

Annex VII Expansion? -- An Ignoble Attempt to Undo the Basel Ban

Lest we Forget: History of the Basel Ban

Ever since its entry into force, the Contracting Parties of the Basel Convention have made the enactment of a full ban on the exports of hazardous wastes from developed to developing countries the overarching priority of the Convention.

At the first meeting of Contracting Parties (COP1) in 1992, Decision I/22 was passed, requesting developing countries to prohibit the import of hazardous wastes from industrialized countries. At their next opportunity (COP2) in 1994, the Parties passed Decision II/12 banning the export of all hazardous wastes from Organization for Economic Cooperation and Development (OECD) countries to non-OECD countries. Then, at COP3 in 1995 Decision III/1 was adopted, installing the Basel Ban as an amendment to the Convention. Decision III/1 created Annex VII, a list of countries consisting of the OECD, EU and Liechtenstein, prohibited from exporting hazardous wastes to non-Annex VII countries.

To date following the expansion of the European Union there are 37 Annex VII countries and it is a powerful statement of international cooperation that a full 30 of these have already implemented or ratified the Basel Ban Amendment.

Unfortunately, despite the strong support for this landmark agreement, there remains a small minority of powerful Annex VII countries known as the “**JUSCANZ group**” including **Japan**, the **United States**, **South Korea**, **Canada**, **Australia**, and **New Zealand**, wishing to reverse or weaken the Basel Ban decision. These countries have signaled their intent to press for exploiting a loophole in the Basel Ban Decision (III/1) by pressuring relentlessly for the expansion and opening of Annex VII beyond the normal channels of doing so – entry into the OECD or EU.

Annex VII: A Pandora's Box

While Annex VII countries are forbidden from exporting hazardous wastes to non-Annex VII countries, they nevertheless can trade in hazardous wastes with other Annex VII countries. This was never seen as a serious problem as the Ban was never designed to halt intra-OECD trade or trade between non-OECD countries in hazardous wastes but only the most abusive form of hazardous

waste trade – that trade designed to exploit weaker economies from the OECD group for economic reasons. Yet the handful of Basel Ban opponents have indicated a desire to press for adding non-OECD/EU countries to join Liechtenstein on Annex VII. *These countries are not doing this to prevent more non-OECD countries from exporting their hazardous waste, but rather because they want them to be able to import their waste.*

Liechtenstein in real terms is not a problem with respect to diluting the Basel Ban, as that country has, via the European Economic Agreement (EEA), already implemented the Basel Ban Amendment. The addition of Liechtenstein can be viewed as an exceptional case and was never meant to be the first in a long list of non-OECD countries joining Annex VII *without first joining the EU or OECD*. Indeed the idea of an open list of countries was rejected during the negotiations of COP2 and COP3.

There are two fundamental reasons for the line drawn in the creation of Annex VII:

- The OECD and the developed European countries are disproportionately responsible for a global problem (hazardous waste generation) and possesses a disproportionately better capability (wealth) to solve that problem at home as required by the Basel Convention (Article 4, para. 2, (a)(b) and (d)).
- The OECD and the EU are a legally bound set of nations whose memberships are not self-elective but based on economic and infra-structural criteria. The rigidity of these criteria within the OECD and EU provide an enforceable safeguard against a regime where countries, on the basis of unenforceable criteria, can opt in or out of the ban. An “opt-out” ban is not a ban at all.

These Annex VII distinctions, while imperfect as any annex will be, *do* address the *worst* abuses of export and dumping for profit and at the same time serve to prevent a return to the highly corruptible, and unacceptable elective system of “prior informed consent” with respect to developed to developing country trade.

If, non-OECD/EU countries are allowed (or are pressured into) joining Annex VII, once again they will become the potential target for economically motivated waste dumping. *If* the Annex VII distinctions are erased, a Pandora's box will be opened, and the demons of waste colonialism the Basel Convention Parties fought so hard to contain, will again be unleashed.

Blaming the Victims, Ignoring Responsibility

Aspiring waste trading nations opposed to the ban are trying hard to justify Annex VII expansion by falsely characterizing the distinction

between Annex VII and non-Annex VII as strictly a case of “technical capacity” -- non-Annex VII countries being too technologically “underdeveloped” to properly manage hazardous wastes. Yet the assertion that “environmentally sound management” as defined in the Convention is *only* a matter of “end-of-pipe,” downstream responsibility for the importing country (possessing adequate technical capacity, etc.) and the before-the-pipe, upstream responsibility of the exporter, is simply wrong.

The Convention defines “environmentally sound management” (ESM) as “*taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes.*” Yet ban opponents conveniently ignore that “*taking all practicable steps*” is certainly not confined to *downstream* capabilities of importing states for end-of-pipe disposal methods. Rather, the most important first practicable steps *must* involve fulfilling the preventative obligations of the Convention itself:

■ **To reduce waste to a minimum at source. (Article 4, para 2, (a))** Almost certainly when Annex VII countries export to non-Annex VII countries that export equates to an economic disincentive to reduce hazardous wastes at source.

■ **To ensure the availability of adequate disposal facilities, that shall be located, to the extent possible in the exporting state. (Article 4, para 2, (b))** It is almost certain that Annex VII countries possess the ability (to the extent possible) to provide for adequate disposal facilities domestically for those remaining wastes which they have not reduced at source.

■ **To ensure that the exporting state reduces transboundary movements of hazardous wastes to a minimum. (Article 4, para 2, (d))** Each exporting country, and in particular those with the greatest resources, has the individual responsibility to reduce transboundary movements to a minimum.

If Annex VII countries took the three “practicable steps” highlighted above, as they must, waste trade to any other country would cease. Add to that the environmental justice context of the Basel Convention which seeks to prevent developing countries from bearing a disproportionate burden of the world’s hazardous waste simply because to their lower-wage economies, and the fact that there is far more to occupational and environmental protection than simply technology (e.g. infrastructure to maintain technology, worker rights, legal remedies etc.) and one reaches the conclusion that such waste trade to non-Annex VII countries should be the waste exports that cease immediately.

Thus, the ban is a logical extension of the Convention itself. And we submit that Annex VII countries above all others have a *special responsibility* to fulfill the above obligations because:

✓ **Economically motivated waste trade (Annex VII to non-Annex VII) serves as a strong disincentive to source reduction.**

✓ **Annex VII countries produce a disproportionate amount of the hazardous waste on the planet.**

✓ **Annex VII countries also have the greatest resources to implement the above obligations and “practicable steps.”**

The question of whether a non-Annex VII country possesses the technical capacity for “environmentally sound management” in the *comprehensive ESM* context becomes irrelevant. Raising this issue repeatedly is an attempt to vastly limit the real meaning of “environmentally sound management” and pass the onus for responsibility from the generator to disposer and worse from rich to poorer. By trying to focus our attention on the capabilities of non-Annex VII importing countries instead of their own, ban opponents would like us to believe that the waste crisis is the fault of non-Annex VII countries for their failure to possess “end-of-pipe” treatment and recycling technologies to deal with wastes not of their making. Rather, we know that the real failure lies with those generating hazardous wastes -- a failure to reduce such wastes at source through the use of clean production methods as the Convention envisages rather than by exporting these burdens to others.

It is the economically motivated trade in hazardous wastes from Annex VII to non-Annex VII countries that works as a disincentive to responsible, preventative waste management among Annex VII countries, that is most antithetical to “environmentally sound management.”

COP4: Decision IV/8 and its Mandates

At the Fourth Conference of the Parties in February of 1998, the resolve of the Parties to resist the opening of Annex VII was tested when Slovenia, Israel and Monaco all sought to amend the amendment (Decision III/1) to allow their entry into Annex VII. After lengthy debate, however, these proposals were all wisely rejected and instead a compromise (Decision IV/8) was passed wherein it was decided that *Annex VII would not be altered until entry into force.*

“No” to Annex VII Expansion

The Basel Ban is a logical extension of the Convention, and in fact, was envisaged in the Convention (Article 15, para. 7). It became necessary when it was revealed that the elective waste trade regime, based on “prior informed consent,” was ineffectual in the face of the enormous economic pressures of the global waste trade. If Annex VII is opened beyond the OECD and EU, we will have returned to just such a failed opt-in/opt-out system. If Annex VII is expanded we will reassert that pollution does pay -- that instead of solving waste problems at home, and exporting clean technologies, affluent countries can simply clean their own house by exporting their poisons to their global neighbors. Lets not allow that to happen.

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