

The US Must Ratify the Entire Basel Convention (or not at all)

The Original Basel Convention: An Anachronism

Treaties are living and growing instruments. Since its adoption in 1989, the Basel Convention on the Transboundary Movement of Hazardous Wastes and their Disposal has evolved and moved a long way from its original minimalist approach to controlling trade in wastes. The Basel Convention has now adopted hundreds of decisions, a protocol, an amendment and it has amended its annexes since coming into legal force. Of these agreements, the decisions that culminated in the adoption of a global ban on the export of hazardous wastes from developed (defined as member states of the Organization for Economic Co-operation and Development) to developing (non-OECD) countries have dramatically altered the treaty. By far, the Basel Ban, which has now been adopted as an amendment to the treaty, has been the subject that has most dominated the work of the Convention since it came into being in 1992.

While the original text of the Convention was condemned by environmentalists and many developing countries as doing more to legitimize international toxic waste trade and dumping rather than criminalizing it, as soon as the treaty entered into force, the Parties progressively moved at each of the Conference of Parties (COPs) to rectify that shortcoming by the following *consensus* agreements:

COP1 (December 1992): Decision I/22 requested developing countries to prohibit the import of hazardous wastes from industrialized countries.

COP2 (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.

COP3 (September 1995): Decision III/1 adopted the OECD (and Liechtenstein) export ban as an amendment to the Convention.

The Basel Ban has been hailed as a landmark precedent for global environmental justice. It aims to end the practice of dumping hazardous wastes on poorer countries in avoidance of paying the high costs of more appropriate waste management or prevention within wealthier industrialized nations. It has, without question,

transformed the Basel Convention from a control regime, to a no-exceptions, environmentally-justified trade barrier to hazardous waste.

Countries like the United States that might wish to enter the treaty cannot pretend that they can turn back the clock and ignore these highly significant decisions made on more than one occasion by a consensus of the Parties -- decisions which dramatically and forever altered the treaty during the period they were not Parties to it. Yet this is precisely what the United States intends to do. They wish to ratify the original Convention but not simultaneously ratify the most significant alteration to that agreement the Parties have adopted.

Regardless of the legality of doing so, such an action is tantamount to a new 51st state joining the United States by ratifying the original 1787 US Constitution without accepting the subsequent first 10 amendments (the Bill of Rights) or the amendment banning slavery. It is simply not acceptable.

Motivations for Selective Ratification Revealed

Since the beginning of the Basel negotiations, the United States, in both Republican and Democrat administrations, has adopted the viewpoint of its industry lobby and not of its public, as it continues to strongly oppose the concept of a no-exceptions waste trade ban. The US, even as a non-Party, fought hard against passage of all of the above noted Basel decisions and they continue to do so.

As the Basel Ban has been *a dominant goal and activity* of the treaty since 1989 and since the US still vociferously opposes it, the underlying motivation by the US to accede to the original treaty and ignore the Basel Ban Amendment to it, can only be *bad faith*.

A closer look at the stated US reasons for *selectively* ratifying the Basel Convention reveals that the strongest motivation is likely to be an unstated one -- an enhanced ability for the United States to work within the Convention to weaken the obligations imposed by the Basel Ban and the treaty generally. We examine below the alleged reasons we have heard from US officials for "selective" ratification:

"In the Current Political Climate the Ban will not be accepted by Congress, so we should just move forward with what will Pass."

-- While it's true that the Senate has already granted "advice and consent" on the original treaty and not the Ban Amendment, there is no reason, other than a lack of administration support, why an effort to promote the Ban and receive the consent from the Senate is not possible right now.

"We need to ratify quickly to prevent terrorists from using hazardous waste shipments to carry weapons of mass destruction into the US" – This latest post-September 11 argument has been stated recently by EPA officials. This is seen as a pandering attempt to lean on the current administration's fixation with September 11. But it is hardly a compelling argument. With virtually all of our sea-going containers coming into our ports uninspected, it is unlikely that a terrorist would claim a weapon as a hazardous waste, when much less attention would be drawn by claiming it as a product or a non-waste.

"The US needs legal authority to better control hazardous wastes exports and imports and the Convention alone is better than nothing" -- The fact remains that if the United States wants better authority over waste exports and imports then they can propose amending their laws accordingly at any time. But the claim is seen as especially odd given the fact that the Basel Convention *with* the Ban Amendment supplies more control over environmentally destructive shipments of hazardous waste than the discredited original treaty alone.

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The US claim becomes even more dubious once it is realized that the United States *already* has the internationally imposed legal authority and obligation to apply most of the obligations of the original 1989 Basel Convention by virtue of a legally binding OECD decision passed in 1986. But they have failed to do so!

This legally binding OECD decision (C(86)64(Final)), which requires Prior Informed Consent (PIC) for all hazardous wastes, and prohibits exports if there is reason to believe that the wastes will not be handled in an environmentally sound manner, has *never* been properly implemented into US national law. Thus, current US law allows highly dangerous and unscrupulous exports of asbestos and lead acid batteries, lead/cadmium contaminated sludges, electronic wastes, etc. to developing countries – with no controls whatsoever! If the United States really had the will to better control hazardous waste exports why did they not implement the 1986 OECD agreement?

In light of the fact that the original treaty *without* the ban was denounced by environmentalists and developing countries alike and dramatic moves were made immediately by the Parties to reform the original treaty by adding the ban, the notion that the Convention *without* the ban is *"better than nothing"*, begs the question, *better for whom?*

The Real Reason

To date, as a non-Party, the United States has been forced to argue their extreme minority view in the Basel Convention from an

increasingly weak position. There is no doubt that *if* the world's last superpower were allowed to join the Convention without accepting the decisions made by that body, the US' ability to project their current policy to weaken the Basel Ban on behalf of domestic industry would be improved. Rights and obligations of Parties include ability to block consensus, call special votes, propose amendments, etc. Additionally, the relatively large amount of money the US as a Party would be required to contribute to the Convention would allow it considerable more clout than other Parties.

As long as the US remains a non-Party, it is likely they will become increasingly ineffectual at dismantling the Basel Ban and the will of the global community. Meanwhile, the day of entry into force of the Ban is getting closer. It is this eventuality that the US has sought to avoid at all costs. To date, their numerous attempts to sabotage the Ban have failed. By selectively ratifying the treaty, they can get their foot in the door, however unwelcome it might be, and be that much better positioned to punch loopholes in the Basel Ban.

Would US Ratification of the Basel Convention *without* the Basel Ban Amendment be a step in the right direction for the global environment?

Given that the original 1989 text of the Basel Convention has been denounced by environmentalists and developing countries alike as legitimizing hazardous waste trade instead of criminalizing it; that the Basel Ban Amendment was passed by a consensus of the Basel Parties to rectify this shortcoming; that the United States is still intent on weakening or destroying the Basel Ban and given that the original 1989 Convention is largely a replica of a 1986 OECD decision which the United States has never bothered to implement; and given that the US ability to weaken or eliminate the Basel Ban will be vastly enhanced *if* the US becomes a Party; we would say....

No. It is our conclusion that US ratification of the original 1989 treaty *without simultaneous ratification of its Ban Amendment* will equate to a net loss for the global environment and the protection of developing countries. Until the United States changes its position within the Basel Convention and decides to join the rest of the global community in prohibiting the unscrupulous and environmentally damaging export of hazardous wastes to developing countries, it would be much better for the earth and its inhabitants to keep the US out of the Basel Convention entirely.

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