



delegate alert

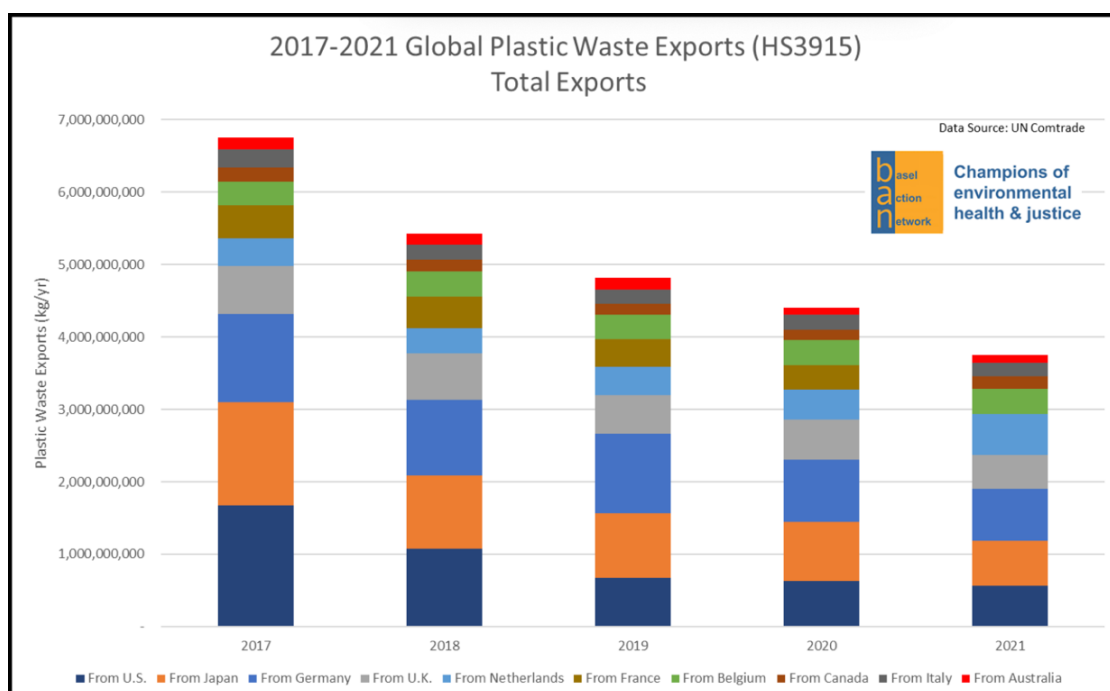
2 June 2022

Plastic Waste Trade Still Out of Control

Recommendations to Parties

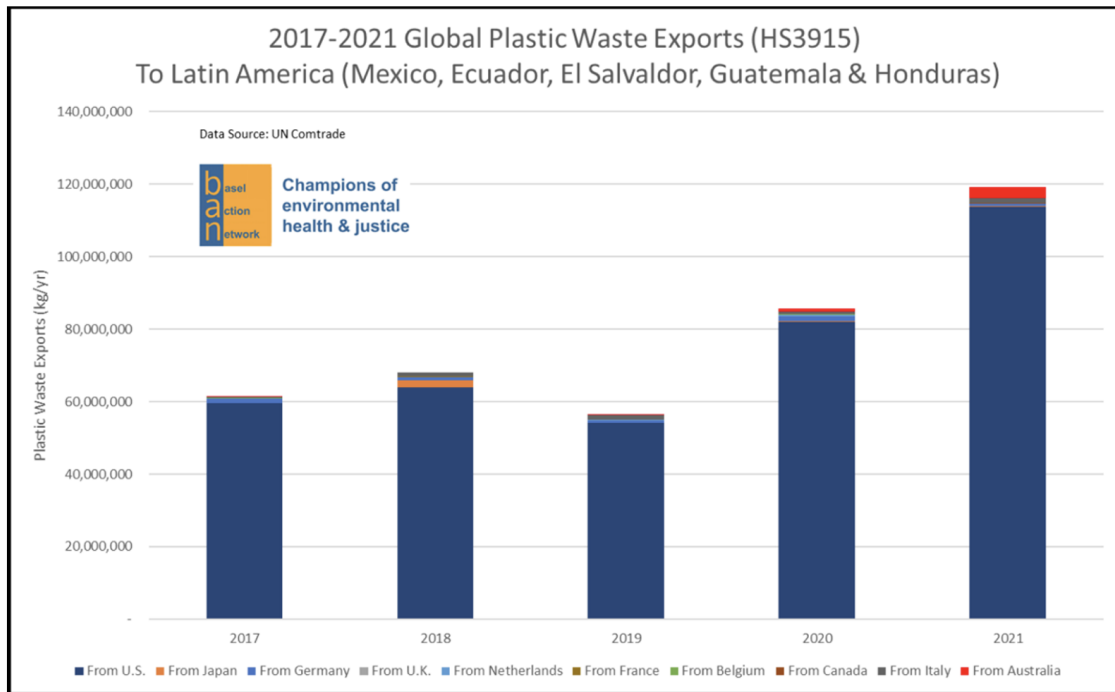
Business-as-Usual Even When it is Now Illegal

As Parties meet face-to-face for the first time since the historic April 2019 Conference of the Parties when new rules on plastic waste trade were adopted, it is time to take stock of whether these rules are working as intended to prevent the acute harm to the environment and communities from incomplete and harmful recycling operations, and in particular in weaker economies. One way to take stock is to examine the trade data from 2020 in comparison with 2021-- the first year of experience when the amendments were in force.

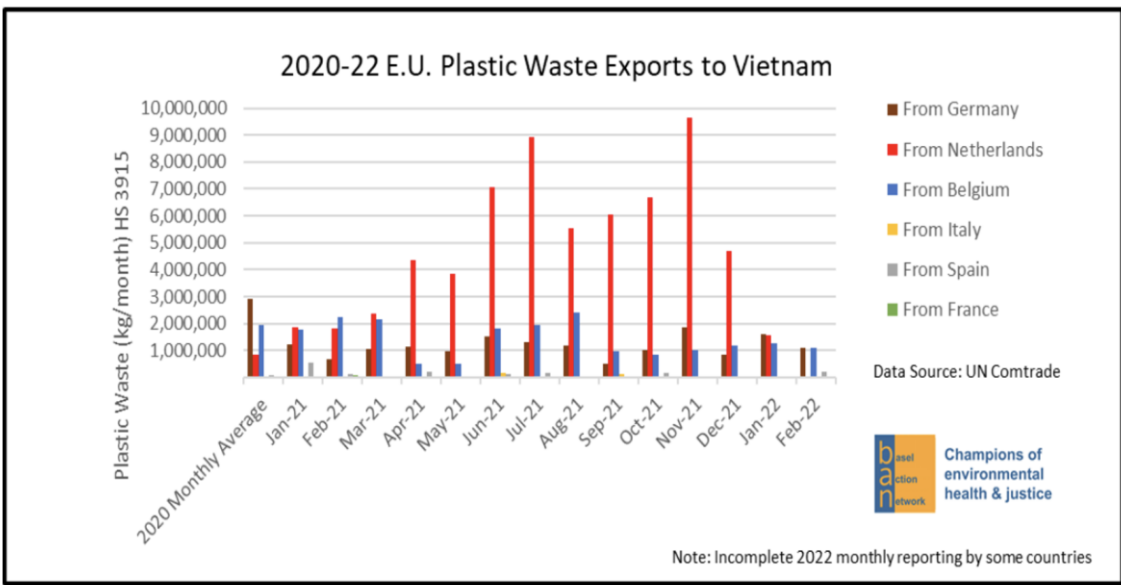
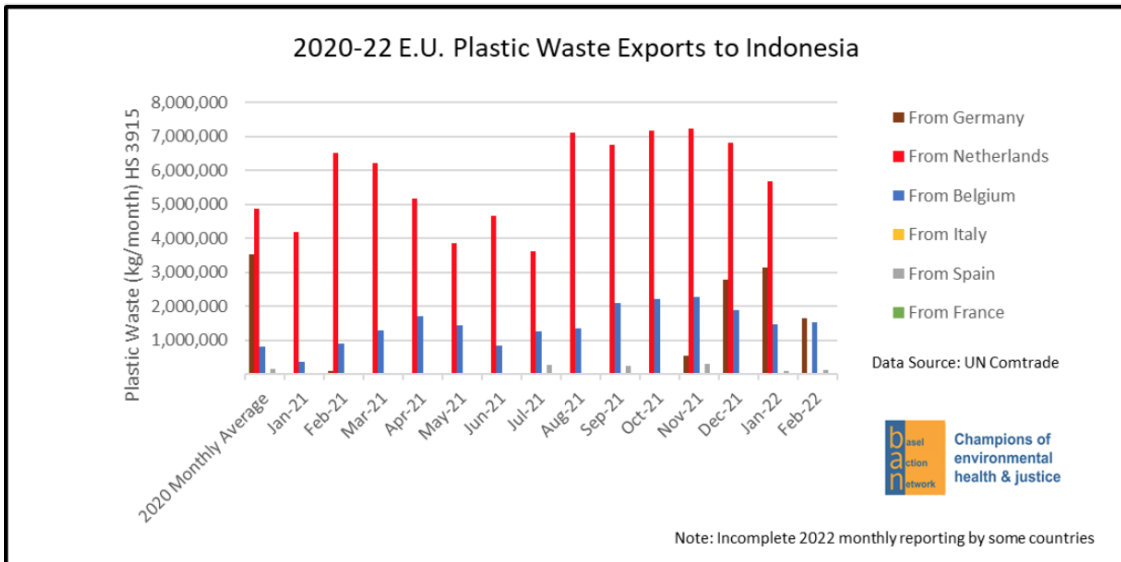


While Comtrade data shows that the overall trade in plastic waste diminished by approximately 14% from 2020 to 2021, as has been noted in a [recent study by the OECD](#), the reasons for this decline are not easy to discern. The OECD notes that several different factors associated with the COVID-19 pandemic may have affected trade patterns of plastic waste and scrap, including supply chain disruptions related to shipping container shortages, challenges with land-based transportation, port shutdowns, and labour shortages.

Thus, it is hard to attribute the decline to the Basel Plastic Waste amendments, particularly when we have little corroborating evidence, anecdotal or otherwise, that would indicate enforcement of the amendments has been rigorous with seizures and rejection of illegal shipments increasing in 2021 compared with 2020. We would welcome such evidence of rigorous implementation and enforcement. On the contrary, apart from some concerning increases in exports to **Mexico** and the rest of **Latin America**, mostly from the **US**, and the emergence of the **Netherlands** as a Europe-to-Asia transit hub, the *big story* is that we are witnessing far too much "business as usual," even when such business may now be illegal.



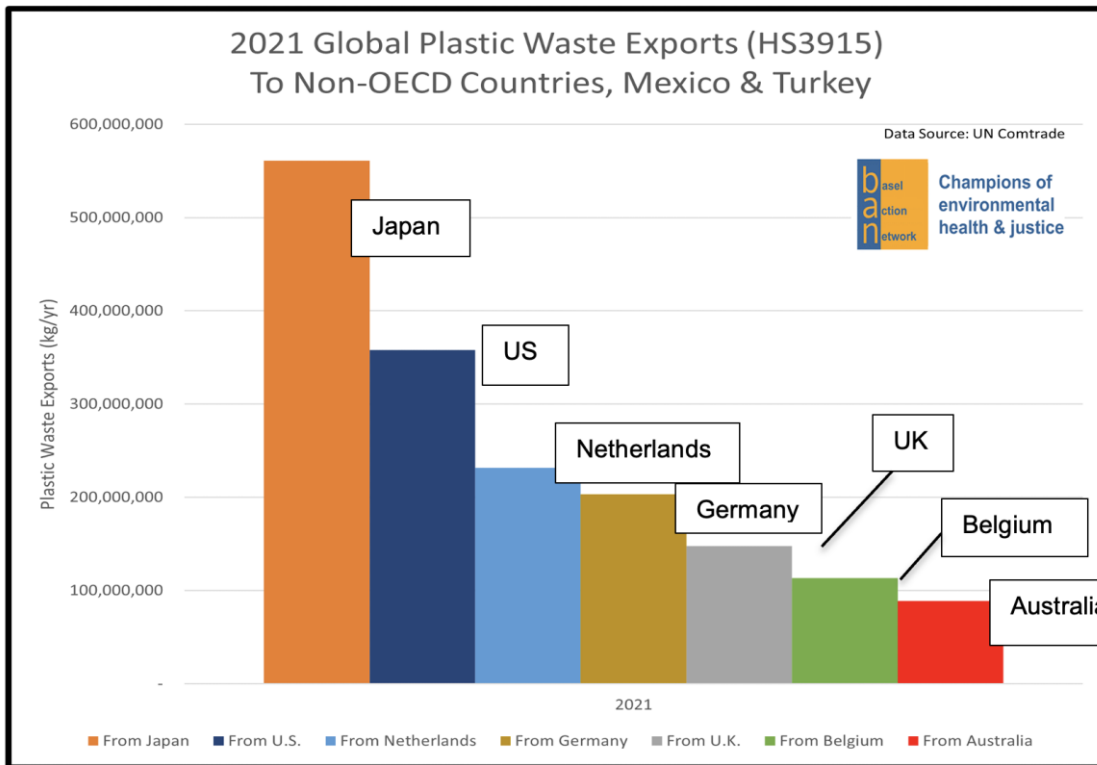
US exports are increasing dramatically to Latin America. As the US is a non-Party it is likely many of these are illegal shipments of Y48 wastes.



The two tables above illustrate the surprising amount of exports recorded from **Netherlands** to two Asian non-OECD destinations. The large port of Rotterdam is likely being used as a transit port for wastes from all over Europe/UK. These exports should be recorded as transit and not export. Dutch authorities need to address this situation as a matter of urgency.

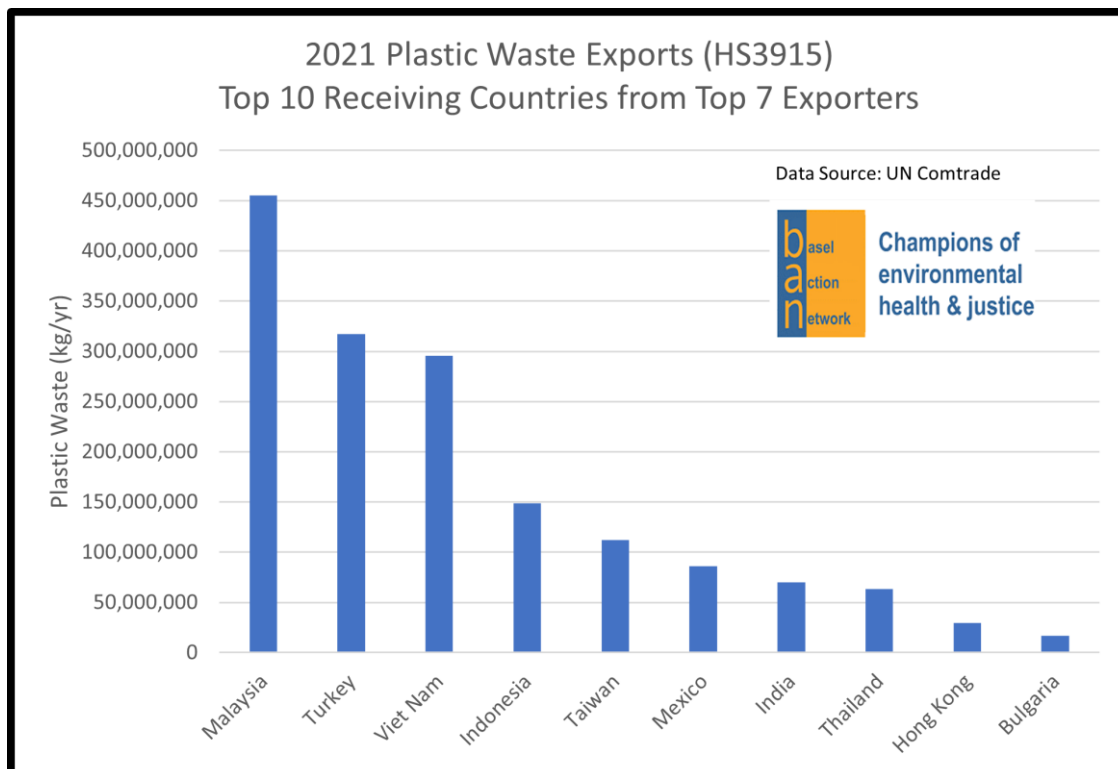
The Plastic Waste Trade of Most Concern -- From Rich to Weaker Economies

In the chart below we can see the top seven plastic waste exporting countries that continue to ship plastic waste to non-OECD countries, Turkey, and Mexico.



As we can see, **Japan** leads the world, followed by the **US, Netherlands, Germany, the UK, Belgium** and **Australia** as the top seven countries exporting plastic wastes to weaker economies.

The top ten destinations for those seven are as follows:



Malaysia is the global plastic waste destination of choice, followed by **Turkey, Vietnam, Indonesia, Taiwan, Mexico, India, Thailand, Hong Kong** and **Bulgaria**.

Why it is Likely Much of the Current Plastic Waste Trade is Illegal

The consensus decision at the Basel Convention Conference of Parties (COP14) most notably created three categories of plastic wastes. The most significant category was a new listing on Annex II (wastes for special consideration) -- Y48. This listing includes all plastic wastes that are not deemed hazardous (A3210 on Annex VIII) or not deemed non-hazardous (new listing B3011 on Annex IX). Y48 dramatically enlarged the scope of plastics formerly controlled by the Convention.

As a result of this package (Y48, A3210, B3011) of new waste listings, the *only* plastic wastes exempted from Basel controls (Annex IX entry B3011) are paraphrased here as the following:

Plastic wastes destined for environmentally-sound mechanical recycling (Annex IV, R3) that are almost free from contamination and are:

- *Mixes of polypropylene (PP), polyethylene (PE) and polyethylene terephthalate (PET);*
- *Shipments of a single non-halogenated polymer;*
- *Previously exempted wastes of thermoset plastics (cured resins), as well as five fluorinated polymers, although the fluorinated polymers must not be post-consumer waste.*

We would assert that most plastic wastes traded currently do not meet the description above for non-hazardous plastic waste and are likely to either meet the description of A3210 (Hazardous Plastic Waste) or far more commonly Y48, which is virtually a mirror listing of the above. Both A3210 and Y48 listings require at a minimum the control procedure of Prior-Informed Consent (PIC).

And, where non-Parties such as the United States are involved, trade between Parties and non-Parties in Y48 is prohibited in accordance with the Convention, unless a special valid Article 11 agreement exists to trade in such wastes with non-Parties. Similarly, exports of Y48 plastics are banned to non-OECD countries from countries where Parties have included Annex II wastes as part of their national or regional implementation of the Basel Ban Amendment (new Article 4a). This is the case now with the European Union and thus exports of Y48 to non-Annex VII countries are prohibited by those 27 countries.

An examination of the available trade data and commonly-held industry knowledge about what is possible provides certainty that significant volumes of plastic wastes are likely to fall within the Y48 listing and yet continue to be traded to and from Basel Parties without the control procedures (PIC or bans) now required since January 1, 2021 taking place.

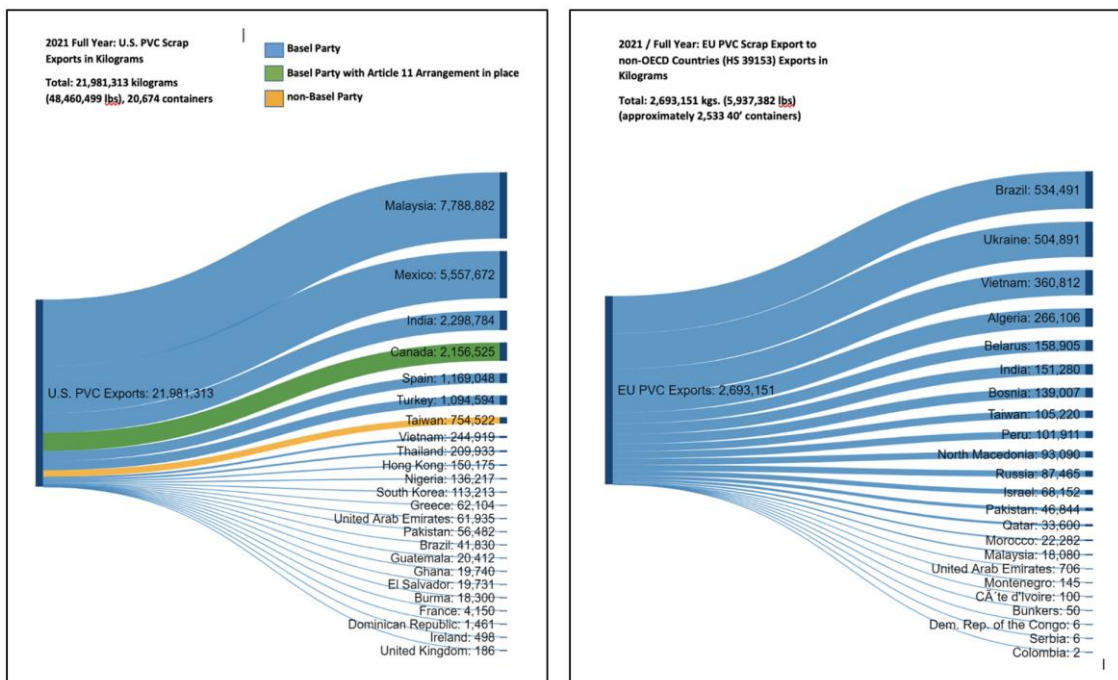
Trade data (e.g. Comtrade) does not usually contain the detailed descriptions of plastic waste necessary to determine whether they are Basel-listed wastes (A3210 or Y48). However, in one instance we can know this, and that is in the case of PVC plastic waste. As PVC plastic waste has its own HS code (39153) and because PVC is a halogenated polymer, it can be considered at a

minimum to be covered by the Y48 listing. Thus, when data exists showing PVC waste moving from the **EU** to non-OECD countries (see chart below), it is clearly illegal because Y48 exports to non-OECD countries are prohibited in the **EU**.

Similarly, when any Basel party imports PVC waste from the non-Party **United States** (see chart below), this is clearly illegal due to the Party/non-Party trade prohibition found in the Convention. The only exception to this is **US** trade with **Canada**, as they have signed a bilateral arrangement that they assert is valid under Article 11.

From the charts below, we can see that the **EU** is in violation of their Basel obligations with respect to PVC exports. We can also see that those Basel Parties importing controlled wastes from the **United States** (a non-Party) are in violation of their Basel obligations. These include **Malaysia, Mexico, India, Spain, Turkey, Vietnam, and Thailand**. This illegal trade should not be difficult to uncover and prosecute as the records of the bills of lading, which reveal the exporters and consignees, are already in the hands of the NGOs like BAN and governments. This is low hanging fruit for customs and environmental agencies. There is a strict and obvious duty within the Convention to prosecute and punish illegal traffic (Article 9,5). Why is this not taking place?

Likely Illegal Trade in PVC Plastic Scrap from EU and US



Blue bands indicate illegal trade in PVC from the US and from the EU. In total they add up to 21,763,471 kgs. (47,980,240 lbs.) representing 20,469 40' intermodal containers.

Other Likely Violations of the Convention's New Plastic Waste Rules

PVC export violations are easy to prove, but it is also not difficult to assert that much of the non-PVC plastic waste trade is also illegal. Why do we say this?

Since the majority of collected plastic wastes are post-consumer wastes and not post-production wastes (e.g. factory scraps), they are collected from households and small businesses pre-mixed and contaminated with other types of plastics or wastes. Such pre-mixed and contaminated wastes cannot be easily separated by polymer type and cleaned of contamination by human intervention, either by hand or even with the most modern technologies.

The matter of how much contamination is too much for the new Basel listings is important in this regard. So far, this has been left to individual Parties to determine based on the interpretation of the language provided in the new listings (i.e., "almost free from contamination and other types of wastes"). BAN has been following national developments in this regard and has created an [in-progress table](#) of allowed contamination levels by various countries. Most countries have set contamination levels between 0% and 5%. We know that much of the currently generated and traded plastic waste, in particular post-consumer waste, exceeds such levels.

Unless new and very costly systems are employed to separate and clean the mixed polymers thoroughly and to assess the potential for hidden additives that might render them hazardous plastic waste, they will qualify at a minimum as Y48 and thus be subject at least to the minimum trade control (PIC) under the Convention. Moreover, in the case of exports from EU to non-OECD countries or imports from the US to other Parties (other than Canada), this trade should be prohibited.

Even large amounts of post-commercial waste are known to be commonly mixed polymers or contaminated. Agricultural plastics routinely experience high levels of contamination from soil and chemicals. Electronics and appliance recyclers do not possess polymer separation processes and routinely bale up several different types of "computer plastic".

Adequate separation and cleaning technologies are not widely available in most jurisdictions. First, it is a very significant added expense to provide these steps in the exporting countries, and second, there has been little incentive to do so until now. For many years, until the adoption of a new "National Sword" Policy in 2017, China readily accepted mixed and contaminated wastes. After that, the exports simply moved to a wider variety of destinations including Turkey, Malaysia, Thailand, Vietnam, Mexico, India, and Pakistan.

Consequently, adequate capacity for proper processing of mixed and contaminated plastic wastes prior to export does not currently exist, and this represents the vast majority of wastes made available to the international market. So, even though an HS customs code does not exist to determine that a plastic is Y48, we know that much of what is now being currently exported as HS 3915 (plastic scrap) is in fact Y48 or A3210 -- and should be subject to Basel controls. How much is impossible to know without enforcement activities, which must include inspections, followed by penalties for violators. But where is this enforcement? We see little evidence it is taking place.



Malaysia Inspection Agency SIRIM responding to BAN/BFFP/SAM alert examining container to determine legality of imported plastic wastes. May 2022. Copyright Department of Environment.

Alerts to Importing Countries Fall on Deaf Ears

Two months prior to the COP15 meeting, BAN sent a series of letters alerting the competent authorities of five major importing countries in an effort to assist in intelligence-led enforcement actions by the states concerned. We alerted the countries of **Malaysia, Indonesia, Vietnam, Thailand, and India** of en route exports of plastic wastes with a high likelihood of being illegal traffic from the United States to their ports and giving the authorities time to intercept the shipments and conduct inspections. [These warnings](#) came with information acquired by BAN via trade data subscription services including container numbers, ship name, port name, and estimated times of arrival. One would think such information would be seen as invaluable in assisting enforcement and would almost certainly provide some confidence in assuring compliance with Basel obligations. Yet to date, of the five countries contacted, we have only had confirmation from **Thailand and Malaysia** that they took the warning seriously, but we have yet to learn the outcome, while **Vietnam** acknowledged receipt of our information and nothing more, and **India and Indonesia** have failed to respond at all. Such lack of diligence following contraband warnings is concerning.

Illegal Attempts to Use Article 11 to Circumvent the New Rules by OECD Countries

Perhaps even worse than ignoring the enforcement of the new Basel plastic waste trade rules are the actions taken by some exporting countries to intentionally and illegally refuse to accept the new listings and requirements. In this regard, we can sadly report that collectively the **European Union and its Member States** and the tandem of the **United States** and **Canada** have claimed that they can use Article 11 of the Convention to unilaterally ignore the new rules entirely for trade amongst themselves. After the adoption of the amendments in 2019, the **US** and **Canada** hastily forged what they call an "[arrangement](#)" supposedly faithful to Article 11 of the Convention. Likewise, the **European Union** asserted that they too were not going to adopt the new listings for trade between their 27 member states. Why? Because they promised their waste industry they would not do so.

Unfortunately, however, as has been [called out by the Center for International Environmental Law \(CIEL\)](#), both of these unilateral actions are a clear derogation from Article 11 and are thus illegal. Article 11 requires these side agreements to be "not less environmentally sound than those provided for by this Convention." Ignoring new obligations made to protect the environment is obviously less environmentally sound than abiding by them. Such maneuvers should be called out for what they are: a cynical self-serving attack on the integrity of the Convention and an attack on global governance.

Meanwhile, non-State Actors Have Taken Greater Actions than Parties

If it can be observed that very little action is being taken to enforce the new Plastic Waste Amendments by Basel Parties, with Parties even conspiring to ignore the implementation of the agreements, we can happily report that actors in some local governments, in political parties, and in the private sector have taken significant steps in the right direction. Here we cite three laudable and decisive steps in the right direction:

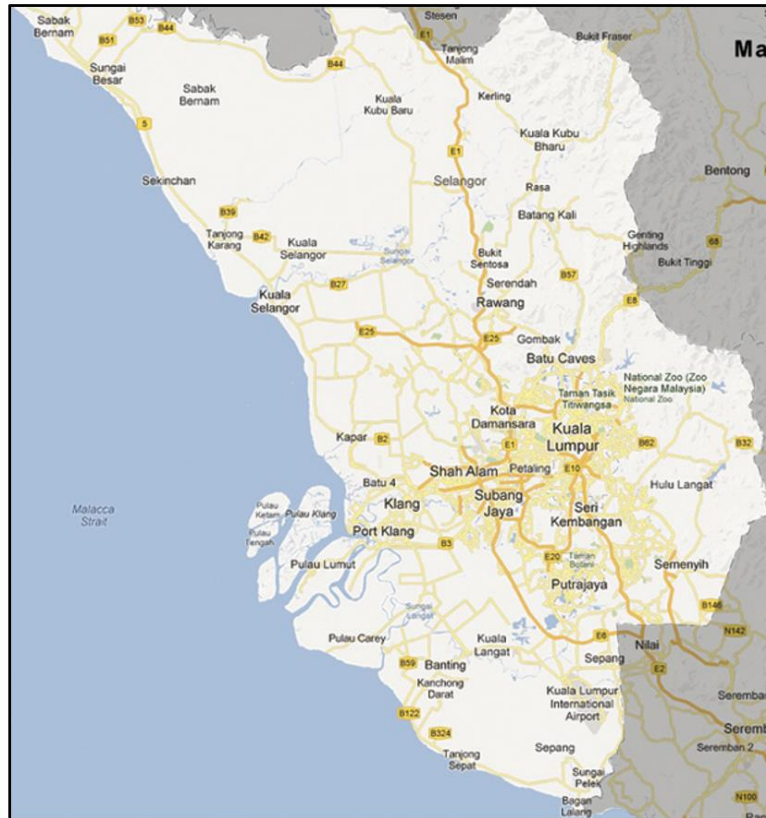
1. EU Parliamentarians Propose Full Plastic Waste Export Ban and Reform EU Failure to Accept Plastic Waste Amendments

Parliamentarians from the Party groupings of the Greens, RENEW Europe, and the Socialists and Democrats have called for a total ban on all exports of plastic waste of all kinds (B3011, A3210, and Y48) from the European Union. Also, in the mix of amendments is a proposal to ensure that the **EU** does not provide themselves with a unilateral exemption on full notification and consent requirements of the Basel Convention for internal **EU** trade in mixed and contaminated plastics. Further amendments are proposed to ensure that "refuse derived fuels" are categorized as wastes to be controlled. If the EU agrees to these reforms, they can truly be said to be global leaders in projecting an ethical circular economy where the export of externalities and harm are no longer permitted.

2. Malaysian State of Selangor Bans the Import of Plastic Waste

Home to Port Klang, Malaysia's largest port, and surrounding the capital city of Kuala Lumpur, the Malaysian state of Selangor has [banned](#) the import of plastic waste and will be limiting consideration and approval of new licenses for

plastic waste recycling plants. This action is bringing [renewed calls](#) by Malaysian NGOs to ensure that the entire country follows suit. Despite Malaysia's [current requirements](#) of 0% non-recyclable contaminants for plastic waste imports, the country now leads the world as a the largest target for Plastic waste traders after Chinese businessmen migrated to Southeast Asia following China's National Sword import ban, and it is very clear that not all of it is being recycled or recycled properly.



State of Selangor, where the plastic waste imported into Malaysia ends up.

3. Shipping Giant CMA-CGM Voluntarily Refuses to Ship Plastic Waste

As of June 1 of this year, CMA-CGM will no longer allow their ships to carry plastic waste. This remarkable decision followed the launch of a [shipping lines campaign](#) in February of 2021. In [a statement](#) released following the One Ocean Summit organized by French President Emmanuel Macron, the shipping giant with 566 ships in its fleet said the decision was made "heeding the urgent calls made by certain NGOs" and "will prevent this type of waste from being exported to destinations where sorting, recycling or recovery cannot be assured."



Conclusion / COP15 Recommendations

The world applauded when the Basel Convention Parties adopted by consensus the package of plastic waste amendments first proposed by Norway in 2019. At that time, we had much to celebrate and truly believed we had placed a cornerstone in a new edifice that would begin controlling and rolling back the international plastic waste crisis. We all presumed diligent implementation and enforcement would follow. Sadly, since that time, efforts by Basel Parties have not been commensurate with our promise to address the crisis identified. Passing rules and then ignoring or refusing to implement them is lazy at best and cynical and corrupt at worst. We must do better. And in particular, the countries singled out by the data above showing them to be leaders in the global plastic waste trade we all sought to curtail, *must do better*.

A. Increase Implementation and Enforcement of the New Basel Rules

It is without question that we must respond with vigor to the data and signs that show diligent implementation and enforcement of the new amendments is lacking.

→ Parties must vow to work in their own country to increase and improve enforcement efforts. Customs and environment agencies must cooperate to conduct port inspections and impose high penalties for violators. Parties must respond to alerts from NGOs, and others regarding shipments of plastic wastes entering their territories. They must monitor the imports and exports from brokers and recyclers in their jurisdictions.

B. Plastic Waste Technical Guidelines / Need Continuing Work

As Basel's next important contribution to the new Global Treaty negotiations underway at UNEA, we need to ensure that the Technical Guidelines on

Plastic Waste truly provide the best practical solutions for Parties that will not exacerbate the climate crisis and will not use the term "recycling" as "green wash". The Guidelines must provide for Parties a clear-eyed look at the pollution caused by recycling operations and the inherent limitations of recycling of plastics in the face of polymer chain shortening and additives, lack of value in the face of virgin plastic prices, and other economic and technical limitations. The Guideline must also delve into the larger issues such as how to manage micro-plastics, what plastics are in fact A3210 (hazardous), and how to deal with plastics mixed into other listings (tires, textiles, electronic waste, etc.). Finally, despite an excellent start to the section on Prevention, as this is clearly the most vital guidance we can provide to solve the plastic waste management issue, this needs to be further strengthened with case examples and models for Parties.

In our view, the Guideline is not complete nor of a high enough quality to accomplish the above as yet and will need more time than COP15 allows for adequate completion.

→ **Work should continue to improve the existing Guideline but it cannot be seen as complete at COP15. If it is adopted at COP15, it should only be adopted on an interim basis, with gaps identified and work of the SIWG made ongoing and added at a later date.**

C. Towards a Systemic Solution: Minimize Plastic Generation via the New Treaty

Increasingly, it has become clear that the primary reason plastic waste moves across borders is due to the fact that most plastic waste cannot be economically collected, separated, and safely recycled in the countries that generate such waste. Plastic waste has little value, is not able to be recycled more than one or two cycles, requires constant additions of virgin plastic derived from fossil fuel, and is laden with a plethora of toxic additives making safe recycling and reuse impossible. In short, plastic is not an inherently circular product. A recently released OECD report, [Global Plastics Outlook: Economic Drivers, Environmental Impacts, and Policy Options](#), indicates that only about 9% of plastic today is recycled, and this is some 50 years after plastics recycling has been highly promoted. Further, we would argue that this figure is inflated given that much of the waste that has been exported for recycling is only partially recycled. And even that fraction of the 9% that is recycled remains guilty of perpetuating a circle of poison due to the recycling or reshuffling of toxic additives into new post-consumer markets.

Waste trade controls are critical, but as the Basel Convention's Preamble duly recognizes, *"the most effective way of protecting human health and the environment from the dangers posed by such wastes is the reduction of their generation to a minimum in terms of quantity and/or hazard potential."* That should be the theme for the new Treaty.

→ **Basel Parties, both within Basel and in the Plastic Treaty negotiations must support a global treaty that emphasizes reduction of the generation of plastic wastes in terms of quantity and hazard potential.**

For more information:

- A full array of import export data and charts can be found at BAN's [Plastic Waste Trade Hub](#).
- See the [Plastic Waste Guideline Comments](#) submitted by BAN/GAIA/EIA.
- Find [here](#) the Basel Convention Policy Briefs on plastic waste produced by GAIA.
- Find [here](#) the BRS 2020 Quick View produced by IPEN.

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