

# COMMENTS ON THE ANALYSIS OF ISSUES RELATED TO ANNEX VII (Phase II)

Submitted by the Basel Action Network (BAN)  
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## General Comments

The mandate of the terms of reference for phase II of the Annex VII analysis states that “the purpose of this analysis is to explore, in a transparent, objective and comprehensive manner, health, environmental, social, economic and other issues related to Annex VII that are considered important to the Conference of Parties and to assist Parties to ratify the ban amendment.”

The requirements are clear that the exploration of the issues must be transparent, objective and comprehensive, and be included with a view to assist Parties in ratifying the Basel Ban Amendment. There are certain points in the present document that we believe are likely to fail the test of meeting fair standards of objectivity and comprehensiveness and moreover are, on balance, not aimed to assist Parties to ratify the ban amendment.

One striking example is found at the very beginning of the document, where the list of issues regarding implementation of the Ban Amendment all contain negatives and no positives. This imbalanced portrayal belies the fact that in 2003 8 ratifications occurred for the Ban Amendment and one has already occurred in January of 2004. The amendment has been on a steady pace of achieving more than 5 ratifications per year and recently this average is seeing an increase. Compared with a similar instrument like the London Protocol (receiving 2.66 ratifications per year, thus far) that bans the dumping of industrial wastes at sea, the Basel Ban Amendment has received excellent support. Presently there are now 44 total ratifications in total. Surely, these 44 nations see something positive or have experienced something positive in ratifying and/or implementing the Ban Amendment. Have these experiences been translated or communicated into the analysis? Wouldn't the experiences of those that have ratified the ban be vital with respect to the consideration of assisting parties to ratify the ban? So far the paper is lacking in this regard, and as such reveals a certain imbalance and lack of objectivity in contradiction to its mandate.

One crucial point that continues to be bypassed is the economic costs on the environment and human health - the price tag for pollution. BAN has consistently advocated that this type of study or analysis be undertaken as part of the Annex VII analysis in order to fully comprehend the repercussions of waste trade and its impact on the local environment and community. This is the other side of the economic coin of the trade in hazardous wastes that is consistently unaccounted for here despite a mandate in the terms of reference to do so.

The comments that follow are consistent with the mandate to not consider new issues or attempt to raise new issues not already dealt with in the current analysis. The comments below are given to help steer the present analysis closer to what the terms of reference have originally called for in terms of balance, objectivity and with a view to assisting the parties to ratify the Ban Amendment.

## Specific Comments

### III. A.

There is a need to mention the positive experiences of Parties who have ratified the Ban Amendment in this survey or summary of issues raised by Parties. Recently, the Ban has seen an increase in ratifications with 9 being deposited in the last 13 months. The Parties who have ratified the Ban Amendment have something valuable to contribute in the analysis, as to why they ratified, and the noted benefits of doing so. Thus, it is imperative to include such positive issues in order to arrive at a balanced and well-rounded analysis of the Annex VII issue. As this new text must be provided by those countries that have ratified and/or implemented the ban, we would request that those parties be asked to submit some observations about this experience before the text is finalized.

#### **IV. B. 1.**

Para. 13. This paragraph is incorrect in that some of the noted “principles” are in fact obligations of the Convention. The “proximity principle”, on the other hand, does not in fact exist in the Convention and is therefore not of significant standing in this paper. Further, despite the fact that the self-sufficiency principle and least transboundary movement principles are actually obligations of the Convention, it is incorrect to state these obligations so vaguely as: “recognizing that the application of those principles will vary from country to country.” Further, the statement, “...in some cases, however environmentally sound and efficient management of certain hazardous wastes may be achieved at specialized facilities located in another country”, flies in the face of the obligations of the Convention, and likely the Ban Amendment. Further, there is no recognition of Annex VII itself here which the analysis is supposed to be about. Annex VII was created to respect the special needs of developing countries as well as the special responsibilities of developed countries. Therefore, we strongly suggest that the text be dramatically altered to read as follows:

*The Convention calls on all Parties to minimize the transboundary movement of hazardous wastes and to strive for national self-sufficiency in hazardous waste management. Thus there must be an effort to build capacity for such environmentally sound management in each country in order to reduce transboundary movements. Developed countries have a special role in this regard, vis-à-vis, developing countries.*

Para. 14. The first sentence of paragraph 14 makes an assertion of fact, which we believe to be true, yet it is not supported by any citation of evidence or sources proving the factual claim. The study mentioned in the second sentence only examines zinc and lead, and would thus, fail to qualify as supportive of the previous assertion in the paragraph.

The statement in sub-paragraph (a) is fine. However, it discusses a percentage of the total zinc wastes traded that are in fact non-hazardous under the Convention and this bears no relation to sub-paragraph (b) which begins a discussion about competitiveness. In fact, sub-paragraph (b) doesn’t assert anything other than the fact that something “could” occur. The fact that something “could” occur in the future without evidence of its propensity to do so, is hardly relevant here, as the list of things that “could” occur, should they be cited in full would be a long list indeed.

For the foregoing reasons, we suggest that paragraph 14 be deleted as being unhelpful in fulfilling the mandate of the study.

#### **IV. B. 2.**

Para. 16. There is a significant logical flaw in the conclusion arrived at by the study as stated in the first sentence in this paragraph, as it misinterprets the requirements under the Basel Convention and Decision III/1. BAN had commented on this fact earlier in our comments on the consultant’s incorrect conclusion.

While the Convention imposes obligations on all Parties, Decision III/1, on the other hand, only calls for implementation on the part of Annex VII countries, namely those countries that are members of the Organization for Economic Cooperation and Development (OECD), the European Union and Liechtenstein. Thus, it is incorrect to assert that the countries that must implement the Ban Amendment have inadequate capacity or resources to do so. Rather, the Ban Amendment was designed precisely to place responsibility on countries that were certain to have all of the infrastructure and economic development to implement the ban. The thrust of the entire paragraph -- that countries lack the infrastructure, resources or legislative capacity to implement the ban, when only the OECD states must implement it, is an utter falsehood. The analysis with this faulty conclusion fails in fulfilling the terms of reference requirement of assisting parties in ratifying the Ban Amendment, as it regrettably discourages any ratification from occurring. For these reasons the paragraph should be deleted.

### IV. B. 3.

Para. 17. Again this section is a discussion of the implementation of decision III/1 which only must be implemented by Annex VII countries. Therefore, we cannot understand the relevance of statements about the lack of capacity of non-Annex VII countries. As there is little revealed in this paragraph regarding OECD countries, we suggest deleting this paragraph. At the very least, all references to non-OECD countries should be deleted as the paragraph is meant to deal with implementing Decision III/1.

Para. 18. The discussion in the final three sentences refers to a matrix and a baseline. As this analysis is not meant to be a summary of other papers but a stand-alone document, we would suggest deleting the last three sentences of this paragraph.

Para. 19. Oddly there is no discussion here about the increase or decrease of hazardous waste flows from Annex VII countries to non-Annex VII countries as plotted over time. This is the most relevant data, as the ban is not designed to minimize other waste flows, only those from Annex VII to non-Annex VII. This data can also help Parties revisit the significance of the ban, which can ultimately assist them in ratifying the Ban Amendment. All other data are irrelevant to the issues concerning the ban and Annex VII.

Para. 21. The cautionary statement in para. 20 requires that the two cases cited in this paragraph be sufficiently described to highlight the particular nature of the cases to the country in which they were derived from. Having had the opportunity to look at the actual paper cited for the first case, BAN noted some objective details missing from the case summary. We suggest the following adjustments in order to more accurately reflect the paper in question:

*One non-Annex VII country developed a lead recovery industry in the late 1980s due to the huge capital outlay needed to mine its lead deposits. In spite of an admitted lack of a national effort to collect domestic used batteries, the country made a determination that the national supply of lead through secondary sources was insufficient to ensure a viable and efficient use of the lead smelters. As a consequence, the country imported lead-acid batteries principally from a single source in an Annex VII country until 1994. As the lead recycling industry developed in this non-Annex VII country, lead poisoning in workers and the community around the recycling plants became commonplace. In fact, the rise in lead poisoning incidents and the hazards of such recycling plants prompted some regions in the same non-Annex VII country to shut down all used battery processing factories.*

*In the process of amending the environmental law, the legislative assembly of that country requested the banning of hazardous waste imports, with exception of used batteries, up to the year 2002. The exemption was based on the commonly used argument by the battery recycling industry that because the supply from domestic sources was insufficient to reach an economic production level, used batteries were needed to be imported until the local supply could satisfy the economic needs. Yet this argument was made in the absence of an adequate domestic collection system for locally generated waste batteries.*

*Meanwhile, the Annex VII country (principal source of used batteries) stopped its export of used lead-acid batteries, in line with decision III/1. Since 1998, the used batteries are imported principally from non-Annex VII countries. In the meantime, progress in encouraging and improving the collection of used batteries at the local level remain slow. In addition, small-scale recyclers which do meet the country's environmental and health requirements are still operating illegally.*

BAN has not been able to find the source of the second case noted here. But given the experience in reading the actual cited case above, and comparing it to the analysis summary, we believe it would be prudent to allow the Parties to actually review this case. In order to arrive at a more transparent and objective summary of the case, BAN suggests that subparagraph (b) be placed in square brackets and remain open for modifications until the source for the case has been given to Parties for review, and for the Parties to weigh-in with comments on whether the case has been adequately summarized and whether its argumentation is sound.

#### **IV. B. 5.**

Para. 27. This paragraph largely claims that there is a lack of data regarding the health impacts from hazardous waste management operations. This is certainly not the case. There are numerous studies in existence. In fact several studies even exist which document health effects from the importation and subsequent handling and management of toxic waste. Some that come to mind are studies conducted in Cambodia following the importation of mercury-laden waste from Taiwan which included several deaths as a result. Likewise, imported mercury wastes caused the death of 2 workers at the Thor Chemical plant in South Africa. Studies of shipbreaking workers that have also been done evaluate health impacts and the prospective deaths from cancer from asbestos alone. It is vital that the Secretariat cite this existing and published information. Further, no relevance here with respect to illegal traffic and thus this sentence should be removed, particularly as it seems to imply that there are no health impacts from the legal traffic of hazardous wastes. Finally, the reference to an Annex III list of “wastes” is incorrect, as Annex III is a list of hazardous characteristics and not wastes.

#### **IV B. 6.**

Para. 29. Here it must be noted that ratification and implementation are two different things. In other words it is clear that while all Parties are urged to ratify the Ban Amendment, only the Annex VII countries are to implement it. The group of countries that were among the first to implement the Basel Ban was the European Union member states. Therefore, we propose that the EU experience and steps for implementation be reflected here. The EU experience can be well-documented, thus belying the assertion here that the information does not exist.

#### **IV. B. 7.**

Para. 32. Here the term “sham” recycling needs to be augmented. Sham recycling refers to recycling that is not really recycling at all. What is more often the case is “dirty” recycling – highly polluting operations. Thus we would recommend the formulation: “sham and dirty recycling”. Further, the final sentence in this paragraph is extremely misleading. The implication here is that only those that freely trade in waste might get access to newer and cleaner technologies. This is patently false. Everyone in the world has access to clean technologies if they are made available. There are no trade restrictions of any kind on clean technologies! This latter sentence needs to be scrapped.

Para. 33. This paragraph is extremely imbalanced and not objective. Suddenly the text is calling wastes “secondary raw materials”. These are “wastes” and in fact are hazardous or other wastes in the Basel context which are known to cause environmental harm when disposed or recycled. Nothing in this paragraph suggests why scrap and wastes migrate from Annex VII to non-Annex VII countries. This is quite amazing as it is a well-known phenomenon which spawned the Basel Convention itself. Hazardous waste migrates to take advantage of cheaper recycling labor, lack of environmental and occupational protections etc. found in developing countries or weaker economies. It is small wonder that the flows of wastes from Annex VII to non-Annex VII countries and not the other way around. The Basel Convention calls for self-sufficiency in waste management. This paragraph seems to have forgotten this obligation completely. Further, this paragraph implies that all that is necessary to allow the export of hazardous wastes from Annex VII countries to non-Annex VII countries is enhanced technology in the non-Annex VII country. However, regardless of technology levels, pollution is still transferred. What remains unanswered by technological “solutions” are the incentives to prevent waste in the first place, the fact that technology alone cannot guarantee levels of environmental and human health protection, and finally, the justice issue of allowing weaker economies to receive a disproportionate burden of the world’s waste simply because they are relatively poor. This paragraph is of such bias; it must be deleted.

New Para. 34 The contents in item 7 do not properly bear or coincide with the terms of reference it was intended to fulfill. The heading in Item 7 refers to an evaluation of the cost-benefit and effectiveness of hazardous waste recycling versus health risks and environmental damage, yet no mention is made of existing efforts in the international community to determine the environmental costs of the emissions of toxic

substances. One such study was commissioned by the Nordic Research Council on the economic valuation of emissions of several toxic substances. In this regard, we suggest that the following paragraphs be inserted as a new paragraph 34, under item 7:

*There have been efforts in placing economic values to the adverse environmental effects of toxic substances. One such effort was commissioned by one Annex VII country. It was designed as an aid to policy-makers in arriving at a rational decision on how to prioritize measures in curbing pollution from particular hazardous substances.*

*In determining the economic value for a particular substance, the study compiled recent weighting/ranking methodologies on the adverse impact of several substances, particularly their physical effects. The monetary values were based on surveys conducted by several Annex VII countries. From there the study developed a best, low, and high estimate of the environmental cost of a particular substance. An anchor substance was chosen in order to come up with an evaluation of the other substances. In this case, the study chose lead as the anchor substance due to its known effects, and for the numerous studies that have been carried out to assess the damage caused by its emissions.*

*Some of the resulting values of the study are:*

<i>Substance</i>	<i>Best estimate*</i>	<i>Low estimate*</i>	<i>High estimate*</i>
<i>Dioxin</i>	<i>2.2E+06</i>	<i>8.4E+05</i>	<i>6.0E+06</i>
<i>TBT</i>	<i>261</i>	<i>98</i>	<i>697</i>
<i>Chromium 6+</i>	<i>163</i>	<i>61</i>	<i>434</i>
<i>Mercury</i>	<i>111</i>	<i>41</i>	<i>296</i>
<i>PCB</i>	<i>96</i>	<i>36</i>	<i>256</i>
<i>Cadmium</i>	<i>32</i>	<i>12</i>	<i>87</i>
<i>Lead</i>	<i>6.1</i>	<i>2.3</i>	<i>16</i>

*\* Prices are in Norwegian Kroner per gram.*

*Thus, if a 25,000 metric ton capacity/year lead-acid battery recycling plant operating in a non-Annex VII country, importing lead acid batteries has a 98% lead recovery rate, with 2% fugitive emissions, that means 500 tons of lead per year is being emitted in the vicinity of the plant. Applying the study values, based on the low estimate of NOK 2.3 per gram of lead emission, the low estimate would equate to an environmental cost of the 500 tons of lead emission as NOK 1,150,000,000 (US\$166,064,982) per year to the country where this particular plant is located. Under the best estimate the environmental cost would be pegged at NOK 3,050,000,000 (US\$440,433,213) per year.*

*The values presented under this study and others like it can greatly aid Parties in their analysis of the economic benefits and cost of hazardous substances. Too often these costs resulting from emissions and residues in even state of the art recycling operations are not calculated, and result in cost externalities and dramatic economic inefficiencies.*

## **V. 8.**

The title of this section and the content of paragraphs 34 and 35 have little to do with one another. What is needed here is an examination of how the Ban Amendment impacts waste minimization. We maintain that there is a strong correlation. Therefore we suggest the following paragraph.

New Paragraph for Section 8:

*The ban, by closing off cheap and dirty options for waste management can force cost internalizations which in turn drive "green design" and thus hazardous waste minimization. One such example is found in the European Union which after ratifying and implementing the Basel Ban in 1997, was thereafter forbidden from exporting electronic wastes to weaker economies. As a result, the pressure*

*to design for less toxics and recycling and enhanced collection became far more acute in Europe, in comparison to North America where a free trade in electronic wastes to non-Annex VII countries persists to this day. It is largely due to the closing-off of the export "escape hatch" that has pressed Europe into more rapidly adopting legislation to enhance European recycling of electronic waste and to phase-out toxic inputs to electronic products to ensure that such domestic recycling has less economic and environmental impacts within Europe.*

## VI.

Paras. 36 and 37. The pronouncements made in these paragraphs were more accurate for the period from the mid to the late 1990's than with the realities of the new decade. For the most part the global privatization trend has dissipated, and in its wake lies the ruins of the failure of deregulation in crucial industries. What paragraph 36 misses out on is that with the new century there have been increasing efforts globally to ratchet up corporate responsibility for their products through legislation. At times this effort has been called extended producer responsibility, and has contributed to more environmentally sustainable designs of products and production processes. So far these trends are noticeable in Europe, China and Japan, e.g. with respect to take-back legislation with respect to automobiles and electronics. Further, para. 37 fails to mention that the advent of new sustainable designs ushers in less toxic secondary materials that can be recycled and used by rapidly industrializing countries without the accompanying pollution.

For the above reasons, we suggest the following modifications to paras. 36 and 37:

*36. Since the mid-1990's, there has been a gradual and significant policy shift in many countries, both Annex VII and non-Annex VII, away from a strong focus on regulation towards market driven opportunities. The deregulation trend has tapered down as failure in certain sectors covered by deregulation has become apparent. In the area of waste management, the new century has brought on a renewed focus on the polluter pays principle and its extension to post-consumer waste pollution – calling for manufacturer responsibility in the full life cycle management of their products or extended producer responsibility (EPR). One of the first applications of EPR was with automobiles, and now has captured one of the largest sources of post-consumer wastes – electronics. EPR provides a feedback mechanism that internalizes costs back to those first responsible for creating them. This mechanism leads to obvious economic incentives to drive cleaner production and greener products.*

*37. Rapidly industrializing countries have a growing demand for secondary raw materials to sustain the pace of their social and economic development. Unfortunately, in order fuel this growth these countries are forced to take in hazardous and other wastes together with the secondary raw materials that they require materials which in many instances need not be hazardous, and polluting were there more attention paid to hazardous use reductions upstream. In this context, there is a critical need for EPR as one tool to drive the development and application of environmentally sustainable designs of products and processes, and to build a capacity for the transfer of clean production technologies, and also for environmentally sound recovery or recycling of non-hazardous wastes.*

Para. 38. There are key elements that are not mentioned in the future work, which we suggest should be included as new sub-paragraphs f and g:

- f. Evaluation of the implementation experience of countries that have ratified Decision III/1.*
- g. Development of economic valuation of the health and environmental impact of hazardous substances.*

-End-