appropriate disposal operation in the case of waste referred to in Article 3(4)): R-code/D-code: R4			
7. Recovery facility <input checked="" type="checkbox"/> Laboratory <input type="checkbox"/> Name: Tel. E-mail.		9. Usual description of the waste: Metal scrap			
10. Waste identification (fill in relevant codes): (i) Basel Annex IX: B1115 (ii) OECD (if different from (i)): (iii) Annex IIIA (4): (iv) Annex IIIB (5): (v) EC list of wastes: 191203 (vi) National code:					
11. Countries/states concerned:					
Export/dispatch SE		Transit	Import/destination MY		
12. Declaration of the person who arranges the shipment: I certify that the above information is complete and correct to my best knowledge. I also certify that effective written contractual obligations have been entered into with the consignee (not required in the case of waste referred to in Article 3(4)). Name: Songul Seffo Date: Signature: <u>Songul Seffo</u>					
13. Signature upon receipt of the waste by the consignee: Name: Date: Signature:					
TO BE COMPLETED BY THE RECOVERY FACILITY OR BY THE LABORATORY:					
14. Shipment received at recovery facility <input type="checkbox"/> or laboratory <input type="checkbox"/> Quantity received: Tonnes (Mg): m ³ : Name: Date: Signature:					

- (1) Information accompanying shipments of green listed waste and destined for recovery or waste destined for laboratory analysis pursuant to Regulation (EC) No 1013/2006. For completing this document, see also the corresponding specific instructions as contained in Annex IC of Regulation (EC) No 1013/2006 on shipments of waste
- (2) If more than 3 carriers, attach information as required in blocks 5 (a, b, c).
- (3) When the person who arranges the shipment is not the producer or collector, information about the producer or collector shall be provided.
- (4) The relevant code(s) as indicated in Annex IIIA to Regulation (EC) No 1013/2006 are to be used, as appropriate in sequence. Certain Basel entries such as B1100, B3010 and B3020 are restricted to particular waste streams only, as indicated in Annex IIIA.
- (5) The BBU codes listed in Annex IIIB to Regulation (EC) No 1013/2006 are to be used.