

## The Basel Ban Amendment: Entry Into Force = Now!

### Long Overdue

Ever since the first inception of the Basel Convention, a majority of countries of the world sought a full ban on the worst forms of the international hazardous waste trafficking. And, ever since entry into force in 1992, the Contracting Parties of the Basel Convention worked to fulfill this promise to ban the exports of hazardous wastes from developed to developing countries and made it the overarching priority. Finally, in 1995, the most significant accomplishment of the Convention – the Basel Ban, was adopted.

A little history is useful to understanding how important this ban is to the Parties of the Convention. At the first meeting of Contracting Parties (COP/I) in 1992, **Decision I/22** was passed, requesting developing countries to prohibit the import of hazardous wastes from industrialized countries. At the next opportunity, COP/II in 1994, the Parties passed **Decision II/12** banning the export of all hazardous wastes from the Organization for Economic Cooperation and Development (OECD) countries to non-OECD countries. Then, at COP/III in 1995, **Decision III/1** was adopted, installing the Basel Ban as an amendment to the Convention. Since then, at COPs IV, V, VI, and VII all Parties were urged to ratify the Ban Amendment at the earliest opportunity (**Decisions IV/7, V/3, VI/33, VII/23**).

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***The need for the Basel Ban Amendment is now more pressing than at any point in history.***

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**Now, after 21 years since the adoption of the Convention when the ban was first conceived, it is past time to move the 1995 Basel Ban Amendment into the force of international law. The Basel Ban is seen as vital for two primary reasons:**

- To prevent damage to the environment and human health caused by the disproportionate export of hazardous wastes to countries that did not create them and where there was less infrastructure and resources to mitigate the great risks associated with such wastes.
- To prevent waste generators from avoiding taking responsibility to minimize the generation of hazardous wastes by externalizing costs via the pathways of globalization rather than internalizing the costs upstream through clean production and green design.

Both of the above reasons are fully consistent with the Basel Convention itself, and the concept of Environmentally Sound Management of hazardous wastes.

### We Now Have 68 Ratifications! Why the Delay?

The Basel Ban Amendment has now garnered what was thought for a long time to be the magic number of 62 ratifications – 3/4 of the number of Parties present (82) in 1995 when the landmark decision was adopted. However on the way to the celebration, an ambiguity was discovered in the text of Article 17 making it unclear as to which group of Parties the 62 can be drawn from. Should the 62 come from the total number of Parties today or should it just be those Parties actually present in 1995?

Failure of the Parties to decide between these two options will mean that the Office of Legal Affairs (OLA) at the United Nations will apply another standard, a default standard requiring ratifications of 3/4 of the number of Parties at the current time (current time approach). Such an approach would presently require 130 countries! Three facts become abundantly apparent when faced with these choices:

1. *The OLA's current time approach is a draconian option that will likely relegate the amendment to not entering into force for at least 20 years.*
2. *We cannot afford to wait 20 years as recent dumping evidence, deaths and disease attest.*
3. *As one of the interpretations of Article 17 would mean that the Ban should now be in force, it is absolutely necessary for the Parties to interpret Article 17 as soon as possible.*

The need for the Basel Ban Amendment is now more pressing than at any point in history. It is clear that the Parties did not expect this amendment to need more than 62 Parties and there is no political relevance as to whether the Parties are drawn from those present in 1995 or those present today. The important matter is that 62 countries approve, bearing in mind the amendment is *only* binding on those that ratify it.

### Resolving the Ambiguity in Article 17

At COP9, the small handful of countries that oppose the Ban Amendment including the US, Canada, Japan and India began to declare that the "current time" approach needing 130 countries was what they preferred regardless of what the original intent of the Convention founders was, or what it would mean for the passage of other less controversial amendments in the Convention's future. Further they demanded that any decision on how Article 17 is to be interpreted should only be made by consensus.

That notion however is absolutely incorrect as the Rules of Procedure of the Convention allow for decisions of the Parties to be made by a ¾ majority should any country call for a vote. While a vote has as yet not occurred in the Basel Convention, utilizing a voting procedure when necessary was absolutely envisaged by the Parties. Unless the tiny minority of countries ceases their intransigence and let the overwhelming will of the majority of nations prevail, a vote will clearly be necessary for resolution.

### **In the Meantime -- Ratify!**

#### **Non-Annex VII: No Time to Waste!**

To date, 38 Non-Annex VII countries -- **Albania, Andorra, Bahrain, Bolivia, Botswana, Brunei Darussalam, Chile, China, Cook Islands, Ecuador, Egypt, Ethiopia, Gambia, Ghana, Indonesia, Jordan, Kenya, Kuwait, Liberia, Macedonia, Malaysia, Mauritius, Republic of Moldova, Montenegro, Morocco, Nigeria, Oman, Panama, Paraguay, Qatar, St. Lucia, Serbia, Sri Lanka, Trinidad and Tobago, Tunisia, Uruguay, Former Yugoslav Republic of Macedonia, and Tanzania** have ratified.

However, many non-Annex VII countries still have not ratified the ban. We need them to help enter the Ban into force and at the same time send a strong message cost externalization via globalization is unsustainable and immoral.

#### **Annex VII Countries: The EU Leads But Some Have Not Yet Ratified Despite Implementation!**

As the Basel Ban is really an Annex VII country export ban, it is of paramount importance that Annex VII countries ratify the agreement. To date the **European Union** has been the driving force within the Annex VII group. But despite the Basel Ban Amendment being implemented fully in the EU and EFTA countries which via the European Economic Agreement (EEA) all abide by the ban via the EU Waste Shipment Regulation, to date, **Malta, Greece, Monaco, and Iceland have failed to individually ratify.** These countries must take immediate steps to do so.

#### **Other Annex VII Countries: The Irresponsible JUSCANZ**

The record of the non-European Annex VII countries sometimes known as the JUSCANZ, on the other hand, has been sadly irresponsible apart from **Turkey.** These countries include:

**Australia, Canada, Japan, New Zealand, South Korea, and the United States.** While **Mexico** has supported the ban in the past, it also seems to be missing from the lists of responsible Annex VII countries. *It is time now for these countries to stop obstructing the global community consensus in which they participated in good faith and accede to the ban.* Failure to ratify the Basel Ban sends the unmistakable message that these countries wish to solve their hazardous waste problems by exporting them to poorer countries rather than taking responsibility for them at home.

In the latter part of 2006, the global community was confronted with another unacceptable waste trade tragedy resulting in the deaths of at least 10 persons, impairment to hundreds of others,

and the collapse of the government in **Cote 'D'Ivoire.** This incident along with the increasing tsunami of post-consumer electronics and obsolete ships must serve as a wake-up call that the Ban Amendment is needed now more than ever and is long overdue.

<b><u>PROGRESS REPORT</u></b>	<b><u>RATIFIED</u></b>
<b>ANNEX VII (30)</b>	Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, European Community, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, UK.
<b>NON-ANNEX VII (38)</b>	Albania, Andorra, Bahrain, Bolivia, Botswana, Brunei Darussalam, Chile, China, Cook Islands, Ecuador, Egypt, Ethiopia, Gambia, Ghana, Indonesia, Jordan, Kenya, Kuwait, Liberia, Malaysia, Mauritius, Montenegro, Morocco, Nigeria, Oman, Panama, Paraguay, Qatar, St. Lucia, Serbia, Sri Lanka, Syria, Trinidad and Tobago, Tunisia, Uruguay, Former Yugoslav Republic of Macedonia and Tanzania
<b>TOTAL</b>	<b>68 Ratifications</b>

Indeed, the forces that drive the international waste trade have actually increased in recent years. These forces include: the disparity in global wealth (the rich getting richer and the poor poorer); amounts of hazardous waste generation on the rise; and, increasing disposal costs in developed countries. Sadly, the Ban which places a barrier against global cost externalization is more relevant now than ever.

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**It has been 15 years since we have been gathering ratifications for the amendment and now we have reached 68. It is certain that the Parties did not expect the Ban Amendment to need more than 62 Parties. And, indeed the world situation has made it clear that we cannot afford to wait any longer to move the Ban Amendment into the force of international law. 62 does it. We thus now have but two courses of action:**

- 1. For those that have so far failed to ratify, do so at the earliest opportunity.**
  - 2. The Parties must collectively resolve, by a vote if necessary, to interpret the Basel Convention's Article 17 as needing 62 Ratifications.**
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