



THE BASEL BAN AMENDMENT AND IMPLICATIONS FOR INDIA

August 2020



Toxics Link
for a toxics-free world



for a toxics-free future

THE BASEL BAN AMENDMENT AND IMPLICATIONS FOR INDIA

A Guide to Implications and Next Steps

August 2020



Basel Action Network (BAN)

Founded in 1997, the Basel Action Network is a 501(c)3 charitable organization of the United States, based in Seattle, WA. BAN is the world's only organization focused on confronting the global environmental justice and economic inefficiency of toxic trade and its devastating impacts. Today, BAN serves as the information clearinghouse on the subject of waste trade for journalists, academics, and the general public. Through its investigations, BAN uncovered the tragedy of hazardous electronic waste dumping in developing countries.

www.ban.org



IPEN is a global network of public interest non-governmental organizations (NGOs) forging a toxics-free future. IPEN is comprised of over 550 NGOs in more than 116 countries. Together we work to ensure that toxic chemicals and metals are no longer produced, used, or disposed of in ways that harm human health and the environment. IPEN and its Participating Organizations have become a leading force in chemicals and waste regulation and are catalyzing an international movement to promote chemicals without harm and an end to the production of the world's most hazardous substances.

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Toxics Link
for a toxics-free world

Set up in 1996, **Toxics Link** is an Indian environmental research and advocacy organization engaged in disseminating information to help strengthen the campaign against toxics pollution, provide cleaner alternatives and bring together groups and people affected by the problem. Toxics Link's Mission Statement is: "Working together for environmental justice and freedom from toxics."

We have taken upon ourselves to collect and share both information about the sources and the dangers of poisons in our environment and bodies, and information about clean and sustainable alternatives for India and the rest of the world." The organisation's unique expertise lies in the areas of hazardous, medical and municipal waste, international waste trade, and the emerging issues of pesticides, Persistent Organic Pollutants (POPs), hazardous heavy metal contamination etc. from the environment and public health point of view. We have successfully implemented various best practices and have brought in policy changes in the aforementioned areas apart from creating awareness among several stakeholder groups.

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ACKNOWLEDGMENTS

IPEN gratefully acknowledges the financial support provided by the Government of Sweden, the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, and other donors. The expressed views and interpretations herein shall not necessarily be taken to reflect the official opinion of any of the institutions providing financial support. Responsibility for the content lies entirely with IPEN.





WHAT IS THE BASEL CONVENTION?

The [Basel Convention](#) on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was adopted on 22 March 1989 and entered into legal force on 5 May 1992. Numerous international scandals regarding hazardous waste trafficking that began to occur in the late 1980s spurred the call for the treaty. The objective of the Basel Convention is to protect human health and the environment from the adverse effects of wastes, in particular taking into account the vulnerabilities of developing countries. Treaty obligations include: 1) reducing and minimizing waste at source; 2) managing wastes within the country in which they are generated; 3) reducing transboundary movement of wastes to a minimum; 4) managing wastes in an environmentally sound manner; and 5) strictly controlling waste trade that does occur via a notification and consent mechanism known as “prior informed consent”. The treaty currently has 187 [Parties](#).

WHAT IS THE BASEL BAN AMENDMENT?

The Basel Ban Amendment is an agreement taken by Basel Convention Parties to prohibit the member states of the [Organization for Economic Cooperation and Development](#) (OECD), the [European Union](#) (EU), Liechtenstein, and the countries that have ratified the ban amendment from exporting hazardous wastes as defined by the [Convention](#) to other countries – primarily developing countries or coun-

tries with economies in transition. For the specific text, please see Appendix 1.

WHEN DID THE BAN AMENDMENT COME INTO FORCE?

The ban amendment was a longstanding issue as the requisite number of countries didn't ratify to enforce this agreement. In November 2019 after the ratification by Croatia, the Basel Ban Amendment came into force on **5 December 2019**. However, it is important to note that all the EU countries were already implementing the provisions of the Basel ban amendment in their national law prior to the amendment coming into force.

WHAT IS THE HISTORY OF THE BAN AMENDMENT?

In March of 1989, the Basel Convention was created in Basel, Switzerland as a global response to the alarming increase in toxic waste trade which became epidemic in the late 1980s. However, the original treaty did not ban the transboundary movement of hazardous waste but instead required prior informed consent – much to the disappointment of developing countries. In 1994, the Second Conference of Parties adopted the Ban Amendment as a decision and did so again in 1995 as a proposed amendment. After a protracted series of efforts by some developed countries to weaken or undermine the Ban Amendment including a bid to interpret the Convention to delay entry into force, at the Tenth Conference of the Parties in 2009 it was decided that the Ban Amendment would enter into force with 3/4 of the Parties present and voting at the time of its adoption in 1995. Ten years later, in 2019, St. Kitts and Nevis, followed by Croatia, were the final two countries to complete that requisite number for entry into force. For a more detailed history, please see Appendix 2.

DOES THE BAN AMENDMENT OBLIGATE PARTIES THAT HAVE NOT RATIFIED IT?

Yes, it can. While technically the amendment is only binding on those that ratify it, all **Basel Convention Parties** still must respect the import prohibitions of other Parties.¹ Thus, an Annex VII country (OECD, EU, Liechtenstein) regardless of whether they have ratified the Ban Amendment or not, cannot export hazardous wastes to a non-Annex VII Party (developing or transition country) that has ratified the Ban Amendment as their ratifica-

1 Article 4, 1, (b)

tion automatically reflects their national import prohibition. Likewise, a developing country (non-Annex VII Basel Party), regardless of whether they have ratified the Ban Amendment, will not be able to accept hazardous wastes from an Annex VII Party that has ratified the Ban Amendment because that Party is prohibited from exporting hazardous waste to a non-Annex VII country pursuant to the Ban Amendment. However, if neither importing Parties nor exporting Parties in a transboundary movement have ratified the Ban Amendment, then the Amendment will not apply. This is why it is important for all countries to ratify the Ban Amendment.

WHAT ARE THE WASTES COVERED BY THE BAN AMENDMENT?

The Ban Amendment includes most **Persistent Organic Pollutants** (POPs), most electronic wastes, most obsolete ships, most flammable liquids, and most toxic heavy metals. It will not likely include plastic, scrap metal or paper waste unless it is contaminated with, or containing a hazardous waste/material. Formally, the Basel Ban will cover all wastes listed in Basel Annex I that possess an Annex III hazardous characteristic. It will also include all wastes listed on **Annex VIII** (presumed hazardous waste streams) unless it can be shown that they do not possess an Annex III hazardous characteristic. It will not necessarily include wastes determined to be hazardous on a national basis (Article 1(1)b wastes), however these can be stipulated in the national implementing legislation as desired. And, it will not include Annex II wastes unless a country so establishes. We urge Parties to include these latter two categories when they pass or amend their implementing legislation.

WHAT DOES THE BASEL BAN AMENDMENT NOT DO?

The Basel Ban Amendment does not create a ban of any kind for trade between Annex VII Parties (OECD, EU, and Liechtenstein), between non-Annex VII Parties (mostly developing and transition countries), or from non-Annex VII Parties to Annex VII Parties. Further, unless there is contamination, it does not ban exports of non-hazardous wastes such as scraps of copper, steel, aluminum, glass, paper, etc. or even Annex II Basel wastes (wastes for special consideration), which currently includes household wastes, ashes from incineration of household wastes, and, in the near future, various difficult-to-recycle plastic wastes (the new “Norwegian Amendments”).

ARE THERE ANY EXCEPTIONS TO THE BAN AMENDMENT UNDER SPECIAL CIRCUMSTANCES, SUCH AS UNDER SEPARATE AGREEMENTS OR RESERVATIONS?

No.

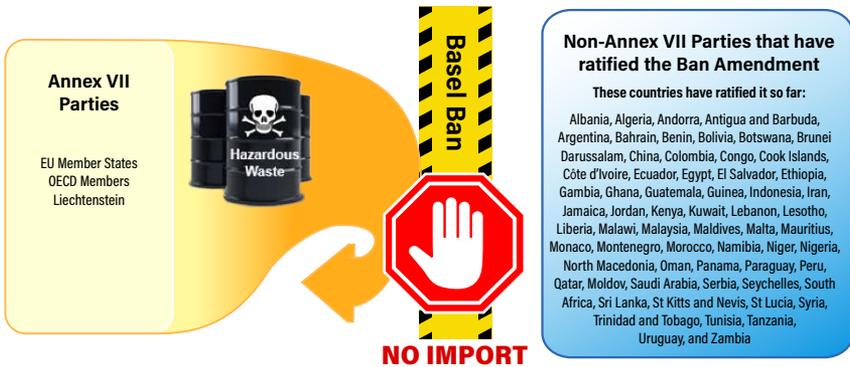
WHAT ARE THE LEGAL IMPACTS OF THE BAN AMENDMENT?

There are five key legal impacts of the Ban Amendment:

1. The following countries (those that have [ratified the Ban Amendment](#) and are listed in Annex VII) will not be able to export hazardous wastes for any reason to countries not on that Annex: Austria, Belgium, Bulgaria, Chile, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, and the United Kingdom.



2. Parties that have **ratified the Ban Amendment** that are not listed on Annex VII must not accept hazardous wastes from Annex VII Parties. Thus the following countries cannot receive hazardous waste exports from OECD Members, EU Member States or Liechtenstein: Albania, Algeria, Andorra, Antigua and Barbuda, Argentina, Bahrain, Benin, Bolivia, Botswana, Brunei Darussalam, China, Colombia, Congo, Cook Islands, Côte d'Ivoire, Ecuador, Egypt, El Salvador, Ethiopia, Gambia, Ghana, Guatemala, Guinea, Indonesia, Iran, Jamaica, Jordan, Kenya, Kuwait, Lebanon, Lesotho, Liberia, Malawi, Malaysia, Maldives, Malta, Mauritius, Monaco, Montenegro, Morocco, Namibia, Niger, Nigeria, North Macedonia, Oman, Panama, Paraguay, Peru, Qatar, Moldova, Saudi Arabia, Serbia, Seychelles, South Africa, Sri Lanka, St. Kitts and Nevis, St. Lucia, Syria, Trinidad and Tobago, Tunisia, Tanzania, Uruguay, and Zambia.



3. All Basel Parties must respect the national waste import or export bans of other Parties. As such, even Parties that have not ratified the Ban Amendment must respect those that have. Thus, Annex VII Parties that have not ratified the Ban Amendment cannot export hazardous wastes to non-Annex VII Parties that have ratified it. Likewise, non-Annex VII Parties that have not ratified the Ban Amendment cannot import hazardous wastes from those Annex VII Parties that have.



4. After the Ban Amendment entered into legal force on 5 December 2019, it became part of the Basel Convention as Article 4a. This means that the Ban Amendment is legally binding for countries that decide to ratify the treaty after this date (such as the USA) because it will be part of the treaty.
5. Since the Ban Amendment has now become a part of the Convention, violations are treated the same as other illegal traffic under the Convention. Violations by national citizens or corporations shall be considered illegal traffic and a criminal act to be prosecuted by the Party having ratified the Ban Amendment. If an importing Party, or an exporting Party that has ratified the Ban Amendment, fails to enforce it or acts in defiance of it, including not respecting the ratification of another Party, it would be considered non-compliance and subject to

the non-compliance **mechanism** of the Convention, as well as possible international condemnation.

WHAT ARE THE POLITICAL IMPACTS OF THE BAN AMENDMENT?

There are three key political impacts of the Ban Amendment:

1. Annex VII countries that have not yet ratified the Ban Amendment will rightly be under some pressure to ratify it and to refrain from exports to non-Annex VII countries regardless of the law. These countries include: Australia, Canada, Japan, Mexico, New Zealand, South Korea, and the United States.
2. Non-Annex VII Basel Parties that have not yet ratified the Ban Amendment will increasingly wish to do so to update their Basel commitments and protect themselves from hazardous waste imports. These countries currently include: Afghanistan, Angola, Armenia, Azerbaijan, Bahamas, Bangladesh, Barbados, Belarus, Belize, Bhutan, Bosnia and Herzegovina, Brazil, Burkina Faso, Burundi, Cabo Verde, Cambodia, Cameroon, Central African Republic, Chad, Comoros, Cuba, Democratic Republic of Congo, Democratic People's Republic of Korea, Djibouti, Dominica, Dominican Republic, Equatorial Guinea, Eritrea, Eswatini, Gabon, Georgia, Guinea-Bissau, Guyana, Honduras, India, Iraq, Israel, Kazakhstan, Kiribati, Kyrgyzstan, Libya, Laos, Madagascar, Mali, Marshall Islands, Mauritania, Micronesia, Mongolia, Mozambique, Myanmar, Nauru, Nepal, Nicaragua, Pakistan, Palau, Papua New Guinea, Philippines, Republic of Moldova, Russian Federation, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Singapore, Somalia, St. Vincent and the Grenadines, State of Palestine, Sudan, Suriname, Tajikistan, Thailand, Togo, Tonga, Turkmenistan, Uganda, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Venezuela, Viet Nam, Yemen, and Zimbabwe.
3. Generally, with the force now of international law, exports of hazardous wastes from rich industrialized powers to poorer countries will be perceived as a criminal or irresponsible act as will other forms of exploitive externalization of real costs and harm to poorer countries.

WHAT ARE THE ENVIRONMENTAL IMPACTS OF THE BAN AMENDMENT?

Downstream Impacts: Already, prior to entry into force, many hundreds if not thousands of shipments of hazardous wastes, including electronic wastes and obsolete ships, have been averted when the European Union, Norway, and Switzerland adopted the Ban Amendment shortly after its adoption in 1995. The impact of this cannot be quantified, but due to the uneven playing field between norms of environmental and labor protection with respect to the developed and developing world, it is not an exaggeration to assert that many lives have been saved, water and air resources kept uncontaminated, wildlife protected, and much occupational disease averted in the developing world. For more information about the impacts of unsound waste management due to waste trade from developed to developing countries visit the [Basel Action Network website](#).

Upstream Impacts: By forcing an internalization of costs and harm via regulation, upstream solutions to the waste crisis have become an economic necessity. Upstream solutions involving preventing waste generation and avoiding hazardous inputs in the first instance are far more effective and in the long-term, more economic than downstream pollution mitigation. In this way, while not quantifiable, thousands of tons of wastes have likely been prevented already from early adoption of the Ban Amendment, while incentives to innovate to prevent waste generation have proliferated.

IS THERE A RELATIONSHIP BETWEEN THE BASEL BAN AMENDMENT AND THE MOST RECENT AMENDMENTS TO INCLUDE SOME PLASTIC WASTES IN THE CONVENTION?

The Basel Convention amendments adopted at the 14th Conference of the Parties included some plastic wastes in Annex II (wastes for special consideration), which are not necessarily defined as hazardous wastes. The Ban Amendment applies only to hazardous wastes. However, when implementing the Ban Amendment, countries should be encouraged to include Annex II wastes in their national implementation language for the Ban Amendment, ensuring that Annex II wastes are covered as well. This is what was done by all 28 Member States of the EU in their [Waste Shipment Regulation](#).

WHAT IS THE RELATIONSHIP BETWEEN THE ROTTERDAM CONVENTION AND THE BAN AMENDMENT?

When a chemical listed in the [Rotterdam Convention](#) is destined for a Basel Annex IV destination (recovery or disposal operations), then it will very likely be banned from being exported from Annex VII countries (OECD, EU and Liechtenstein) to non-Annex VII countries. Only in the rare instance when such a chemical was not listed in Basel Annex I and did not possess a hazardous characteristic on Annex III would this not be the rule.

WHAT IS THE RELATIONSHIP BETWEEN THE STOCKHOLM CONVENTION AND THE BAN AMENDMENT?

When a POP as defined by the [Stockholm Convention](#) is destined for a Basel Annex IV destination (recovery and disposal), then it will very likely be banned from being exported from Annex VII countries to non-Annex VII countries. Only in the rare instance when such a chemical was not listed in Basel Annex I or did not possess a hazardous characteristic on Annex III would this not be the rule. The prohibition on export could include post-consumer waste products such as plastics contaminated with levels of PBDEs (brominated flame retardants) at levels above the low-POPs threshold.

NOW THAT IT IS ENTERING INTO FORCE, WHY SHOULD COUNTRIES RATIFY THE BAN AMENDMENT AT THE EARLIEST POSSIBLE DATE?

1. To protect human health and the environment, upstream and downstream and prevent environmental injustice, in particular in developing and transition countries, *all Basel Parties should ratify at the earliest possible date.*
2. Notwithstanding the obligation to respect other Parties import and export prohibitions, the Amendment does not become legally binding on a Party until they ratify it. Currently the Basel Convention has 187 Parties and the Basel Ban Amendment has 97 Parties. The Ban

Amendment, as of 5 December 2019, will become part of the Basel Convention and yet legally, for the new Article 4a to be valid in their countries, Parties must ratify it separately. The Convention without the Ban Amendment is an anachronism. Parties should thus move to update their ratification package as well as their national laws at once to remain up to date. The gap between the 187 Basel Parties and the 97 Amendment Parties must be closed.

3. For Annex VII Parties that have still not yet ratified the Ban Amendment, they should consider the harmful diplomacy and messaging a refusal to ratify holds. It is tantamount to saying, “We wish to retain the option of exporting hazardous wastes to developing countries, even when the Basel Convention, which we are party to, has been changed to forbid this type of trade.”
4. For non-Annex VII countries that have still not ratified the Ban Amendment, they are inadvertently sending a message that says, “We wish to retain the option of importing hazardous wastes from developed countries, even when the Basel Convention, which we are Party to, has been changed to forbid this type of trade.”

WHAT DO PARTIES THAT HAVE RATIFIED THE BAN AMENDMENT STILL NEED TO DO NOW THAT IT IS ENTERING INTO FORCE?

1. Parties, that have not already done so, should, as soon as possible, ensure that their national law properly implements the Ban Amendment for hazardous wastes. Further, at this moment, we urge them also to add, as the EU has done, [Basel Annex II](#) to the list of banned materials. Note that Annex II currently contains the following wastes: wastes collected from households (Y46); and residues arising from the incineration of household wastes (Y47). When the [new plastics amendments](#) enter into force on 1 January 2021, Annex II will also contain most mixed plastic wastes, except those that are hazardous or wastes that are destined for recycling and that consist almost exclusively of a non-halogenated polymer (such as polyethylene, polypropylene etc.), or a cured resin or condensation product (such as urea formaldehyde resins); or a fluorinated polymer (such as polyvinylidene fluoride). Parties should also consider broadening the protective scope of their national legislation by adding wastes covered by the law. Some countries have included very old or obsolete electronic products into their hazardous waste lists, regardless of functionality. Under the Basel Convention these national measures / definitions must be respected by the other Parties.
2. Parties should establish enforcement measures and inform private industry of the new law(s) to prevent illegality.
3. Parties must review at once all [Basel Article 11 agreements](#) they may have entered into to see if such agreements are still valid in accordance with the new Ban Amendment obligations. Of particular concern are the [Hong Kong Convention](#) on the Recycling of Ships (not in force) and the [EU Ship Recycling Regulation](#) (in force). These two ship recycling agreements are in many respects weaker than the Basel Convention and do not allow the Ban Amendment to be enforced as part of a package of “equivalent level of control” as required of all Article 11 agreements.

PARTY IMPLICATIONS FOR THE PLAN TO LIBERALIZE E-WASTE TRADE?

In addition to what has been already noted above, the Parties to the Basel Convention should revisit the provisionally adopted [Guideline on the Transboundary Movement of Electronic Wastes](#). This Guideline unilaterally asserts in its paragraph 31 that non-functional electronic equipment can be declared as non-waste when claimed to be exported for repair. However, this was never foreseen to be the case when the Ban Amendment was written and when most countries ratified it. The flows of e-waste which the new e-Waste Guideline has inappropriately been designed to facilitate via this narrowing of the waste definition will very commonly move from developed to developing countries. Thus, the new Guideline, unless changed, will undermine the Ban Amendment's original intent and purpose. It might therefore be appropriate to refrain from altering the waste definition via a guideline and to correct the existing Guideline before final adoption.

WHAT ARE THE ANSWERS TO COMMONLY HEARD ARGUMENTS AGAINST THE BAN AMENDMENT?

Argument 1: If a country is not a member state of the OECD or EU it could still handle hazardous waste properly, so the Ban Amendment is not needed.

The dividing line defining developed countries and developing or transition countries for the purposes of controlling trade can never be a perfect one and detractors like to point out anomalies in the Annex VII distinction. But the distinction as created by the Basel Parties in the Ban Amendment not only seeks to differentiate relative wealth of a country (to provide national safety nets, legal and technical infrastructure to protect human health and the environment), but relative democratic norms as well that must be present to ensure the rights of citizens to assert that protection.

Sure, one could theoretically create a state-of-the-art facility in a developing country, however, the country would not likely have the requisite resources to ensure adequate monitoring of emissions or maintain state-of-the-art operations throughout its lifespan; or have the necessary downstream waste management health or legal clinics, or the requisite laws and enforcement to protect workers and communities and preserve the environment and human health. And it is likely that such a facility would

require a constant stream of imported hazardous waste which could turn the country into an unmanageable hazardous waste hot spot.

The exploitation of negative externalities made possible by the trade in wastes from developed to developing countries extend far beyond the confines of a waste management facility. They are also defined by the context of a country and its ability to protect its citizens and environment with societal “safety nets”. Regardless of the technology employed inside a facility, it is highly unlikely that a non-Annex VII country can afford the same package of protections that an Annex VII country can afford based on relative wealth alone. Developed countries that insist that developing countries can adequately handle hazardous waste make a theoretical argument about technology but ignore the fact that the real reason to export from rich to poorer countries is an economic one – to externalize costs and in doing so, exploit weaker economies.

Argument 2: Trade barriers for wastes ultimately harm the Circular Economy which needs to amplify recycling and return wastes to production centers.

The Circular Economy concept includes an understanding of the effects of negative externalities that subvert the level playing field needed for a true Circular Economy. In waste trade, negative externalities represent costs “paid” by developing country communities and ecosystems from the impacts of hazardous waste that are not borne by developed country waste producers. Such externalities undermine true circularity, as it encourages cheap and dirty destinations for wastes rather than upstream design alterations to prevent waste generation upstream and avoid hazardous inputs.

Responsible recycling is best done as close to the source of generation as possible and certainly not across an uneven economic playing field where relative weakness can, and will be exploited. Meanwhile, transporting wastes and products simply to and from developing countries to take advantage of the cheap labor and less or poorly enforced environmental and labor regulations, and weaker infrastructure, found in weaker economies, equates to a further and enormous burden on our devastated climate due to the added carbon emissions from oceanic transport.

THE BASEL BAN AMENDMENT AND INDIA

INDIA'S EFFORTS TO MANAGE TRANSBOUNDARY MOVEMENT OF HAZARDOUS WASTE

India was one of the first countries of the global south in the early 1990s to call for a ban on exports to developing countries. India notified the hazardous waste rules in 1989 before the Basel Convention came into force in 1992, and became a party to the Basel Convention in 1992. Subsequently, India made amendments to their regulations in 2000 and in 2003 in order to properly align national law with the Convention. A revised version of the Hazardous Waste Rules was promulgated in 2008.

Over the years, the issue of the transboundary movement of hazardous waste has remained an important one for the country. The rules were revised again in 2016. They are now called “The Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016”. Among the traded wastes, electronic waste (e-waste) remains a matter of concern for the country and thus e-waste management rules were passed in 2016, so that the large quantity of e-waste could be managed.

Recently, in March 2019, the country passed a complete prohibition on the import of solid plastic waste into the country including the Special Economic Zones (SEZ) and by Export Oriented Units (EOU).

The plastic ban is an important step that the Indian Government has taken to protect its environment. However, India does not have a national ban on the import of hazardous wastes; and, they have still not ratified the Basel Ban Amendment, which will be critical in the context of global waste trade. It is pertinent to mention that other major waste importing countries in Asia like China, Indonesia, and Malaysia have ratified the Basel ban amendment. Within South Asia, Maldives, and Sri Lanka have also ratified it.

WHY SHOULD INDIA RATIFY THE BASEL BAN AMENDMENT?

India, as one of the emerging economies of the world, is having difficulty managing its own hazardous waste. Therefore it would be prudent to ratify the Basel Ban Amendment to prevent the possibility of more hazardous waste via imports. Because India is not a party to the Basel Ban Amendment, India does not benefit from the international cooperation such an instrument could provide to ensure countries do not use India as a dumping ground for hazardous wastes, including e-wastes.

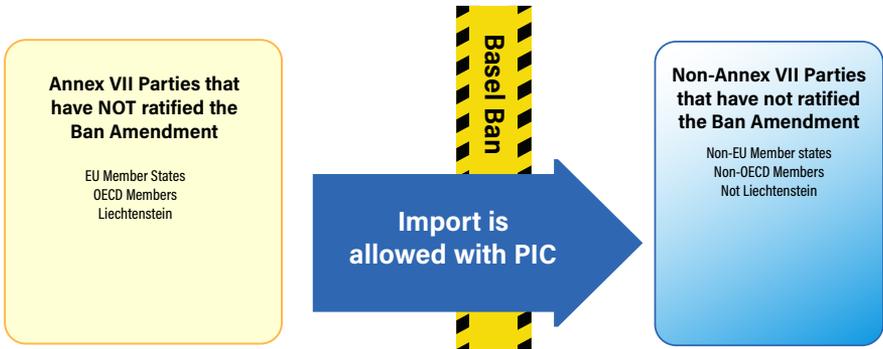
A simple implication of the amendment is that Annex VII countries that have ratified the Basel Ban Amendment cannot export hazardous waste to India. However Annex VII countries that have not ratified the Amendment would have no legal obligation to not export their wastes to India unless India has erected the equivalent national bans and had notified the Basel Parties via the Secretariat. They would be required to receive consent from India. However, if India does not ratify the Ban Amendment, Annex VII Parties that have not ratified the Ban Amendment can export hazardous waste to India, following treaty obligations for prior informed consent. As more Parties ratify the amendment, Annex VII Parties that have not ratified the Ban Amendment will be looked at by unscrupulous traders as hazardous waste export destinations. India should not be one of them, noting that China, Indonesia, Malaysia and other parties have already ratified the Amendment and therefore closed their doors to hazardous waste imports. Finally, the Basel Convention has, as of December 5, 2019, been fundamentally altered with a new Article 4a and Annex VII. The original Convention can now be considered out of date. For these reasons, we would expect India to ratify the Convention at the earliest possible date.

SCENARIO I: MOVEMENT BETWEEN ANNEX VII PARTIES THAT HAVE RATIFIED THE BAN AMENDMENT AND INDIA, A PARTY THAT HAS NOT RATIFIED THE BAN AMENDMENT



Note: "Party" refers to the whole treaty, not the Amendment.

SCENARIO-II: MOVEMENT BETWEEN ANNEX VII PARTIES THAT HAVE NOT RATIFIED THE BAN AMENDMENT AND INDIA, A PARTY THAT HAS NOT RATIFIED THE BAN AMENDMENT



THE BASEL BAN AMENDMENT AND THE RECYCLING INDUSTRY IN INDIA

In India, waste recycling is a source of employment and livelihood for many people. There are a large number of formal and informal workers engaged in the waste recycling sector. Most of these jobs will be retained in India and will be made far safer. The Basel Ban Amendment only restricts imported wastes and only those which are hazardous. These include wastes of Persistent Organic Pollutants (POPs), electronics, obsolete ships, flammable liquids and toxic heavy metals.

BASEL BAN AMENDMENT AND E -WASTE TRADE

E-waste is one of the fastest growing waste streams in the world and is recognized as a major source of environmental pollution. The world produces as much as 50 million tonnes of e-waste a year.² US-based Basel Action Network (BAN) has put GPS trackers on hundreds of electronic devices sent to recycling facilities across ten European countries and many US states between 2014 and 2017. Many of the devices were then tracked to countries in Africa and Asia.³ In this context, the electronics industry

2 <https://www.unenvironment.org/news-and-stories/press-release/un-report-time-seize-opportunity-tackle-challenge-e-waste>

3 <https://www.euronews.com/2019/02/07/eu-e-waste-illegally-exported-to-developing-countries-report, www.ban.org/trash-transparency> (see reports “Scam Recycling” and “Holes in the Circular Economy”).

has lobbied for a major loophole that would allow the export of electronic waste as long as traders claimed it was repairable. This loophole is currently in the Basel Convention Technical Guideline on the Transboundary Movement of e-waste. To their credit, the Indian government has strongly opposed this loophole which contradicts the ban amendment. But, India needs to project a consistent policy in this regard and ratify the ban amendment as well as oppose the dangerous “repairable loopholes.”

BAN AMENDMENT AND SHIP RECYCLING INDUSTRY

India is one of the top destinations for ship recycling. As per UNCTAD data in 2018, India’s share of the gross tonnage of ships recycled worldwide is about 26%.⁴ The Basel Convention considers obsolete ships as a form of hazardous waste and thus the Basel Convention, including the Basel Ban Amendment is meant to apply to these forms of waste as well unless they have first been pre-cleaned of hazardous substances.

CONCLUSION

Waste trade is most often a violation of a true circular economy. It exploits the externalization of costs in a very linear manner -- making others pay the bill for harm and pollution best prevented at source. Considering all environmental, public health and socio-economic costs, ratification of the Basel Ban Amendment would benefit India by internalizing those costs with those responsible for them. China has been a strong advocate of banning waste importation including obsolete ships precisely for this reason. India would be wise to follow suit. By so doing they could play a leadership role in encouraging other developing countries to ratify the Ban Amendment to stop the further exploitation of non-Annex VII countries.

Once India ratifies the Ban Amendment, it needs to revise its existing hazardous waste regulation, which may include the following points:

- Imposing a complete ban on the import of hazardous waste in the country even for recycling, as a lot of waste dumping happens in the name of recycling.
- Formulating a procedure for returning waste to the country of origin in case any illegal dumping is reported.
- Revising/updating the list of hazardous waste substances.

⁴ <https://economictimes.indiatimes.com/industry/transportation/shipping/-/transport/can-a-new-ship-recycling-law-help-india-regain-its-status-as-the-worlds-top-dismantler-of-vessels>

APPENDIX 1. THE TEXT OF THE BASEL BAN AMENDMENT

The Basel Ban Amendment is a legally binding agreement to amend the Basel Convention with: a new preambular paragraph, a new Article (4a), and a new Annex (VII). The effect of these three additions is to prohibit countries listed on the Annex VII, which includes member states of the Organization for Economic Cooperation and Development, the European Union, and Liechtenstein, from exporting hazardous wastes as defined by the Convention to any transit or importing country not on Annex VII. When in force it will be binding on all countries having ratified it and for countries that become Parties after the Ban Amendment enters into force, the Ban Amendment will be legally binding. The amendment is open to ratification by any Basel Party.

The text of the Ban Amendment reads as follows:

Insert new preambular paragraph 7 bis:

“Recognizing that transboundary movements of hazardous wastes, especially to developing countries, have a high risk of not constituting an environmentally sound management of hazardous wastes as required by the Convention.”

Insert new Article 4A:

“1. Each Party listed on Annex VII shall prohibit all transboundary movements of hazardous wastes which are destined for operations according to Annex IV A, to States not listed in Annex VII.

2. Each Party listed in Annex VII shall phase out by 31 December 1997, and prohibit as of that date, all transboundary movements of hazardous wastes under Article 1(1)(a) of the Convention which are destined for operations according to Annex IV B to States not listed in Annex VII. Such transboundary movement shall not be prohibited unless the wastes in question are characterized as hazardous under the Convention.”

“Annex VII

Parties and other States which are members of the OECD, EC, Liechtenstein.”

APPENDIX 2. A HISTORY OF THE BAN AMENDMENT

In March of 1989 the Basel Convention was created in Basel, Switzerland as a global response to the alarming increase in toxic waste trade which became epidemic in the late 1980s. The new treaty sought to address this new scourge head on, as developing nations across the globe called for this new “toxic colonialism” to be banned outright. Unfortunately, due to the consensus basis used in the formation of international law, the new Basel Convention gavelled into adoption in Basel ended up doing far less than that, as rich countries like the United States and Japan formed the lowest-common denominator and vetoed any notion of a trade ban, to the dismay of developing countries. The African group of countries in particular, who had received the brunt of the global dumping from European factory wastes, were deeply disappointed with the final treaty text which did not include an export ban to any region of the earth other than Antarctica. As a further compromise, a paragraph (Art. 15 (7)) was included in the Convention stipulating that in the future a complete ban might be considered by the Parties. Nevertheless, as Greenpeace hung a banner on the conference center reading: “Basel Convention Legalizes Toxic Terror,” the Africans walked out of the meeting refusing to sign the new accord, and instead vowed to return to Africa to create their own Convention – one which would include a full ban on exports to their continent.

In the following years from 1989 to 1992, to the credit of the developing countries around the world, they did not give up, but in fact took the lead from Africa in first adopting regional waste trade bans – the [Waigani Convention](#) in the South Pacific, the [Izmir Protocol](#) in the Mediterranean Region, the [Acuerdo Regional sobre el Movimiento Transfronterizo de Desechos Peligrosos](#), and the [Bamako Convention](#) of Africa endure to this day. By the time the first conference of Basel Parties took place in Piriápolis, Uruguay, in 1992, many of these countries that supported regional bans began to push for a global ban, but the vote was discouraged by the Executive Secretary of UNEP, Dr. Mostafa Tolba, due to the fact that at that first meeting none of the developed countries, other than Denmark, supported the decision to create a ban.

By the Second Conference of Parties in 1994, which took place in Geneva, and after many months of media pressure spurred by a series of Greenpeace actions blocking and returning shipments of European wastes from around the world, the European Union decided to join the G77 (developing country bloc) and China in support of the global ban. After much heated negotiation which saw Dr. Nesiiah of Sri Lanka, representing the

G77, telling the JUSCANZ⁵ group that while they were open to negotiating the implementation date, they refused to weaken the basic concept of a full, no-exceptions ban -- the global ban was finally adopted. It was decided in Decision II/12 that a prohibition on hazardous waste exports to “developing countries” from “developed countries” for any reason would be immediately enacted for final disposal, and for recycling phased into being within two years and three months. The decision passed by consensus and was hailed as a landmark for human rights and the environment.

One would have thought that the debate was over, but this was far from the case. The JUSCANZ group at that point began a protracted war against the prohibition of hazardous waste exports from developed to developing countries. Immediately following the meeting, they declared that a decision of the Convention is not legally binding. While many disagreed with that interpretation of treaty law, the late Mr. Svend Auken, Environment Minister of Denmark, took up the gauntlet and, calling their bluff, declared they would turn the Ban into a proposed Amendment at the next meeting. Despite much more organized and well-resourced opposition the second time around, at the Third Conference of the Parties taking place in Geneva in September of 1995, the proposed amendment was adopted again by consensus as Decision III/1.

The JUSCANZ countries however never stopped working to undermine entry into force of the Amendment. In 1997, a newly founded organization known as [Basel Action Network](#) (BAN) was created after Greenpeace decided to cease work on the Convention. BAN was formed to carry on the fight against these powerful countries and business lobbies such as the [Institute of Scrap Recycling Industries](#) and the [US Chamber of Commerce](#). The Ban Amendment was seriously and repeatedly challenged, first by an effort to water down Annex VII by admitting many countries into it to make it a form of waste trading “club”. When this was denied at COP IV, the trade-off was a protracted and very contentious “analysis of Annex VII” which after many years was simply halted with no conclusion. At one point even the supposedly neutral Secretary of the Convention – Katharina Kummer – spoke out against the Ban Amendment even while it was supported by a majority of Parties. An effort to allow Article 11 to be used to circumvent the Ban was fended off, and then later in the last battle, a new claim was made that the language in the Convention describing how Amendments go into force was ambiguous, and thus a counter-intuitive interpretation of the process was provided by the JUSCANZ which insisted on using 3/4 of the number of Parties at the current time, rather than when it was adopted (fixed time approach).

5 At the time, this bloc included: Australia, Canada, Japan, New Zealand, South Korea and the United States.

The “current time approach” would have delayed the entry into force by perhaps another 30 years.

At that critical juncture, Switzerland and Indonesia came to the rescue. They launched the [Country Led Initiative](#) (CLI) with a goal of solving the impasse of bringing the Ban into force. This culminated in a historic decision in 2011 at COP10 at Cartagena, Colombia, aided by the leadership of that nation, to allow the ban to enter into force with 3/4 of the Parties present and voting at the time of adoption (1995).

Almost ten years later, in 2019, St. Kitts and Nevis, followed by Croatia, were the final two countries to complete that requisite number for entry into force. The Ban Amendment will become law on December 5, 2019.

APPENDIX 3: ANNEX VII COUNTRIES

I. OECD COUNTRIES

1. Australia*
2. Austria
3. Belgium
4. Canada*
5. Chile
6. Colombia
7. Czechia
8. Denmark
9. Estonia
10. Finland
11. France
12. Germany
13. Greece
14. Hungary
15. Iceland
16. Ireland
17. Israel*
18. Italy
19. Japan*
20. South Korea*
21. Latvia
22. Lithuania
23. Luxembourg
24. Mexico*
25. Netherlands
26. New Zealand*
27. Norway
28. Poland
29. Portugal
30. Slovakia
31. Slovenia
32. Spain
33. Sweden
34. Switzerland
35. Turkey
36. United Kingdom
37. United States*

II. EU MEMBER STATES

1. Austria
2. Belgium
3. Bulgaria
4. Croatia
5. Cyprus
6. Czechia
7. Denmark
8. Estonia
9. Finland
10. France
11. Germany
12. Greece
13. Hungary
14. Ireland
15. Italy
16. Latvia
17. Lithuania
18. Luxembourg
19. Malta
20. Netherlands
21. Poland
22. Portugal
23. Romania
24. Slovakia
25. Slovenia
26. Spain
27. Sweden

III. LIECHTENSTEIN*

** Countries that have not yet ratified the Basel Ban Amendment. Note that the United States is not a Party to the Basel Convention.*

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