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February 25, 2015

The Honourable Lynne Yelich, P.C., M.P.
Department of Foreign Affairs
125 Sussex Drive
Ottawa, Ontario K1A 0G2

RE: Illegal Waste Shipment from Canada to the Philippines

Dear Hon. Yelich,

With this letter, the environmental non-profit organizations Basel Action Network (BAN) and Ban Toxics seek to address and receive a response from the Canadian government in regard to the dumping of Canadian household waste in the Philippines. Our findings assert that Canada is now out of compliance with its legal obligations under the Basel Convention. As you know, Canada demonstrated its commitment to protecting the environment and human health by ratifying the Basel Convention in August 1992.

It has been more than 500 days (roughly a year and a half) since the first illegal shipment arrived in the Philippines and more than a year has passed since the Philippine government and environmental and health organizations sought to repatriate more than fifty 40-foot intermodal shipping containers full of mixed household wastes including non-recyclable plastics, waste paper, and used adult diapers.

So far, the Canadian government has not acted with due diligence, nor as they are legally required to act under their Basel Convention obligations. BAN and Ban Toxics have documentation that demonstrates beyond reasonable doubt that much of the waste is defined as "Other Wastes" in Annex II of the Basel Convention (Annex II, Y46 -- *wastes collected from households*).

Because it is clear that Canada's export of this Annex II waste was not preceded by notification nor consent by the Government of the Philippines, as required under the Convention, the shipment was *illegal traffic* as defined in Article 9 of the Convention (Art. 9, 1 [a – e]). According to the Convention, illegal traffic is deemed to be a *criminal act* that should be prosecuted diligently by all Basel Parties concerned (Art. 4, 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 exporting state has been informed about the illegal traffic.

According to our records, the 30-day clock stopped ticking on April 14, 2014. Now, exactly 317 days later, Canada has done nothing. As a result, Canada is out of compliance with the Convention for not taking remedial action as described in Article 9, paragraph 2, (a) or (b).

In sum, Canada has failed their international environmental commitment on two counts:

(1) by not proceeding with prosecution of illegal trafficking of Basel Annex II waste, and

(2) by not initiating management of the shipment's return or alternative disposal within 30 days.

Perhaps Canada has mistakenly concluded that it lacks domestic or international authority to compel the shipper to return the shipment. Ambassador Reeder reported this incorrect view in June 2014.

However, there is recent precedent for a more appropriate response to a similar situation, which took place in 2009 when 89 containers holding 15,000 tonnes of United Kingdom household waste appeared in Brazil. Immediately accepting responsibility, the UK embassy in Brazil stated:

"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, as this avenue can only be explored if the repatriation is "impracticable" (Art. 9, para. 2).

In light of the above, BAN and Ban Toxics respectfully request a meeting with relevant officials of the Ministry of Foreign Affairs, the Ministry of Environment, and the Attorney General of Canada to understand the lack of action on this matter in accordance with your Basel Convention obligations with a view to arriving at a solution as soon as possible.

Continued absence of action and engagement from the Canadian government, will cause us to have no other choice but to raise our concerns as a matter of urgency at the Basel Convention Conference of Parties in May 2015, with the United Nations Special Rapporteur on Human Rights and Toxic Waste and Chemicals as well as with the global media. We may likewise be forced to explore legal avenues to enforce the Basel Convention obligations as they are implemented under Canadian law. Rather than taking these steps which would expend a great deal of time and effort on all our parts, we would vastly prefer an expedited solution where Canada would recognize the appropriate response and:

1. Organize the repatriation of all exported containers urgently and have them recycled or disposed of in an environmentally sound manner in Canada.
2. Prosecute the exporter for illegal traffic and seek recovery of all costs incurred by all parties involved as a result of this illegal traffic, including the costs of transport and

waste recycling or disposal.

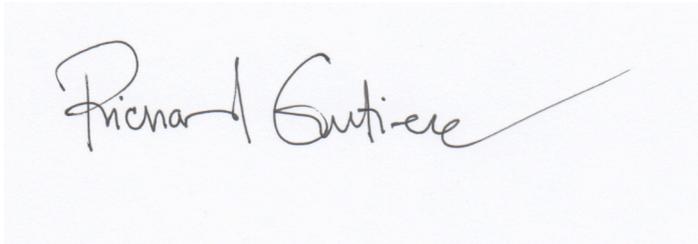
3. Consider improvements in domestic legislation and implementation to improve control and enforcement of transboundary movement of waste from Canada.

In sum, we seek a meeting to discuss the Canadian view with respect to the above three points as a matter of urgency. We welcome either a conference call or face-to-face meeting. We look forward to hearing from you regarding this request by March 4, 2015. We stand ready to work with you in the spirit of cooperation to resolve this problem.

Sincerely yours,



Jim Puckett
Basel Action Network



Richard Gutierrez
Ban Toxics

cc.

Office of the Minister of Foreign Affairs, Hon. Robert Nicholson, P.C., Q.C, M.P.

Hon. Peter Gordon MacKay, P.C. Q.C. M.P., Attorney General of Canada

Hon. Leona Aglukkaq, P.C., M.P., Minister of Environment

Hon. Julie Gelfand, Commissioner of the Environment and Sustainable Development
Basel Convention Competent Authority, Gwen Goodier

Ms. Julie Croteau, Basel Delegate: Environment Canada, Programme Scientist

Ms. Anne Daniel, Basel Delegate, Canadian Department of Justice

Canadian Environmental Law Association, Executive Director, Theresa McClenaghan

ANNEX

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 the shipment 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 covered 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 *5 January 2014*, the petition was signed by 25,001 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 Canadian government officials Mr. 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 Sanes 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.

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).

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.

Financial Costs

As of January 5, 2015, the Canadian waste shipment costs the Philippines **PhP 72,490,055.61** (US\$ 1,611,887.61) in rental costs and demurrage. This is the total cost of 554 days that the shipment is staying in the Port of Manila. The computation is as follows:

Demurrage

PhP 2,000 (US\$ 44.47) per day x 50 container vans x number of days

Rental Costs

PhP 1,080 (US\$ 15.86) per day x 50 container vans x number of days

The Canadian waste shipment costs PhP 130,848.48 (US\$ 2,910.61) per day that it remains unclaimed.

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