

BAN Intervention on Improper Article 11 Agreements

Thank you Mr. President. Following the landmark passage of the Plastic Amendments in 2019, BAN has become alarmed and concerned with the discovery that certain OECD countries have taken action to ignore these amendments in certain circumstances of their choosing by invoking Article 11 of the Convention.

First we cite the European Union's, Norway, Liechtenstein and Iceland's application of the EU Waste Shipment Regulation which has now legislated that these countries can largely ignore the the trade restraints placed on new Plastic Waste entry Y48 within Europe. This unilateral application ignores the trade restraints on mixed plastics, halogenated plastics such as PVC and also ignores the restraints on trade to non-R3 destinations such as landfills, incinerators and cement kilns, for all trade within the EU and EFTA area known as the EEA. This inappropriate decision has created an unfair and unsustainable double standard for Europe with respect to the rest of the world.

Second, we have the case of Canada choosing likewise to ignore the new plastics listings with respect to their trade with non-Party -- the United States.

And third, we have recorded the case of Mexico trading in Y48 with non-Party the US, claiming to invoke the use of the OECD Council Decision as a valid Article 11 agreement, even though the OECD Council never adopted the new listing Y48.

We consider each of these a very clear misuse and illegal application of Article 11, as it is clear by a plain reading that Article 11 can only be used when such agreements do not derogate from the Convention and are no less environmentally sound and provide an equivalent level of control to that of the Convention itself. It is abundantly clear that choosing to not require the PIC procedure and all of the other obligations of the Convention for the newly listed plastics such as Y48 can never be considered as environmentally sound as doing so.

Distinguished Delegates, Article 11 was never meant to be a free pass to ignore the Convention's prohibition against reservations or to avoid the obligations of the Convention. Quite the contrary. It was meant to uphold the basic requirements of the Convention for trade with non-Parties or to create stronger and not weaker agreements.

I am sure you will agree that such interpretations fly in the face of Article 11 and will mean the unravelling of the convention if such attempts by Parties are condoned and not condemned. BAN has released a report on this subject which can be found on the intranet under other documents and on Wednesday evening of next week BAN and the Center for International Environmental Law will hold a side event on this matter. We hope you will read the report, and attend the side event to discuss this matter with a view to finding remedies for this very serious development.

I thank you.