

Violation of Basel Convention by Argentine Decree

The Basel Convention has defined waste in Article 2(1) as “substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law”.

Disposal is defined by the Annex IV destinations (Article 2(4)). Thus, waste is also defined by Annex IV destinations. Annex IV intentionally contains a Part A (final disposal destinations) as well as a Part B (recovery/recycling/reclamation/direct reuse destinations). Since Article 2(1) defines waste as substances to be disposed of and since Article 2(4) defines disposal as all operations specified on Annex IV (both part A and B), any substances or objects destined for Annex IV B recycling destinations are wastes under the Basel Convention.

Argentina is a Party to the Basel Convention and as such must meet the obligations and adopt the definitions of the Basel Convention (Article 4(4)). Under the Basel Convention, Parties are required to implement the definitions and other obligations of the Convention into their national law and ensure that persons in their national jurisdiction are following the Convention as well (Article 4 (4) and Article 4 (7a)). When a Basel Party derogates from the baseline obligations of the Convention, its actions are illegal under the Convention.

The Convention does not allow any national reservations. Parties are however allowed to impose additional requirements as long as they are consistent with the provisions of the Convention (Article 4 (11)). Parties can also add to the scope of the Convention in their domestic legislation by including additional wastes in their national hazardous waste definitions (Article 1(1)(b)), but they cannot narrow the scope, e.g. with new more narrow definitions of waste created at a national level unilaterally. Such a change would have to be agreed by all Parties and the Basel Convention amended accordingly.

The Argentine Decree [591/2019](#) inter alia upholds the ban on TBM of all wastes (rewording Art 1 of Decree 181/1992) but narrows the definition of wastes (amending Art 3 of Decree 181/1992) rendering the free flow of materials legal under national law which otherwise would be controlled.

Decree 591/2019 in its Article 2 includes a set of new criteria defining non-wastes, in effect exempting many Basel wastes from the Argentine waste definition, and thus exempting them from the import ban and other possible control:

- “a. That the substance or object be used for specific purposes;
- b. That there is a market or demand for said substance or object;
- c. That the substance or object satisfies the technical requirements for the specific purposes, and complies with existing legislation and standards applicable to the product;
- d. That the use of the substance or object does not generate adverse impacts to the environment or health.”

These new criteria are not consistent with the waste definition of the Basel Convention as they dramatically reduce the scope of the Convention's application for Argentina. All of the four exemptions in Article 2(a-d) of the Decree violate the definition of waste of the Basel Convention:

Article 2(a) of the Decree: The Basel Convention does not stipulate that a substance or object used for a specific purpose is not waste as defined under Article 2(1), 2(4) and Annex IV of the Basel Convention. It can be argued that all of the wastes moving to Annex IV B have a purpose -- e.g. to be transformed or reused as a product or input into a production process -- yet they remain wastes under the Basel Convention.

Article 2(b) of the Decree: The Basel Convention does not stipulate that a substance or object that has a market value and demand is not waste. Most wastes that are being recycled in an Annex IV B destination have a value and a market but are still considered to be waste under the Basel Convention.

Article 2(c) of the Decree: The Basel Convention does not stipulate that substances or objects that meet national technical recycling or product requirements or standards are not waste. Such substances are still considered to be waste under the Basel Convention.

Article 2(d) of the Decree: The notion that a substance or object creates adverse impacts to the environment or health is not a valid alteration of the definition of waste under the Basel Convention. This alteration may be relevant with respect to the definition of *hazardous waste*, but not with the definition of waste per se. Further, it can be argued that every recycling operation has negative and positive environmental impacts, thus such a definition would be difficult to interpret and enforce.

Finally, all of these four criteria being met at once, still will not in any way alter the fact that the Basel Convention waste definition is less restrictive.

Conclusion

Argentina is a Party to the Basel Convention and as such must meet the obligations and adopt the definitions of the Basel Convention (cf. Article 4(4) of the Basel Convention). Argentina's Decree [591/2019](#) represents a unilateral derogation from the obligation under the Convention to adhere to the established waste definition found in Article 2(1), 2(4) and its reference to Annex IV of the Basel Convention. The changes do not widen definition of waste as permitted by the Basel Convention (Article 4(11)), but are in fact narrowing the definition of waste under the Basel Convention -- reducing thus the scope of the Basel Convention for Argentina. As such, Argentina's decree violates the Basel Convention and is therefore illegal.



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