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YES to the Country Led Initiative
Let’s Make the Cartagena Meeting a Stunning Success

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.

Trade rules should incentivize waste prevention and proper upstream waste management. This is the mission of the Basel Convention and the Ban Amendment.

Finally! Waste Prevention Comes to Basel
Ban Amendment Entry into Force and Action on National Waste Reduction

Clearly the most important issue at the upcoming 10th Meeting of the Conference of the Parties (COP10) to be held in Cartagena next week is the passage of the Country Led Initiative Draft Omnibus Decision without amendments. That needs to pass by consensus or by vote. But it is imperative that it passes.

When is a Non-Paper the Wrong Paper?

Resource Recovery—Yes, Exploiting Weaker Economies—No

Our Moment in History

The 10th Conference of the Parties to the Basel Convention may be the most important Basel Convention meeting since 1994. That was the year when the landmark Basel Ban decision was first adopted based on consensus on the historic proposal by China and the G-77. Some see the upcoming COP in Cartagena as the meeting that can finally affirm that historic decision and reaffirm the relevance of the Convention, rather than continue to allow it to slip into obscurity due to neglect.

Less than Equivalent
Hong Kong Convention Fails to Uphold Basel Principles and Obligations

Parties at COP10 have before them the question of whether or not the Hong Kong Convention offers an “equivalent level of control” for the transboundary movement and disposal of ships as compared to the Basel Convention. It is expected that there will be a working group on this subject and Parties concerned about the original intent of the Basel Convention are encouraged to attend and speak out in plenary. The question is of the utmost importance not only to the Convention, but also to international governance and the lives of the many who labor every day in the most dangerous profession on earth on the beaches of South Asia.
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:

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.

Less than Equivalent... continued from page 1

The real question underlying “equivalent level of control” is whether or not a powerful industry can avoid being regulated by existing international laws simply by creating a far less rigorous and protective international law in an alternate venue, while applying pressure for countries to accept the new weaker rules and forsake existing stronger ones.

The history of this matter is rather unseemly. When the Basel Convention began to take up the matter of ships as waste in the past decade, the shipping industry and Maritime Ministries began coming to the Basel meetings arguing vociferously that ships are not waste. They argued this not with any valid legal or technical argument but simply because they did not want to be told by the Basel Convention that the common practice of dumping of toxic waste ships on South Asian beaches was illegal. When it was clear that the Basel Parties all believed that ships could be wastes, the shipping industry then ran to the IMO and began to create a new legal instrument.

In response, at COP7, the Basel Parties, in a landmark decision (VII/26) asserted that a ship could be a waste when intended to be recycled or disposed of, and was covered under the Basel Convention. The Parties also invited the IMO to:

» “continue to consider the establishment in its regulations of mandatory requirements, including a reporting system for ships destined for dismantling, that ensure an equivalent level of control as established under the Basel Convention and to continue work aimed at the establishment of mandatory requirements to ensure the environmentally sound management of ship dismantling, which might include pre-decontamination within its scope.”

The intent of this decision and its first use of the term “Equivalent Level of Control” was clear—to ensure that any legally binding instrument the IMO concluded on their own would not turn back the clock on environmental progress, not circumvent the Basel Convention, and not victimize developing countries, their environments, their workers and communities. Sadly, the IMO completely ignored the Basel Convention Parties’ wishes. During the negotiations of the Hong Kong Convention, the issue of an “equivalent level of control” to Basel was never even considered. The shipping industry, the IMO and their enabling countries never ever intended equivalence but rather a regime that would allow business-as-usual. The Hong Kong Convention was developed for and by industry in an attempt to outrun Basel rules and present a far weaker regime. This is very quickly demonstrated by the following facts:
The Hong Kong Convention condones the fatally flawed beanching method of shipbreaking, whereas the Basel Convention Ship Dismantling Guidelines clearly signaled that ship recycling should be done on an im permeable surface and in a setting where heavy lifting cranes and emergency equipment could be brought alongside a ship. Such beach recycling of hazardous waste would never be considered Environmentally Sound Management by definition under Basel and would be disallowed.

The Hong Kong Convention does not allow any state (importing, exporting or transit) to deny a transboundary movement of ships. Regardless of how disreputable the ship owner, how poor the condition of the ship, or how inadequate the proposed ship recycling plan or facilities might be, a ship can move out of the territory of one state and into the territory of another state, without Basel’s requirement for notification or consent, making abandonment very likely.

The Hong Kong Convention does not consider toxic paints, asbestos, PCBs, etc., removed from ships and then sent out of the ship recycling facility to be covered under its legal regime. Basel requires environmentally sound management (ESM) of the toxic residues through final disposition.

The Hong Kong Convention does not cover all ships. It does not cover ships under a certain size, or military or state owned ships. Basel covers all hazardous wastes, regardless of size or ownership and was ultimately why the French warship Clemenceau had to be returned from India to France.

The Hong Kong Convention does not take into consideration the human rights aspects of transboundary movements, and does not make any special consideration with respect to the special interests of developing countries. The Basel Convention has a clear obligation to minimize of course was written with especial concern for impacts on developing countries.

The Hong Kong Convention promotes rather than minimizes the transport of waste vessels to those developing countries that have shipbreaking “capacity”, most notably to the existing shipbreaking states of India, Pakistan and Bangladesh, where 90% of today’s end-of-life ships are dismantled disastrously on tidal beaches. Basel calls for minimizing all transboundary movements of hazardous wastes, in particular to developing countries.

The simple fact is that the Hong Kong Convention ignores or contradicts these fundamental principles of Basel.

And yet it is the next 5-10 years that are the most critical time for the global ship recycling industry due to high levels of PCBs and asbestos expected to be found in vessels being scrapped in this time frame.

While it is well known that the Basel Convention needed to close some loopholes that are made possible due to the mobility of ships, such work to close those loopholes was quite feasible had that truly been the real concern and indeed needs to be concluded as soon as possible. Rather, the shipping industry and the EU used those implementation concerns as an excuse to run to the IMO, and create options for shipowners that are far less principled and protective and indeed would be illegal for all other owners of hazardous waste. These interests used the excuse of Basel being “weak” in order to make an even weaker instrument that serves to externalize costs and harm to the shipbreaking beaches and laborers of the Indian subcontinent.

To better understand the EU’s motivation for supporting the Hong Kong Convention over the Basel regime, one only need turn to the Euro influence of the four largest shipping companies in the world, A.P. Moeller Maersk, CMA CGM, Hapag-Lloyd, and MSC. These four shipping lines alone represent more than 40% of the global shipping capacity, which means they also hold 40% of the ship recycling needs in future years. Never before has a single industry been able to so effectively shatter the environmental and moral rudder of all of Europe, and certainly Japan, the US, and Canada as well.
Finally, Waste Prevention Comes... continued from page 1

However, another very important and closely related outcome of this meeting, lies in the theme chosen by the Colombian government—Waste Prevention, Minimization and Recovery. The word “recovery” seems to have been oddly thrown into the mix as an afterthought, but it is really “Prevention and Minimization”—those strategies employed before waste is created to reduce both waste hazardousness and quantity, that experts all agree is the most important solution to our waste problems. It is for this reason that waste prevention and avoidance lies at the apex of all waste management hierarchies. Despite this fact, however waste minimization rarely gets the emphasis in action and resources commensurate with its paramount importance.

Certainly, waste prevention has always been a fundamental obligation of the Convention (Article 4, 2, (a)), but little has been done, short of passage of the Basel Ban, to promote it, since adoption of the Convention in 1989. Hopefully this will begin to change at Cartagena.

Not only is waste prevention the theme of the meeting, and the subject of the Cartagena Declaration, but most importantly, the Colombians are envisaging more than just rhetoric, but real action on waste prevention, some of which appears to spring from the Declaration itself and more no doubt will be forthcoming in a decision signaled in the draft declaration’s final paragraph.

As we can read in the posted draft Cartagena Declaration
http://www.basel.int/Portals/4/BaselConvention/cop-10/docs/CartagenaDeclaration-30SEPT11.doc,

“...efforts will be made to create a global methodology for accurate measurement of national waste generation, and then, on a national basis efforts will be undertaken to measure and record progress in waste prevention...”

In addition, pilot projects and capacity building on waste prevention are foreseen.

By closing the cheap and dirty dumping options for rich industrialized countries, these countries and their waste generators will be forced to either solve the problems at home through green design and clean production methods, or pay very high costs of waste disposal and recycling at home.
Also, tied closely to the theme, it must not be overlooked, that the Basel Ban Amendment which COP10 will be in a position to finally liberate into coming into force, is, in itself a powerful lever for waste minimization as it forbids the externalization of costs (risk and harm from hazardous wastes) to developing countries from developed countries, and by so doing, eliminates a powerful disincentive for solving waste problems upstream through waste prevention. In other words, by closing the cheap and dirty dumping options for rich industrialized countries, these countries and their waste generators will be forced to either solve the problems at home through green design and clean production methods, or pay very high costs of waste disposal and recycling at home.

Neglect would be a form of tragedy for global governance because the Basel Convention together with the Basel Ban Amendment is the only Multilateral Environmental Agreement (MEA) that was initiated by and for developing countries. Its legal regime is designed first and foremost to prevent the export of harm via the externalization of costs — both economic and environmental — to developing countries. From the beginning, the Basel Convention was well ahead of its time in understanding the vital connection between human rights and the environment, a connection at the heart of the globalization debate today.

Further, when we realize also that the Basel Convention is our only international treaty dealing with one of the most fundamental environmental concerns of any generation — waste, and early on, set out a binding obligation for waste minimization which remains the most important unfulfilled solution to the global waste crisis, any action that would allow the Basel Convention to fall into an historical abyss would represent a serious contractual breach with future generations. It would represent a turning back the clock on progress toward a more just and sustainable world and leave our children with a far uglier and polluted one.

Certainly at a time in history, when we currently face the single largest defined flow of hazardous waste which daily inundates developing countries around the world from the export of toxic electronic waste, the Basel Convention must be seen as not only a landmark but a beacon for vigorous future action.

Non-Paper

It is against this backdrop that many delegates were very surprised, if not shocked, to read the “non-Paper” written by then Executive Secretary of the Basel Convention entitled:

“Shifting Paradigms: From Waste to Resources” published in February of this year.

Contrary to any “paradigm shift,” the document presents waste as a resource—an idea which has been understood for decades. But here, in yet another worn-out and long rejected attempt, the paper claims that “recycling” trumps all in a false justification for throwing out the landmark and increasingly vital Basel Convention rules and obligations.

Recycling Old Justifications for Toxic Waste Trade

Those that were there at the Basel COPs in 1989, 1994, 1995, 1997 have all experienced the attempt by a few to cloak cost externalization with the green mantle of “recycling.” And each time the notion was soundly rejected.

That is because it is widely known that toxic waste is not traded to developing countries for recycling to take advantage of better facilities and the availability of stronger national infrastructure to govern such facilities. Tragically,
toxic waste moves across borders to do just the opposite: exploit cheaper labor and weaker government safety nets. Cheap labor comes in a context of relatively weaker economies whose governments therefore do not have the resources necessary to ensure that toxic waste recycling facilities are operated at optimal conditions; where adequate laws, monitoring and enforcement can truly protect worker safety and health and the local environment; where there are adequate toxic residual disposal technologies in place (because nothing is 100% recyclable); where there are independent trade unions, tort law, right to know laws, to protect the rights of workers and communities, etc.

All of these are the safety nets that developed countries can afford and take for granted and which developing countries cannot afford and therefore lack. These safety nets are far more important to ensuring environmentally sound management than empty promises that a certain technology operated by a certain corporation can deliver within a given facility.

Consider for a moment these very surprising “recommendations” found in the non-Paper:

» Revise the permissibility of transboundary movements of hazardous waste to include movements carried out to promote resource efficiency through environmentally sound recycling or recovery operations;

» Encompass waste definitions in the context of the waste-resources linkage and develop guidelines (or an annex to the Convention) to incorporate additional waste classification. Nomenclature should be harmonized (e.g. terms such as commodity, secondary raw material, alternative fuel, waste);

» Provide a “fast track” for transboundary movements of hazardous waste which is destined for recycling in an environmentally sound manner, while keeping a tight control on hazardous waste movements;

» Create a new annex to the Basel Convention which would, in addition to the ESM criteria for transboundary movements, add a “resource recovery” or “waste utilization” criterion to the applicable rules to differentiate end-of-life goods from (processed) secondary raw materials;

It is hard to imagine a more obvious attack against not only the Basel Ban Amendment but indeed the fundamental obligations of the Basel Convention itself found in Article 4, 2 and paraphrased below:

1. Ensure that the generation of hazardous waste is reduced to a minimum. (4.2.a)

2. Ensure that each country will provide adequate disposal/recycling facilities within its own borders to the extent possible. (4.2.b)

3. Ensure that the transboundary movement of hazardous waste is reduced to a minimum. (4.2.d)

It is surprising that the Executive Secretary, whose job it is by design to do the bidding of all of the Parties and not just some small interest group, would on her own volition, and without a mandate, quietly convene a small working group of her own choosing, primarily made up of business consultants and United Nations staff, without a single environmental NGO nor a representative from the field of human rights, to serve as a springboard for a document postulating an anti-Basel Convention point of view.

While a “non-paper” by title presuming “non-responsibility,” coming as it does from a meeting paid for by the Parties and organized and authored by the Executive Secretary of a “neutral” secretariat who does indeed hold the responsibility for upholding the Convention and its decisions, this paper crosses a line.

Why Now?

One cannot but wonder why this well-worn message that the word “recycling” is a justification to turn the Basel Convention on its head, is now being trotted out yet again just prior to the very meeting where it is expected that the impasse over the Basel Ban Amendment is to be put to rest, and the Convention can finally move on and work towards the all-important goal of waste prevention and minimization?

Is this a strategy to weaken the Ban Amendment and the Convention’s original intent at the same time it is expected to be allowed to finally enter into force? Is it a case of “what the right hand giveth, the left hand taketh away”? We hope not.
The Cartagena meeting should be a new beginning for the Convention, not a renewal of a tiresome blockade by a handful of countries continuing to stand in the way of the original desire of the Convention.

Nobody is against recycling. Recycling will always have a vital role in waste management, and indeed it is already a major growing industry. But recycling, particularly of hazardous waste, is no panacea for our waste crisis and should never be used as a justification for dumping costs and risks on those less able to deal with them.

Waste minimization/prevention has long been recognized as the most preferable activity in the waste management hierarchy (see Basel Preamble, 3rd paragraph), and progress towards waste prevention is seriously impaired by anointing recycling, particularly recycling of toxic waste and that which is linked to seeking out global cost externalities, as the answer to all prayers.

True waste prevention is far preferable and involves substituting less harmful chemical inputs into our processes and products as well as process changes to create less waste volumes. Waste trade justified by recycling which moves for economic reasons to exploit weaker economies works as a direct disincentive to true waste prevention.

That is why the Parties in 1994 and again in 1995 passed by consensus the Basel Ban Amendment that recognized a natural extension of the three Basel obligations noted above and very intentionally covered all exports of hazardous waste including those labeled as exports for recycling.

And that is why at Cartagena we need to finally put the Basel Ban on a pathway to enter into force at the earliest moment possible.

Sure hazardous waste can be a resource (albeit a dangerous one)—that is hardly a new idea! But it would be folly to ignore that the generation of hazardous waste is generally not a good idea and that it takes a great deal of care and resources to recycle it without causing harmful exposure and pollution. The Basel Convention is clearly designed to ensure that rich, industrialized societies be among the first to take national responsibility for first reducing the generation of toxic wastes, and then ensuring that those that do exist are not simply packed off in container ships and sent to countries lacking the resources to safely manage them. That was the intent in 1989 and that purpose is more relevant than ever today. The Secretariat non-Paper has a far different intent than the Basel Convention and can only be seen as the wrong-Paper for today’s world and for future generations.