

## The Basel Ban Amendment: Entry Into Force = Now!

### Long Overdue

Ever since the first inception of the Basel Convention, a majority of countries of the world sought a full ban on the worst forms of the international hazardous waste trafficking. And, ever since its entry into force in 1992, the Contracting Parties of the Basel Convention worked to fulfill this promise of made a full ban on the exports of hazardous wastes from developed to developing countries the overarching priority, and finally in 1995, 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, and VII all Parties were urged to ratify the Ban Amendment at the earliest opportunity (*Decisions IV/7, V/3, VI/33, VII/23*).

---

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

---

Now, after 19 years since the adoption of the Convention when the ban was first conceived, it is time to move the 1995 Basel Ban Amendment into the force of international law. 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 63 Ratifications! Why the Delay?

The Basel Ban Amendment has now garnered the magic number of 62 ratifications –3/4 of the number of Parties present (82) in 1995 when the landmark decision was adopted. What remains is resolution of the ambiguity discovered in Article 17, as to *which* group of Parties the magic number of 62 can be drawn. Can they be drawn from the current list of 170 Parties or must they be drawn from the list of 82 Parties that were present in 1995?

Failure of the Parties to decide between these two options will mean that the Office of Legal Affairs (OLA) at the United Nations will apply a third approach requiring ratifications of ¾ of the number of Parties at any given time (current time approach). Such an approach would presently require 128 countries! Three facts become abundantly apparent when faced with these choices:

1. *The OLA's current time approach is a draconian option that will likely relegate the amendment to not entering into force for at least 20 years.*
2. *We cannot afford to wait 20 years as recent dumping evidence, deaths and disease attest.*
3. *As one of the interpretations of Article 17 would mean that the Ban should now be in force, it is absolutely necessary for the Parties to interpret Article 17 as soon as possible.*

The need for the Basel Ban Amendment is now more pressing than at any point in history. It is clear that the Parties did not expect this amendment to need more than 62 Parties and there is no political relevance as to whether the Parties are drawn from those present in 1995 or those present today. The important matter is that 62 countries approve, bearing in mind the amendment is *only* binding on those that ratify it.

### The Concern over Annex VII Expansion

One issue might remain regarding the will of some Parties to see the Ban enter into force. Due to the debate that took place at COP4 regarding the expansion of Annex VII and the decision at that time to disallow any amendment of Annex VII prior to entry into force, many Parties are fearful that entry into force would trigger a plethora of requests to be added to Annex VII. This fear is not unfounded as those that would undermine the Ban and its effect are still active and such expansion would render the Ban meaningless.

To address this concern, any decision interpreting the entry into force date should also state that expansion of Annex VII can only be justified on the basis of *minimizing* transboundary movement of hazardous wastes and not *facilitation* of it.

We cannot afford to wait any longer to move this landmark decision into the force of international law. It is time therefore to act to interpret Article 17 as needing any ratifications totaling ¾ of the Parties present at the time of adoption.

### In the Meantime -- Ratify!

#### Non-Annex VII: No Time to Waste!

To date, 35 Non-Annex VII countries -- **Albania, Andorra, Bahrain, Bolivia, Botswana, Brunei Darussalam, China, Cook Islands, Ecuador, Egypt, Ethiopia, Gambia, Ghana, Indonesia, Jordan, Kuwait, Liberia, Malaysia, Mauritius, Montenegro, Morocco, Nigeria, Oman, Panama, Paraguay, Qatar, St. Lucia, Serbia, Sri Lanka, Syrian Arab Republic, The Former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Tanzania, and Uruguay** -- have ratified the Basel Ban.

However, there are many non-Annex VII countries who still have not ratified the Ban. While there are no real obligations placed on non-Annex VII countries by the Basel Ban Amendment, depending on the interpretation of Article 17, the Basel Ban Amendment may not soon go into force without more non-Annex VII countries.

#### Annex VII Countries: The EU Leads But Some Have Not Yet Ratified Despite Implementation!

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. But despite the Basel Ban Amendment being implemented fully in the EU and EFTA countries which via the European Economic Agreement (EEA) all abide by the ban via the EU Waste Shipment Regulation, **Malta, Greece, Ireland, Italy, Monaco, and Iceland** have so far failed to individually ratify. These countries must take immediate steps to do so.

#### Other Annex VII Countries: The Irresponsible JUSCANZ

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**. These countries include:

**Australia, Canada, Japan, New Zealand, South Korea, and the United States.** While Mexico has supported the ban in the past, it also seems to be missing from the lists of responsible Annex VII countries. *It is time now for these countries to stop obstructing the global community consensus in which they participated in good faith and accede to the ban.* 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.

In the latter part of 2006, the global community was confronted

with another unacceptable waste trade tragedy resulting in the deaths of at least 10 persons, impairment to hundreds of others, and the collapse of the government in **Cote D'Ivoire**. This incident along with the constant flood of post-consumer electronic and ships waste must serve as a wake-up call that the Ban Amendment is long overdue.

<u>PROGRESS REPORT</u>	<u>RATIFIED</u>
<b>ANNEX VII (28)</b>	Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, European Community, Finland, France, Germany, Hungary, Latvia, Liechtenstein, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, UK.
<b>NON-ANNEX VII (35)</b>	Albania, Andorra, Bahrain, Bolivia, Botswana, Brunei Darussalam, China, Cook Islands, Ecuador, Egypt, Ethiopia, Gambia, Ghana, Indonesia, Jordan, Kuwait, Liberia, Malaysia, Mauritius, Montenegro, Morocco, Nigeria, Oman, Panama, Paraguay, Qatar, St. Lucia, Serbia, Sri Lanka, Syria, Trinidad and Tobago, Tunisia, Uruguay, Former Yugoslav Republic of Macedonia and Tanzania
<b>TOTAL</b>	<b>63 Ratifications</b>

Indeed, the forces that drive the international waste trade have actually increased in recent years. These forces include: the disparity in global wealth (the rich getting richer and the poor poorer); amounts of hazardous waste generation on the rise; and, increasing disposal costs in developed countries. It is clear that the Ban is more relevant now than ever.

It has been 13 years since we have been gathering ratifications for the amendment and now we have reached 63. It is certain that the Parties did not expect the Ban Amendment to need more than 62 Parties. And, indeed the world situation has made it clear that we cannot afford to wait any longer to move the Ban Amendment into the force of international law. *62 does it. We have 62.* We thus now have but two courses of action:

1. *For those that have so far failed to ratify, do so at the earliest opportunity.*
2. *The Parties must collectively resolve by Decision, to interpret the Basel Convention's Article 17 as needing 62 Ratifications of any Parties.*

**The Basel Action Network**  
c/o Earth Economics  
122 S. Jackson St., Suite 320  
Seattle, WA. 98104

Phone: 1.206.652.5555, Fax: 1.206.652.5750  
E-mail: [inform@ban.org](mailto:inform@ban.org), Website: [www.ban.org](http://www.ban.org)