
Committee on Trade and Environment

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**COMMUNICATION FROM THE SECRETARIAT OF THE BASEL CONVENTION ON
THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS
WASTES AND THEIR DISPOSAL**

The attached background paper¹ has been received from the Secretariat of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. It is being circulated to Members of the CTE in preparation for the Information Session with Secretariats of Multilateral Environmental Agreements on 23 July 1998.

Comité du commerce et de l'environnement

**COMMUNICATION DU SECRÉTARIAT DE LA CONVENTION DE BÂLE
SUR LE CONTRÔLE DES MOUVEMENTS TRANSFRONTIÈRES
DE DÉCHETS DANGEREUX ET DE LEUR ÉLIMINATION**

La note d'information ci-jointe¹ a été reçue du Secrétariat de la Convention de Bâle sur le contrôle des mouvements transfrontières de déchets dangereux et de leur élimination. Elle est distribuée aux membres du Comité du commerce et de l'environnement en vue de la séance d'information avec les Secrétariats des Accords environnementaux multilatéraux qui aura lieu le 23 juillet 1998.

Comité de Comercio y Medio Ambiente

**COMUNICACIÓN DE LA SECRETARÍA DEL CONVENIO DE BASILEA
SOBRE EL CONTROL DE LOS MOVIMIENTOS TRANSFRONTERIZOS
DE DESECHOS PELIGROSOS Y SU ELIMINACIÓN**

La Secretaría del Convenio de Basilea sobre el Control de los Movimientos Transfronterizos de Desechos Peligrosos y su Eliminación ha enviado el documento de base adjunto¹, que se distribuye a los miembros del CCMA como parte de los preparativos para la reunión de información con las Secretarías de Acuerdos Multilaterales sobre el Medio Ambiente, que se celebrará el 23 de julio de 1998.

¹ English only/En anglais seulement/En inglés solamente.

THE BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL RECENT DEVELOPMENTS

Note by the Secretariat of the Basel Convention

I. ENVIRONMENTALLY SOUND MANAGEMENT

The concept of environmentally sound management sustains the objectives, principles, and obligations of the Basel Convention. It concerns the management of hazardous wastes from their generation to their final disposal and, in particular, the problem of transfrontier movements of such wastes, which calls for international cooperation between exporting and importing countries in the light of their joint responsibility for the protection of the global environment. As such, this concept should permeate national, domestic or regional social and economic policies.

In the Basel Convention, the environmentally sound management of hazardous wastes is defined as taking all practicable steps to ensure that hazardous wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes. The Convention recognizes the need to continue the development and implementation of environmentally sound low-waste technologies, recycling options, good house-keeping and management systems with a view to reducing to a minimum the generation of hazardous wastes. It recognizes also the increasing desire for the prohibition of transboundary movements of hazardous wastes and their disposal in other States, especially developing countries.

II. CLASSIFICATION AND HAZARD CHARACTERIZATION OF WASTES

For the purpose of the Basel Convention, wastes that are moved across frontiers and are characterized as hazardous will be subject to the Convention. The prime determinant for classifying a waste as hazardous is its intrinsic properties (i.e. it exhibits or possesses one or more hazardous characteristics of Annex III). Annex I to the Convention is presumed to be the categories of wastes that are characterized as hazardous under the Convention. However, this is a rebuttable presumption in the sense that an exporter or a generator can prove, by using the hazard characteristics of Annex III to the Convention, that the waste identified in Annex I is not hazardous. Wastes that belong to any of the two categories contained in Annex II that are subject to transboundary movements and classified as "other wastes" will be controlled under the Convention. Waste that are not characterized as hazardous using Annexes I and III for this purpose, but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit shall be "hazardous wastes".

At its fourth meeting in February 1998, the Conference of the Parties of the Basel Convention decided to add the two lists of wastes prepared by the Technical Working Group as requested, at its third meeting, as two new annexes to the Convention namely Annex VIII (list A) and Annex IX (list B). The Conference of the Parties also instructed the Technical Working Group to keep the List A and List B of wastes under review:

- (a) List A. Wastes contained in this list are characterized as hazardous under Article 1, paragraph 1(a) of the Convention, and their designation on this list does not preclude the use of the Annex III to demonstrate that a waste is not hazardous.
- (b) List B. Wastes contained in this list will not be wastes covered by Article 1, paragraph 1(a) of the Convention unless they contain Annex I material to an extent causing them to exhibit an Annex III characteristic.

The specific wastes contained on List A of Annex VIII and on List B of Annex IX are an elaboration and clarification of the provisions of Article 1, paragraph 1(a) of the Convention by reference to Annexes I and III.

Annex III of the Basel Convention contains a list of 14 hazardous characteristics. The Technical Working Group noted that uncertainties linked to the interpretation of the text of some of the hazard classes of Annex III and in the absence of internationally accepted criteria for the classes H10 to H13 may present a problem for the implementation of the Convention. The first 10 hazard classes in Annex III (H1 to H8) are modelled on the United Nations Recommendations on the transport of dangerous goods that provides a useful approach to interpreting these classes. A limited number of hazard classes need to be further considered for the purpose of the Basel Convention, in particular taking into account the requirement for the disposal of wastes subject to the Convention, i.e. H1 (Explosive) and H6.2 (Infectious).

For the hazard classes H10 (Liberation of toxic gas in contact with air or water), H11 (toxic-delayed or chronic) and H12 (ecotoxic), considerable explanation and elaboration are required. The hazardous characteristics H10-H12 pose special problems. Whilst H1-H8 correspond to well-defined classes, the H10-H12 ones seek to address more general aspects of environmental and health impacts resulting from the management, including disposal of hazardous wastes. The descriptions offered in Annex III of the Basel Convention do not amount to a precise definition of each characteristic. For example, some consider that the characteristic "ecotoxic" should operate only within the aquatic environment, and in the context of bioaccumulation, whilst others believe it has a much broader application and should apply to any environmental media.

For H13 (Capable, by any means, after disposal, of yielding another material), the third meeting of the Conference of the Parties indicated the four options to retain:

- (a) a narrow interpretation referring only to leachate;
- (b) not to use the hazard characteristic until guidance was better developed;
- (c) explore with countries how they wish to use H13; and
- (d) a broad interpretation referring to all disposal options of Annex IV to the Convention likely to release harmful emissions, leachate, effluent or residues. The Technical Working Group at its eighth session in June 1995 did not retain this option as being workable.

III. AMENDMENT OF THE BASEL CONVENTION

Recognizing the increased desire and demand of the international community for a ban on export of hazardous wastes, especially to developing countries, the second meeting of the Conference of the Parties (1994) decided to immediately prohibit all transboundary movements of hazardous wastes which are destined for final disposal from OECD to non-OECD countries, and to phase out such movements for recycling or recovery operations by 31 December 1997 and prohibit them as of that date. At its third meeting, the Conference of the Parties agreed to adopt an amendment to the Convention incorporating this export ban into the Convention itself. The Parties decided to amend the Convention by inserting a new Article 4 A which stipulates that each Party listed in a new Annex VII shall prohibit all transboundary movements of hazardous wastes that are destined for operations according to Annex IV-A to States not listed on Annex VII immediately. States listed on Annex VII are the members of the OECD, and the EC, Liechtenstein. 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 destined for operations listed in Annex IV-B. Three-fourths of the Parties who accepted the

Amendment need to ratify it for it to come into force. As of June 1998, 8 Parties have ratified the Amendment.

At its fourth meeting in Kuching, Malaysia, in February 1998, the Conference of the Parties adopted Decision IV/8 regarding Annex VII as part of the Amendment contained in Decision III/1. In this Decision, the Conference recognized the difficulties of modifying Annex VII prior to the entry into force of the Amendment. Indeed, three State Parties made proposals to be considered by the Conference for them to be included into Annex VII. Taking into account the above, the Conference of the Parties decided to leave Annex VII unchanged until the Amendment contained in Decision III/1 enters into force. The Conference also decided that issues relating to Annex VII should be further explored and requested the Technical Working Group in cooperation with the Consultative Sub-group of Legal and Technical Experts to provide Parties with a detailed and documented analysis that would highlight issues related to Annex VII and to report to the fifth meeting of the Conference of the Parties. The 14th session of the Technical Working Group will take place from 2-5 November 1998 in South Africa and will be followed by a two days joint meeting with the Consultative Sub-group of Legal and Technical Experts.

IV. ENFORCEMENT

A. USE OF THE HARMONIZED SYSTEM OF THE WORLD CUSTOMS ORGANIZATION (WCO)

The Conference of the Parties of the Basel Convention has given the mandate to the Secretariat of the Basel Convention to cooperate with the WCO, in collaboration with the European Commission and OECD, on matters concerning the separate identification of wastes in the harmonized system. As of today, significant progress has been made to include entries for wastes covered by the Basel Convention in the harmonized system. As a general principle, separated harmonized system subheadings should be created for hazardous wastes which are environmentally sensitive and whose transboundary movements has to be controlled or which are important in international trade. The Harmonized System Review Sub-Committee intends to complete its work by the end of 1998 so that all amendments to be accepted by the WCO could be adopted by June 1999. The revision of the harmonized system is scheduled for the year 2002. National administrations could recommend the use of the harmonized system codes for wastes identified in the harmonized system until the World Customs Organization nomenclature is being formally amended. The last opportunity for considering any additions or amendments to the current proposals will be September 1998.

B. ILLEGAL TRAFFIC

The Secretariat of the Basel Convention is cooperating with Interpol on the issue of illegal traffic in hazardous wastes. The Secretariat is a member of the Sub-Working Group on Hazardous Wastes established three years ago by Interpol. The group agreed that there is an urgent need to initiate a training module that can be packaged and transferred around the world. It should be a "train the trainers" program. It is envisaged that training courses could be given at the Regional Centres for Training and Technology Transfer established under the Basel Convention. The Secretariat also cooperates with the United Nations Commission on Human Rights on matters related to illegal traffic in hazardous wastes and in particular with the Special Rapporteur of the Commission on Human Rights. Environmental crimes according to penal law are in constant rise and, within this overall increase, the most important rise concerns illegal waste disposal, including illegal transboundary movements of wastes and hazardous. Reasons for occurrence of illegal traffic in wastes and hazardous wastes is multifold and can find roots in the following:

- (a) increasing cost of disposal and differences in disposal costs
- (b) differences in national/domestic law and regulations
- (c) high profit margin

- (d) difficulties in proving acts are criminal
- (e) complex business set up
- (f) possible involvement of organized crime
- (g) liberalization of trade
- (h) mobility of persons
- (i) lack of uniform definition of what is a waste or hazardous waste
- (j) plurality of the international/regional legal instruments concerning hazardous waste and the difficulties in following their provisions
- (k) lack of harmonization on the enforcement side
- (l) differences in waste management infrastructure

V. A GLOBAL FRAMEWORK FOR COMPLEXITY

The Basel Convention is a global framework where control procedures and management options are mutually supportive in the quest for protecting health and the environment. Hazardous wastes are often mixtures of materials that are difficult to treat or dispose of. As new chemicals are being produced and used, new problems arise with the disposal of these chemicals which are becoming more and more complex. The challenge is multifold and the generation of hazardous waste impacts on all aspects of society. This global framework is gradually being enlarged through the alliance of experience, shared knowledge, pragmatism and science. Already, work in the Basel Convention has canvassed core environmental principles that are widely acknowledged and used by States, intergovernmental organizations and civil society.

In the preamble of the Basel Convention, the Parties consider that enhanced control of transboundary movement of hazardous wastes will act as an incentive for their environmentally sound management and for the reduction of the volume of such transboundary movement. They are determined to protect, by strict control, human health and the environment against the adverse effects that may result from the generation and management of these wastes. In the same preamble, the Parties recognize the need to promote the transfer of technology for the sound management of hazardous wastes produced locally. There is all through the Basel Convention a clear understanding of the intimate relationship, complementarity and synergy between control of transboundary movements and management of hazardous wastes with the purpose of ensuring optimal protection from the adverse effects of these wastes on health and the environment.

Multi-dimensional issues require thorough, effective, coherent and concerted actions in particular within the fast-evolving context of the world of wastes. Thanks to the high spirit of cooperation of the State Parties, Signatories and other stakeholders, the Basel Convention is meeting this challenge.
