

The Basel Ban Amendment: Just Say Now!

Long Overdue

Ever since its inception, the intent of the majority of the world's nations that came together in Basel in 1989 to create a treaty on hazardous waste dumping, sought a ban on the export of such waste from developed to developing countries. However they were rebuffed by most of the developed countries. And, ever since its entry into force in 1992, the Contracting Parties of the Basel Convention worked to fulfill this promise and make this effort of a full ban on the exports of hazardous wastes the overarching priority of the Convention's work. Finally in 1995, the Ban Amendment became the most significant accomplishment 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, VII and X all Parties were urged to ratify the Ban Amendment at the earliest opportunity (**Decisions IV/7, V/3, VI/33, VII/23, X/3**).

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

Now, 26 years since the adoption of the Convention when the ban was first conceived, and more than 20 years since its adoption the Ban has still not entered into force. But there is great hope now that this day will not be far off.

The Basel Ban is seen as vital for two primary reasons:

- To prevent damage to the environment and human health caused by the export and disposal of hazardous wastes to countries that did not benefit from their creation and possess less infrastructure and resources to mitigate the great harm associated with such wastes.
- To ensure that waste generators will not avoid taking responsibility to minimize the generation of hazardous wastes through clean production technologies and methods at source

rather than externalize their costs to countries where disposal is less costly than at home.

We Now Have 81 Ratifications! Why the Delay?

The Basel Ban Amendment has now exceeded what many considered the magic number of 68 ratifications –3/4 of the number of Parties present (90) in 1995 when the landmark decision was adopted. However as the ratifications began to approach the number, people discovered upon a close reading, that the text of the Convention regarding entry into force of amendments was ambiguous. The small minority of countries that opposed the amendment seized upon the vague wording. For them this was a new tool to prevent the imminent entry into force. In the absence of an agreement by the Parties on what Article 17, paragraph 5 really meant, the Office of Legal Affairs (OLA) at the United Nations stated that they would apply what is known as the “current time” approach, requiring ratifications of ¾ of the number of Parties at any given time. Such an approach would have required 133 countries at the time.

The “fixed time” approach however was what appeared to be closest to what the original authors seemed to have meant. A fixed time approach would draw its “¾” from the actual 90 listed countries that were Parties to the Convention in 1995 when the Amendment was adopted. If you ratified the Ban Amendment but were not a Party at COP3 then your ratification would not count toward entry into force.

At COP9 the Parties were poised to decide on an interpretation that would move the ban into force at the earliest possible date but then they could not decide how to decide. A small minority of countries claimed that any decision to interpret the treaty would need to be decided by consensus and not by the Rules of Procedure. The Rules of Procedure allow for a vote on the matter should consensus not be achieved. Because certain countries remained adamant about blocking consensus in order to thwart the overwhelming will of the global community for a ban, placing the viability of the ban in the hands of a consensus process would have been the death knell for the Amendment. Thus it was that at COP9 the process to decide on how to decide reached an impasse and the ban's entry into force was blocked by default.

CLI to the Rescue

At that point the Indonesian Presidency joined hands with Switzerland and announced the formation of a Country Led Initiative (CLI) that would seek to find a diplomatically way to assuage the concerns of those countries that were blocking the passage of the long sought prohibition. Several Party only meetings were held and issues about the Ban were aired.

At COP10, Parties adopted the Omnibus Decision including the

“fixed time” approach interpretation of Article 17, paragraph 5 that would allow for the Amendment to enter into force swiftly. The decision also called for work on legal clarity, guidelines, and environmentally sound management.

Only 12 Parties Needed!

Today, only 12 more ratifications from the pool of countries present at COP3 are needed to enter the Amendment into force and have it become part of the Convention itself.

While it is urgent for all countries that have not yet ratified the Ban Amendment to do so, it is imperative that those countries that were Parties in 1995 and listed in the “Not Yet Ratified Ban” column below do so immediately to fulfill this historic agreement.

Parties in 1995 (90)	
Ratified Ban Already	Not Yet Ratified Ban (12 more of these are needed for entry into force)
Argentina, Austria, Belgium, Chile, China, Congo, Cote d'Ivoire, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Estonia, European Community, Finland, France, Germany, Greece, Guatemala, Hungary, Indonesia, Ireland, Italy, Jordan, Kuwait, Latvia, Liechtenstein, Luxembourg, Malaysia, Mauritius, Monaco, Netherlands, Nigeria, Norway, Oman, Panama, Peru, Poland, Portugal, Qatar, Romania, Saint Lucia, Saudi Arabia, Slovakia, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Trinidad and Tobago, Turkey, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Zambia	Antigua and Barbuda, Australia, Bahamas, Bangladesh, Brazil, Canada, Comoros, Costa Rica, Croatia, Cuba, Dem. Rep. of Congo, El Salvador, Guinea, Iceland, India, Iran, Israel, Japan, Lebanon, Malawi, Maldives, Mexico, Namibia, New Zealand, Pakistan, Philippines, Republic of Korea, Russian Federation, St. Kitts and Nevis, Senegal, Seychelles, South Africa, United Arab Emirates, Vietnam
Total 56	Total 34

Ratification Progress Report for All Parties

As the Basel Ban is really an Annex VII country export ban, it is also 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. The record of the non-European Annex VII countries on the other hand, has been sadly irresponsible apart from **Turkey** and **Chile**. Failure to ratify the Basel Ban sends the unmistakable message that these countries are not fulfilling the Basel obligation of national self-sufficiency in waste management (Art. 4(2)b). Surely if any country can achieve this, it is the Annex VII countries.

BAN Ratification Tally	
ANNEX VII	
RATIFIED (32)	Austria, Belgium, Chile, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, UK.
NOT RATIFIED (10)	Australia, Canada, Croatia, Iceland, Japan, Israel, Mexico, New Zealand, South Korea, United States,
NON-ANNEX VII	
RATIFIED (49)	Albania, Andorra, Argentina, Bahrain, Benin, Bolivia, Botswana, Brunei Darussalam, Bulgaria, China, Colombia, Cook Islands, Congo, Cote d'Ivoire, Ecuador, EU, Egypt, Ethiopia, Gambia, Ghana, Guatemala, Indonesia, Jordan, Kenya, Kuwait, Lesotho, Liberia, Macedonia, Malaysia, Mauritius, Moldova, Monaco, Montenegro, Morocco, Nigeria, Oman, Panama, Paraguay, Peru, Qatar, St. Lucia, Saudi Arabia, Serbia, Sri Lanka, Syrian Arab Republic, Trinidad and Tobago, Tunisia, Uruguay, United Republic of Tanzania, and Zambia.
NOT RATIFIED (74)	Afghanistan, Algeria, Angola, Armenia, Azerbaijan, Barbados, Belarus, Belize, Bhutan, Bosnia/Herzegovina, Burkina Faso, Burundi, Cameroon, Cambodia, Cape Verde, Central African Republic, Chad, Djibouti, Dominica, Dominican Republic, Equatorial Guinea, Eritrea, Fiji, Gabon, Georgia, Guinea Bissau, Guyana, Haiti, Honduras, Iraq, Jamaica, Kazakhstan, Kiribati, North Korea, Kyrgyzstan, Lao People's Dem. Rep., Libyan Arab Jamahiriya, Madagascar, Mali, Marshall Islands, Mauritania, Federated States of Micronesia, Mongolia, Mozambique, Myanmar, Nauru, Nepal, Nicaragua, Niger, Palau, Papua New Guinea, Rwanda, St. Vincent and Grenadines, Samoa, Sao Tome and Principe, Sierra Leone, Singapore, Solomon Islands, Somalia, Sudan, Suriname, Swaziland, Thailand, Togo, Tonga, Turkmenistan, Tuvalu, Uganda, Ukraine, Uzbekistan, Vanuatu, Venezuela, Republic of Yemen, Zimbabwe
TOTAL	81 Ratifications

It has been 19 years since we have been gathering ratifications for the amendment and now we have reached 81. It is certain that the Parties did not expect the Ban Amendment to take this long. And, indeed the continued dumping of hazardous wastes such as e-wastes from developed to developing countries has made it clear that we cannot afford to wait any longer to move the Ban Amendment into force. We urge all countries to ratify the Ban Amendment. But particularly we call on the countries that were Parties to the Convention in 1995 to do so as a matter of great urgency.

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