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april 2006

**briefing paper 5**

# The Shame of Shipping: Breaking with Principle to Break Ships

**Basel Must Do Its Job**

The migration of obsolete ocean going vessels laden with asbestos, PCBs, toxic paints, biocides, fuel residues and other hazardous substances, from wealthy shipping companies and nations to some of the poorest communities on earth for extremely hazardous scrapping - "on the cheap" - is precisely the type of scandalous exploitation that the Basel Convention and its subsequent Basel Ban Amendment was designed to arrest.

It is thus disturbing to find that despite the passage of many years since the global shipbreaking scandal was revealed to a horrified public, the Basel Convention has done so little to ensure that its principled legal controls are invoked for ships when such ships become hazardous wastes. This 9-year "thumb twiddling" is scandalous in its own right. But it can be attributed in large part to the timidity of the Basel Convention to act on principle against a scandalous and relentless pressure from one of the richest and most powerful industries on earth – the global shipping industry.

From the outset the Basel Convention was born out of principle. It was created to erect a bulwark against human rights abuses and the environmental injustice engendered when toxic wastes are freely traded without restraint in the global market place. A guiding principle of environmental justice is that no peoples should be disproportionately burdened by environmental risk and hazard simply because of their racial, social, geographic, or economic status. This concern over the justice and human rights abuses from the international waste trade was the driving force behind the creation of the Convention itself and the passage of the Basel Ban, which has been affirmed in repeated decisions ever since the first COP (I/22, II/12, III/1, IV/7, V/III, VI/33, VII/23).

**Exploitation Is Not Prevented By Technology Alone**

Contrary to some recent characterizations of the goals and objectives of the Basel Convention, the treaty is very clearly not *just* an instrument to promote technologically defined **environmentally sound management (ESM),** without regard to the need to prevent the injustice that arises from a free trade in toxic waste. The Convention did not just make it obligatory to provide end-of-pipe, downstream hazard mitigation, and good housekeeping, but boldly demanded that all countries reduce transboundary movement of wastes (particularly to developing countries) to a minimum and that all States accomplish this through waste minimization methods and by assuring environmentally sound management capacity within their own national borders.

Clearly, the current state of affairs that finds just a handful of developing countries managing the hazards and risks of over 90% of the world's toxic waste ships – most owned in rich developed countries, is the antithesis of what the Basel Convention stands for on principle and in obligation. If the Convention is to remain relevant and live up to its mandate, it must ignore the tantrums of an industry that has profited immensely from decades of exploitation and begin to move resolutely to preserve the intent and spirit of the Convention with respect to ships as hazardous wastes.

**Respective and Respectful Competence**

The Basel Convention has a clearly defined role to play in resolving the shipbreaking crisis, as does the International Maritime Organization (IMO), and International Labour Organization (ILO). These respective competencies are to be respected, with each institution working to compliment and not compete with one another.

We are faced with a widening crisis -- where shipbreaking conditions in countries like Bangladesh and India are not improving to any serious degree while massive amount of ships, including the world's single-hulled tanker fleet, create a massive tide of ships awaiting disposal, the world desperately needs each of the above institutions to pursue their mandates toward the following concrete objectives:

1. **Developed countries must develop more shipbreaking and ship decontamination capacity. (IMO, Basel)**

2. **In developing countries, shipbreaking capacity for *pre-cleaned* (decontaminated) ships be maintained, further developed and vastly improved. (Basel, ILO)**

3. **Ensure that developing countries no longer receive ships laden with toxic substances. (Basel)**

4. **Mandatory proactive steps are taken now to ensure that all new ships are made with a minimum of toxic materials on board. (IMO)**

| Ship Life Cycle Segment | Design and Building | Operation (Inventory / decontamination during service) | Ship as Waste being Transported | Ship as Waste Disposed / Recycled |
|---|---|---|---|---|
| IMO | | | | |
| Basel | | | | |
| ILO | | | | |

It is clear from the diagram above that each institution has a significant role to play in the life-cycle of a ship to ensure that its environmental and occupational impacts are minimized. While dialogue between all three institutions is always important, it is vital that each respective body upholds its own mission and competence. The IMO role is to ensure green ship design, proper inventorying and decontamination of hazardous substances prior to disposal, and the safe and sound operation of the ship. The ILO role is to protect workers at shipbuilding, during operations and at shipbreaking yards. The Basel Convention's competency begins once a ship becomes a waste – that is, when intent to dispose has been revealed or declared, and covers transboundary movement and disposal/recycling operations.

**Industry Asks IMO to Steal Basel Competence**

Today, however, despite the very clear delineation and need for all of the respective roles of the relevant institutions, we are finding a strong push by the shipping industry for the Basel Convention to stand down and let the IMO take control over Basel's primary *raison d'etre* – preventing the transboundary movements of hazardous wastes and environmental injustice.

The IMO in turn, seems all too willing to do the industry's bidding and have rushed to issue IMO Shipbreaking Guidelines (adopted by the IMO General Assembly in December 2003) prior to the Basel Convention having the ability to conduct its own legal deliberations on how best to close loopholes and implement the principles and obligations of the Convention with respect to ships. *Lately we are even seeing that the shipping industry is trying to prevent the Basel Convention from conducting its deliberations and appears to have embarked on a strategy obstruct its efforts and mandate!*

Without any legal footing to do so, the shipping industry claims that a ship cannot be a ship and a waste at the same time. Meanwhile, the Basel Convention has determined otherwise. Any product can of course become a waste when it is destined for disposal or recycling and not re-use under the Basel Convention. This is a fact of law. Yet, the IMO has given the Basel Convention's legal regime and mandate a slap in the face by provided a safe haven for the shipping industry to make these spurious claims.

***It has become clear that the shipping industry's strategy is to "use one United Nations body (IMO) to undermine another (Basel).*** Their motivation is not due to a question of territoriality or scope. Rather it is a cynical strategy to usurp competency being conducted not because the industry expects a *better* control regime under the IMO, rather because they expect a *weaker* one. They expect the IMO will be more likely to deliver them a greenwashed "business-as-usual" regime that still enables this powerful industry to exploit low-wage communities with high-risk enterprises and toxic residues. A precedent of allowing an industry to go "forum shopping" within the "UN store" for the weakest international law available threatens not only the future of the Basel Convention, but the credibility of the entire UN system.

**IMO: Places Burden on Shipbreakers, not on Shipowners**

BAN and Greenpeace has reviewed the IMO Guidelines and carefully compared them to the obligations and definitions under the Basel Convention. What we found were egregious and disturbing contradictions between the two regimes. Fundamental obligations and principles of the Basel Convention, such as *whether* vessels are wastes, *the need to minimize transboundary movements of wastes*, *the obligation to minimize the generation of hazardous waste*, to name a few, were ignored by the IMO.

Alarmingly, the IMO Guidelines unjustly pin the burden of ship dismantling risk and obligation on the developing countries that host most of the existing ship recyclers. This turns on its head what Basel stands for. It also distorts the polluter-pays principle – advocating instead a "polluted-pays" principle. By burdening the recipient countries with most of the mandatory responsibilities, ship designers, owners and operators who have the resources, both technical and financial, to deal with the hazardous materials upstream, are relieved of their duty to minimize the wastes they have, in effect, generated. Once more the poorest workers, their families, and communities in developing countries are left – disproportionately burdened by poisons not of their making.

**IMO: Wrong for Waste Justice, Right for "Green Design"**

It is clear that the IMO is not the correct body to deal with matters of waste trafficking, human rights, the principle of environmental justice, nor minimizing the transboundary movements of hazardous waste ships. They have neither the culture, the context, the mission, nor the inclination to fulfill the crucial role Basel is meant to fill. However, there is a vital role for IMO to play – actually the most important role. *Rather than working to ensure that ships are not considered wastes, IMO should work to create a mandatory regime that ensures that all future ships will no longer contain hazardous materials.. If that is done, the days in which Basel must deal with toxic ships will be short-lived indeed.*

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**Acting on Principle**

**The Basel Convention was created in 1989 to make a principled change in how we conduct waste business on earth. It and the subsequent Basel Ban Amendment were designed to make the world a better place by preventing the exploitation of poorer communities under the name of waste management. The job given Basel by the global community of prohibiting, notifying and otherwise controlling the transboundary movement of hazardous wastes with a view to minimizing such movement, is the clear competence of the Basel Convention. We should not shirk from the duty. We cannot start now to set a precedent whereby any industry that becomes unhappy with Basel's obligations on it can run off to create a parallel regime more favorable to its profit margin. Basel *must* stand its ground, and prevent any special interests from turning back the clock and breaking from Basel's landmark principles.**

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september 2007 **briefing paper 1**

# **The Basel Ban:** A Triumph for Global Environmental Justice

## The Impeccable Logic of Toxic Trade

*"I think the economic logic behind dumping a load of toxic waste in the lowest wage country is impeccable and we should face up to the fact that ... under populated countries in Africa are vastly under-polluted."*

In 1991, this remarkable statement was found in an internal memo of then World Bank Chief Economist Lawrence Summers, and was leaked to the world press. His words resulted in a global outcry.

Then Environment Minister of Brazil, Jose Lutzenberger found words for the collective outrage in his written rebuke to the Bank and Mr. Summers: *"Your reasoning is perfectly logical but totally insane...your thoughts [provide] a concrete example of the unbelievable alienation, reductionist thinking, social ruthlessness and the arrogant ignorance of many conventional 'economists' concerning the nature of the world we live in."*

Mr. Summers' words were shocking for one simple, awful reason -- they were true. His words spoke volumes about the imperatives of free market economics and its failure as an absolute model for governance over our lives. The economic logic of the export of hazardous wastes from the rich industrialized countries of the North to the poorer less-industrialized countries of the South had already become horribly real even before Mr. Summers wrote his memo.

Beginning in the mid-1980s headlines began appearing announcing the discoveries of barrels of mixed industrial poisons dumped on tropical beaches, and of vessels laden with toxic trash plying the coastlines of developing countries searching for a port-of-call. These first "ships of death" were highly publicized harbingers of an extremely profitable trade that threatened to become epidemic.

## 1989 Basel Convention: Legalizing Toxic Trade

In June of 1987, following the intense outrage expressed by developing countries, the United Nations began negotiations to prepare a global convention on transboundary movements of hazardous waste. This led, in March 1989, to 118 nations signing the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal. To date, over 165 countries have now ratified the treaty.

Unfortunately, whereas the vast majority of nations wanted to *ban* waste trafficking, particularly from developed to developing countries, certain heavily industrialized countries, most notably the United States, fought to reject any such prohibition. Thus, the original 1989 treaty became primarily an instrument to monitor the transboundary movements of hazardous waste rather than actually fulfill its stated goal -- to reduce or prevent them.

Immediately following the signing, Greenpeace denounced the Convention as providing license to an activity, which should have been considered criminal. Many developing countries refused to sign or ratify it. A very disappointed African group walked out claiming that they would not sign and would instead initiate their own treaty banning waste imports to Africa.

## A Ban is Born: The Global Community Prevails

Rather than giving up, developing countries and non-governmental organizations (NGOs) began instead to forge regional and national bans in lieu of a global one. These efforts rapidly bore fruit so that by the time the Basel Convention entered into force in 1992, over 88 countries had banned the import of hazardous wastes through national or regional laws or agreements. This tidal wave of legislative activity persuaded progressive European countries such as Switzerland, Norway, Sweden and Denmark, to join developing and Eastern European countries in an even stronger push for a global ban. These governments and NGOs were successful in progressively transforming the Basel Convention with the following Conference of Parties (COP) decisions:

- COP I (December 1992): Decision I/22 requested developing countries to prohibit the import of hazardous wastes from industrialized countries.

- COP II (March 1994): Decision II/12 banned export of all hazardous wastes from OECD to non-OECD countries including for recycling as of 1 January 1998.

- COP III (September 1995): Decision III/1 adopted the OECD (and Liechtenstein) export ban as an amendment.

- COP IV (February 1998): Decision IV/8 agreed to leave the Ban Amendment unchanged until its entry into force. Decision IV/7 appealed to all Parties to ratify the Amendment as soon as possible.

- COP V (December 1999): Decision V/3 appealed to Parties to ratify the Amendment as soon as possible.

- COP VI (December 2002): Decision VI/33 strongly appealed for ratification as soon as possible.

- COP VII (October 2004): Decision VII/23 noted the progress of the Ban and strongly appealed for its immediate ratification.

## The Reason for the Basel Ban

The Basel Ban was justified by the Basel Parties on the basis *"that transboundary movement of hazardous wastes from OECD to non-OECD countries have a high risk of not constituting an environmentally sound management of hazardous wastes as required by the Basel Convention."* This determination was not only due to the obvious lack of adequate technical capacity *(downstream ESM)* in developing countries, but *more importantly* for the reason that export of pollution to avoid higher costs always works at cross purposes to the primary *(upstream ESM)* goals of the Basel Convention: a) the minimization of hazardous waste generation; b) national self-sufficiency in hazardous waste management; and c) the minimization of the transboundary movement of hazardous wastes.

## A Legal Landmark for Environment and Justice

The Basel Convention was originally intended as a beacon of preventative policy and legal restraint with respect to hazardous waste and trade. It was born out of a notion that economically motivated waste exports particularly from developed to developing countries was both an affront to human rights and the environment. Above all, it is a *legal* instrument; it is international law, with a clear aim to promote the minimization of transboundary movement (particularly to developing countries) of hazardous wastes and to minimize hazardous waste generation.

The Basel Ban is hailed as one of the few fulfilled promises of the 1992 United Nations Summit on Environment and Development (UNCED). Its far-reaching significance is summarized below:

- Non-OECD Solidarity: First, it was an initiative launched, sustained, and won by the G-77 group of developing countries (led initially by the African Group). It was this group of countries, with China, that provided the moral backbone. Allies found in Western and Eastern European countries soon joined them. The unwavering solidarity of transition and developing countries to bridle the excesses of richer, more powerful countries for the sake of the global environment remains unprecedented to this day.

- Powerful NGO Role: Likewise, a very significant role was played by NGOs, which are usually relegated to the sidelines of international political debate and decision-making.

- Legally Binding Trade Barrier: The Basel Ban was adopted as a legally binding instrument with criminal penalties for violators in a political climate of de-regulation and voluntary agreements. Despite being an unabashed discriminatory trade barrier on behalf of the global environment, the Basel Ban was passed by a consensus of 83 countries in an era noted for the proliferation of global free trade agreements (WTO, NAFTA, FTAA, etc.)

- Defeated Powerful Interests: It was passed despite the total opposition of powerful business lobbies such as the International Chamber of Commerce and many of the world's most rich and powerful nations (eg. United States, United Kingdom, Germany, Australia, Canada, Japan, and France). These opponents not only disliked a precedent restraining free trade, but stood to profit tremendously if the huge economic liability for toxic waste could be cheaply exported.

- Recognized Recycling as a Problem: The great environmental significance of the Basel Ban Decision II/12 was that it closed the recycling loophole through which more than 90% of exported hazardous waste was by then flowing. It recognized that the recycling of many wastes, and in particular hazardous wastes, represents a perpetuation of the waste crisis and a further excuse for unsustainable consumption and wastefulness. And by addressing a high-risk dirty recycling industry migrating southward, the Basel Ban opened the eyes of the world to the issue of the disproportionate proliferation of toxic technologies in the global South.

- Instrument for Global Environmental Justice: The Basel Ban moves to prevent the globalization of an international environmental crisis -- the toxic waste crisis. In a climate of increasing corporate dominance and minimization of governmental control over trade, the Basel Ban serves as a vital restraint against the unbridled free trade in a global liability. Without the Basel Ban, poorer global communities would be transformed via the "impeccable logic" of the free market into "toxic colonies" of the rich and most wasteful nations.

- Instrument for Clean Production: The Basel Ban, together with the London Convention ban on most forms of industrial and nuclear waste dumping at sea, represent a closure of the last great global escape valves for dirty and wasteful production. By ending the most blatant forms of corporate cost externalization via the export of pollution to poorer economies or the global commons, a huge incentive is created for doing the right thing with respect to hazardous waste -- reducing it at source. The Basel Convention is now poised to become the global leader in facilitating real solutions -- the use of clean production methods, which utilize a minimum of toxic materials and create a minimum of waste.

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## Entry into Force Now!

The Basel Ban still faces a massive threat from powerful governments and business lobbies determined to sabotage it or prevent it from every entering into force. The good news is that 63 parties have now ratified the Basel Ban Amendment. 62 ratifications were needed for it to enter into the force of international law. The only question remaining is *which* 62 countries. It is vital that the Parties resolve the recently identified textual ambiguity as to which countries are needed for entry into force in favor of allowing this vitally necessary ban to enter into force immediately.

For more information on this matter see:
http://www.ban.org/Library/ban_entry_into_force_06.pdf

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september 2007 **briefing paper 7**

# Hazardous Waste Recycling: No Justification for Toxic Trade

Very quickly following the first international toxic waste trade scandals that took place in the late 1980s and early 1990s, the environmentally friendly word *"recycling"* began to increasingly be used by waste traders to justify the export of hazardous wastes from rich to poorer countries. Today, this rationalization for toxic waste trade for industrial wastes continues. Virtually all existing hazardous waste trade , legally or illegally, is said to be exported for recycling. These exports range from industrial wastes to post-consumer wastes such as old computers and other electronic wastes, to even asbestos laden seagoing vessels.

## Basel Convention Bans Exports for Recycling to Developing Countries

In 1994, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal banned all exports of hazardous wastes for final disposal *and recycling* from developed to developing countries (see BAN Briefing Paper 1). The Parties to the Convention included recycling in the total ban due to the knowledge that export of hazardous waste for recycling from developed to developing countries, works in contradiction to the obligations of the Basel Convention. These obligations include the achievement of national self-sufficiency in hazardous waste management and environmentally sound management of wastes through waste prevention.

The concerns that necessitated the ban are not limited to merely the technical capacity of developing countries to manage such wastes. The issues go far deeper and relate more, in fact, to providing incentives to manage hazardous wastes via upstream solutions of clean production and toxics use reduction, rather than through downstream approaches of recycling and disposal.

## Sham and Dirty Recycling

Waste trade for recycling as witnessed in developing countries falls into two categories. It will either be *"sham recycling"* where wastes are not really recycled at all, but simply burned or dumped, or *"dirty recycling"* which involves polluting operations that jeopardize the health of the importing country's populace and environment. Most often, both types of recycling are involved as it is rare indeed when 100% of a waste stream can be recycled. In fact, some waste streams such as electronic wastes are designed so poorly that large proportions of the wastes are simply dumped in the environment. Either one of these recycling scenarios - *sham* or *dirty*, or a combination of the two, equates to a transfer of pollution from rich to poor countries.

## A Polluting Enterprise Anywhere

It is not often realized, but unlike the recycling of *non-hazardous* wastes, such as paper, rags, scrap steel, etc., *hazardous waste* recycling even in the best of circumstances, is inevitably a polluting enterprise. Even in state-of-the-art facilities, hazardous waste recycling will involve exposing workers to hazards, and/or producing toxic residues or emissions. While a majority of these residues may be captured via costly and maintenance-intensive end-of-pipe engineering, they then must be disposed of as hazardous waste.

Historically, hazardous waste recycling has proven to be an environmental nightmare even in rich developed countries. For example, a full 11% of US Superfund priority sites slated for clean-up were caused by recycling operations. And it's not just an historical problem. For example, in the US, existent secondary metals smelters are notorious polluters and that is the reason no new smelters are being planned for the US. This highly polluting industry is migrating to poorer countries where pollution regulations are more lax or less enforced.

Further, many toxic problems created by recycling operations remain ignored by regulators. Among these concerns are highly toxic dioxins and furan compounds created by secondary metal smelters, and secondary plastics melting operations that process brominated compounds in plastics and PVC. Other problems that have not been adequately assessed include brominated flame retardants, beryllium and mercury releases from the recycling of post consumer electronics.

## Special Problems in Developing Countries

Thus, it is clear that even in the United States and other rich industrialized countries where the technological level is high and the infrastructure and resources exist to monitor and maintain the highest standards, it is still not possible to prevent pollution from hazardous waste recycling. So how can we ever justify export of that same pollution to developing countries where the possibility to mitigate the impacts are even less?

In developing countries the hazardous waste recycling becomes even deadlier than what is experienced in developed countries. This is not

simply a matter of a lack of adequate technology but involves many additional factors that might be taken for granted in developed countries. Social, financial and infrastructural factors are at least as important to protecting the populace and environment as technical criteria. These factors include adequate legislation, resources, manpower, and political will, to enforce such legislation, including monitoring and inspecting operations. It involves infrastructure to provide emergency response, adequate roads and services to ensure safe transport, and adequate medical facilities to monitor worker and community health. It involves the public and workforce having democratic capability to redress environmental and occupational concerns and to be able, if necessary, to protest hazardous working or living conditions. It is naive to expect most of these factors to adequately exist in the developing world.

## An Affront to Environmental Justice *and* Clean Production

Toxic waste exports justified by recycling are now one of the biggest threats to the overarching goals of global environmental justice and in the implementation of clean production. The principle of environmental justice asserts that no people should bear a disproportionate burden of environmental problems by reason of race or economic status, particularly when those people do not benefit from the products that created the pollution in the first place. Not only does waste trade under the name of recycling victimize the poor simply because they are poor, it creates a disincentive to achieving true waste prevention and minimization. As long as the cheap and dirty avenue of export is available, there will be little incentive for upstream efforts to make products more long-lived, more recyclable, and without toxic inputs.

## Mining v. Recycling?

Often we have heard export for recycling justified by comparing it head to head with environmental damage from mining. It is of course clear that mining is environmentally destructive, but it is hardly logical to compare one environmental evil to another with an assumption that our choices are limited to the two terrible options. In order to avoid destructive mining, we need to first, minimize and phase-out our use of toxic metals such as cadmium, lead, and mercury. The assumption that we should, and will continue to extract and use toxic metals and introduce and re-introduce them into the biosphere is a very dangerous one. When one recycles a hazard, one is left with a hazard; and is it not hazards that we are all trying to minimize? For those metals, which are non-hazardous, we must design easily recyclable products. For these, recycling is certainly preferable to mining.

## Cheap Resources for Developing Countries?

We have also heard justifications for hazardous waste exports for recycling based on the reported need of developing countries to obtain cheap sources of certain raw materials, such as lead, that might be obtained from imported hazardous waste sources such as lead-acid batteries from the USA. But it is vital to bear in mind *why* such sources are cheaper than obtaining already processed pure lead. It is cheaper because such operations are typically very difficult to operate without serious pollution. The cost differential then is largely a factor of externalizing environmental and health costs to developing countries. Further, such importation of such cheap sources of lead from rich, wasteful, developed countries, often leads to disincentives to perpetuate serious collection and recycling of materials such as lead from batteries in the importing country. In actual fact, despite the short-term economic gains that can be made from importing wastes, non-OECD countries have repeatedly rejected this option in favor of long-term economic and ecological sustainability. In every instance in the Basel Convention when developing countries had the opportunity to vote against waste trade they have used it decisively. In fact, many countries, such as in the case of China's ban on electronic waste, have enacted import bans on their own.

## Take Back to Asia?

We have sometimes heard argumentation that due to the fact that certain products such as electronics are increasingly manufactured in Asia, then export of these post-consumer waste materials back to Asia makes some kind of sense. We have even heard justifications of waste export to Asia as a twist on the "take-back" producer responsibility argument. This argumentation is seemingly compelling, but the professed logic falls apart quickly on closer examination. The mere fact that cheap labor is exploited *first* by a transnational electronics manufacturer in the *production* of a product can absolutely not be a justification to *further* exploit that very same low-wage labor population again at the end-of-life *disposal* of that product, particularly if that exploitation involves hazardous substances. It is the height of cynicism to ask developing countries to bear the burden of the most polluting segments of a products life-cycle -- particularly when the benefits of most of the high-tech products are enjoyed *after* dirty manufacturing and *before* dirty disposal in rich developed countries. In order to minimize cross-boundary dumping and unnecessary transport, "take-back" must occur in the country of consumption and where the product becomes a waste.

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The export of toxic wastes to poorer economies for recycling is an unacceptable transfer of pollution to those least able to afford it. It can only be justified by brute economics and not from a moral or environmental standpoint. Such trade leaves the workers in developing countries with a choice between poverty and poison - a choice nobody should have to make. Moreover, by allowing a convenient escape valve for rich consumptive societies and manufacturers, it stifles the innovation needed to truly solve our toxic waste problems through upstream "green" design and clean production. We must all do our part to reaffirm the Basel Convention commitment to ban this destructive trade.

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september 2007 **briefing paper 9**

# **The 3Rs Initiative:** A Mask for Toxic Trade?

In June 2004, the Group of Eight most developed countries (G8) adopted a proposal made by Japanese Prime Minister Koizumi to launch "the 3R Initiative" to tackle the global waste problem. The 3Rs refer to Reduce, Re-Use, Recycle – a policy concept meant to reduce waste that was first established about 20 years ago.

Working to eliminate waste sounds like a very good idea. One would expect NGOs like BAN, which serves as a proponent and watchdog of the world's only treaty on waste – the Basel Convention, would be overjoyed that the most wasteful countries on earth are now huddling together to work on waste reduction. However, a closer look at this initiative provides real cause for concern. At the outset it is important to note the following:

- Two biggest proponents of the 3R Initiative -- the US and Japan – are both governments that are unfortunately well known for their opposition to the Basel Convention's call for *national self-sufficiency in hazardous waste management* and the Basel Ban Amendment -- a decision by the Basel Parties *to ban all exports of hazardous wastes from rich to poorer countries*.

- Both the US and Japan have recently been exposed as major players in an illegal trade of hazardous electronic waste to developing countries. Neither country has renounced these export activities nor tried to prevent them.

- One of the stated primary goals of the initiative is to *"Reduce barriers to the international flow of goods and materials for recycling and remanufacturing, recycled and remanufactured products, and cleaner, more efficient technologies, consistent with existing environmental and trade obligations and frameworks";*

## Reducing Trade Barriers for Waste: Direct Affront to the Basel Convention

The most obvious "trade barrier" to the international flows in "goods and materials for recycling" (known as "wastes" in international law) is the Basel Convention. The so-called "trade barriers" found in the Basel Convention and the Basel Ban Amendment were agreed by the international community despite the strong opposition of the United States and Japan. They were erected intentionally to protect developing countries from the free market's propensity to exploit weaker economies, desperate laborers, and disproportionately burden the global poor with pollution and poison.

Despite the seeming assurances that "existing environmental obligations and frameworks" will be respected, the background papers prepared by the Japanese government for the past 3R Initiative conferences speak at length of establishing Asian regional waste networks, and cite specific examples of transport of hazardous electronic wastes from Japan to developing countries. The papers openly discuss the competitive advantage of Asian developing countries to manage wastes due to low wages. While the background documentation warns against obviously polluting enterprises in developing countries, the organizers of the 3R Initiative seem to be oblivious to the primary obligations of the Basel Convention, which include achieving national self-sufficiency in hazardous and household waste management and preventing the exploitation of developing countries in the management of such wastes. In fact the Basel Convention passed a decision (III/1) in 1995 to amend the Convention to forbid exports of hazardous wastes from developed countries for any reason.

Is it coincidental that the two countries that fought hardest to defeat the Basel Ban Amendment (Japan and the United States) are now two of the biggest proponents of the 3R Initiative and its goal of "*reducing barriers to the international flows in goods and materials for recycling…"?*

## Where is the NGO Involvement?

The Orwellian contradictions do not end there. One of the stated goals of the 3R Initiative is "to encourage the cooperation among various stakeholders" including NGOs

and communities. Yet it must be noted that the 3R Initiative has not involved NGOs in the planning of the initiative, the in the development of the papers for the initiative, nor the planning of conferences to date. Despite the claim for encouraging multi-stakeholder cooperation, NGOs have so-far been relegated as "observers" and not allowed to participate in key working groups. Two of the primary international networks working on waste issues – the Basel Action Network, and the Global Alternatives to Incineration Alliance (GAIA), had to invite themselves to the conferences.

## 3Rs is Insufficient

The concept of 3Rs has been in use already for many years and in that time it has proven to be a useful concept. However in those years, it has also been revealed to be inadequate alone to address some of the most important issues surrounding globalization, consumption, and wastes.

One of the primary shortcomings with the 3Rs approach is that, despite waste management hierarchies that have sought to establish priorities to give more weight to waste reduction and re-use, it is the last of the 3 Rs – Recycling -- that ends up being the primary thrust. Recycling, while having great utility for non-hazardous waste, is far from being the best solution in comparison with the first 2 Rs. Recycling cannot address issues of over-consumption and profligate wastefulness.

Further, where hazardous waste is concerned, such as in the matter of electronic waste, recycling by itself merely transfers hazards rather than eliminating them. The risks will simply be shifted to impacting the recyclers and recipient communities as the hazardous substances exit the recycling process as pollution residues, or are reintroduced as hazardous product into the marketplace.

It must be understood that industries utilizing hazardous materials like recycling because they can appear to look "green" while continuing to promote the business-as-usual approach and needless consumption to sell more products. If they can have recycling take place in the lowest wage countries of the world, they profit even more, while having little incentive to make efforts for re-use and waste reduction. For post-consumer wastes, reduction and re-use actually work directly against the economic bottomline, as profits are maximized through rapid obsolescence and new sales.

For this reason, Recycling ends up being the primary thrust of waste management programs, while Reduction and Re-use are just the subject of talk and no action.

Perhaps the most obvious gauge of the bias away from the first 2Rs is the fact that statistics from the Organization for Economic Cooperation and Development (OECD), show that, despite 3Rs policies, not a single G8 country has so far succeeded in capping its waste generation, let alone reducing it. Rather, waste generation in each country has continued to rise in recent years. Until the emphasis in terms of implementation is placed on Reduce and Reuse, not on the last, Recycle, no real progress will be made on actual waste reductions.

## A Fourth R is Needed -- *Responsibility*

It has become clear that the 3Rs are not adequate as a basis for a government or corporate policy. They are strictly technological notions devoid of meaning without the essential 4th R – *Responsibility*.

The fourth R of responsibility includes the concepts of producer responsibility (for the entire life cycle of a product, including efforts to enhance product longevity, toxics use reductions, energy efficiency, and design for recycling); individual consumer responsibility, (to make informed and responsible choices in consumption and disposal practices); national and international governmental responsibility (to embark on national waste reduction strategies, and to become self-sufficient in waste management); and social/democratic responsibility (the fabric that holds the other three tiers of responsibility dictates that we respect human rights and democratic involvement in all phases of decision making including the right to corporate planning and product design).

## Conclusion

Unfortunately, the present form of the 3R Initiative is a means to perpetuate business-as-usual behind a mask of a familiar and benign 3Rs concept. It has been designed to "run around" the Basel Convention, rather than embrace its obligations of waste prevention and national self-sufficiency in waste management. Meanwhile, the global generation of hazardous waste continues to rise, as does the exploitation of international trade to irresponsibly sweep hazardous and other wastes out the backdoors of rich developed countries. If we are to assure that the 3Rs are not used as a password for such irresponsibility, we need to add the 4th R to any waste policy. Only through the incorporation of Responsibility as the 4th R can we truly work on upstream solutions rather than exporting our problems downstream, and begin to embrace the global environmental justice in waste management. The fate of future generations rests on the present generation's willingness to seriously take such responsibility.

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turn back the toxic tide

september 2007 **briefing paper 10**

# Preventing the Digital Dump: Ending "Re-use Abuse"

Today, as electronics consumption skyrockets and obsolescence renders equipment useless in a matter of a few short years, we are increasingly faced with mountains of toxic electronic waste. For a variety of motivations, both good and bad, this e-waste is increasingly sold and exported from rich developed countries to developing countries for the stated purpose of *re-use*. Such re-use exports have been touted as a means to bridge the "digital divide" and satisfy the great desire and need in the developing world to become a part of the information age through access to information technology. However there is a very ugly side to this "re-use" trade as well and it is time that we begin to be able to tell the difference.

## Re-use: The Good

Re-use, directly or via repair or refurbishment *is* usually the preferable option over recycling and disposal from an environmental perspective. Re-use can extend product life and means less environmentally damaging extraction, less energy consumption, less waste. Re-use of second-hand equipment can also often mean a lower price for products, thus increasing accessibility for more people who might not otherwise be able to afford the product. But, as shall be shown, these worthy goals alone, without a good measure of "responsibility" backed up by law, can perversely become, instead of a bridge over the digital divide, a highway to a "digital dump."

## Re-use: The Bad

In late 2005, BAN conducted an extensive 10-day investigation in Lagos, Nigeria to better understand the burgeoning re-use/repair trade. That investigation revealed a major and growing influx of e-scrap that *was not* being controlled by the Basel Convention despite the fact that as much as 75% of the material was strictly waste, as all or part of it could not be repaired or re-used even in a country with excellent and affordable electronic engineers. Consequently this toxic e-waste was simply dumped and burned in waysides in Lagos, leading to serious environmental and health impacts.

We fear that what we documented in the report and film *The Digital Dump* represents just the first ripple of a tsunami of such re-use exports, which are often cloaked by the seeming intent of "helping the poor" and exploiting an arena of trade which has not been well controlled by customs authorities. Already journalists now are finding similar scenes in other African ports. The glimpse at how this trade really occurs today has led us to the following unfortunate conclusions:

- Without mandatory testing and controls, "re-use" can be a pretext (intentionally or not) for exporting junk and give legitimate re-use a bad name. Most e-waste is hazardous by definition and the Basel Convention is meant to control the export of hazardous waste. But with "re-use" destinations creating illusions of good intent and legal ambiguity, enforcement has not been as diligent as necessary. Mandatory testing, certification and labeling are a necessity to remedy this "disguise" effect.

- Export for repair can involve export for disposal: Export for repair can involve immediate disposal of hazardous parts when bad parts are replaced. Thus by Basel definitions (Art. 1, Annexes I, III and IV), export for repair can involve transboundary movement of hazardous waste. Testing then is necessary prior to export.

- Re-use is a less preferable waste management option for a technology that undergoes rapid obsolescence: The "digital divide" cannot be defined by the difference between those with computers (no matter how old) and those without, but rather by those with state-of-art computers and those without. A hand-me-down solution to the problem of the "digital divide," then, will never completely eliminate the gap. And due to the very rapid obsolescence of IT technology today, this gap occurs very rapidly. Seen in this light, it is not always so charitable to provide hand-me-down technology which will become outdated in but a few years, particularly when that technology carries with it a substantial environmental burden. This is particularly true when weighed against other policy options, such as demanding toxics use reductions and investing in indigenous IT industries in developing countries.

- Exporting toxic equipment for re-use to poorer consumers equates to "passing the toxic buck" and environmental injustice: If the solution of handing-down toxic technology from rich to poor becomes the norm on this finite planet known for its very inequitable economic

geography, a very convenient world is created for some. In this world, in effect, the rich northern countries most capable of managing a hazardous waste problem can wash their hands of the global toxic burden for electronic waste by passing it to countries least able to deal with the problem. This would create a world where global pollution burdens from certain industrial sectors would effectively be transferred to the producers and last users – the low-waged poor. Indeed, even if, by some miracle, developing countries had the very best waste management technologies, such management is not without substantial risk to human health and the environment and entails sacrifice of land and air to accomplish waste management. It is the very definition of environmental justice that developing countries or poorer communities should not receive a disproportionate global toxic burden.

## Re-use: The Illegal

Much of the e-scrap that is exported today is not being controlled as a Basel waste despite the fact that it falls well within Basel definitions. Some claim that if the material is destined for re-use, repair or refurbishment it is a product and not a waste. Yet this is not likely to be true.

Direct Re-Use Does Not Fall under Basel if Tested. Certainly, direct re-use (without any work or processing required) does not involve Annex IV recycling or disposal operations. Thus, used electronic equipment that is functioning and is intended for direct re-use is not considered to be a waste, regardless of whether it is hazardous or not. However, from a regulatory point of view, this is not ascertainable without testing, certification and labeling to assure and make transparent that a) the material functions as-is and b) that it is destined for a re-use destination.

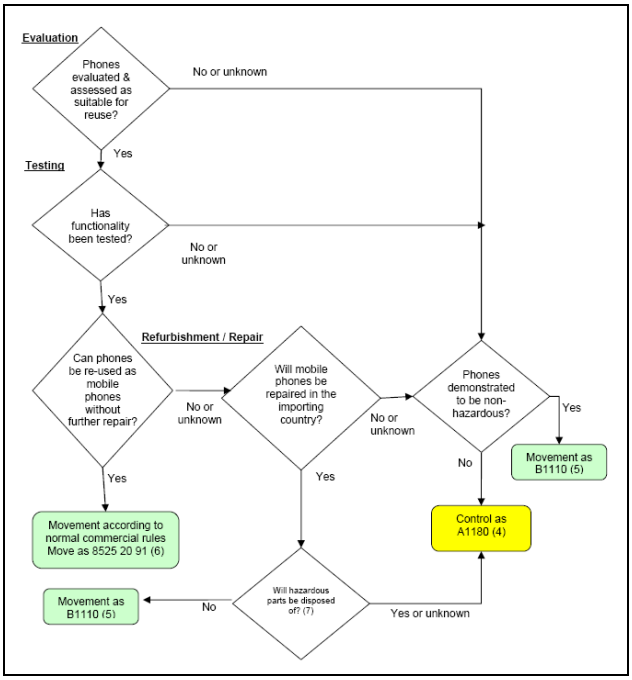
Repair and Refurbishment. While the word "repair" or "refurbishment" does not appear in the Annex IV lists, this does not mean that such equipment is non-waste. In fact, very often materials sent for repair or refurbishment will, in part, move to Annex IV operations, when the repair or refurbishment requires that a *hazardous part* of the equipment be replaced and the old part is disposed of/recycled while the rest of the equipment is re-used. Thus, it is clear that repair and refurbishment are very likely to *involve* a recycling or disposal destinations.

The logic of considering a hazardous, non-functioning part that must be replaced during repair as a Basel-controlled waste becomes clear when looked at in another way. Exporting a non-functioning circuit board by itself destined for recycling is clearly a hazardous waste export. Yet this is very much the same as exporting a hazardous, non-functioning circuit board as part of a computer sent for so-called repair/refurbishment. In both cases a waste circuit board is involved in a transboundary movement.

### The MPPI Guidance Document's Decision Tree

Annexes VIII and IX were meant to help determine which wastes streams possess Annex I constituents and are likely to possess an Annex III characteristic. Unfortunately, footnote 13 of Annex IX in defining electronics re-use ("to include repair, refurbishment, upgrading, but not major reassembly") caused more confusion than solutions. This was the subject which the Mobile Phone Partnership Initiative (MPPI)'s working group on Collection and Transboundary Movement addressed.

One of the results of that work is a procedure to apply the Basel Convention by use of the Decision Tree below. In sum the Decision Tree indicates that whenever a hazardous part is replaced during the repair or refurbishment operation then the export of the used equipment to that operation must fall under the Basel control procedures.



MPPI Decision Tree for Exports for Re-use Following Repair

## Conclusion: Testing and Labeling Prior to Export Must be Part of Diligent Enforcement

It is clear that it has become far too easy for waste brokers to simply make a claim of re-use and all manner of useless junk can then be exported while customs officials are forced to simply take their word for it. That has got to stop!

Use of the MPPI Decision Tree Prodedure is the only proper way to implement the Basel Convention with respect to export of used electronic equipment.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turn back the toxic tide

September 2007 **briefing paper 11**

# Building Toxic Waste Colonies: Japan's "JEPAs"

## Asian "Integration" – Japan's Vision

Saddled with a rapidly aging population, a shrinking and expensive labor force, a very high cost of living, hunger for resources to feed its industrial base, and diminishing space to dispose of waste, Japan is now eyeing the rest of Asia, with its relatively inexpensive land, and young and cheap labor force, favorable investment climate, and abundant natural resources, as the engine for future Japanese growth. The drive is to create satellite economies in the service of Japan.

Such a policy unfortunately also encourages the externalization of real environmental costs and liabilities by industrial sectors that are known to create severe environmental impacts to weaker economies. This includes the outsourcing to poorer countries of all forms of waste management. Under Japan's exploitive vision, East and South Asian developing countries are in danger of being used as Japan's repository for its increasing volumes of toxic waste.

Existing legal barriers set up by international agreements, such as the Basel Convention, coupled with local national waste trade bans, sanctioned by the same, have proved to be a hindrance to Japan's new Asian waste colonization scheme. To counter these Japan has created new venues and launched well resourced strategies, all designed to circumvent the intent and obligations of the Basel Convention -- to minimize waste trade.

## Tools for Waste Colonization

*3R Initiative.* Japan launched a new waste initiative and venue at the G8 summit in 2004. This initiative, with a nice sounding name, is competitive with, and in important ways, contrary to the prime objectives of the Basel Convention. Rather than *minimizing* transboundary movement of hazardous waste, the 3R Initiative calls for lifting of trade barriers for waste and the for the free movement of recyclable materials, including toxic wastes, within a regional context. By pumping money and largely controlling the agenda of the 3R Initiative, Japan has been able to conduct a series of regional and national Asian workshops and programs on waste management isolated from the Basel context, to promote regional waste trade schemes and establish dependencies and relationships that will serve their long term interests in exporting its waste mountains. (*See BAN Briefing Paper 9 on the problems of the 3Rs Initiative*)

The second strategy to circumvent the Basel Convention lies hidden in what are known as *Japan Economic Partnership Agreements or JPEPAs.*

## Divide and Conquer with Bilateral Agreements

With the seeming collapse of the WTO negotiations in Doha, Japan has found it easier to lure Asian developing countries outside of the safety of the multilateral context into signing bilateral trade agreements. What once was a multilateral negotiation, pooling the collective political clout of developing nations, has now been reduced to a one-on-one standoff, where Japan enjoys the predatory weight and influence of its economic dominance.

Japan successfully took its first step with Singapore in 2002, followed by Malaysia and Brunei in 2005. The Philippines signed an agreement in 2006, Indonesia and Thailand quickly followed in 2007. However, the Philippine, Indonesian nor the Thai agreements are as yet ratified. Japan is currently negotiating JEPAs with India, Vietnam, and South Korea.

The JEPAs in general are stacked in favor of the long-term benefit of Japan to the detriment of the sustainable development of the natural resource and national economies of developing countries. However it was the trade liberalization chapters of the JEPAs that immediately spurred public outcry when they were found to actually be in contradiction to international law – *the Basel Convention.*

## Collision Course with Basel Convention

1. Tariff Elimination for Hazardous Wastes -- Pouring over the various JEPAs, BAN and other civil society groups were shocked to find various "materials" that just happen to be considered hazardous wastes under Basel (e.g. clinical and medical waste) were included in an extensive list of "goods" subject to tariff elimination. Tariff elimination, of course is a course of action that is only undertaken to *increase* trade. There can be no reason for it unless there is a future envisaged for increased trade in such wastes. Most worrying is the fact that the dynamics of cost-externalization via waste trade will ensure that the vast majority of such future trade will move from Japan to developing countries and not the other way round. Such trade is absolutely contrary to the obligations, decisions and principles of the Basel Convention.

2. Redefining Wastes as Goods – Blurring Distinctions -- JEPAs fail to respect the Basel Convention's definition of wastes as they define "originating goods" to include Basel wastes. The Basel Convention does not treat wastes (whether for recycling or disposal) as "goods" but rather as "bads" that are not subject to unbridled free trade, but rather to trade restrictions for the sake of environment, particularly of developing countries.

3. Limiting Trade Restrictions - Direct Interference -- In certain cases, such as in the Philippines, parties are bound to amend, repeal, or make less restrictive, laws or regulations that hamper the implementation of the JEPA. The Basel Convention, particularly the Basel Ban Amendment, which all Parties have been urged to ratify at the earliest possible date is in real danger of being undermined in the face of this more recent, more specific agreement with Japan.

4. Non-tariff Barriers - Undermining Sovereignty -- Under the JEPAs, countries are *prohibited* from imposing non-tariff barriers. This provision contradicts the makes it difficult for countries to quickly impose trade bans on toxic wastes which is an expressed right enjoyed by any sovereign state and is acknowledged by the Basel Convention.

## Caught in the Act: The Case of the Philippines

Japan's strategy to sneak through waste trade liberalization requirements with its economically weaker neighbors hit a sudden snag however in the Philippines, when non-governmental organizations began to shine a spotlight on the text of the Japan-Philippines Economic Partnership Agreement (JPEPA).

It has since been revealed that the Philippine Department of Environment and Natural Resources refused the inclusion of toxic wastes in the treaty early in the negotiation, but were later prevailed upon by Japan's insistence that the JPEPA was an all or nothing deal.

To force the immediate ratification of the JPEPA and to quash any civil society opposition, Japan and its allies in benefiting industries have poured considerable resources and employed numerous schemes to stem the growing animosity by Philippine society against the JPEPA and in particular its waste trade provisions.

■ Exchange of Diplomatic Notes was executed by the two governments, which contained Japan's promise not to export toxic wastes in accordance with the Basel Convention. *This is an empty gesture because it is not clear whether the notes are legally binding. More significant is the fact that because neither Japan nor the Philippines has ratified the Basel Ban Amendment and the Philippines does not possess an full import ban on hazardous waste, it is quite feasible to export in accordance with the Basel Convention even while violating its fundamental principles of national self-sufficiency. The Notes were simply a re-hash of old promises presented in a new package.*

■ The Philippine ambassador to Japan has publicly stated that Official Development Assistance from Japan, in the form of loans and grants, may be affected if the JPEPA is not ratified. *The JPEPA is a bilateral trade and investments agreement, with no clear commitments on development aid to begin with. Linking the JPEPA with aid, which the Philippine government heavily relies on, is a testament on how Japan bullies its so called "partners" into bowing to its demands.*

■ JPEPA supporters have launched a well funded media offensive running two-page ads in all major dailies in Manila trumpeting the virtues of the JPEPA.

It is telling that Japan has refused to simply remove the offensive and controversial text, even while claiming they have no intention of ever using it! Meanwhile they resort to threats and expensive propaganda to ensure that toxic waste trade liberalization provisions remain.

*NOTE: The JEPAs also raise very serious conflict issues with other Multilateral Environmental Agreements, such as the Stockholm Convention, because of the inclusion of banned or controlled substances such as, DDT, in the JPEPAs.*

*For the full story, please see BAN Report available at: http://www.ban.org/Library/JPEPA_Report.pdf*

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## Recommendations:

1. Reject JEPAs. Developing countries in Asia must refuse the ratification of the Japanese Economic Partnership Agreements and pursue renegotiations until all listings of toxic wastes and technology and internationally controlled or banned wastes and substances are expunged from tariff reduction provisions and other exploitative provisions are removed.

2. Ratify the Basel Ban. Countries that have ratified the JEPAs and who have not ratified the Basel Ban Amendment are vulnerable to toxic waste imports. Considering that in East Asia, Brunei, Indonesia, and Malaysia have all ratified the Basel Ban, Thailand, the Philippines, and Vietnam are left wide open for Japanese toxic wastes.

3. Japan must call a halt to its waste colonialism policies and initiatives. They must ratify the Basel Ban Amendment and move towards a zero waste – national self-sufficiency policy for all hazardous waste management.

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