The Basel Ban Amendment: Just Say Now!

Long Overdue

Ever since its inception, the intent of the majority of the world’s nations that came together in Basel in 1989 to create a treaty on hazardous waste dumping, sought a ban on the export of such waste from developed to developing countries. However they were rebuffed by most of the developed countries. And, ever since its entry into force in 1992, the Contracting Parties of the Basel Convention worked to fulfill this promise and make this effort of a full ban on the exports of hazardous wastes the overarching priority of the Convention’s work. Finally in 1995, the Ban Amendment became the most significant accomplishment of the Convention.

At the first meeting of Contracting Parties (COP/1) 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, 22 years since the adoption of the Convention when the ban was first conceived, and more than 15 years since its adoption the Ban has still not entered into force due to its being held hostage by a handful of countries.

The Basel Ban is seen as vital for two primary reasons:

- 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 71 Ratifications! Why the Delay?

The Basel Ban Amendment has now exceeded what many considered the magic number of 62 ratifications –¾ of the number of Parties present (82) in 1995 when the landmark decision was adopted. At about the time the ratifications were reaching 62, people discovered upon a close reading, that the text of the Convention regarding entry into force of amendments was ambiguous. The small minority of countries that oppose the amendment seized upon the vague wording. For them this is a new tool to prevent the imminent entry into force. In the absence of an agreement by the Parties on what Article 17, paragraph 5 means, the Office of Legal Affairs (OLA) at the United Nations will apply what is known as the “current time” approach requiring ratifications of ¾ of the number of Parties at any given time. Such an approach would presently require 133 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. Most legal analysts and Parties believe that the current time was never in mind when the authors crafted the language used, but rather the “fixed time” approach.

The “fixed time” approach draws its 3/4s of Parties from the actual 82 countries that were there in 1995 when the Amendment was adopted.

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 – the Convention itself only needed 20!

At COP9 the Parties were poised to decide on an interpretation that would move the ban into force at the earliest possible date but then they could not decide how to decide. A small minority of countries, claimed that any decision to interpret the treaty would need to be
decided by consensus and not by the Rules of Procedure. The Rules of Procedure allow for a vote on the matter should consensus not be achieved. Because certain countries remain adamant about blocking consensus in order to thwart the overwhelming will of the global community for a ban, placing the viability of the ban in the hands of a consensus process would have been the death knell for the Amendment. Thus it was that at COP9 the process to decide on how to decide reached an impasse and the ban’s entry into force blocked by default.

CLI to the Rescue?

At that point the Indonesian Presidency announced with Switzerland the formation of a Country Led Initiative to find a way to diplomatically assuage the concerns of those countries that were blocking the passage of the long sought after prohibition. Several Party only meetings were held and issues about the Ban were aired. The result of the process is the Omnibus Draft Decision which calls for the “fixed time” approach and continued dialogue and work on guidelines and standards.

While the normal interpretation of the “fixed time” approach will not allow the Ban to enter into force immediately, it will require it to only achieve 12 more ratifications from a pool of 32 countries that were there in 1995 and who have as yet not ratified it

Fixed Time Approach: 1995 Parties Needed

<table>
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<tr>
<th>Parties in 1995 who “accepted” Ban Amendment</th>
<th>Not Yet Ratified Ban (12 more of these are needed for entry into force)</th>
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<tbody>
<tr>
<td>Argentina, Austria, Belgium, Chile, China, Cyprus, Czech Republic, Denmark, Ecuador Egypt, Estonia, European Community, Finland, France Germany, Greece, Hungary Indonesia, Ireland, Italy, Jordan, Kuwait, Latvia, Liechtenstein, Luxembourg Malaysia, Mauritius, Netherlands, Nigeria, Norway, Oman, Panama, Poland, Portugal, Qatar, Romania, Saint Lucia, Slovakia, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Trinidad and Tobago, Turkey, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Zambia</td>
<td>TOTAL 50 Total 32</td>
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Basel Ban is Needed Now More than Ever

In the latter part of 2006, the global community was confronted with a horrific waste trade tragedy resulting in the deaths of at least 15 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 serves a wake-up call that the Ban is needed now more than ever.

It has been 15 years since we have been gathering ratifications for the amendment and now we have reached 71. It is certain that the Parties did not expect the Basel 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. At COP10 we urge support for the “fixed time” approach.

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