



# delegate alert

## **Canada in Breach of its Basel Obligations by Refusing to Take Back 50 Containers of Household Garbage Illegally Exported to the Philippines**

Prepared by the Basel Action Network (BAN), April 8, 2015

### **Pleas Ignored**

In one of the most egregious willful violations of the Basel Convention by a state yet recorded by the Basel Action Network (BAN), Canada has just refused to repatriate 50 containers of household waste illegally exported to the Philippines almost 650 days ago. Likewise Canada has failed to even proceed to prosecute the exporter for the illegal export, which under the Convention must be prosecuted as a criminal act.

Despite months of pleading by the Philippine government, by local civil society and by BAN(1), Canada finally issued the following statement: “[t]here are not domestic laws which the Government of Canada could apply to compel the shipper to return its containers to Canada.”(2)

Having received this statement, the Philippine’s Foreign Affairs Ministry has apparently given up in trying to get Canada to take responsibility and has called for the wastes to be buried in the Philippines.

However, if the Philippines does this allow this, they themselves will be in violation of their Basel obligations, by enabling what is clear non-compliance of another Party.

If the statement by the Canadian government is true, then Canada has *not* properly transposed the Convention into its national laws. But this rather shocking discovery is nevertheless not a valid legal excuse for not fulfilling its obligations under the Convention. As we shall explain, under its treaty obligations, Canada not only has the authority but is obliged to exercise the authority. It does not have to rely on the “shipper to return its containers”, as a state Party to the Basel Convention the government must do so.

### **The Case for Non-compliance**

Canada has been a Party to the Basel Convention since 1992. The Convention has always obliged Parties to strictly control the exports of not only “hazardous wastes” but also of “other wastes” -- those listed in Annex II of the Convention. Under the Convention’s Article 9, para 1, exports of hazardous *or other* wastes, which are not first notified to and consented by the importing country or are mis-declared, as was the case in this instance, are to be considered illegal traffic. Such

shipments which take place must be repatriated by the exporting country “unless impracticable” (Article 9, para 2).

In this case, as the containers remain full and intact and ready to ship back, the exports could hardly be considered any more impracticable than any other overseas shipment, thousands of which take place every day.

Likewise, all illegal traffic must be prosecuted as a criminal offence. Canada has made no effort to exercise criminal prosecution against the exporter, which it is obliged to do under the Convention (Article 4, paras. 3, 4).

Refusing to do these things by claiming they have no national laws to provide the authority to do so due to faulty transposition and implementation of the Basel Convention, is not the fault of the Philippines. And it can never be used as an excuse to ignore treaty obligations.

The Vienna Convention on the Law of Treaties (1969) to which Canada, and the Philippines are parties clearly states in Article 27: *“A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”*

Thus, Canada’s statement abdicating responsibility due to a lack of proper laws to uphold its treaty obligations is not a justification for failure to perform the treaty.

Further, if the Philippines acts as an enabler of this egregious act of non-compliance they will, in turn, fail to fulfill their own Basel Convention treaty obligations. The Philippines, by accepting this illegal shipment will be violating its obligations found in Article 4, paras 4, and 9. Therefore the Philippines must not allow the burial of this waste on their own soil. They need to remind Canada of their obligations under the Convention and offer to assist them in achieving compliance in this case. Anything less than that places the Philippines also into non-compliance with the Convention. .

### **“Bullying”**

It is hard to imagine a situation that Canada would not have properly transposed the Basel Convention for providing controls on “other wastes” into its national laws, as required, and this has not been corrected in 23 years. However according to an email sent to BAN(3), this appears to be the case. If that indeed turns out to be true, it is even harder to imagine that Canada’s Justice Ministry or Foreign Ministry is not aware that treaty obligations trump national legal situations of Parties and that they do indeed not only have the authority to repatriate the waste and enforce the illegal export, but are obliged to do so. Given this, it would seem that rather than being ignorant of their responsibility, it appears that Canada is willfully using such false statements (of lack of authority) to pressure the Philippines into accepting the illegally exported waste into their territory simply for their own convenience.

Further and even more pernicious are the indications that Canada is using its comparative economic and political clout to get its way in this regard with a smaller country. Indeed, assistance on matters regarding a territorial dispute between China and the Philippines, as well as with immigration issues in Canada, were cited as pressures placed on the Philippines. This led to the decision to capitulate to Canada’s refusal to repatriate the waste, and bury it on the island nation despite that outcome being out of compliance with the Basel Convention. It is for this

reason that local environmental organizations in a recent press conference in Manila have accused Canada of “bullying”.

### **Steps that must be Urgently Taken**

Canada, the Philippines and the Parties in general must immediately take steps to remedy the situation, as required by the Basel Convention.

→ First, Canada must urgently exercise its obligations, change its previous statement and accept full responsibility and authority to organize for the repatriation of the containers prior to any further actions by Philippine authorities (e.g. burial). We also call upon Canada to report themselves via a submission to the Implementation and Compliance Committee for their failure properly transpose the Convention obligations into national law and diligently implement the Basel Convention for “other wastes”.

→ Second, the Philippine Government must resist being bullied and must not allow themselves to be guilty of non-compliance by aiding and abetting Canada’s non-compliance. The Philippines must specifically not violate Article 4, paras 4 and 9. Additionally, they must (because nobody else is likely to do so) bring this matter to the Implementation and Compliance Committee. If this does not happen, in this most serious case, that committee will have failed in its mandate and the Convention will in fact be condoning a very dangerous precedent for non-Compliance that is simply ignored, making a mockery of the integrity of the Convention and its non-compliance mechanism. Already more than 25,000 persons have signed an online petition(4) asking Canada to rectify their mistake. The Parties must not allow the Basel Convention to fail. The world is watching.

Action on this matter is urgent as at any moment the Philippine government may order the burial of the 50 containers. If that happens, a very dangerous, unacceptable precedent would be set of allowing a more powerful country to ignore its treaty obligations and victimize a less powerful country simply to avoid costs and inconvenience. This would be deadly for the credibility of the Basel Convention as it was precisely to prevent this kind of behavior that the Convention was created.

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For more information:

1. [BAN Letter to Canada, including Chronology of the Case](#)
2. [Statement by Canada](#)
3. [E-Mail by Canada to BAN admitting that it has not controlled “Other Waste” in national law](#)
4. [Link to Online Petition](#) (please sign)