

From: "JESUS IGNACIO LOPEZ OLVERA" <jesus.olvera@semarnat.gob.mx>

To: "Jim Puckett" <jpuckett@ban.org>

Date: 12/22/2022 7:42:01 PM

Subject: Fwd: Fwd: BAN Counter response // ATTN: Mexico / USA Transboundary Movements of Plastic Waste Y48

Dear Mr. Jim Puckett
Basel Action Network,

On behalf of Mr. Arturo Gavilán, Head of the DGGIMAR of the Ministry of Environment and Resources of Mexico, I apologize for the delay in responding to your message with the appropriate questions regarding the control of transborder movements of plastics, in particular the PVC and plastics of the entrance Y48. You will see our response to each of them below:

1. The applicability of the Bilateral Agreement (La Paz, Annex III) to Article 11 of Basel in this case remains in doubt.

Regarding the applicability of the Bilateral Agreement (La Paz, Annex III) for the movement of non-hazardous plastic waste between Mexico and the United States, I have to admit that it is not the appropriate legal instrument to allow the movement of non-hazardous waste, since as He points it out well, it only refers to transboundary movements of hazardous waste; however, within the framework of said Agreement, coordination is given between the USEPA and the General Directorate for the Integral Management of Hazardous Materials and Activities (DGGIMAR)/Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT) for issues of common interest.

It is also important to recognize that although the United States has not ratified the Basel Convention, if it is an OECD country and Decision C(2001)107, updated on the OECD/LEGAL/0266 portal, respects that each Member Country retains its right to control the waste from the Basel Convention Amendments in accordance with its domestic law and international law, as this Decision qualifies as an Article 11 multilateral agreement under the Basel Convention and is considered to provide an environmentally sound management level equivalent to that of the requirements of said Convention, so much so that the OECD Secretariat published a summary of the amendments to the OECD Council Decision applicable to member countries at [https://www.oecd.org/environment/waste/Full_summary_of_the_amendments_to_the_OECD_Council_Decision](https://www.oecd.org/environment/waste/Full_summary_of_the_amendments_to_the_OECD_Council_Decision.pdf) .pdf

Similarly, it published information from countries on the controls applied to the transboundary movements of plastic waste described in the Y48 list, and available online at [https://www.oecd.org/environment/waste/Reporting-of-controls](https://www.oecd.org/environment/waste/Reporting-of-controls-non-hazardous-orgwaste.pdf) -non-hazardous-orgwaste.pdf

Derived from the foregoing, Mexico and the United States may move non-hazardous plastic waste in compliance with the mutatis mutandis procedures established in Article 4(d) of the OECD Council Decision whereby prior informed consent procedures are carried out by the importer and the State of import that controls the cross-border movement subject to amber, or dangerous procedures, respecting the internal legislation of each country.

2. What are the requirements for exports and imports of non-hazardous plastic waste and scrap between the United States and Mexico?

It is reiterated that the procedure and requirements for exports and imports of non-hazardous plastic waste between the United States and Mexico are available at the USEPA link New International Requirements for the Export and Import of Plastic Recyclables and Waste | US EPA

As noted in the previous response, it is recognized that such movements are made in compliance with the OECD Decision of the Council on the Control of Transboundary Movements of Waste Destined for Recovery Operations and not the La Paz Convention.

It is opportune to clarify that Mexico does not require a single notification for exports from the US, it should be clear that for each application for export from the US to Mexico, that is, imports from Mexico, a notification is required for Mexico to issue your consent, which must be processed again when the consent is concluded in case you want to continue making exports.

Otherwise, since the USEPA does not control non-hazardous plastic waste, they do not require notification; however, Mexico does send a single notification to have the official "no consent, no objection" issued by the competent authority and Mexico can issue an authorization thus complying with International Agreements and respecting US domestic law. The notification The only one applies for subsequent requests that involve the same Mexican exporter, the same US receiving facility and the same type of scrap or plastic waste, if any of the above conditions change, a new notification will be sent.

3. The lack of Y48 consent to date by Mexico and the prevalence of clear evidence of Y48 exports (eg, PVC) reveals a serious case of illegal trafficking for Mexico and whether the La Paz Agreement is valid and applicable, also for the United States.

What steps have the US and Mexico taken to address this rampant illegal trade and what is expected in the future?

The DGGIMAR recognizes that there could have been movements of non-hazardous plastic waste without the consent of Mexico, which is due to a delay in updating the Mexican regulatory framework, which was already resolved with the publication of the AGREEMENT that modifies the diverse one that establishes the merchandise whose import and export is subject to regulation by the Ministry of Environment and Natural Resources in the Official Gazette of the Federation on October 7, 2022, which can be consulted at the following link:

https://dof.gob.mx/nota_detalle.php?codigo=5667507&fecha=07/10/2022#gsc.tab=0

The publication of said AGREEMENTS depended on multiple meetings, analysis and discussion between SEMARNAT, the Ministry of Health and the Ministry of Economy, not only on the issue of waste, but also on CITES, regulation of forest species and pesticides, fertilizers and substances toxic.

Said instrument includes all fractions of heading 39.15 and others to guarantee the control of waste of interest, specifying in the description of the applicable fractions that it is for hazardous and non-hazardous plastic waste and its mixtures with other waste, including PVC plastic waste.

With the above, it is expected that cases of illicit trafficking will be reduced to a minimum, coupled with the fact that Mexico maintains constant communication with the United States if necessary.

It is opportune to clarify that based on articles 115 and 116 of the LGPGIR Regulation, only the importation of hazardous plastic waste for recycling or reuse and the importation of non-hazardous plastic waste for recycling or co-processing is allowed. In case of having a request for confinement, simple deposit, accumulation, burial or other destination, it is prohibited to issue an authorization. In addition to the above, based on the Plastics Amendment and Annex IX of the Basel Convention, the importation of non-hazardous plastic waste classified under entry B3011 can only be carried out if its destination is recycling in an environmentally sound manner.

The import authorizations for non-hazardous plastic waste issued by DGGIMAR indicate recycling as the object; no applications have been received for the import of hazardous and non-hazardous waste with a different destination. Any importation of regulated plastic waste without authorization is classified as illicit trafficking. PROFEPA has the powers to monitor and inspect compliance with the authorizations issued by SEMARNAT.

SEMARNAT published notices on its website on the application of the Basel Convention Amendment on Plastics, which allows further discussion on the subject and which are and will be updated as applicable:

1. <https://www.gob.mx/semarnat/acciones-y-programas/la-semarnat-informa-medidas-para-la-implementacion-de-las-enmiendas-de-basilea-sobre-residuos-plasticos>
2. <https://www.gob.mx/semarnat/documentos/aplicacion-de-la-enmienda-bc1412-del-convenio-de-basilea-sobre-movimientos-transfronterizos-de-desechos-y-su-eliminacion?state=published>
3. <https://www.gob.mx/semarnat/documentos/comunicado-sobre-entrada-y48-convenio-de-basilea>

4. Assuming the La Paz bilateral agreement is not actively and correctly adhered to by the US and Mexico at the same time, this is a Basel non-compliance case for Mexico.

Is it correct to say that Mexico is out of compliance with the Convention if the Bilateral Agreement is not valid for the reasons indicated above? (Not being adhered to by the US and Mexico, and b. not correctly applying Article 6 of Basel with respect to state-to-state communication and annual notices and consent?)

As already indicated, it is recognized that the La Paz Agreement is not the instrument to protect the movements of non-hazardous plastic waste between Mexico and the United States, but the Council Decision on the Control of Cross-border Movements of Waste Destined for OECD Recovery Operations, which qualifies as an Article 11 multilateral agreement under the Basel Convention, which provides that:

In the case of a transboundary movement of waste where the waste is legally defined or considered as waste subject to the Amber control procedure only by the importing country, which is the case of Mexico, the requirements of section D that apply to the exporter and to the country of export, mutatis mutandis will be applied to the importer and the country of import, respectively, that is why the USEPA recommends that the United States exporter coordinate with the Mexican importer to comply with the notification and obtain consent. Therefore, we can assure you that DGGIMAR is making every effort to comply with the plastics amendment of the Basel Convention.

For more information on the Council Decision on the Control of Transboundary Movements of Waste Destined for Recovery Operations of the OECD and what is related to non-hazardous plastic waste applied within the framework of said decision, you can consult <https://www.oecd.org/env/waste/theoecdcontrolsystemforwasterecovery.htm>

It is necessary to indicate that the USEPA and DGGIMAR, held agreements so that regardless of Annex III of the Peace Agreement, the obligation to apply the Principle of Information and Prior Consent was established, therefore the information available at <https://www.epa.gov/hwgenerators/new-international-requirements-export-and-import-plastic-recyclables-and-waste>

It contains the following items, as you know:

Overview of the Basel Convention plastic scrap and waste amendments

How the new Basel plastic scrap and waste amendments will impact U.S. exports and imports

What requirements apply to U.S. exports and imports of plastic scrap and waste

Frequent Questions;

1. What is the Basel Convention?
2. What are the Basel plastic scrap and waste amendments?
3. What types of plastic scrap and waste are controlled under the Basel Convention?
4. What types of plastic scrap are not controlled under the Basel Convention?
5. Can the United States trade in plastic scrap with Basel Party countries?
6. What are the requirements for U.S. exports and imports of Basel-controlled non-hazardous plastic scrap and waste?
7. What are the requirements for exports and imports of non-hazardous plastic scrap and waste between the United States and Canada?
8. What are the requirements for exports and imports of non-hazardous plastic scrap and waste between the United States and Mexico?
9. What requirements apply, if any, to U.S. exports and imports of plastic scrap and waste not controlled under the Basel Convention (Basel listing B3011)?
10. What are the requirements for U.S. exports and imports of hazardous plastic scrap and waste?
11. What are the requirements for U.S. exports of plastic scrap and waste controlled by the importing country, but not by the United States?
12. What are the requirements for U.S. imports of plastic scrap and waste controlled by the exporting country, but not by the United States?
13. What steps are involved in completing transboundary shipments of Basel-controlled waste under the Basel Convention?
14. Are the terms used in the Basel plastic scrap and waste amendments defined under the Basel Convention?
15. When do the new Basel Convention requirements for plastic scrap and waste take effect?

It should be noted that our country participates proactively in the work sessions of the Intergovernmental Negotiation Committee to develop a legally binding international instrument on pollution by plastics, particularly in the marine environment, and is committed to it being an instrument that comprehensively regulates said residual polymers. for the benefit of health and ecosystems.

Lastly, we recognize the complexity of controlling recyclable plastics and that not all of them are subject to control by this Unit, so we will be attentive to the need to update the corresponding regulation with a valid legal basis. Therefore, we appreciate your criticism and identification areas of opportunity to improve the application of the Law and the applicable Agreements. We also ask for your patience in understanding the regulatory conditions that govern our work and reiterate your willingness to make continuous improvements to protect human health and the environment.

Note: (Sorry for my bad English, I hope there are no translation or syntax errors that distort this message)

Sincerely,



Ing. Jesús I. López Olvera

Director de Materiales Y Residuos Peligrosos.

Av. Ejército Nacional 223 Col. Anáhuac I Sección, CP.
11320, Alcaldía Miguel Hidalgo, Ciudad de México
Teléfono: (55) 56280 600 Ext. 23562

Subsecretaría de Regulación Ambiental
Dirección General de Gestión Integral de Materiales y
Actividades Riesgosas.

----- Mensaje reenviado -----

Asunto:Re: BAN Counter response // ATTN: Mexico / USA Transboundary Movements of Plastic Waste Y48

Fecha:Wed, 10 Aug 2022 21:43:10 +0000

De: Jim Puckett <jpuckett@ban.org>

Para: JESUS IGNACIO LOPEZ OLVERA <jesus.olvera@semarnat.gob.mx> , ARTURO GAVILAN GARCIA <arturo.gavilan@semarnat.gob.mx>

CC: coordinacion@rapam.org <coordinacion@rapam.org> , Adrian, Stephanie <Adrian.Stephanie@epa.gov> , coughlan.laura@epa.gov <coughlan.laura@epa.gov> , luz.ortiz@semarnat.gob.mx <luz.ortiz@semarnat.gob.mx> , rodrigo.rojas@sre.gov.mx <rodrigo.rojas@sre.gov.mx> , miguel.fragoso@semarnat.gob.mx <miguel.fragoso@semarnat.gob.mx> , alfonso.delatorre@semarnat.gob.mx <alfonso.delatorre@semarnat.gob.mx> , maria.rocha@semarnat.gob.mx <maria.rocha@semarnat.gob.mx> , alejandra.medina@semarnat.gob.mx <alejandra.medina@semarnat.gob.mx> , azucena.olivares@semarnat.gob.mx <azucena.olivares@semarnat.gob.mx> , kreisler.eva@epa.gov <kreisler.eva@epa.gov> , larisadeorbe@gmail.com <larisadeorbe@gmail.com>

Dear Jesus Ignacio Lopez Olvera:

My condolences for your recent misfortunes. I hope you are doing much better now. I look forward to your updating of the regulations in Mexico to conform to the 2019 Basel Plastics Amendments. With respect to Basel I also would like to take this opportunity to congratulate you on your ratification of the Basel Ban Amendments, which according to my knowledge Mexico attained by Accession in May of this year. Well done!

With respect to the Plastics Amendments, please be well aware that it is not ONLY PVC which is of concern. In fact far more often, the plastic waste will need to be controlled due to the wastes being mixed or contaminated, rather than halogenated. PVC was just an example we could detect due to its having a specific HS code (39153). What is most vital is that your enforcement capacity is enlarged to proper enforcement of the entire Y48 listing. Y48 is illegal to bring in from the US currently in our view, and will require PIC procedure from all other countries.

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With respect to the Ban Amendment, this will required additional implementation (rulemaking) and enforcement against hazardous waste exports from Mexico, e.g. to Central American countries or to Asia. In this implementation we would urge Mexico to not only ban the export of hazardous wastes to developing countries, but also Annex II wastes. This is what the EU has done and it is much easier and more appropriately implmemented.

Please let us know when we can expect to hear from you with respect to your changes in rules, policies and procedures.

Sincerely yours, Jim Puckett



Jim Puckett

Executive Director

Basel Action Network

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Skype: jimpuckett

Please note: BAN's hours are Mon-Thurs, 8am - 5pm Pacific Time

From: JESUS IGNACIO LOPEZ OLVERA <jesus.olvera@semarnat.gob.mx>

Date: Tuesday, August 9, 2022 at 5:32 PM

To: Multiple Recipients <jpuckett@ban.org> , ARTURO GAVILAN GARCIA <arturo.gavilan@semarnat.gob.mx>

Cc: "coordinacion@rapam.org" <coordinacion@rapam.org> , "Adrian, Stephanie" <Adrian.Stephanie@epa.gov> , "coughlan.laura@epa.gov" <coughlan.laura@epa.gov> , "luz.ortiz@semarnat.gob.mx" <luz.ortiz@semarnat.gob.mx> , "rodrigo.rojas@sre.gov.mx" <rodrigo.rojas@sre.gov.mx> , "miguel.fragoso@semarnat.gob.mx" <miguel.fragoso@semarnat.gob.mx> , "alfonso.delatorre@semarnat.gob.mx" <alfonso.delatorre@semarnat.gob.mx> , "maria.rocha@semarnat.gob.mx" <maria.rocha@semarnat.gob.mx> , "alejandra.medina@semarnat.gob.mx" <alejandra.medina@semarnat.gob.mx> , "azucena.olivares@semarnat.gob.mx" <azucena.olivares@semarnat.gob.mx> , "kreisler.eva@epa.gov" <kreisler.eva@epa.gov> , "larisadeorbe@gmail.com" <larisadeorbe@gmail.com>

Subject: Re: BAN Counter response // ATTN: Mexico / USA Transboundary Movements of Plastic Waste Y48

Dear Mr. Jim Puckett,
Basel Action Network,

On behalf of Mr. Arturo Gavilán, Head of the DGGIMAR of the Mexican Ministry of the Environment and Resources in Mexico, I apologize for the delay in responding to your message with the appropriate questions about the control of transboundary movements of plastics, in particular PVC.

Let me inform you that I am the main person responsible for the matter and that two surgeries in the hospital and COVID have kept me out of my work activities during the last few weeks, so we are still reviewing how to respond to you, acknowledging the sections in which You are right and we must update the regulation.

In this framework, we await the updating of an Agreement published in the Official Gazette of the Federation to optimize the control of PVC and the application of the Amendment to the Basel Convention.

Thank you for your understanding, please expect to hear from us soon.

Cordially,

4/16/2023



Ing. Jesús I. López Olvera

Subdirector de Movimientos Transfronterizos de Residuos

Av. Ejército Nacional 223 Col. Anáhuac I Sección, CP.
11320, Alcaldía Miguel Hidalgo, Ciudad de México
Teléfono: (55) 56280 600 Ext. 23562

Subsecretaría de Gestión para la Protección Ambiental

Dirección General de Gestión Integral de Materiales y

Actividades Riesgosas.

Dirección de Materiales y Residuos Peligrosos

El 19/06/2022 a las 12:00 a. m., Jim Puckett escribió:

[Formal letter attached]

18 June 2022

Dr. Arturo Gavilan Garcia
Director General
Secretaría de Medio Ambiente y Recursos Naturales
Av. Ejército Nacional 223, Col. Anáhuac I
11320 Ciudad de México
Mexico

Dear Dr. Arturo Gavilan Garcia:

Thank you for your response to our letter. We greatly appreciate you and your staff taking the time to investigate the situation regarding US to Mexico plastic waste (Basel listing Y48) trade. I am sure we are all desiring to see such trade between Mexico and the US conducted legally and sustainably. In that regard it is important to examine the remaining questions based on your response.

1. The applicability of the Bilateral Agreement (La Paz, Annex III) to Basel Article 11 in this case remains in question.

It is possible that we may have been wrong with respect to the existence of what could be an appropriate Article 11 agreement that could be used to import Y48 plastic waste from the US. Due to the very broad definition of hazardous waste employed in the La Paz Agreement Annex III accord it is possible that the US and Mexico could agree together to make use of this agreement.

However, for the bilateral accord to be valid in the case of Y48 plastics, the US and Mexico would both have to agree that it is and abide by it simultaneously and for trade in both directions. Most importantly, they would need to follow its obligations. Currently it is not at all clear that the US agrees that they believe the La Paz agreement applies to Y48 and moreover neither country is applying its provisions in a manner consistent to the La Paz accord, nor to the Basel Convention. Rather the US statement on their [website FAQ](#) asks and answers an important question as follows:

1. What are the requirements for exports and imports of non-hazardous plastic scrap and waste between the United States and Mexico?

As of January 1, 2021, Mexico is applying prior notice and consent requirements for U.S. exports of non-hazardous plastic scrap and waste. Therefore, exports to Mexico are not allowed unless consent is received from Mexico's Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT), the Mexican environmental agency. U.S. exporters

4/16/2023

should send export notifications for non-hazardous plastic scrap and waste (Basel code Y48) directly to SEMARNAT using the [OECD/Basel notification form](#) at the address below.

*Dirección General de Gestión Integral de Materiales y Actividades Riesgosas (DGGIMAR)
Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT)
National Army No. 223, 15th Floor Ala A
Col. Anáhuac, Miguel Hidalgo Mayor's Office
Postal Code 11320,
Mexico City, Mexico*

Mexico requires that export notifications be original documents and include the signature of the exporter or the exporter's legal representative. Responses from Mexico will be issued by official letter. EPA suggests that U.S. exporters work with Mexican importers to comply with Mexican requirements.

Mexico is applying prior notice and consent requirements to Mexican exports of non-hazardous plastic scrap and waste to the U.S. (i.e., U.S. imports). SEMARNAT will send export notifications to EPA and EPA will issue a "neither consent nor object", which is equivalent to a consent. EPA will issue a "neither consent nor object" to the notice because U.S. imports of non-hazardous scrap and waste are not regulated under RCRA. Once SEMARNAT receives EPA's "neither consent nor object," SEMARNAT will communicate EPA's decision to the Mexican exporter. SEMARNAT has informed EPA that they will not require export notices for subsequent requests involving the same Mexican exporter, same U.S. receiving facility, and same type of plastic scrap or waste. New export notices will be required if any of these elements' changes. EPA suggests that U.S. importers work with Mexican exporters to comply with Mexico's requirements.

This answering statement above makes it very clear that:

- a) the US is not following the La Paz accord's Annex III,
- b) that while Mexico claims they are following the La Paz accord (in your letter to us), neither Mexico nor the US are following the accord correctly and in the case of Mexico, consistent with their Basel Article 11 obligations.

The US FAQ does not mention the La Paz accord at all and rather indicates that it is only Mexico that is requiring the PIC procedure whereas La Paz requires both Parties to undertake that procedure and do so in both directions -- export and import. Both governments must be prepared to utilize the Bilateral agreement and all its provisions for this to work as a valid Article 11 agreement/movement. If they invoked the bilateral agreement as it is written, it will also require PIC for exports from Mexico to the US. It is not at all clear if exports from Mexico to US are following the PIC procedure as required in the La Paz agreement. So, while the La Paz accord could have been used as a valid Article 11 agreement if it was adhered to and accepted by both Parties for the purposes of trading in Y48, it is very clear it is not being so used.

The US even refuses to engage in the La Paz PIC procedure and rather reverts to indicating that RCRA does not require PIC for Y48 when they clearly had the opportunity to cite the use of the La Paz accord. This is especially pointed as the same US FAQ clearly references the Canadian Article 11 Arrangement for Y48. Why do they utilize a special agreement for Canada and not Mexico?

Despite Mexico claiming the exports are undertaken via the La Paz accord, both countries fail to adhere to that accord. The US fails to require a state-to-state notification, rather allowing and even encouraging US exporters to make the initial notification and subsequent contacts with the Mexican authorities. To have this vital responsibility delegated to private exporters would not be compliant with Basel's Article 11 as it is very clearly less environmentally sound as a control procedure. It is also not in accordance with the La Paz agreement (see La Paz Article 3,1). Mexico likewise departs from the requirements of the La Paz accord when they indicate (at least according to the USA FAQ) that they will accept one time notification -- (pre-consented) facilities which is not a possibility in the La Paz accord. The La Paz agreement indicates that notifications must be done at least once per year for similar shipments.

It seems both Mexico and the US are making this arrangement up with no legal basis to do so and by so doing, Mexico is in breach of its obligations under Article 11. In summary, we must ask, is the bilateral agreement being accepted and used by both the US and Mexico, and if so, why is this not so stated, and why are the provisions far less environmentally rigorous than the Basel Convention and contrary to the La Paz accord?

2. The lack of any Y48 consents to date made by Mexico and the prevalence of clear evidence of Y48 exports (e.g. PVC) reveals a serious case of illegal traffic for Mexico and if the La Paz accord is valid and applicable, for the US as well.

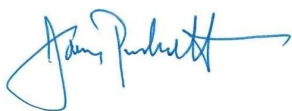
If we were to assume that the problems with a valid Article 11 agreement indicated above could be rectified soon, your response to our letter indicated that you have not yet consented to one shipment of Y48 is alarming. Given that we have provided ample evidence in our last letter that there have been significant exports of Y48 (e.g. PVC waste) moving to Mexico from the US throughout 2021 and in 2022, indicates a serious case of illegal traffic on the part of US exporters and Mexican importers. Illegal traffic is a criminal act (Basel Article 4,3) and Parties must take actions to prevent illegal traffic (Basel Article 4,4). This is a problem also for the US (if indeed they are invoking the La Paz accord) as the prosecution of illegal traffic is a requirement of the La Paz agreement (see Article XIV, 2). BAN stands ready to assist you with data as we provided earlier. However, we will not be silent regarding illegal traffic that is not investigated and prosecuted diligently and punished accordingly as a criminal act (Basel Article 4, 3). What steps have the US and Mexico taken to address this rampant illegal traffic and what is intended in future?

3. Assuming the La Paz bilateral agreement is not active and correctly adhered to by the US and Mexico at the same time, this is a case of Basel non-compliance for Mexico.

If indeed the US does not believe as Mexico does, that the La Paz Annex III accord is applicable now for Y48 as it is written (with equal applicability to trade moving from or to the United States), and indeed if neither Party is in fact following that accord correctly in accordance with its provisions, then we have another very serious problem. This then would be a matter of Basel non-compliance on the part of Mexico with respect to the evidence we have provided for the exports of PVC plastic (Y48) that occurred in 2021. Mexico cannot unilaterally breach the Party to non-Party Trade Ban (Article 4, para 5 of the Convention) which they would be doing in the absence of a valid and mutually agreed upon Article 11 bilateral or multilateral agreement. Is it correct to say that Mexico is out of compliance with the Convention if the Bilateral Agreement is not valid for the reasons indicated above (a. Not being adhered to by the US and Mexico, and b. not applying Basel's Article 6 correctly with respect to state-to-state communication and annual notifications and consent?)

We look forward to hearing your response to the three underlined questions above.

Sincerely yours,



Jim Puckett
Executive Director
Basel Action Network

cc:

Mr. Jesus Olvera, SEMARNAT
Ms. Stephanie Adrian, US EPA, Chief, International Branch
Laura Coughlan, US EPA
Eva Kreisler, US EPA
Luz Ortiz, SEMARNAT
Rodrigo Rojas, SEMARNAT
Miguel Fragoso, SEMARNAT
Alfonso Delatorre, SEMARNAT
Maria Rocha, SEMARNAT
Alejandra Medina, SEMARNAT
Azucena Olivares, SEMARNAT
Mr. David Azoulay, Center for International Environmental Law (CIEL)
Mr. Fernando Bejarano, International Pollutants Elimination Network (IPEN)
Ms. Larisa De Orbe, International Pollutants Elimination Network (IPEN)



Jim Puckett
Executive Director
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Please note: BAN's hours are Mon-Thurs, 8am - 5pm Pacific Time

From: ARTURO GAVILAN GARCIA <arturo.gavilan@semarnat.gob.mx>
Date: Tuesday, June 14, 2022 at 1:52 AM
To: Multiple Recipients <jpuckett@ban.org>
Cc: **MailScanner has detected a possible fraud attempt from "rapam.org" claiming to be**
"coordinacion@rapam.org" <coordinacion@rapam.org**>**
Subject: Fwd: Re: ATTN: Mexico / USA Transboundary Movements of Plastic Waste Y48

This is a re-send of the mail!

4/16/2023

----- Mensaje original -----

De: ARTURO GAVILAN GARCIA <arturo.gavilan@semarnat.gob.mx>

Para: **MailScanner has detected a possible fraud attempt from "ban.org" claiming to be** "puckett@ban.org" <puckett@ban.org> , **MailScanner has detected a possible fraud attempt from "rapam.org" claiming to be** "coordinacion@rapam.org" <coordinacion@rapam.org>

Cc: "adrian.stephanie@epa.gov" <adrian.stephanie@epa.gov> , "coughlan.laura@epa.gov" <coughlan.laura@epa.gov> , LUZ MARIA ORTIZ ORTIZ <luz.ortiz@semarnat.gob.mx> , "rodrigo.rojas@sre.gob.mx" <rodrigo.rojas@sre.gob.mx> , ALFONSO DE LA TORRE VEGA <>, JOSE MIGUEL EMILIO FRAGOSO ROMERO <>, ALEJANDRA MEDINA AREVALO <>, JESUS IGNACIO LOPEZ OLVERA <>, AZUCENA OLIVARES ANGELES <>, "" <kreisler.eva@epa.gov> , MARIA TERESA LOPEZ ROCHA <>

Fecha: 13/06/2022 4:58 PM

Asunto: Re: ATTN: Mexico / USA Transboundary Movements of Plastic Waste Y48

Dear Mr. Jim Puckett,

Basel Action Network,

In response to your May 10, 2022 message to Jesús I. López Olvera regarding concerns about the cross-border trade of electronic and plastic waste between Mexico and the United States, I kindly give our gratitude to your concern about the risks to the health and the environment that the cross-border movement of said waste implies for our Country and we give you specific answers below:

1. Regarding your comment on the existence or not of a bilateral or multilateral agreement between the two countries that governs plastic waste,

I inform you that the Agreement between the United Mexican States and the United States of America on Cooperation for the Protection and Improvement of the Environment in the Border Area (known as the Peace Agreement, or in Spanish Acuerdo de la Paz), signed on August 14, 1983, establishes the basis for cooperation between the Parties for the protection, improvement and conservation of the environment and the problems that affect it on the basis of equality, reciprocity and mutual benefit. Annex III of the Peace Agreement called Cooperation Agreement between the United Mexican States and the United States of America on transboundary movements of hazardous waste and hazardous substances, signed on November 12, 1986, aims to ensure that activities related to transboundary movements of hazardous substances and waste are carried out in a way that reduces risks to public health, property and the quality of the environment, effectively cooperating with regard to their export or import.

In this framework and as a result of the coordination between the USEPA and the General Directorate of Comprehensive Management of Materials and Risky Activities (DGGIMAR for its acronym in Spanish)/ Secretary of the Environment and Natural Resources (SEMARNAT, acronym in Spanish), the coordination is released in which the provisions applicable to the export of plastics are made known to US exporters, which can be found in the following link : <https://www.epa.gov/hwgenerators/new-international-requirements-export-and-import-plastic-recyclables-and-waste#overview>

1. The Decision of the Council of the OECD has not adopted the new Basel lists: B3011 and Y48 and the Bilateral Mexico-United States of 1986 only deals with hazardous waste. B3011 as a non-hazardous waste, does not require controls, however, exports of Y48 moving between the two countries must be controlled by Basel and are therefore not legally traded between the two countries due to the prohibition of Part a non-Party found in Article 4 and 5 of Basel.

As you are aware, Mexico supported from the beginning the application of Amendment BC-14/12 of Annexes II, VIII and IX of the Basel Convention and consequently in January 2021 reported to the Environment and Economy Integration Environment Directorate of the OECD, the application of the Merit Amendment without reservation even for non-hazardous plastic waste (Basel entry Y48 and B3011). It should be clarified that you are right to mention the non-consensus in the application of the aforementioned amendment among the OECD countries, however, you also know that the decision of each Country was reserved for its application and Mexico reiterated its adoption.

1. The new Y48 listing cannot be imported into Mexico from the US, and yet we fear it is being exported. In the case of documented PVC exports, this is obvious based on known trade data representing HS code 39153. We know that they flow across the border into Mexico on a regular basis. And as you know, halogenated polymers like polyvinyl chloride (PVC) are Y48.

Based on the provisions of article 11 of the Basel Convention, the Parties may enter into bilateral, multilateral or regional agreements or arrangements on the movement of hazardous waste and other wastes with Parties or States that are not Parties, with provisions that are no less environmentally friendly. rational than those established in said agreement. In this context and after consultation between the environmental authorities of both countries, the measures governing the import and export of the plastics referred to in the Basel Convention Amendment were agreed upon. In fact, you quote the answer to the question: What are the requirements for exports and imports of

non-hazardous plastic scrap and waste between the United States and Mexico?, posed through the USEPA portal:

<https://www.epa.gov/hwgenerators/new-international-requirements-export-and-import-plastic-recyclables-and-waste#fq8>

Where it is established that as of January 1, 2021, Mexico is applying prior notification and consent requirements for US exports of scrap metal and non-hazardous plastic waste. Therefore, exports to Mexico are not permitted unless consent is received from the Mexican Secretariat of the Environment and Natural Resources (SEMARNAT), the Mexican environmental agency. US exporters must submit non-hazardous plastic scrap and waste export notifications (Basel code Y48) directly to SEMARNAT using the OECD/Basel Notification Form.

At the national level and in order to clarify the applicable regulation that is based on Mexican legislation and international agreements on the matter, there are the following links from the Ministry of Environment and Natural Resources, for import and export of plastic waste (SEMARNAT procedure-07-029):

<https://www.gob.mx/semarnat/acciones-y-programas/la-semarnat-informa-medidas-para-la-implementacion-de-las-enmiendas-de-basilea-sobre-residuos-plasticos>

and

<https://www.gob.mx/semarnat/documentos/aplicacion-de-la-enmienda-bc1412-del-convenio-de-basilea-sobre-movimientos-transfronterizos-de-desechos-y-su-eliminacion?state=published>

It is important to highlight that in the explanatory notes of the cited information, PVC is included as an example of plastics from entry Y48 and the following clarification:

"In cases where it is intended to import plastic waste under entry Y48 from the United States of America, US exporters must send the original non-hazardous plastic waste export notification directly to DGGIMAR/SEMARNAT, recommends Mexican importers to be in communication with exporters, for more information on movements with the US consult: <https://www.epa.gov/hwgenerators/new-international-requirements-export-and-import-plastic-recyclables-and-waste> The notification must be addressed to the General Director of Comprehensive Management of Materials and Risky Activities..."

In this context I inform you that due to the reported data of increasing volumes of Y48 plastics that cross the border into our country, this General Directorate will seek opportunities to improve import control procedures, coordination with the Ministry of Economy to improve the identification of plastics waste tariff fractions and communication with inspection and surveillance authorities.

- 1. Globally accepted levels of contamination range from 0 to 5%, depending on the importing country in question. The EU requires 2%. What is the Mexican level of acceptable contamination?For these reasons, we are confident that much of the waste increasingly flowing across the US-Mexico border is commingled or contaminated and therefore Y48 and therefore are illegal to enter Mexico due to the Party to Non-Party Prohibition found in Article 4 and 5 of Basel.**

Based on Amendment BC-14/12 of the Basel Convention and the conditions established in the General Law for the Prevention and Comprehensive Management of Waste (LPGIR acronym in Spanish) and its Regulations, they may only be imported and/or exported by presenting the formality SEMARNAT-07-029, plastic waste that is destined for recycling in an environmentally sound manner, is almost free of contamination and other types of waste, is pre-classified and separated, has not been in contact with infectious agents, is not flammable either, corrosive, toxic or poisonous, in accordance with the results of the analysis provided for in the Official Mexican Standard NOM-052-SEMARNAT-2005, which establishes the characteristics, the identification procedure, classification and lists of hazardous waste and the Official Mexican Standard NOM-053-ECOL-1993 that establishes the procedure to carry out the extraction test to determine the constituents that make a hazardous waste due to its toxicity to the environment. The companies that carry out the importation of residual plastics must have the authorizations required by the Law and must apply the security measures for their adequate environmental management. On the other hand, by having an EPA-SEMARNAT Bilateral Agreement, the provisions of Articles 4 and 5 of the Basel Convention are not being transgressed, based on what is indicated in Article 11 of the same Convention.

- 1. Based on the above, it would appear that Mexico is not complying with its Basel obligation not to trade Basel controlled waste with a non-Party.**

Annex III of the Agreement between the United Mexican States and the United States of America on Cooperation for the Protection and Improvement of the Environment in the Border Area, is the legal framework by which the control of cross-border movements between both countries is governed.

- 1. How does Mexico legally justify its importation of Y48 plastics such as PVC from the US, considering Articles 4**

and 5 of the Convention?

From the application of Annex III of the Agreement between the United Mexican States and the United States of America on Cooperation for the Protection and Improvement of the Environment in the Border Area.

1. How does Mexico act against shipments of plastic that cross the border?

Through the inspection and surveillance applied by the General Customs Administration and the Federal Attorney for Environmental Protection (PROFEPA) in conjunction with the LGPGIR, its Regulations, the Foreign Trade Law, the Federal Economic Competition Law, the Customs Law and the international treaties to which Mexico is a party and the other applicable legal systems.

1. How many notifications has Mexico already consented to since January 1, 2021? Are these records publicly available?

From January 1, 2021 to date, the DGGIMAR/SEMARNAT has not issued consent for the import of plastic waste. In relation to the notification records, there is no public information.

In item 14 of the following link you can consult information on waste import and export authorizations. <https://www.gob.mx/semarnat/documentos/empresas-autorizadas-para-el-manejo-de-residuos-peligrosos>

1. How many enforcement actions has Mexico taken against what it considers to be illegal trafficking?

This information is not available in this Administrative Unit since the Legal Competence is in PROFEPA, so requests are to be made to them.

1. Will Mexico reconsider its import rules with respect to the United States now that we have pointed out the illegality of the rule?

The DGGIMAR will continue to act in accordance with the applicable legal and international framework. We appreciate the information provided by BAN.

Regards,



El 10/05/2022 a las 09:43 p. m., Jim Puckett escribió:

ATTN: BASEL CONVENTION FOCAL POINT

Mr. Jesús Ignacio López Olvera

Subdirector

Subdirector de Movimientos Transfronterizos

Secretaría de Medio Ambiente y Recursos Naturales

Av. Ejército Nacional 223, Col. Anáhuac I

11320 Ciudad de México

Mexico

Email: jesus.olvera@semarnat.gob.mx

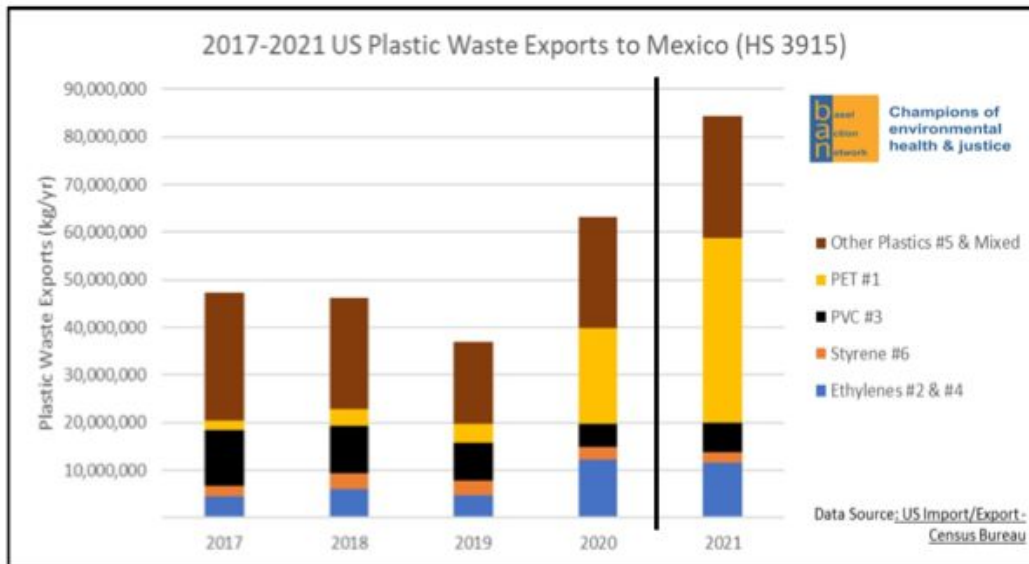
Dear Mr. Jesús Ignacio López Olvera:

4/16/2023

Greetings to you from the Basel Action Network. I am not certain we have met, but I would hope we can meet soon at the upcoming BRS meeting in Geneva in June.

Today I write about some concerns regarding cross-border trade in electronic and plastic waste with the United States.

First, we note with alarm that there are an increasing number of plastic wastes moving from the US to Mexico. See chart below.

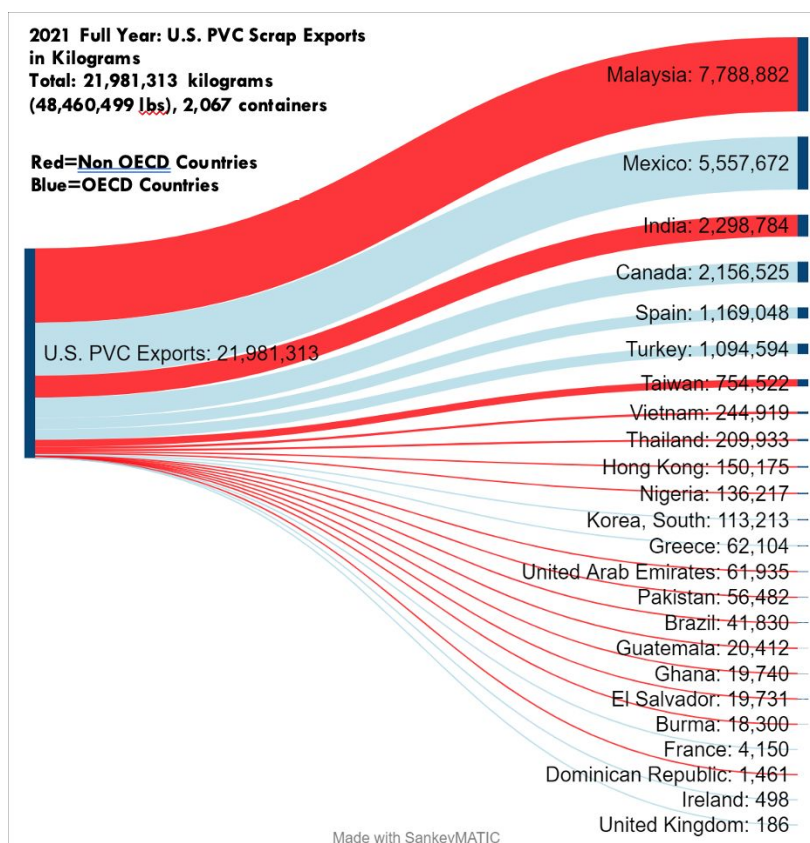


And, we note that there is no bilateral or multilateral agreement between the two countries governing plastic wastes other than hazardous plastic waste. As you know, the OECD Council Decision has not adopted the new Basel listings -- B3011 and Y48 and the [USA-Mexico Bilateral of 1986](#) only deals with hazardous waste. B3011 as a non-hazardous waste, does not warrant controls, however Y48 exports moving between the two countries are to be controlled under Basel and thus are not legally traded between the two countries due to the Party to non-Party ban found in Basel's Article 4,5.

The new Y48 listing cannot be imported by Mexico from the US and yet we fear it is being exported. In the case of documented PVC exports this is obvious based on known trade data accounting for HS code 39153. We know these are flowing across the border toward Mexico with regularity. And as you know halogenated polymers such as polyvinyl chloride (PVC) are Y48.

Please see below publicly available data in the spreadsheet, and in the 2021 Flow Chart for PVC shipments.

Date	Product HS	Country of Destination	FOB Value (USD)	Unit	Quantity	Full HS Description	Unit Value FOB (USD)	District of Loading
3/1/22	3915300000	MEXICO	3,600.00	KILOGRAMS	20,412.00	Waste, parings and scrap, of plastics: Of polymers of vinyl chloride	0.18	EL PASO, TX
3/1/22	3915300000	MEXICO	2,740.00	KILOGRAMS	18,900.00	Waste, parings and scrap, of plastics: Of polymers of vinyl chloride	0.14	NOGALES, AZ
3/1/22	3915300000	MEXICO	13,562.00	KILOGRAMS	15,780.00	Waste, parings and scrap, of plastics: Of polymers of vinyl chloride	0.86	SAN JUAN, PR
3/1/22	3915300000	MEXICO	401,887.00	KILOGRAMS	655,610.00	Waste, parings and scrap, of plastics: Of polymers of vinyl chloride	0.61	LAREDO, TX
3/1/22	3915300000	MEXICO	79,322.00	KILOGRAMS	318,852.00	Waste, parings and scrap, of plastics: Of polymers of vinyl chloride	0.25	SAN DIEGO, CA
2/1/22	3915300000	MEXICO	6,958.00	KILOGRAMS	7,872.00	Waste, parings and scrap, of plastics: Of polymers of vinyl chloride	0.88	SAN JUAN, PR
2/1/22	3915300000	MEXICO	162,952.00	KILOGRAMS	260,966.00	Waste, parings and scrap, of plastics: Of polymers of vinyl chloride	0.62	LAREDO, TX
2/1/22	3915300000	MEXICO	90,457.00	KILOGRAMS	400,803.00	Waste, parings and scrap, of plastics: Of polymers of vinyl chloride	0.23	SAN DIEGO, CA
1/1/22	3915300000	MEXICO	15,333.00	KILOGRAMS	86,944.00	Waste, parings and scrap, of plastics: Of polymers of vinyl chloride	0.18	SAN DIEGO, CA
1/1/22	3915300000	MEXICO	224,707.00	KILOGRAMS	301,255.00	Waste, parings and scrap, of plastics: Of polymers of vinyl chloride	0.75	LAREDO, TX
1/1/22	3915300000	MEXICO	12,910.00	KILOGRAMS	14,872.00	Waste, parings and scrap, of plastics: Of polymers of vinyl chloride	0.87	SAN JUAN, PR



Further, we believe much of the non-PVC imported plastic waste is also Y48 by virtue of it either being mixed polymers or contaminated.

Contamination levels being accepted globally are between 0-5% depending on the importing country concerned. The EU requires 2%. What is the Mexican level for acceptable contamination? Currently the US waste haulers have a very hard time achieving even 8% in their baled waste.

And if not contaminated, it is probable that the shipments are most often not separated as to individual polymers with the only acceptable mixture allowed being mixes of PP, PE and PET?

For these reasons, we are certain much of the waste increasingly flowing across the US/Mexican border is mixed or contaminated and thus Y48, and thus illegal for entry into Mexico due to the Party to non-Party Ban found in Basel

Article 4,5.

And yet, the US EPA website has stated the following in an FAQ:

"What are the requirements for exports and imports of non-hazardous plastic scrap and waste between the United States and Mexico?"

As of January 1, 2021, Mexico is applying prior notice and consent requirements for U.S. exports of non-hazardous plastic scrap and waste. Therefore, exports to Mexico are not allowed unless consent is received from Mexico's Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT), the Mexican environmental agency. U.S. exporters should send export notifications for non-hazardous plastic scrap and waste (Basel code Y48) directly to SEMARNAT using the [OECD/Basel notification form](#) [EXIT](#) [EXIT EPA WEBSITE](#) at the address below.

Dirección General de Gestión Integral de Materiales y Actividades Riesgosas (DGGIMAR)
Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT)
National Army No. 223, 15th Floor Ala A
Col. Anáhuac, Miguel Hidalgo Mayor's Office
Postal Code 11320,
Mexico City, Mexico

Mexico requires that export notifications be original documents and include the signature of the exporter or the exporter's legal representative. Responses from Mexico will be issued by official letter. EPA suggests that U.S. exporters work with Mexican importers to comply with Mexican requirements."

Based on the above, it would appear that Mexico is failing to uphold its Basel obligation not to trade in Basel Controlled waste with a non-Party. The PIC procedure for Y48 can only be possible if there is a valid Article 11 agreement in place. The failure of the OECD to reach agreement on the adoption of Y48 and the absence of a valid bilateral agreement with the US, for Y48, makes it clear that there is a very strong likelihood that much of the 80,000 metric tonnes of plastic waste that has moved into Mexico as Y48 is illegal traffic.

Further, it is clear to us that the US government, by virtue of their notice cited above, is aiding and abetting this illegal traffic.

Questions:

- How does Mexico legally justify its importation of Y48 plastics such as PVC from the US considering Article 4,5 of the Convention?
- How does Mexico enforce against the shipments of plastic flowing across the border?
- How many notifications have been consented to already by Mexico since January 1, 2021? Are these records publicly available?
- How many legal enforcement actions have been taken by Mexico against what it considers illegal traffic?
- Will Mexico reconsider its import rules with respect to the United States now that we have pointed out the illegality of the rule?

I hope you can answer the above questions for us. We are herein copying US EPA to see if they can take steps to assist in minimizing what appears to be widespread illegal traffic in plastic waste between the two countries.

Sincerely yours,

Jim Puckett

cc. Stephanie Adrian, US EPA

4/16/2023



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Please note: BAN's hours are Mon-Thurs, 8am - 5pm Pacific Time