



turn back the toxic tide

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July 27, 2015

Dr. Rolph Payet
Executive Secretary
Basel Convention

RE: Canadian Non-Compliance with the Basel Convention

Dear Dr. Rolph Payet:

I write today as Executive Director of the Basel Action Network (BAN) and on behalf of our Philippine partner Ban Toxics and the communities and stakeholders they represent, to lodge an official notification of non-compliance with the Secretariat of the Basel Convention.

While we are aware that there is no direct civil society trigger in the Mechanism for Promoting Implementation and Compliance with the Convention of the Basel Convention (Mechanism), nevertheless there is a Secretariat trigger that is to be used in accordance with the judgment of the Secretariat with the following as quoted from the Terms of Reference, as a guide:

Objectives

1. The objective of the mechanism is to assist Parties to comply with their obligations under the Convention and to facilitate, promote, monitor and aim to secure the implementation of and compliance with the obligations under the Convention.

Nature of the mechanism

2. The mechanism shall be non-confrontational, transparent, cost-effective and preventive in nature, simple, flexible, non-binding and oriented in the direction of helping parties to implement the provisions of the Basel Convention. It will pay particular attention to the special needs of developing countries and countries with economies in transition, and is intended to promote cooperation between all Parties. The mechanism should complement work performed by other Convention bodies and by the Basel Convention Regional Centres.

(emphasis added with underscored text)

Submissions may be made to the Committee by:

9. (c) *The Secretariat, if, while acting pursuant to its functions under articles 13 and 16, it becomes aware of possible difficulties of any party in complying with its obligations under paragraph 1 of Article 3, paragraph 1 of Article 4, Article 5 and paragraphs 2 and 3 of Article 13 of the Convention, provided that the matter has not been resolved within three months by consultation with the Party concerned.*

With respect to the language above, please note that Article 4 paragraph 1(c) states:

(c) Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes if the State of import does not consent in writing to the specific import, in the case where that State of import has not prohibited the import of such wastes.

(emphasis added with underscored text)

Thus the Secretariat trigger is invoked because, as we shall see, Canada precisely exported “other waste” (Annex II waste) without the written consent of the Philippines government.

Additionally, with respect to the language above, please note that Article 16 referred to in 9 (c) above includes Article 16 (b) which reads:

(b) To prepare and transmit reports based upon information received in accordance with Articles 3, 4, 6, 11, and 13 as well as upon information derived from meetings of subsidiary bodies established under Article 15 as well as upon, as appropriate, information provided by relevant intergovernmental and non-governmental entities;

(emphasis added with underscored text)

The Basel Action Network (BAN) is a “relevant” non-governmental entity. We have been an observer in good standing since 1997 and further are a member of the ENFORCE partnership. We act as a watchdog of illegal traffic under the Convention.

The Secretariat therefore is within its mandate to collect information from non-governmental organizations, as appropriate and may use that information to explore a failure to properly implement Article 4, para. 1 of the Convention.

Fully understanding the objective and nature of the Mechanism, as well as its limitations, it is our assertion that the Mechanism can and should be applied in this instance. Canada is not in compliance with its Basel obligations and is therefore in need of assistance to reach proper compliance. It is also our belief that other Parties likewise may not have properly transposed the Basel Convention as described below in the case of Canada.

Further, the Mechanism exists to primarily assist the special needs of developing countries on of which in this case (Philippines) is impacted directly by the illegal traffic described.

For these reasons and with the general integrity and credibility of the Convention at risk if we

do not respond to one of the most well publicized, egregious and unresolved cases we have seen in recent years, we ask that the Secretariat take up this case and utilize the Mechanism as it was intended to be used.

Attached please find BAN's Submission: The Case of Non-compliance by Canada

Sincerely,



Jim Puckett
Executive Director
Basel Action Network

The Case of non-Compliance by Canada

The environmental organization and observer to the Basel Convention, the Basel Action Network (BAN) calls the attention of the Basel Convention Secretariat to an ongoing, unresolved act of non-Compliance with the Convention. We do this with a view to the Secretariat exercising its trigger noted in paragraph 9 (c) from the Terms of Reference cited above, in order to help parties implement the provisions of the Basel Convention and in particular, to pay attention to the special needs of developing countries and to promote cooperation between all Parties.

Our findings indicate with strong evidence that Canada is now out of compliance with its legal obligations under the Basel Convention (ratified by Canada in August of 1992). Further, they have taken no action to fulfill their obligations with respect to taking responsibility for the illegal export of 98 intermodal containers of Basel waste.

In 2013, the first of 50 40-foot intermodal containers arrived in the Philippines from Canada (see attached chronology). As was subsequently revealed by visual inspection by the Department of Environment and Natural Resources (DENR) of the Philippines, to be Y46 Annex II "other waste" (wastes collected from households). The visual inspection revealed mixed household solid wastes, including used adult diapers, un-cleaned plastic food and beverage containers and waste paper.

In an interview with Jim Puckett, Executive Director of BAN during the COP12 meeting in Geneva, Philippine delegate and person present during the inspection, Geronimo Sañez, DENR-Environment Management Bureau, stated that he had no doubt in his mind that the waste was Annex II waste.

Because it is clear, and has been stated by the DENR that the export of this Annex II waste was not preceded by notification nor consent by the Government of the Philippines, as required under the Convention, it must be concluded that the shipment was *illegal traffic* as

defined in Article 9 of the Convention (Art. 9, 1 (a - e)). Under the Convention's Article 4, paragraph 3, illegal traffic is deemed to be a *criminal act* which should be prosecuted diligently by all Basel Parties concerned (Article 4, paragraph 4).

Further, in accordance with Article 9, paragraph 2 the exporting state must take responsibility for the export and either (a) have the exporter or itself take the shipment back, *or if impracticable* (b) otherwise dispose of the waste in accordance with the provisions of the Convention within 30 days from the time the State of export has been informed about the illegal traffic.

According to the record of events, that 30-day clock stopped ticking on April 14, 2014. Now about 465 days later it is noted that the Canadian government has taken no action to manage the wastes in accordance with Article 9, paragraph 2, nor have they taken any action to prosecute the exporter.

In summary then, Canada has failed to be compliant with their international legal obligations on two counts:

(1) they have not proceeded with prosecution of illegal trafficking in Basel Annex II waste, and

(2) they have not moved within 30 days to manage the return or alternative disposal of the shipment.

In June of last year Canada's Ambassador to the Philippines, Mr. Neil Reeder, stated that Canada has no domestic or international authority to compel the shipper to return the shipment to Canada. In an e-mail to BAN sent from Ms. Gwen Goodier of Environment Canada, Ms. Goodier similarly asserts that Canada has not transposed the Basel Convention obligations with respect to Annex II into their national legislation:

"In the EIWHRM Regulations, the definitions of hazardous waste and hazardous recyclable material do not capture waste and recyclables collected from households.

This means that currently a Canadian import or export permit is not required for the transboundary movement of household waste or recyclables. Where a permit is not required, Environment Canada can request, but not compel, an exporter to bring back a waste shipment."

Clearly the above statement indicates that Canada has failed to properly implement the Basel Convention and transpose its obligations into their national legislation, but more importantly, it shows that Canada intends to ignore their international legal obligations under the Basel Convention to ensure exports are only made by permission and prior informed consent and that the State has the obligation to ensure the return or otherwise ensure the ESM management of the waste within 30 days should return be deemed impracticable.

Canada well knows that in accordance with Article 27 of the Vienna Convention on the Law of Treaties, ratified by Canada, national legislation, or the lack thereof, cannot be used as an excuse not to exercise treaty obligations.

BAN, Ban Toxics and the Center for International Environmental Law raised the issue of

Canada's non-compliance with respect to the 50 containers before the plenary session of the 12th Conference of the Parties to the Basel Convention. At that time we stated that we would be bringing this matter to the Secretariat for action.

Canada nor the Philippines took the floor to contest or discuss the matter. The silence on the part of these two States Concerned is not "golden" and speaks to the possibility that this flagrant violation and the important lesson it carries will be swept under the carpet. For this reason, the importance of the Secretariat raising the matter as part of its responsibility with respect to the Compliance and Implementation mechanism becomes clear and compelling.

It must be known that initially the Philippines DENR asked Canada to take back the waste. When Canada refused the protests on the streets of Manila and in the Congress got louder. However, leading up to the May summit between the heads of states of the two countries in Ottawa, the Foreign Affairs Ministry of the Philippines intervened and took over the matter.

They soon announced that the wastes would be buried or incinerated on Philippines soil with the apparent hope that the contentious diplomatic matter might be put to rest. The executive summit took place where the Philippines was said to have asked Canada for help on various matters including immigration issues. The illegal waste shipments were not discussed. In our view and in the view of many observers, the Philippines stood down, not because they were wrong in their assessment as to the illegality of the shipment, but because Canada, holding far more clout on the world stage, was able to have their way on the waste dumping issue while the weaker economy, the Philippines, had far more to gain by not offending Canada over a "small matter" like international environmental law.

The Basel Convention was created precisely to prevent weaker economies from being exploited by richer economies. This intention is turned on its head when a powerful country tacitly compels a weaker country not to complain about a violation of the Basel Convention itself. This cannot stand if the Basel Convention is to be a credible legal instrument and force for sustainable development.

Shipment Repeated – Still no Action

The question concerning many at the 12th Conference of the Parties was, if Canada will not act, who will stop their illegal exporters operating within their territory from continuing this illegal activity with impunity? What if this incident were not just a one-time affair and more incidences occurred with Canadian dumping on the Philippines or other countries?

Then on May 20, 2015 that question became more than hypothetical when another large shipment, this time of 48 containers, said to contain similar wastes were discovered in the Port of Manila, sent by the very same exporter. This time the DENR was back in charge and seemingly doubly incensed, by the discovery, called for the immediate return of the containers by Canada. Once again Canada has remained silent.

Why it is vital the Secretariat Bring the Matter to the Implementation and Compliance Committee

The wisdom of the Basel Parties in ensuring a third party (Secretariat) trigger is revealed in this case. To avoid the situation where a victim country is unduly and successfully pressured by the perpetrator country, it is necessary for a third party to be able to blow the whistle to

prevent two Parties to collude, for whatever reason, in undermining the intent and purpose of the treaty which was intentionally designed to create a legal level playing field and prevent exploitation of a weaker country by a more powerful country.

If Canada is able to allow the conduct of illegal activity of this kind with impunity forever, victimizing less powerful nations, the Convention is undermined and by its dysfunction, indeed all international governance is deeply undermined. If the Parties by virtue of the Implementation and Compliance Mechanism are not able to hear an obvious case of non-compliance, what is to prevent any Party from simply ignoring the rules the Parties have struggled to create and abide by? If this case is not acted upon, what incentive will there be for other countries to continue to abide by their obligations when to do so is costly?

In this regard it is worth bearing in mind a similar case of a few years ago. In 2009 when 89 containers holding 15,000 tonnes of UK household waste appeared in Brazil the UK embassy in Brazil stated the following:

"Where any company is found to have contravened the strict controls on the export of waste as set out by the Basel convention, which is fully ratified by the UK, the UK authorities will not hesitate to take action. The UK takes a strong global lead on protection of the environment and the safeguarding of human health, and will do all it can to stamp out the illegal trade in waste."

We note that the UK did not seek local disposal as an option in this case, as this avenue can only be explored if the repatriation is "impracticable" (Article 9, para. 2). Rather they ordered the waste to be repatriated at their own cost. What incentive would the UK have in future to take action at great cost when others can avoid this proper response?

Finally, we are also reminded of numerous other benefits in hearing and learning from this case bearing in mind the constructive and non-punitive objective of the Basel compliance mechanism. BAN believes that *many* countries have neglected to properly transpose the Basel Convention into their national laws. This is probably the primary cause of non-compliance generally. Strategies for ensuring proper implementation and transposition need to be explored and this case of Canada can prove pivotal in that regard.

In particular the general neglect of Annex II waste is a concern. The discovery of this problem and its remedy would serve to benefit many Parties around the world. More and more the global proliferation of plastics waste due in large part the proliferation of one-time use packaging (which constituted a majority of the material in these particular shipments) is becoming an acute one. Already far too much plastic has been exported from North America to Asia in the name of recycling and yet it is not readily recyclable. Our seas are filling with plastic debris and export and subsequent improper disposal is an obvious channel for this global crisis.

During the COP12 meeting, the Global Environmental Facility (GEF), sponsored a side event on the plastic waste crisis and reminded us all of the lack of action on this growing threat. The Basel Convention is a vital instrument to stem the tide of plastic waste damaging our environment, but not if it can be ignored conveniently by affluent Parties wishing to externalize the costs of proper minimization and management.

It is clear that if the Parties fail to tackle this case with a view to assisting Canada and others to become compliant with the Convention, the Convention will have failed and the Compliance

and Implementation Committee will have failed in its purpose in service to the mission of the Convention. This is precisely the type of situation for which the mechanism (including its Secretariat trigger) was created. We call on the Secretariat to exercise their responsibility in this case.

END

Attached: Annex I -- Chronology
Annex II -- News Articles

ANNEX 1

History Of Actions Undertaken On The Canadian Illegal Waste Shipment

The shipper, Chronic Incorporated, a private company with address in Ontario, Canada (owned by Jim Makris) consigned shipments of household waste said to be collected in Vancouver, British Columbia to a Philippine-based company Chronic Plastics (owned by Adelfa Eduardo).

The Philippine company claimed to be in the business of recovering (recycling) plastic from scrap, to be converted into useable plastic pellets, for onward sale to Philippine manufacturers of plastic products/construction materials.

The first thirty (30) containers were discovered by Import Certifications issued by the Department of Environment and Natural Resources (DENR) and processed through Bureau of Customs (BOC). When applications for Import Certifications continued to be submitted at a rate inconsistent with the estimated capacity of the facility to process materials, the concern of the Philippine Environment Management Bureau (EMB) was raised.

8 August 2013 – An inspection of the processing site of Chronic Plastics by the EMB confirmed that the ‘imported plastics are mixed and heterogeneous’, in violation of local law Republic Act 6969 or the Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990 and DENR Department Order No. 1994-28.

This prompted the DENR to review the applications for Import Clearances and to alert the BOC to impound any shipments that arrive until the matter could be resolved. Shipments that arrived in Manila between August and September 2013 were held at the Port at the request of the DENR. *It was suspected that the contents of the container vans were not ‘plastic scrap’ as declared but domestic/household wastes.* Seizure Identification Case (SIC) Numbers were issued belatedly, as follows:

- 21 August 2013 – 10 x 40ft container vans – SIC No. 31-2014, 5 February 2014
- 10 August 2013 – 5 x 40ft container vans – SIC No. 30-2014, 5 February 2014
- 21 July 2013 – 9 x 40ft container vans – SIC No. 29-2014, 5 February 2014
- 4 August 2013 – 11 x 40ft container vans – SIC No. 28-2014, 5 February 2014
- 17 September 2013 – 5 x 40ft container vans – SIC No. 27-2014, 5 February 2014
- 23 June 2013 – 10 x 40ft container vans – SIC No. 15-2014, 22 January 2014

September 2013 – Fifty (50) containers had been impounded, pending clearance by the DENR. From the time of seizure, the matter was handled by the BOC and the DENR as a commercial transaction involving violations of taxation and importation laws to be settled by the shipper Chronic Incorporated and the importer Chronic Plastics with Philippine authorities. A case had been filed by the BOC with the DOJ against the importer.

10 February 2014 - The BOC conducted an inspection of the contents of six containers labeled as ‘homogenous plastics’ and found out that *the container vans contained various waste materials including household wastes, non-recyclable plastics, waste papers, household/kitchen waste, used adult diapers, etc.*

13 March 2013 – A letter was sent by BOC Deputy Commissioner Ariel Nepomuceno to Ambassador Neil Reeder seeking the Embassy of Canada’s ‘assistance for the immediate return of the illegal shipment to its origin’ and ‘commit(ment) to shoulder the expenses of its re-exportation.’ Senior Trade Commissioner Karra-Lee Gerrits asked the Office of American Affairs (OAA) via phone to clarify the letter; in consultation with OLA Director Edna Mae Lazaro, OAA spoke with Randy Vizconde, Office of Deputy Commissioner Nepomuceno, BOC, to inform their office that the letter was a breach of protocol – such requests should be coursed through the Department of Foreign Affairs (DFA).

21 March 2014 - An online petition letter was posted by change.org for the Canadian Embassy in Manila to “Re export the 50 (forty footer) container vans filled with mixed waste + trash from the Philippines to Canada”. The letter was written by Ang Nars Party-List Political Affairs Officer, Anna Marie Kapunan.

As of 23 July 2015, the petition was signed by 37,133 supporters, of which approximately half of those signed are from Canada.

26 March 2014 – An interagency meeting was chaired by the BOC with the DENR-EMB and the DFA – EMB to determine a plan of action on the issue. The BOC would consolidate its position and request for assistance from the Government of Canada, through the DFA, on the procedures for effecting the immediate removal of the shipment from the Port of Manila back to the port of origin, in accordance with obligations under the Basel Convention.

3 April 2014 – Philippine organizations: BAN Toxics, Greenpeace, Ang Nars Party-List, Ecowaste Coalition, Mother Earth Foundation, Green Convergence, Public Services Labor Independent Confederation and Ateneo School of Government (ASoG) picketed the Canadian Embassy demanding for the return of the toxic waste shipment. The groups also delivered a petition letter to Canadian Ambassador Neil Reeder to ask for the immediate returns of the 50 container vans back to its Canadian port of origin.

11 April 2014 – DFA Note Verbale was issued, advising the Embassy of Canada in Manila of the request of the BOC for assistance.

14 April 2014 – Public rallies were held in front of the RCBC Plaza in Makati where the Chancery is located. Mr. James Christoff, Political Officer of the Embassy of Canada had articulated the Embassy’s discomfort how things lay as it is ‘painting an inaccurate picture of the Embassy’s role in this commercial transaction.’

Representatives of the petitioners' groups were received by both Canadian Embassy officials Political Officer James Christoff and Trade Commissioner Karra-Lee Gerrits. The discussions were reported to have been cordial.

24 April 2014 – Canadian Ambassador Neil Reeder called on Senior Special Assistant Joseph Gerard B. Angeles to discuss Canada's response to the request made by the BOC and DENR for the 'expeditious removal of these containers to the port of origin', conveyed by the DFA in the Note Verbale. A white-paper handed over by Ambassador Reeder with the following points:

- Canada would like to explore with the Philippines options for processing the rest of the shipment – in accordance with Philippine law – in the Philippines
- Canada would like to resolve this issue as soon as possible, in ways that address Philippines concerns and Canadian interests, and hope that a pragmatic and urgent solution can be found.

29 April 2014 – OAA recommended that as the DENR had determined that the matter will be pursued through the Basel Secretariat, the DFA- United Nations and other International Office (DFA-UNIO) would be better placed to handle the issue, taking into account excellent bilateral relations between the Philippines and Canada.

23 May 2014 – Mr. Geri Geronimo Sanz of the DENR-EMB copied OAA in his exchanges with Environment Canada, indicating that a 30 May 2014 deadline had been discussed, and that the shipper had been looking at the possibility of moving the containers to Vietnam.

9 June 2014 – Canadian Ambassador Neil Reeder called on the OAA to discuss Canada's response to the request made by the BOC and DENR for the 'expeditious removal of these containers to the port of origin', conveyed by the DFA in the Note Verbale. While no official response has been given by the Canadian Embassy on the Note Verbale, Ambassador Reeder conveyed the following points to OAA during his call:

- Canada has looked into this issue and regrets to inform that the Government has no domestic or international authority to compel the shipper to return the shipment to Canada
- The owner of the shipment has not been successful to date in finding a third country to which the shipment could be sent
- As the shipment is still in the Port of Manila, we would suggest that the Philippines use the authorities available to it to compel the owner to have it removed.

7 July 2014 – A letter from the DFA was sent to Canadian Minister of Foreign Affairs, Hon. John Baird. The letter states that the shipment of scrap plastic mixed with other domestic waste materials have since been impounded and remains at the Port of Manila in view of violations of Philippine Republic Act No. 6969, the "Toxic Substances, Hazardous and Nuclear Wastes Control Act of 1990" and its implementing rules and regulations.

The Department of Health-Bureau of Quarantine has likewise raised the presence of health hazards due to the leakage from the degradation of contents of the impounded materials.

13 August 2014 – A Letter from DFA was sent to BOC citing that the shipment contains scrap plastic mixed with other domestic waste materials from Canada. The letter states that on 24

July 2014, Ambassador Reeder calling to resolve the “household waste” issue as soon as possible.

An aide memoire was attached to this letter highlighting BOC Deputy Commissioner Ariel Nepomuceno’s statement that Ontario-based shipper Chronic Incorporated is responsible for shipping the containers back to the point of origin.

27 August 2014 – The groups slammed the BOC for transferring 14 of the 50 container vans from the Port of Manila to Subic Port. In its defense, the BOC said this was an honest mistake and the shipment is being processed to be returned to the Port of Manila. The groups suspect that this move is part of a ploy to permanently dispose the Canadian waste shipment in a landfill in Tarlac.

29 August 2014 - A memorandum was filed by the BOC on their inter-agency meeting with OAA with regards to the heterogeneous plastic scrap from Canada.

The memorandum states that DENR Supervising Environmental Specialist Geri-Geronimo R. Sañez that an accredited waste disposal facility at Capaz, Tarlac is available should the BOC request assistance from DENR about the illegal waste disposal.

14 September 2014 - Senate Resolution No. 919 “Directing the proper senate committee to conduct an inquiry, in aid of legislation on ways to prevent illegal waste dumping from overseas in light of the botch importation of mixed hazardous garbage from Canada” was filed by Senator Miriam Defensor Santiago.

The resolution indicates that a probe conducted by BOC found that the container vans actually contained “heterogeneous” plastic materials, including mixed household garbage and adult diapers that could pose biohazard to the public and the environment.

19 September 2014 – At the 9th Open-Ended Working Group of the Basel Convention in Geneva, Basel Action Network’s (BAN) Jim Puckett asks Canadian Basel Delegate and Canadian Justice Department official at the Ms. Ann Daniel to look into the matter of the illegal waste shipments and get back to BAN with an indication of possible ways forward. Nothing was ever heard from this overture.

24 September 2014 - House Resolution No. 1525 “A resolution directing the committee on ecology to investigate, in aid of legislation, the unlawful importation of fifty container vans filled with mixed wastes and garbage from Canada” was filed by Hon. Leah S. Paquiz of Ang Nars Party-List.

The resolution strongly highlights that the 50 container vans are “still in the vicinity of the BOC with the garbage juice leaking and thus posing extreme health hazards and irreversible environmental problems” in the country.

9 October 2014 – Philippine groups: BAN Toxics, Greenpeace, Ecowaste Coalition and Ang Nars Party-List held a press conference at the Quezon City Memorial Circle (QCMC) revealed that the several government agencies led by DFA, DENR and BOC are keen on disposing the illegally dumped Canadian toxic waste in the country instead of fighting to have it sent back to Canada for violating international law.

21 October 2014 – Philippine groups: BAN Toxics, Ang Nars Party-List, Greenpeace, and Ecowaste Coalition with Mother Earth Foundation, Global Alliance for Incinerator Alternatives, Green Convergence, and ASoG staged a street protest in front of DFA demanding DFA and DENR to initiate the ratification process of the Basel Ban Amendment to prevent the Philippines from becoming a global toxic waste dump site.

23 October 2014 - DFA issued a letter of assurance that they have officially sought assistance from the Government of Canada for the expeditious return of containers to the port of origin, in accordance with the recommendation from DENR – Environment Management Bureau (EMB) and BOC. In addition, the letter states that DFA will coordinate with DENR accordingly to address the matter of the Basel Ban Amendment.

The letter was addressed to Ang Nars Party-List, BT, Ecowaste Coalition, Greenpeace, and Mother Earth Foundation.

14 November 2014 – The DENR publicized the result of a Waste Assessment and Character Study (WACS) conducted by the inter-agency committee which revealed that only a small percentage of the Canadian waste shipment can be recycled and most are residuals or garbage that can no longer be recycled. The DENR's recommendation, according to the news report, is to return the shipment to the point of origin (consistent with the Basel Convention). (See: <http://www.abs-cbnnews.com/video/focus/11/13/14/trash-canada-still-rotting-manila-ports>)

27 November 2014 – The Department of Justice (DOJ) approved the filing of charges against Adelfa Eduardo, owner of Chronic Plastics, and the company's customs brokers Leonora Flores and Sherjun Saldon.

22 December 2014 - BT, Greenpeace, and Ecowaste Coalition gathered in front of the Canadian Embassy in Makati City to urge Canada to take back their toxic waste shipment that has been rotting at the Port of Manila for more than 500 days.

In a meeting with DENR-EMB, OIC Dir. Jonas Leonas said that their respective office has submitted a letter to DFA and the Senate stating their support for the ratification of the Basel Ban Amendment. As of December 2014, however, DFA-UNIO Jaybee Arguillas and the Senate Committee Secretary on Foreign Relations Suh Samanodi-Candao confirmed that they have not received said letter.

25 February 2015 – BAN and Ban Toxics writes a formal letter to Canadian Foreign Minister Lynne Yelich asking for a meeting with Canadian officials to resolve the case. This letter was copied to multiple relevant departments within Canada including the Prime Ministers office and Environment Canada. This formal letter was never responded to in any way.

18 March 2015 – A House of Representatives inquiry was held in Manila. Ecology Committee representatives voiced concern and outrage regarding the dumping that Canada refused to remediate. The Canadian embassy declined to attend but released a statement dated March 10, 2015 saying *'Canada welcomes the recent determination by the Department of Environment and Natural Resources (DENR) that contents of the containers shipped to the Philippines by a private Canadian company are neither toxic nor hazardous, but are*

comprised of a mix of plastics and residual waste. We would refer you to DENR for more information on their study.

We are pleased that this matter has been resolved and would refer you to the DENR for an update on their behalf.'

31 March 2015 -- BAN and BAN Toxics issue press release denouncing Canada for callous disregard of international law and the environment of developing countries.

01 April 2015 – A local court granted the motion of the owner of the container vans, Le Soleil Shipping Agencies, Inc. to dispose of the contents of the container vans and release the same to its owner. (See attachment)

8 April 2015 – In a remarkable e-mail exchange with BAN's Jim Puckett, Environment Canada's Gwen Goodier states that *"In the EIHWHRM Regulations, the definitions of hazardous waste and hazardous recyclable material do not capture waste and recyclables collected from households."* As the EIHWHRM is the implementing legislation for the Basel Convention, and wastes collected from households are Basel regulated wastes, this means that Canada has by its own admission failed to properly implement the Basel Convention into national law.

April 28, 2015 – A news article quoting DENR Secretary Ramon Paje said that his agency dropped its demand on the Canadian government for re-exportation of the Canadian waste, and instead agreed for it to be dumped in Philippine landfills after the DFA 'strongly recommended' that the issue be settled diplomatically, citing 'friendly diplomatic relations' with Canada. (See: <http://www.asianpacificpost.com/article/6859-trash-talk-stops-aquino-comes-canada.html>)

March 10, 2015 -- Statement released by Canadian Embassy claiming they had no laws to compel any private company to take back the waste. (See attachment)

7-9 May 2015 – Summit between Harper and Aquino in Ottawa. The issue was pointedly not raised during the meeting.

14 May 2015 – BAN and Ban Toxics takes the protest against Canada to the floor of the Basel Convention. Canada is denounced for environmental injustice by Ban Toxics Director Richard Gutierrez. It is announced that the NGOs will be filing an official protest with the Basel Convention Secretariat. The Center for International Environmental Law takes the floor to remind Canada that under the terms of the Vienna Convention on the Law of Treaties, failure to properly transpose a treaty into national law cannot be used as an excuse not to implement the treaty. The following weekend, a protest march from the Basel Meeting to the Canadian embassy took place.

22 May 2015 – 48 hitherto unknown containers suspected of containing more household waste are discovered from the same exporter in the Philippines. Philippines DENR angrily calls for their return by Canada.

10 June 2015 – Indignation Rally against Canada held in Manila.

19 June 2015 – The DENR conducted a WACS on the second Canadian waste shipment. The results are yet to be revealed to the public.

9 July 2015 – 26 of the first 50 containers that were discovered are buried secretly in a Capas, Tarlac landfill. This was done in violation of the rules that the landfill was only allowed to accept local waste.

16 July 2015 – The Province of Tarlac’s Sangguniang Panlalawigan conducted a public hearing on the Canadian waste dumped in the MCWMC local landfill whereby the Provincial Board banned the further disposal of the Manila waste within the province’s territory.

At the hearing BOC Chief Collector Gerardo M. Macatangay revealed that a total of 103 (50 from the first shipment, 48 from the second shipment, and 5 missing) shipment container vans from the same Ontario-based exporter Jim Makris of Chronic Inc. were shipped to the Philippines.

The Canadian Embassy issued another statement, saying that the: *“Government of Canada worked closely with the Government of the Philippines with regard to the shipment, and the Government of the Philippines considered options to dispose of the shipment in an environmentally sound manner in accordance with its laws and regulations.*

The waste shipment was mixed household recyclable materials collected in Canada and exported by a private Canadian company for recycling in the Philippines.

The Government of Canada notes that the Philippines’ Environmental Management Bureau of the Department of Environment and Natural Resources determined that the material shipped was neither hazardous nor toxic.

Given that the waste shipment is subject to legal proceedings in the Philippines, the Government of Canada cannot comment further on this matter.” (See: http://www.twitlonger.com/show/n_1sn33qt)

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Financial Costs

As of July 22, 2015, the Canadian waste shipment costs the Philippines **PhP 240,150,680.00** (US\$ 4,703,990.43) in rental costs and demurrage. This is the total cost of 757 days that the shipment is staying in the Port of Manila. The computation is as follows: The computation is as follows:

Demurrage

PhP 2,000 (US\$ 44.47) per day x 103 container vans x number of days

Rental Costs

PhP 1,080 (US\$ 15.86) per day x 103 container vans x number of days

The Canadian waste shipment costs PhP 317,240 (US\$ 7,007.84) per day that it remains unclaimed.

END

ANNEX II

Recent Articles of Note

Date	Title	Link
May 17, 2015	Canadian trash to be treated in PH, says envoy	http://globalnation.inquirer.net/123042/canadian-trash-to-be-treated-in-ph-says-envoy
May 22, 2015	Canada trash in Manila port now at 98 container vans	http://www.rappler.com/nation/93980-container-vans-garbage-canada-manila
May 24, 2015	DENR wants Customs to return second shipment of Garbage to Canada	http://globalnation.inquirer.net/123440/denr-wants-customs-to-return-2nd-shipment-of-garbage-to-canada-ixzz3b9oepccs
July 10, 2015	Canadian trash ends up in President's backyard	http://globalnation.inquirer.net/125804/trash-from-canada-dumped-in-tarlac-landfill
July 10, 2015	BOC explains why trash from Canada is being buried in Tarlac	http://globalnation.inquirer.net/125925/boc-chief-explains-why-trash-from-canada-is-being-buried-in-clark
July 10, 2015	What went before: Canadian trash	http://globalnation.inquirer.net/125889/what-went-before-canadian-trash
July 11, 2015	Garbage from Canada buried; 'case closed'	http://globalnation.inquirer.net/125972/garbage-from-canada-buried-case-closed
July 11, 2015	Environmentalists protest against garbage from Canada	http://gulfnnews.com/news/asia/philippines/philippines-environmentalists-protest-against-garbage-from-canada-1.1548438
July 13, 2014	Tarlac gov stops dumping of Canadian trash in Tarlac landfill	http://newsinfo.inquirer.net/704902/tarlac-gov-stops-dumping-of-canadian-trash-in-tarlac-landfill
21 July 2015	Environmentalists angry as illegal Canadian garbage heads to Philippine landfills	http://www.huffingtonpost.ca/2015/07/21/canada-philippines-waste_n_7840772.html
21 July 2015	DFA: DENR best agency to handle problem over Canadian waste	http://newsinfo.inquirer.net/706724/dfa-denr-best-agency-to-handle-problem-over-canadian-garbage