COP 10 Alert # 2

YES to the Country Led Initiative

Lets Make the Cartagena Meeting a Stunning Success

Written by the Basel Action Network in preparation for the 10th Conference of Parties to the Basel Convention

The COP10 Meeting in Cartagena will be judged by whether or not the Ban Amendment is finally allowed to enter into force in the near term. The Ban Amendment, which was created originally by developing countries (G-77 and China) but now already implemented nationally by a majority of developed countries, has been the unfulfilled promise of the Convention since its inception.

Despite already having 70 ratifications (the Convention itself entered into force with but 20) the Ban Amendment’s entry into force has been held hostage by a very small minority of countries. Recently these countries have seized upon ambiguous text in the Basel Convention that describes how amendments are to come into force -- Art. 17, para 5. These countries have unfortunately exploited the confusion in the text by proposing methods of entry into force that will forestall the Ban for many decades. This of course is an unacceptable outcome.

It was for this reason, at COP9, that the Swiss and Indonesian governments proposed an open dialogue diplomatic process known as the Country Led Initiative (CLI). The CLI was an effort to break the logjam, resolve the textual ambiguity and finally allow for the Ban to go into force in an expedited manner. This process has now concluded and the resulting product is a large draft decision for COP10 called the Draft Omnibus Decision.
BAN has been critical of the Country Led Initiative (CLI) process. First, we were unhappy that NGOs were locked out of the CLI meetings and were thus unable to contribute to the dialogue. Second, the first phase of the initiative reached terribly flawed and erroneous conclusions regarding international flows of hazardous waste due to reliance on incomplete and outdated data. The conclusion, for example that, most of the hazardous waste trade today (e.g. electronic waste) moves between developing countries flew in the face of all observable facts on the ground. Indeed the reports failed to note that most waste trade is unreported or illegal and thus existing data is useless to analyze.

Finally, the second phase of the initiative involving the Draft Omnibus Decision, now before COP10, contained assumptions and incorrect statements that seemed intent on rewriting history -- citing for example, only one rationale for the Basel Ban – the protection of “vulnerable” countries. This sole rationale belies the fact that since the first demands for the Ban, even before 1989, and certainly at all of the first three COPS of Basel, it was stressed that the Basel Ban would serve environmentally sound management generally and waste prevention specifically (Article 4, para. 2 (a)) for all countries by eliminating cost externalization made possible by unfettered trade in pollutants to weaker economies. That is, it was stressed then and continues to be the case today, that ultimate goal of waste prevention will not succeed until the global pathways for using weaker economies as dustbins are closed.

**Core Purpose Fulfilled**

Despite our disappointment with the CLI’s faulty rhetoric and conclusions, BAN believes that the CLI’s core purpose – to break through the blockade to entry into force of the Basel Ban, is nevertheless fulfilled by the Draft Omnibus Decision.

BAN concurs with the CLI’s clarion call for solving the “entry into force” quandary by interpreting Article 17, para. 5 as meaning that amendments to the Convention are decided by the Parties that adopted them at the time of their adoption (fixed time). This was what almost all observers believed was the original intent of the Convention despite the messy language employed in Article 17, para. 5. The CLI proposal at the outset (Part 1) lays out this “fixed time” approach as the way forward and that is clearly the legally and practically correct solution.

While the “fixed time” approach will not bring the Ban into force immediately, it will pave the way for this to happen within the next 2-3
years. The CLI Draft Omnibus Decision we believe is therefore our best chance to resolve the matter without a vote.

There is of course very widespread support for the Ban Amendment, and now it appears there is likewise widespread support for the Draft Omnibus Decision. Thanks to the diplomatic heroics of the Swiss and Indonesians and all of the CLI participants, it would appear that the few remaining countries that opposed the Basel Ban (and therefore the fixed time approach) at COP9, are now ready to accept the overwhelming will of the global community at COP10.

These countries appear to have agreed to cease blocking consensus, as long as the dialogue of important issues begun with the CLI is maintained. This dialogue is what is described in the remainder of the decision (outlined in Parts 2-7). In our view, despite the faulty rhetoric used in these sections, subsequent dialogue as long as it is open to all stakeholders cannot be a bad thing, and can be an opportunity to correct false assumptions.

If CLI Package Fails -- Vote

The Draft Omnibus Decision is a package deal – a delicate balance of elements to garner consensus. It must not under any circumstances then be meddled with at COP10. If some Parties seek to amend it at this stage, after its careful construction, the whole agreement will fall like a house of cards – as well it should. It must be a “take it, or leave it” adoption that respects deliberate process of its creation.

Should the adoption of the “as is” Draft Omnibus Decision fail to reach consensus despite the CLI’s best efforts, it will be imperative then that countries raise their flags to call for a vote. This can be done by any Party, and would be precisely the kind of situation for which voting was envisaged in the Convention’s Rules of Procedure. When after more than 15 years, a handful of countries continue to prevent environmental sustainability by blocking the overwhelming will of the vast majority -- its time to vote.

From the Rules of Procedure:

\textit{Rule 40}

1. The Parties shall make every effort to reach agreement on all matters of substance by consensus. If all efforts to reach consensus have been exhausted and no agreement reached, the decision shall, as a last resort, be taken by a two-thirds majority vote of the Parties present and voting, unless otherwise provided by the Convention, the
financial rules referred to in paragraph 3 of article 15 of the Convention and the present rules of procedure.

While we hope that a vote will not be necessary, Parties that truly appreciate the importance of the success of the Convention, the success of global environmental justice, the success of environmentally sound management, the success of global governance, the success of COP10, should not hesitate to call for a vote should it become necessary due to an ongoing blockade by a small minority of countries.

It is never appropriate to use the advantages of free trade, externalize costs, and thus exploit and harm others. Rather, trade rules should incentivize waste prevention and proper upstream waste management. This is the mission of the Basel Convention and the Ban Amendment. After the horrific occurrence in Cote d'Ivoire, and in an age of a massive resurgence in exportation of hazardous wastes in the form of toxic electronic wastes, to weaker economies, the Basel mission is more important now than ever before.

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