

The Basel Ban: A Triumph for Global Environmental Justice

The Impeccable Logic of Toxic Trade

"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 the fact that ... under populated countries in Africa are vastly under-polluted."

In 1991, this remarkable statement was found in an internal memo of then World Bank Chief Economist Lawrence Summers, and was leaked to the world press. His words resulted in a global outcry.

Then Environment Minister of Brazil, Jose Lutzenberger found words for the collective outrage in his written rebuke to the Bank and Mr. Summers: *"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."*

Mr. Summers' words were shocking for one simple, awful reason -- they were true. His words spoke volumes about the imperatives of free market economics and its failure as an absolute model for governance over our lives. The economic logic of the export of hazardous wastes from the rich industrialized countries of the North to the poorer less-industrialized countries of the South had already become horribly real even before Mr. Summers wrote his memo.

Beginning in the mid-1980s headlines began appearing announcing the discoveries of barrels of mixed industrial poisons dumped on tropical beaches, and of vessels laden with toxic trash plying the coastlines of developing countries searching for a port-of-call. These first "ships of death" were highly publicized harbingers of an extremely profitable trade that threatened to become epidemic.

1989 Basel Convention: Legalizing Toxic Trade

In June of 1987, following the intense outrage expressed by developing countries, the United Nations began negotiations to prepare a global convention on transboundary movements of hazardous waste. This led, in March 1989, to 118 nations signing the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal. To date, 183 countries have ratified the treaty.

Unfortunately, whereas the vast majority of nations wanted to *ban* waste trafficking, particularly from developed to developing countries, certain heavily industrialized countries, most notably the United States, fought to reject any such prohibition. Thus, the original 1989 treaty became primarily an instrument to monitor the transboundary movements of hazardous waste rather than actually fulfill the stated goal -- to reduce or prevent them.

Immediately following the signing, Greenpeace denounced the Convention as providing license to an activity, which should have been considered criminal. Many developing countries were extremely disappointed in the outcome. The African group walked out of the proceedings claiming that they would not sign and would instead initiate their own treaty banning waste imports to Africa.

A Ban is Born: The Global Community Prevails

Rather than giving up, developing countries and non-governmental organizations (NGOs) began instead to forge regional and national bans in lieu of a global one such as the promised Bamako Convention for Africa. These efforts rapidly bore fruit so that by the time the Basel Convention entered into force in 1992, over 88 countries had banned the import of hazardous wastes through national or regional laws or agreements. This tidal wave of legislative activity persuaded progressive European countries such as Switzerland, Norway, Sweden and Denmark, to join developing and many Eastern European countries in an even stronger push for a global ban. These governments, and NGOs were successful in progressively transforming the Basel Convention towards a waste trade ban with the following Conference of Parties (COP) decisions:

- **COP I (December 1992):** Decision I/22 requested developing countries to prohibit the import of hazardous wastes from industrialized countries.
- **COP II (March 1994):** Decision II/12 banned export of all hazardous wastes from OECD to non-OECD countries including for recycling as of 1 January 1998.
- **COP III (September 1995):** Decision III/1 adopted the OECD (and Liechtenstein) export ban as an amendment.
- **COP IV (February 1998):** Decision IV/8 agreed to leave the Ban Amendment unchanged until its entry into force. Decision IV/7 appealed to all Parties to ratify the Amendment as soon as possible.
- **COP V, VI and VII (December 1999, December 2002, October 2004)** Decision V/3, VI/33, VII/23, all appealed to Parties to ratify the Amendment as soon as possible.
- **COP X (October 2011):** Decision X/3 signified a major breakthrough for the Ban Amendment as it clarified that only 17 more Parties from COP3 will be needed for entry into force.

The Reason for the Basel Ban

The Basel Ban was justified in the preamble of decision III/1 on the basis "that transboundary movement of hazardous wastes from OECD to non-OECD countries have a high risk of not constituting an environmentally sound management of hazardous wastes as required by the Basel Convention." This determination was not only due to the obvious lack of adequate technical capacity (downstream ESM) in developing countries, but more importantly for the reason that export of pollution to avoid higher costs always works at cross purposes to the primary (upstream ESM) goals of the Basel Convention found at the beginning of Article 4: a) the minimization of hazardous waste generation; b) national self-sufficiency in hazardous waste management; and c) the minimization of the transboundary movement of hazardous wastes.

Legal Landmark for the Environment and Justice

The Basel Convention was intended as a beacon of preventative action and legal restraint with respect to hazardous waste and its trade. It was born out of a notion that economically motivated waste exports particularly from developed to developing countries were in-effect cost externalization and an affront to human rights and the environment. Above all, it is a legal instrument; it is international law, with a clear aim to promote the minimization of transboundary movement (particularly to developing countries) of hazardous wastes and to minimize hazardous waste generation.

The Basel Ban once in force, further fulfills that promise and marks a landmark with far-reaching significance as summarized below:

- **Instrument for Global Environmental Justice:** The Basel Ban moves to prevent the globalization of an international environmental crisis -- the toxic waste crisis. In a climate of increasing corporate dominance and minimization of governmental control over trade, the Basel Ban serves as a vital restraint against the unbridled free trade in a global liability. Without the Basel Ban, poorer global communities would be transformed via the "impeccable logic" of the free market into "toxic colonies" of the rich and most wasteful nations.

- **Non-OECD Solidarity:** First, it was an initiative launched, sustained, and won by the G-77 group of developing countries (led initially by the resolve of the African Group). It was this group of countries, with China, that provided the moral backbone. Allies found in Western and Eastern European countries soon joined them. The unwavering solidarity of developing countries and "countries with economies in transition" to bridle the excesses of richer, more powerful countries for the sake of the global environment remains unprecedented to this day.

- **Powerful NGO Role:** Likewise, a very significant role was played by NGOs and civil society.

- **Legally Binding Trade Barrier:** The Basel Ban was adopted as a legally binding instrument with criminal penalties for violators in a political climate of elevating "free trade" over social and environmental concerns. Despite being an unabashed "discriminatory non-tariff trade barrier" erected on behalf of the global environment and human rights, the Basel Ban was passed by a consensus of 90 countries in an era noted for the proliferation of global free trade agreements (WTO, NAFTA, FTAA, etc.)

- **Defeated Powerful Interests:** It was passed despite the total opposition of powerful business lobbies such as the International Chamber of Commerce and many of the world's most rich and powerful nations (e.g. United States, Australia, Canada, Japan, and South Korea). These opponents not only disliked a precedent restraining free trade, but stood to profit tremendously if the huge economic liability for toxic waste could be cheaply exported.

- **Recognized Recycling Can be a Problem:** The great environmental significance of the Basel Ban Decision II/12, and subsequent Ban Amendment Decision III/1 was that it closed the recycling excuse through which more than 90% of exported hazardous waste was by then flowing. It recognized that the recycling of many wastes, and in particular hazardous wastes, often represents a perpetuation of the waste crisis and a further excuse for unsustainable consumption and wastefulness. By addressing a high-risk dirty recycling industry migrating southward, the Basel Ban opened the eyes of the world to the issue of the disproportionate proliferation of toxic technologies in the global South.

- **Instrument for Clean Production:** The Basel Ban, together with the London Protocol ban on most forms of industrial waste dumping at sea, represent a closure of the last great global escape valves for dirty and wasteful production. By ending the most blatant forms of corporate cost externalization via the export of pollution to poorer economies or the global commons, a huge incentive is thus created for doing the right thing with respect to hazardous waste -- *reducing it at source through waste prevention*. The Basel Convention is now poised to become the global leader in facilitating real solutions -- the use of clean production methods, which utilize a minimum of toxic materials and create a minimum of waste.

Entry into Force Now!

For more than 20 years the Basel Ban Amendment has faced a barrage of sabotaging efforts to prevent its entry into force. Finally, the landmark diplomatic breakthrough resolving the textual ambiguity regarding entry into force of amendments made at COP10 moved us on a positive trajectory to a rapid entry into force. With the adoption of the "fixed time" approach for amendments we know that ¾ of the 90 Parties present at COP3 are needed for entry into force. Already we have 62 of the 68 needed. Thus, we are needing just 6 more COP3 Parties.

BAN calls upon the following COP3 countries to take the initiative NOW to close the deal: Australia, Bahamas, Bangladesh, Brazil, Canada, Comoros, Costa Rica, Croatia, Cuba, Democratic Rep. of Congo, Iceland, India, Israel, Japan, Lebanon, Malawi, Maldives, Mexico, Namibia, New Zealand, Pakistan, Philippines, Rep. of Korea, Russia, St. Kitts and Nevis, Senegal, United Arab Emirates, Vietnam.

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