

## INC-5 Chair's Non-Paper as It Applies to Exports of Plastic Waste -- Annotated by Basel Action Network (BAN)



November 7, 2024

### Article 8

3. Each Party shall take measures to ensure that the export of plastic waste is only allowed:

(a) For the purpose of safe and environmentally sound recovery, reuse, recycling, or disposal in a manner consistent with this Article; and

For Basel Parties this statement is mostly redundant as it relates to "safe and environmentally sound recovery, reuse, recycling or disposal." This is because the three Basel plastic listings, B3011, Y48, and A3210 all require Environmentally Sound Management (ESM), which is much the same thing. Basel specifically references ESM in B3011. For Y48 and A3210, Basel requires ESM for these "hazardous and other wastes" in Article 4 of the Convention, such as in 4(2)b, d, and g.

For trade involving non-Parties such as the US, which are not bound by Basel obligations, the ESM-type reference is useful if they ratify the GPT and remain outside of Basel. However, the GPT has not yet defined the meaning of "safe and environmentally sound recovery, recycling or disposal." As for plastics that currently escape Basel Convention controls, such as those listed in Annex IX (textile waste, rubber wastes, plastics mixed with paper waste), ESM-type requirements for these would be useful if well-defined.

The phrase "in a manner consistent with this Article" is also useful as it makes the transparency requirements of Paragraph 4 necessary for legal trade.

(b) With the written consent of the importing Party or non-Party.

**For Basel Parties (all but 5 countries) the requirement of written consent by the importer for all plastic waste is a step forward as currently B3011 is not controlled by Basel at all.** Basel Parties will most likely try to align the "written consent" requirement of GPT with their existent PIC (prior-informed consent) procedure as required by Basel and elaborated in Basel Article 6. This would mean that GPT Parties that are Basel Parties would begin to require PIC for what is currently B3011, which is currently without Basel control. This is very similar to what the Convention has already done for e-waste (requiring PIC controls at a minimum for both hazardous and non-hazardous e-waste). Indeed, if this notion survives, Basel will be under pressure to extend the definition of Y48 to include B3011.

For EU countries after 2026, when the new EU Waste Shipment Regulation plastic waste export ban to non-OECD countries comes into force, this "written consent" would not be an advancement except for exports to OECD countries. The ban to non-OECD countries found in the new Regulation is stronger than PIC.

As the GPT currently has left open the definition of plastic waste, the language here should be interpreted to include all of the hidden and forgotten plastics for Basel Parties (plastic mixed into paper waste, plastic textile waste, and plastic "rubber" waste). However, it must be noted that should a party not wish to add this GPT requirement to their Basel implementation rules, the words "written consent of the importing Party or non-Party" by themselves are minimal and may equate to a very minimalist notification requirement. For example, it might simply be a requirement placed on exporters (private sector) only without the state-to-state communication required under Basel. It might also not have the vital contextual safeguards that are found in Basel Convention Article 4, Article 8 (duty to reimport), and Article 9 (illegal traffic).

For Basel non-Parties such as the US that ratify the GPT, this would mean that all plastic waste trade would require written consent by the importer. However, the means of implementation are left vague. **Currently, the US has no controls on plastic waste, so this would be a major advancement.**

4. Where export of plastic waste is allowed under paragraph 3, the exporting Party shall:

(a) Provide to the importing Party or non-Party complete information about the composition of the waste proposed to be exported, including its contents in polymers, chemicals and plastics, and any associated hazards to human health or the environment, including safety data sheets, as relevant;

This point is also an advancement over the Basel Convention as it explicitly calls out "contents in polymers, chemicals and plastics and any associated hazards to human health and the environment...." Currently, no shipments of plastic waste under Basel are expected to list actual individual polymers, nor plastic additives (chemicals) being shipped that are likely to exhibit a hazardous characteristic. Calling out this information would mean that Basel Parties would likely not be as able and ready to export mixed and untested plastics without defining them as A3210 (hazardous plastic waste). Once defined this way, the Basel Ban Amendment is invoked, meaning that exports from Annex VII countries to non-Annex VII countries would be prohibited.

(b) Require exporters to comply with generally accepted and recognized international rules, standards and practices for packaging, labeling and transport.

This is meaningless as this is already a legal requirement for most countries.

5. The Conference of the Parties shall, at its first meeting, adopt guidance to assist Parties in their implementation of paragraphs 3 and 4 of this Article, including a format for certification to demonstrate that the importing Party or non-Party has measures in place to ensure consistency with the requirements under subparagraph (b) of paragraph 3. In developing such guidance, the Conference of the Parties shall take into account arrangements in relevant international

agreements.

This paragraph attempts to prudently make a linkage between Basel (a relevant international agreement) and the GPT. The guidance could require Parties to certify that when the country is a Basel Party, it manages all plastics not currently controlled by Basel (B3011 and hidden and forgotten plastics) as if it were part of Y48 or A3210, depending on the hazardousness of the polymer and/or additive content. Ideally, this guidance would require any plastic waste shipment for which the content is unknown (e.g. untested for additives and polymers) to be assumed to be hazardous (A3210), thereby invoking the Basel Ban. Alternatively, for non-Parties such as the US, the certification could demonstrate that they will implement a similar written consent procedure to that of Basel.

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