The Entry into Force of the Basel Ban Amendment: History and Implications

Jim Puckett, Founder / Director
Basel Action Network

IPEN/BAN Webinar
January 9, 2020,
Seattle, WA
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<th>Agenda</th>
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The Basel Convention
on the Control of the Transboundary Movement of Hazardous Wastes and Their Disposal

- Adopted in 1989
- Entered into Force 1992
- Currently has 186 Parties (member countries)
BASEL CONVENTION

ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL

PROTOCOL ON LIABILITY AND COMPENSATION FOR DAMAGE RESULTING FROM TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL

TEXTS AND ANNEXES
BAN has been a civil society watchdog of the Basel Convention since 1997
What Does Basel Do? - Soft Law

- Calls for national self-sufficiency in waste management (Art. 4.2.b)
- Calls for minimizing all forms of transboundary movement of hazardous and other wastes (Art. 4.2.d)
- Calls for minimizing the generation of hazardous and other waste (Art. 4.2.a)
- Calls for ensuring environmentally sound management of that which is produced (Art. 4.8)
Defines “hazardous waste” and “other wastes”  
(Scope of Convention, Art. 1)

“Hazardous Waste”:
1. According to Annexes (I,III and VIII)
2. Defined as such by National Law of a Country involved in trade scenario

“Other Waste” (Annex II, wastes for special consideration)
1. Wastes collected from households
2. Incinerator ash from incinerating household waste,
3. Certain plastic wastes (new addition COP14)
Requires control of exports of “hazardous” and “other wastes”

Prior Informed Consent (PIC) (default)
1. Defines PIC procedure (Art. 6)
2. Defines illegal traffic (criminal) (Art. 9)

Prohibitions
1. Countries may ban imports on a national basis. (Art. 4.1)
2. Ban on exports to Antarctica (Art. 4.6)
3. Ban on trade between Parties and non-Parties unless there is a special “Article 11” agreement (Art. 4.5, Art. 11)
4. Basel Ban Amendment (Art. 4a)
186 Parties out of 193 UN members. Just 6 UN countries not Parties: East Timor, Grenada, Haiti, San Marino, South Sudan, Tuvalu, and the USA.
Why Waste Moves (Cost Externalization)
The history of pollution is one of “cost externalization”
COST EXTERNALIZATION

Is a market distortion that occurs when an action by an actor, damages others or nature, resulting in a cost that is not paid for by that actor, either to prevent damage in the first place, or to compensate for it later.
COST EXTERNALIZATION
Throughout history those that extract resources, use resources, and harness technology seldom have had to pay or charge the entirety of the true costs, that include costs for damage done to others.

Sadly, It’s the Norm
COSTS EXTERNALIZED

true cost > market price
COST EXTERNALIZATION

...finding ways to have others or the earth “pay” for the damage
Cost internalization in developed countries via regulation...

...has led to externalization (exploitation) of developing countries (lacking regulation).
E-Waste Trade → Africa and Asia
Shipbreaking Trade → South Asia
Plastic Waste Trade → Southeast Asia
Pollution and labor abuse follow a path of greatest opportunity for cost externalization.
DATE: December 12, 1991
TO: Distribution
FROM: Lawrence H. Summers
EXTENSION: 33774
SUBJECT: GEP

After extensive discussions with Lant on the outline of the GEP '92, I would like to add to my suggestions for immediate follow-up in my memo of December 10, the following chapter by chapter comments on the outline. Also following are specific suggestions for data analysis I think will be useful.

Chapter 1

1.1 As mentioned in a footnote, 1950 is a particular year for such comparisons as German and Japanese trade was exogenous reasons. The overall openness of US and Japan economies is not much higher now than at the turn of the century.

1.2 A footnote mentions that Taiwan, Singapore, and South Korea are high-income countries. Does this make them "industrial"? If so, it seems odd that industrial country share fell

1.3 I thought it interesting that you mention that Asian economies are more diversified as a recent IMF report that by the conventional export diversification measures Korea is roughly the same as the 1960's. How are you measuring diversity?

1.4 How are you defining "high technology" products? An understanding of the commonly used US Dept. of Commerce definition that is relies on R&D intensity. This of course needs to be...
I think the economic logic behind dumping a load of toxic waste in the lowest wage country is impeccable and we should face up to that.

-- Lawrence Summers, 1991
I've always thought that under-populated countries in Africa are vastly underpolluted.

-- Lawrence Summers, 1991
"Your reasoning is perfectly logical but totally insane...your thoughts provide a concrete example of the unbelievable alienation, reductionist thinking, social ruthlessness and the arrogant ignorance of many conventional ‘economists’ concerning the nature of the world we live in...

-- Jose Lutzenburger, Brazilian Sec. of Environment, 1992.
The Impeccable Economic Logic of the Waste Trade

DISPOSAL COSTS

RICH

TOXIC WASTE

POOR
Basel Ban Amendment

- Adopted at COP3 (1995)
- Entered into Force December 5, 2019
- Currently has 98 Parties (member countries)
**Haiti Says Philadelphia Garbage Was Dumped by Ship on Its Beach**

PORT-AU-PRINCE, Haiti, Feb. 7 (Reuters) — A cargo ship chartered in the United States has dumped about 5,000 tons of garbage from Philadelphia on a Haitian beach, according to Haitian Government officials.

The officials said that the Khian Sea, a freighter chartered by a company in Philadelphia, had dumped Philadelphia city waste at the port of Gonaïves every day over the past few months.

Witnesses from the Gonaïves area confirmed the report and said the waste was mostly trash, with some broken bottles and used cans.

In Philadelphia, where residents have brought suit against the city to compel it to remove thousands of tons of ash that have piled up near two of the city’s main waste incinerators, a city official said that a defendant in the suit, not the city, was responsible.

City Denies Responsibility

The Philadelphia official, who spoke on condition he not be identified, said the city had not its obligation to dispose of the refuse by contracting for it to be taken away.

Last October Inspector General John Martin of the Environmental Protection Agency warned that ash from the Philadelphia incinerators contained high levels of dioxin, which can increase the risk of cancer.

The Khian Sea left Philadelphia in September 1986 after efforts to dump her cargo of waste in several other Caribbean countries.

**Newspapers Make Charges**

Opposition newspapers reported the Garbage dumping on Friday. Some said the ship was given permission to dump the waste by Haitian military leaders.

Some opposition papers accused a military strongman, Col. Jean-Claude Paul, of involvement in a deal to accept the trash in return for money. Newspapers printed documents that said the dumping deal was arranged by members of Colonel Paul’s family.

Haiti’s interim military rulers prepared to hand over power to a civilian Government today following elections that opposition leaders and foreign governments have said were rigged in favor of former supporters of Jean-Claude Duvalier.

**Second Drug Agent Is Dead**

After Ambush by Suspects

SAN MAILO, Calif., Feb. 7 (AP) — A Federal drug agent was pronounced dead Saturday, a day after he was shot in an ambush by drug traffickers. Another agent and two suspects died in the shooting.

The Drug Enforcement Administration identified the agent, Paul Serrante, 31 years old, who had been on critical condition since the Friday shooting.

Two suspects, both drug traffickers, were killed and a third was wounded after the undercover agents were shot.

The other slain D.E.A. agent was George M. Montoya, 34, a third agent Jose Martinez, 25, suffered a leg wound and was in critical condition.
Europe's Failing Effort To Exile Toxic Trash

By STEVEN GREENHOUSE

PARIS

In the town of Marienodino in Italy's Adriatic coast, recently, there was a general strike and the city council resigned en masse to protest the Italian Government's efforts to get the port to accept the Deep Sea Carrier, a ship hauling more than 2,800 tons of toxic waste back to Italy from Koko, Nigeria. The week before, the Karin B, carrying 2,300 tons of toxic waste from the same Nigerian landfill, finally received permission to land in Livorno, Italy, ending a nine-week odyssey during which six European countries refused to let it dock.

Western Europe produces about 32 million tons of hazardous waste, or about 120 pounds per person, each year. Disposing of that waste has become increasingly difficult. Just as in the United States, waste disposal in Western Europe has grown more expensive as landfills fill up. New landfills have been hard to build because land is scarce and opposition from environmentalists is strong. In addition, many European nations have strict rules requiring that dangerous chemicals such as PCB's undergo high-temperature incineration, a disposal method that has become increasingly expensive.

As a result, many Western European companies have been exporting their waste to dispose of the waste are shadowy operators who look for low-cost, often unsafe ways to discard the chemicals. That is apparently what happened to the toxic waste carried back to Italy by the Karin B, the ship that finally docked at Livorno. The waste, which is believed to have originated in three or four European countries, was sent in several shipments this year and last to a small landfill in Koko, a remote Nigerian village.

Only after environmental groups and Nigerian officials protested the dumping did the Italian Government order that the toxic waste be picked up and that a suitable way to dispose of it be found in Europe. Italy is responsible for the waste under a rule adopted by the Organization for Economic Cooperation, an association of 34 industrial nations, that holds the originating nation responsible for waste that is disposed of improperly.

A Proper Burial

Spain, Britain, France, West Germany, the Netherlands and Belgium all rejected the first shipment of toxic waste returned abroad the Karin B, saying they were unsure whether their treatment plants could dispose of the cargo properly because no one knew its chemical composition.

The European Community has adopted a directive that calls on the 12 member nations to allow toxic waste to be exported from their countries only after determining that the receiving country would have to check with the Italians to make sure the waste would be disposed of properly. Because of the embarrassment caused by the episode, Italy has now banned and Sweden, for example, have banned polychlorinated biphenyls (PCB's), a wood preservative that contains dioxin, while several nations have outlawed the manufacture of PCB's. Environmentalists hail these measures, saying that banning dangerous materials is
Garbage Odyssey Proves Embarrassing

Islip's problem points up lack of solution for complex issue.

Some public officials, however, were angered by that comment, saying that the town for the plight of the community. They defended themselves vigorously by pointing to the officials to tackle the solid-waste problem.

Although the problem is most acute in the Long Island, Federal officials have been criticized for not taking action to solve it quickly enough. The problem has been allowed to fester for years without attracting much attention.

Now, officials say, maybe Long Island residents and the federal government will realize that dealing with it is not as easy as it was once thought to be. The problem is far more complex than it was once thought to be.

Garbage officials have been accusing the Department of Environmental Conservation for not doing enough to solve the problem. They say the department is not doing enough to solve the problem.

The garbage island is located in the Long Island Sound, an area that is considered to be one of the most important in the country.

"We have a serious problem," said David P. Bruno, the regional solid and hazardous waste engineer for the Department of Environmental Conservation, "and we're doing everything we can to solve it."

"It is very difficult under the law to get people to expand any landfill," he said. "They have to meet the financial costs to see if any other possibilities are available."

It was that law that first caused the town to consider the problem of garbage disposal. The town had to find a place to store its garbage and had to do so in a way that would not cause harm to the environment.

The garbage island is surrounded by water and has a low-lying area that can be flooded. It is not large enough to handle the amount of garbage that is generated daily.

Although the proposed landfill is not yet ready, the Department of Environmental Conservation has given the town permission to expand it. The town has begun to look for other potential sites.

Whatever is done — and that will be the issue of debate for months to come — it seems clear that a large city with a large garbage problem cannot go on as it has been doing in recent years. The town has been accused of not doing enough to solve the problem.

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History of the Basel Ban

• Greenpeace Chronicles and Targets Incidents (1987-1994)
• UNEP Decides to create a treaty (1988)
Dr. Mostafa Tolba Calls for New Convention to Protect Africa and the World, 1988
History of the Basel Ban

• Greenpeace Chronicles and Targets Incidents (1987-1994)
• UNEP Decides to create a treaty (1988)
• Convention Adopted Without Ban (1989)
Banner hung in 1989 at Treaty Adoption
History of the Basel Ban

- UNEP Decides to create a treaty (1988)
- Convention Adopted Without Ban (1989)
- Regional Agreements Formed (1991-1996)
## Regional Waste Trade Treaties Established

<table>
<thead>
<tr>
<th>Name</th>
<th>Geographic Scope</th>
<th>Adoption Date</th>
<th>Entry Into Force</th>
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<tbody>
<tr>
<td>Central American Agreement</td>
<td>Central America</td>
<td>1992</td>
<td>1992</td>
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<tr>
<td>Waigani Treaty</td>
<td>South Pacific Forum Parties</td>
<td>1995</td>
<td>2001</td>
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History of the Basel Ban

- UNEP Decides to create a treaty (1988)
- Convention Adopted Without Ban (1989)
- Regional Agreements Formed (1991-1996)
- Basel Meeting Adopts First Ban as a Decision (II/12) (1994)
Text of Original Ban Proposal in 1994, later gaining support from the EU

25 March 1994

Proposal presented by the Group of 77 and China

Let us agree:

that transboundary movements of hazardous wastes from OECD to non-OECD countries do not constitute environmentally sound management as required by the Convention;

immediately all transboundary movements of hazardous waste and hazardous waste disposal from OECD to non-OECD States; and prohibit as of that date, any hazardous waste that are destined for transboundary movements.
History of the Basel Ban

  • Greenpeace Chronicles and Targets Incidents (1987-1994)
  • UNEP Decides to create a treaty (1988)
  • Convention Adopted Without Ban (1989)
  • Regional Agreements Formed (1991-1996)
• Basel Meeting Adopts First Ban as a Decision (II/12) (1994)
• Decision to Amend Convention (III/1) (1995)
• Many efforts by JUSCANZ countries to undo, weaken / delay entry into force (1996-2010)
### Notable Efforts by JUSCANZ to Undermine the Ban

<table>
<thead>
<tr>
<th>Tactic</th>
<th>When</th>
<th>Outcome</th>
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<tbody>
<tr>
<td>Declare that Decisions (e.g. II/12) are not legally binding</td>
<td>1994</td>
<td>An Amendment (III/1) was proposed and Passed in 1995</td>
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<td>Argument advanced that Article 11 agreements could be used to circumvent the Ban.</td>
<td>1995-1996</td>
<td>Some Parties strongly disagreed and EU lodged legal opinion as to why this was impossible.</td>
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<tr>
<td>Attempt to add new countries (e.g. Slovenia, Monaco, Israel) to Annex VII to water down the effect and make it tantamount to an opt in/opt out ban.</td>
<td>1996-1997</td>
<td>COP4 compromised: No changes in Annex VII until entry into force, but a study of Annex VII could commence. The study lasted years but was finally terminated by the Parties without conclusion.</td>
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<tr>
<td>Tactic</td>
<td>When</td>
<td>Outcome</td>
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<td>Lobbied key countries in Southeast Asia, Africa, Latin America urging them to not Ratify.</td>
<td>1994-2012</td>
<td>Many countries never ratified the Ban Amendment despite it being advantageous for their public and environmental health. This slowed the entry into force.</td>
</tr>
<tr>
<td>Declaring that the Convention text (Art. 17) regarding amendments was ambiguous and could mean that ¾ of Parties now rather that at time of adoption was required for entry into force.</td>
<td>2007-2011</td>
<td>Switzerland and Indonesia convened Country Led Initiative (CLI) to resolve Amendment debate and address concerns of some re: the ban. As a result, in COP10 (2011) an omnibus decision was passed to allow early entry into force of the ban as well as many projects on ESM and Legal Clarity.</td>
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History of the Basel Ban

- UNEP Decides to create a treaty (1988)
- Convention Adopted Without Ban (1989)
- Regional Agreements Formed (1991-1996)
- Basel Meeting Adopts First Ban as a Decision (II/12) (1994)
- Decision to Amend Convention (III/1) (1995)
- Many efforts by JUSCANZ countries to undo, weaken/delay entry into force (1996-2010)
- December 5, 2019 – Enters into Force!
Diplomatic community in Geneva marks the entry into force of the Basel Convention’s Ban Amendment

Watch live the special event in the UN Palais des Nations, which brings together many of the Convention’s 187 Parties to celebrate the strengthening of efforts for implementing this global, legally-binding, international agreement on waste.
• It fulfills the original promise of the Convention and changes its text forever.
• It adds a new preambular paragraph:
  “Recognizing that transboundary movements of hazardous wastes, especially to developing countries, have a high risk of not constituting an environmentally sound management of hazardous wastes as required by this Convention.”
• It creates a new Annex VII (developed countries) consisting of Members of the European Union (EU), the Organization for Economic Cooperation and Development (OECD), and Liechtenstein.

• It adds a new Article (4a) which prohibits the export of hazardous wastes as defined by the annexes of the Convention from Annex VII countries to non-Annex VII countries for any reason.

What Does the Basel Ban Do?
• Technically, while it only directly applies to those Parties that have ratified it, another part of the Convention requires that all Basel Parties must respect the prohibitions of other Parties. Thus, Annex VII Parties that have not ratified must respect the Basel Ban ratifications of the non-Annex VII countries that have.

For example, Canada (not having ratified) cannot export to Indonesia (which has).
Effect of Basel Ban in Internalizing Costs

DISPOSAL COSTS

RICH

TOXIC WASTE

POOR
What Does the Basel Ban not Do?

- Does not prohibit trade from non-Annex VII countries to any other countries.
- Does not prohibit trade between Annex VII countries.
- It does not include “Other Wastes” (Annex II) (i.e. some plastic wastes, household wastes and incinerator ashes from burning household wastes.)
• Currently 98 out of 187 Basel Parties have ratified.
• Of the 41 Annex VII countries (EU, OECD, Liechtenstein) 35 already implemented it.
• When the US finally ratifies the Convention they will have to accept the BAN they have always opposed.
• While the Ban was adopted by consensus, the JUSCANZ group of industrialized countries, continues to oppose it. The group includes: Japan, US, South Korea, Canada, Australia, New Zealand.
The 41 Developed Countries to which the Basel Ban Applies (Annex 7)

<table>
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<tr>
<th>Implementing or Ratified Ban (35)</th>
<th>Implementing Convention Only (5)</th>
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<tr>
<td>Austria</td>
<td>Liechtenstein</td>
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<td>Belgium</td>
<td>Lithuania</td>
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<td>Bulgaria</td>
<td>Luxembourg</td>
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<td>Chile</td>
<td>Malta</td>
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<td>Cyprus</td>
<td>Mexico</td>
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<td>Czech Republic</td>
<td>Netherlands</td>
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<td>Denmark</td>
<td>Norway</td>
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<td>Estonia</td>
<td>Poland</td>
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<td>Finland</td>
<td>Portugal</td>
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<td>France</td>
<td>Romania</td>
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<td>Germany</td>
<td>Slovak Republic</td>
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<td>Greece</td>
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<td>Hungary</td>
<td>Spain</td>
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<td>Iceland</td>
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<td>Ireland</td>
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<td>Israel</td>
<td>Turkey</td>
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<td>Italy</td>
<td>United Kingdom</td>
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<td>Latvia</td>
<td>United States</td>
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<td>Australia</td>
<td>Canada</td>
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<td>Canada</td>
<td>Japan</td>
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<td>New Zealand</td>
<td>South Korea</td>
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<tr>
<td>Neither (1)</td>
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<tr>
<td>United States</td>
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Impacts of the Amendment’s Entry into Force
• The JUSCANZ countries look increasingly out of step with the rest of the world. Pressure is now on them to accept the entire Convention.

• Increasingly all exports of hazardous and other wastes (including plastic waste) to developing countries will be viewed as unacceptable, regardless of ratifications.

• All countries will be under increasing pressure to properly enforce the Ban.

• Non-Annex VII countries that have not ratified, will now be more inclined to ignore the JUSCANZ lobby and ratify.
• **Downstream Impacts** -- Protects environment and peoples in developing countries from pollution and exposure

• **Upstream Impacts** — Provides strong new economic and legal incentive for implementing waste prevention/green design at source

• **Major Victory for Global Environmental Justice** — Stating that environmental considerations are more important than free trade. And cost externalization will not be tolerated.
Some Still Seeking Exemptions -- Shipping Industry
Still Seeking Exemptions -- IT Industry
## Remaining Efforts by Industry to Undermine the Ban/Basel

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<th>Tactic</th>
<th>Who</th>
<th>When</th>
<th>Outcome</th>
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<tbody>
<tr>
<td>Declare that Ships are not Waste and thus should not be regulated under Basel Convention.</td>
<td>Shipping Industry, EU and Shipping Powers (Norway, Japan)</td>
<td>1994</td>
<td>Basel Parties did not agree that ships are not wastes but industry adopted a weaker Convention (Hong Kong, not in force) for ship recycling with no prohibition against moving toxic ships to Asia. EU ignored their Basel obligations and exempted ships from their waste shipment regulation.</td>
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<tr>
<td>Argue that broken electronic equipment going for repair is not waste.</td>
<td>Computer Industry, ITI, EU</td>
<td>1995-1996</td>
<td>Succeeded so far in perpetuating this view in a provisionally adopted guideline. Many Parties are not happy with this but the EU/JUSCANZ</td>
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• **Parties that have Ratified**
  -- Ensure that you have implemented the Ban into national legislation.
  -- Provide the necessary training to customs and border agents for enforcement.
  -- Consider doing what the EU has done and add Annex II wastes to the Ban.

• **Parties that have yet to Ratify (89 Parties)**
  -- Ratify at the earliest opportunity. One can no longer claim they have ratified the Convention in full if the Ban is neglected.
• **All Parties to the Basel Convention**
  -- Oppose efforts to weaken the Ban and the Basel Convention by the Electronics Industry.
  -- Support BAN’s revised e-Waste Guideline at Basel.

• **Civil Society/Citizens**
  -- Press your government to ratify the Ban Amendment if it has not yet done so.
  -- Ensure they have implemented the Ban into national legislation if they have.
Current List of Basel Ban Ratifications

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-3-a&chapter=27&clang=_en
New in-depth Guide to the Basel Ban available on BAN and IPEN websites

www.ban.org
www.ipen.org
Thank You!
Questions?