

The Basel Ban Amendment: Just Say Now!

Long Overdue

Ever since its inception, the intent of the majority of the world's nations that came together in Basel in 1989 to create a treaty on hazardous waste dumping, sought a ban on the export of such waste from developed to developing countries. However they were rebuffed by most of the developed countries. And, ever since its entry into force in 1992, the Contracting Parties of the Basel Convention worked to fulfill this promise and make this effort of a full ban on the exports of hazardous wastes the overarching priority of the Convention's work. Finally in 1995, the Ban Amendment became the most significant accomplishment of the Convention.

At the first meeting of Contracting Parties (COP/I) in 1992, **Decision I/22** was passed, requesting developing countries to prohibit the import of hazardous wastes from industrialized countries. At the next opportunity, COP/II in 1994, the Parties passed **Decision II/12** banning the export of all hazardous wastes from the Organization for Economic Cooperation and Development (OECD) countries to non-OECD countries. Then, at COP/III in 1995, **Decision III/1** was adopted, installing the Basel Ban as an amendment to the Convention.

Since then, at COPs IV, V, VI, VII and X all Parties were urged to ratify the Ban Amendment at the earliest opportunity (**Decisions IV/7, V/3, VI/33, VII/23, X/3**).

The need for the Basel Ban Amendment is now more pressing than at any point in history.

Now, 22 years since the adoption of the Convention when the ban was first conceived, and more than 17 years since its adoption the Ban has still not entered into force due to its being held hostage by a handful of countries

The Basel Ban is seen as vital for two primary reasons:

- To prevent damage to the environment and human health caused by the disproportionate export and disposal of hazardous wastes to countries that did not create them and where there was

less infrastructure and resources to mitigate the great risks associated with such wastes.

- To prevent waste generators from avoiding taking responsibility to minimize the generation of hazardous wastes through clean production technologies and methods, by externalization of their costs to countries where disposal is less costly than at home.

Both of the above reasons are fully consistent with the Basel Convention itself, and the concept of Environmentally Sound Management of hazardous wastes.

We Now Have 75 Ratifications! Why the Delay?

The Basel Ban Amendment has now exceeded what many considered the magic number of 62 ratifications –3/4 of the number of Parties present (82) in 1995 when the landmark decision was adopted. At about the time the ratifications were reaching 62, people discovered upon a close reading, that the text of the Convention regarding entry into force of amendments was ambiguous. The small group of countries opposing the amendment seized upon the vague wording to prevent the imminent entry into force. In the absence of an agreement by the Parties on what Article 17, paragraph 5 meant, the Office of Legal Affairs (OLA) at the United Nations would apply what is known as the "current time" approach, requiring ratifications of 3/4 of the number of Parties at any given time. Such an approach would have required 133 countries at the time.

The "fixed time" approach however draws its 3/4s of Parties from the actual 87 countries that were Parties to the Convention in 1995 (not present) when the Amendment was adopted (66 countries).

At COP9 the Parties were poised to decide on an interpretation that would move the ban into force at the earliest possible date but then they could not decide how to decide. A small minority of countries claimed that any decision to interpret the treaty would need to be decided by consensus and not by the Rules of Procedure. The Rules of Procedure allow for a vote on the matter should consensus not be achieved. Because certain countries remained adamant about blocking consensus in order to thwart the overwhelming will of the global community for a ban, placing the viability of the ban in the hands of a consensus process would have been the death knell for the Amendment. Thus it was that at COP9 the process to decide on how to decide reached an impasse and the ban's entry into force blocked by default.

CLI to the Rescue

At that point the Indonesian Presidency announced with Switzerland the formation of a Country Led Initiative to find a way to diplomatically assuage the concerns of those countries that were blocking the passage of the long sought after prohibition. Several Party-only meetings were held and issues about the Ban were aired. The result of the process was the Omnibus Draft Decision, which called for the "fixed time" approach and continued dialogue and work on guidelines and standards.

At COP10, Parties adopted the Omnibus Decision (X/3) and the "fixed time" approach interpretation of Article 17, paragraph 5, that would allow for the Amendment to enter into force swiftly. Today, with 51 ratifications counted from the 66 needed, we only need 15 more ratifications for entry into force.

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Fixed Time Approach: 1995 Parties Needed

Parties in 1995 when Ban Amendment was Adopted	
Ratified Ban Already	Not Yet Ratified Ban (15 more of these are needed for entry into force)
Argentina, Austria, Belgium, Chile, China, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, Indonesia, Ireland, Italy, Jordan, Kuwait, Latvia, Liechtenstein, Luxembourg, Malaysia, Mauritius, Monaco, Netherlands, Nigeria, Norway, Oman, Panama, Poland, Portugal, Romania, Saint Lucia, Saudi Arabia, Slovakia, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Trinidad and Tobago, Turkey, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Zambia	Antigua and Barbuda, Australia, Bahamas, Bangladesh, Brazil, Canada, Comoros, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Dem. Rep. of Congo, El Salvador, Guatemala, Guinea, India, Iran, Israel, Japan, Lebanon, Malawi, Maldives, Mexico, Namibia, New Zealand, Pakistan, Peru, Philippines, Republic of Korea, Russian Federation, St. Kitts and Nevis, Senegal, Seychelles, South Africa, United Arab Emirates, Vietnam
Total 51	Total 36

While it is urgent for all countries that have not yet ratified the Ban Amendment to do so, it is imperative that those countries that were Parties in 1995 and those listed in the "Not Yet Ratified Ban" column above, do so immediately to fulfill the promises made at COP10 in Cartagena, Colombia.

Ratification Progress Report for All Parties

As the Basel Ban is really an Annex VII country export ban, it is of paramount importance that Annex VII countries ratify the

agreement. To date the **European Union** has been the driving force within the Annex VII group. The record of the non-European Annex VII countries sometimes known as the JUSCANZ, on the other hand, has been sadly irresponsible apart from **Turkey**. Failure to ratify the Basel Ban sends the unmistakable message that these countries wish to solve their hazardous waste problems by exporting them to poorer countries rather than taking responsibility for them at home.

Ratification Tally of All Parties	
	ANNEX VII
RATIFIED (32)	Austria, Belgium, Bulgaria, Chile, Cyprus, Czech Republic, Denmark, Estonia, European Union, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, UK.
NOT RATIFIED (9)	Australia, Canada, Israel, Mexico, New Zealand, South Korea, United States,
	NON-ANNEX VII
RATIFIED (43)	Albania, Andorra, Argentina, Bahrain, Bolivia, Botswana, Brunei Darussalam, China, Cook Islands, Ecuador, Egypt, Ethiopia, Gambia, Ghana, Indonesia, Jordan, Kenya, Kuwait, Lesotho, Liberia, Macedonia, Malaysia, Malta, Mauritius, Moldova, Monaco, Montenegro, Morocco, Nigeria, Oman, Panama, Paraguay, Qatar, St. Lucia, Saudi Arabia, Serbia, Sri Lanka, Syrian Arab Republic, Trinidad and Tobago, Tunisia, Uruguay, United Republic of Tanzania, and Zambia.
TOTAL	75 Ratifications

It has been 17 years now since we have been gathering ratifications for the amendment and now we have reached 75. Currently, given the world situation where we see end-of-life ships and electronic equipment moving en masse across borders, we cannot afford to wait any longer to move the Ban Amendment into the force of international law. We urge all countries to ratify the Ban Amendment, with especial urgency placed on those countries that were Parties to the Convention in 1995.

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