



turn back the toxic tide

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Basel Non-Compliance Notification Report #1

prepared by the Basel Action Network

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Country Violations: INDIA, USA / Urgent Action Required

Introduction

Due to an alarming trend noted of late by the Basel Action Network (BAN), of certain states acting in violation of their obligations under the Basel Convention, and due to the weak response of the international community and from the Basel Convention Secretariat to take any actions to address such violations, BAN has initiated an NGO non-compliance reporting mechanism for the Basel Convention.

One reason we have decided to choose this avenue lies in the unfortunate fact that the Basel Convention's formal non-compliance mechanism officially adopted at the Conference of the Parties (COP6), does not allow any triggering mechanism for civil society, and likewise lacks any accountability or enforcement provisions.

It is our hope that these notifications will foster a climate of better accountability and respect for multilateral environmental agreements, in general, and for the legal obligations under the Basel Convention, in particular. In short, we hope to pressure those who are in non-compliance or are abetting non-compliance to the Convention to stop at once. Timely reporting of the violations will help enable rectify the immediate case in question.

The BAN notifications will be published as [Basel Non-Compliance Notification Reports](#) whenever we have gathered compelling evidence of either: a) a state acting out of compliance with the Basel Convention's obligations; or b) otherwise encouraging, aiding or abetting non-compliance of the Basel Convention. Each such notification will be posted on the BAN website and at the same time will be forwarded as a matter of course to:

1. The Foreign Affairs and Environmental Ministries of the States Concerned;
2. The UNEP Executive Secretary;
3. The Basel Convention Secretariat Coordinator;
4. The United Nations Office of the Human Rights High Commission;
5. The United Nations Human Rights Special Rapporteur on Illegal Traffic of Hazardous Waste;
6. Basel Action Network's Mailing List; and

7. Relevant News and Trade Media.

With this first report the Basel Action Network issues two notifications on two separate and very current cases.

The first breach is currently being perpetrated by the Ministry of Environment of India, in their refusal, to date, to respect the request by the Danish Ministry of Environment to return an illegal shipment of a hazardous waste vessel that arrived at the breaking beaches of Alang, India. Delegates should be well aware that their Minister might be the next snubbed and ignored by India.

The second instance involves a serious effort by the United States, even as a non-Party, to encourage ignoring the obligations of the Basel Convention with respect to mobile phones. They are pushing hard for this within the Mobile Phone Partnership Initiative (MPPI) even when such mobile phones clearly meet the definitions of hazardous waste under the Convention. Delegates should be well aware that under this pressure by the United States, the MPPI might buckle and shirk its duty to provide guidance as is its mandate on how mobile phones should be dealt with under the Basel Convention.

Attached to this alert is the email written by US government representative, Bob Tonetti of the Bush Administration's Environmental Protection Agency, as well as the letter from Danish Environment Minister, Connie Hedegaard, and a news story from New Delhi.

BASEL NON-COMPLIANCE NOTIFICATION

Case Title: Danish Ferry Frederik

Case Number: 2005-1

Violating State: India

Treaty Sections Violated: Articles 1(1), 4 (4), 6, and 9

Date: April 2005

Documentation: News article reporting on Ministry position, April 16 letter from Danish Environment Minister Ms. Connie Hedegaard to Indian Environment Minister Mr. A. Raja.

Case Description:

India Snubs Denmark and Violates the Basel Convention

In February of 2005 the Government of Denmark became aware that a 51 year-old Danish flagged ferry ship named Kong Frederik IX, later renamed Frederik, and now named Riky, was to be sold for breaking in India. It also became known that the ship contains substantial amounts of asbestos. Thus, this proposed export was in violation of the European Waste Shipment Regulation which implements both the Basel Convention and the Basel Ban Amendment prohibiting such exports to non-OECD country destinations. The Danish Government made it clear to the ship owners that export of the ship to India would only be allowed if the ship was first decontaminated of the asbestos and all other hazardous waste material found on or in the ship.

Several bids to conduct the scrapping or decontamination were submitted by Danish scrapping companies. Despite this, the ferry was sold to a postbox company in St. Vincent, and was to be managed by Jupiter Ship Management. Last year, Jupiter Ship Management illegally exported another Danish ship to Alang, India for

breaking. Unfortunately for the Danish national authorities, the local Danish municipality of Korsr was unable to prevent the ship from leaving on March 16, 2005. Danish Minister of Environment Connie Hedegaard announced the filing of a complaint with the police. On April 16, Minister Hedegaard formally requested by letter that her counterpart, Indian Minister for the Environment Mr. A. Raja, promptly refer the ship back to Denmark to be stripped of hazardous wastes.

In her letter, Ms. Hedegaard stated, *"I believe our interests are joint -- and I call on you to cooperate in this case by denying the ship to be dismantled in India - and refer the ship to be returned to Denmark in order to be stripped of the hazardous waste. By this we can send a strong signal that neither India nor Denmark will accept export of environmental problems that could be solved locally, and that we -- as governments will not accept this kind of foul play which results in lasting damage to the environment."*

Diplomacy alone should have ensured that Mr. A. Raja, comply with the Danish request, however, Ms. Hedegaard's request, as exporting state, under the Basel Convention, made it legally incumbent on India to do so. This is because under the Basel Convention, all transboundary movements of hazardous waste can only proceed with the consent of the importing, transit and exporting states and must be pre-notified in accordance with Article 6. Failing that, the shipment is considered illegal traffic under Article 9. Further, Article 4, paragraph 4 requires all Parties to take appropriate legal, administrative and other measures to implement and enforce the provisions of the Convention.

Cynically, however the Indian Ministry chose to play the game favored by the shipping industry to protect their shipbreaking yards, the Minister is insisting on the discredited interpretation that a ship under its own power is not a waste. According to news reports the environment ministry has stated that *"under the Basel Convention, there is no legal obligation or power with the government of India to send back a ship sailing under its own power containing asbestos in a functional role in its ship structure."*

This statement completely flies in the face of the recent COP7 Decision VII/26 which clarifies that a ship can be a ship and a waste at the same time, and if it contains hazardous substances then it is a hazardous waste. But even if India wanted to play games with the Basel decision and claim it is not legally binding, the mere assertion by Denmark that they consider the ship as a waste, requires India to consider it such as well for any particular transboundary movement. Article 1.1.b of the Convention includes within the scope of the Convention any material which is considered hazardous waste under national law. The publication of the EU Waste Shipment Regulation and its reporting in accordance with Article 3 of the Convention to the Secretariat and the subsequent clarifying letter by Ms. Hedegaard, made it crystal clear that this particular ship was considered a hazardous waste under 1.1.b of the Convention even if India wanted to pretend that the application of 1.1.a. does not apply.

As of April 29, reports conclude that the Frederik is now beached in Alang. It is unknown whether scrapping has begun. There appears to still be time to rectify the situation.

The conclusion is that India, pandering to its environmentally disastrous shipbreaking industry, appears to be deciding to not only violate international law, but likewise endanger international relations, as well as their own environment and workers, by refusing take action against illegal traffic as defined in the Convention.

Recommended Action: India must be persuaded very quickly before the ship is scrapped to comply with the Danish request, and fulfill its obligations under Basel. The shipment is clearly illegal traffic under the Convention. If they fail to do this and allow the ship to be cut and scrapped they must be condemned for this action in the strongest terms.

BASEL NON-COMPLIANCE NOTIFICATION

Case Title: US MPPI Basel Avoidance

Case Number: 2005-2

Violating State: United States (Non-Party encouraging non-compliance)

Treaty Sections Violated: Articles 1, 4, 6, etc.

Date: April 2005

Documentation: Proposal by USEPA's Bob Tonetti sent to MPPI Project group 2.1

Case Description:

US Advocates Ignoring Basel Convention for Waste Mobile Phones

The Basel Convention's Mobile Phone Partnership Initiative (MPPI) is meant to be a program to involve the mobile phone industry, other stakeholders, and Basel Convention Partners to first provide guidance for the management of end-of-life cell phones and then to conduct some pilot projects for improving their management on the ground. Project 2.1 has a mandate to provide guidance on the collection and transboundary movement of cell phones. Cell phones are known to contain hazardous substances that clearly qualify them as being hazardous wastes.

Unfortunately it appears that some have seen it from the start as a way to circumvent the legal obligations of the Basel Convention and in effect rewrite the aspects of the treaty they dislike. The United States, even as a non-Party, has insistently called for the MPPI to ignore the provisions of the Basel Convention. They have been supported in this position, mostly by the Precious Metals Institute and few other participants. Most notably many from the recycling industry are content to have the Basel Convention apply to cell phones, and the rest of the delegates that actually represent Parties such as Sweden and Australia have been very clear that the Basel Convention apply.

The Project 2.1 group was close to agreeing on a decision tree that was a good compromise allowing some cell phones (e.g. tested working or needing only minor repair) to be exported without controls while others would need to fall under Basel controls, when the US began an effort to scuttle the progress.

While the US is unlikely to persuade the group that the Basel Convention should be ignored for cell phone exports, their obstructionist position might well push the chairs to remain neutral and decide against their mandate, to provide no guidance at all on the subject. This is clearly the US strategy and would be a terrible mistake if this were to be the outcome. At the Basel Convention meetings the Parties consistently hear from African and other delegates that they are receiving vast quantities of used cell phones that are being exported indiscriminately, many in non-working or non-repairable condition. This is precisely the type of trade for which the Basel Convention was created. The US which continues to have antipathy for the Basel Convention's basic obligations is seeking to hijack the MPPI to promote this position that is so out of step with the rest of the world.

Recommended Action: The US position must be set aside as it is absolutely unacceptable that a program of the Basel Convention such as the MPPI should be used to undermine the treaty itself. Parties should contact

the chairs of Mobile Phone Partnership Initiative and express their emphatic belief that the Basel Convention should not provide exceptions for mobile phones when such phones are a hazardous waste and that the MPPI should provide appropriate guidance for TBM of mobile phones consistent with the Basel Convention.

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