

BAN Annotated Comments on Three Swiss-Indonesian CLI Documents

-- PART 2 --

7 May 2010



CLI/2009/ 1

Basel Convention

Indonesian-Swiss Country-Led Initiative (CLI) to improve the effectiveness of the Basel Convention

Concept Note

1. Context for initiating the CLI:

The President of COP 9 of the Basel Convention called through its statement on the possible way forward on the Ban Amendment (Document UNEP/CHW.9/CRP.20 and Decision IX/26) for a process to explore means by which the objectives of the Ban Amendment might be achieved.

Based on this statement, Switzerland and Indonesia have initiated this "Country-led Initiative" (CLI)

2. Objectives of the CLI

The objective of this Initiative is to develop recommendations for the tenth meeting of the Conference of the Parties to the Basel Convention (COP 10) for a way forward to protect vulnerable countries without adequate capacity to manage hazardous wastes in an environmentally sound manner from unwanted import of hazardous waste and to ensure that transboundary movement of hazardous wastes, especially to developing countries, constitute an environmentally sound management of hazardous wastes as required by the Basel Convention.

Comment [JHP1]: Yes. The error in the entire CLI, is to presume what those objectives are and to assume also that the objectives are to be achieved outside of the Basel Ban Amendment. In fact there are numerous objectives apart from preventing unwanted waste trade to developing countries when it is not constituting ESM. And the process was not designed to find an alternative to the Basel Ban Amendment but rather to achieve its objectives.

Comment [JHP2]: This stated objective does not speak to the fact that this initiative is supposed to be complimentary to, and not a replacement for the Basel Ban Amendment. Further this statement seizes upon but one objective and advantage of the Basel Ban Amendment as needing work. There is far more accomplished by the Basel Ban Amendment than simply protecting vulnerable countries without adequate capacity from unwanted waste.

One of the most dangerous statement in this introduction stems from the use of the word "unwanted". This word does not appear anywhere in the President's Statement at COP IX. The Basel Ban Amendment rejected soundly the notion of protecting countries solely on the basis of wastes being "unwanted." The "unwanted" issue is solved by prior informed consent (PIC). But clearly PIC exists in the current original Convention. The Basel Ban was a repudiation of PIC as not being effective enough in halting harmful trade. Thus it is disingenuous to pretend that this issue revolves around "wanted v. unwanted". Sadly it reveals that the convenors of this effort are seeking to turn back the clock on the Basel Ban and return to the notion of Certifications, opt-in, opt-out lists, or reversion to PIC.

Therefore, the CLI should provide a process for informal, open-minded and dynamic consultations among key players with the following objectives (additional elements may arise during the consultation meetings) :

- To enhance the understanding
 - of management of hazardous wastes in developed and developing countries
 - of north-south and south-south transboundary movements of hazardous wastes and identify the reasons;
 - which reasons are leading to the unacceptable situation that countries that do not have the capacity to ensure the environmentally sound management of hazardous wastes are still receiving such wastes,
 - which additional activities besides the importation of hazardous wastes lead to problems of environmentally unsound management and especially the unsound disposal of such wastes.
- To take into account new elements to ensure that hazardous wastes are managed soundly all over the world and to protect developing countries from unwanted imports of hazardous wastes.
- To identify practices which do not operate in an environmentally sound manner.
- To discuss actions to be taken to improve human health and livelihood, and to provide economic opportunities through environmentally sound 3Rs and disposal
- To discuss established ESM criteria that could be applied to facilities in developing countries.
- To elaborate recommendations to be submitted to the tenth meeting of the Conference of the Parties to the Basel Convention (COP 10) on a way forward.

3. Proposed Process

The CLI is intended to be an informal process. The continued participation of the same persons throughout the whole process will be crucial for the success of the process.

Three meetings are planned which will address the following issues:

- 1. meeting (spring 2009, tentatively in Bali): identify, analyse and enhance the understanding of the problem.
- 2nd meeting (fall 2009 / spring 2010, tentatively in Switzerland): continuation of this analysis and beginning to develop options and solutions.
- 3rd meeting (fall 2010 / spring 2011 tentatively in Switzerland): formulation of recommendation for the COP 10, containing the analysis of the problem and possible solutions or way forwards

The meetings will be supported by

- background documentation and concept papers providing analysis of the problem,
- the presentation of concrete situations in developed and developing countries and,
- possible case studies.

In order to ensure transparency, a report will be prepared after each meeting and with assistance of the Secretariat of the Basel Convention disseminated to all Parties to the Basel Convention, the relevant NGOs, IGOs, and Non-Parties. These will be invited to submit their comments on and input into the process.

Comment [JHP3]: Unfortunately it has been deemed that key players do not include NGOs which were instrumental in the passage of the Ban Amendment in the first instance. And in fact have much of the knowledge base on this issue. The author of the analysis for example did not bother to interview BAN about their information on illegal and damaging trade.

Comment [JHP4]: The addition of this area of examination is highly suspect as it has little to do with the Basel Ban Amendment.

Comment [JHP5]: We would argue that this is not the central concern or objective of the Ban. It is unacceptable that this Swiss-Indonesian CLI only decide on focusing on one objective of the ban of their choosing. There are several objectives. It is a fact that waste is moving for reasons of externalizing costs resulting in many concerns addressed by the Basel Ban Amendment. Impacts include developing countries bearing a disproportionate burden of global environmental harm. Another involves a disincentive for clean ... [1]

Comment [JHP6]: This is highly suspect as this question has nothing to do with the rationale behind the Basel Ban but sounds like, because other factors besides export can lead to harm, th ... [2]

Comment [JHP7]: Where did the notion of "unwanted" come into play? This is not language from the Basel Ban and implies that countries can be persuaded to want their countries ... [3]

Comment [JHP8]: It is not well understood why this is being done as that is a monumental task and involves varying degrees of ESM. There is no such thing as absolute ESM.

Comment [JHP9]: If these opportunities are being envisaged for developing countries, this point is extremely onerous and absolutely off point. The Basel Ban Amendment ... [4]

Comment [JHP10]: This is again based on looking at the Ban as only being a vehicle for ESM at the facility level in developing countries – absolutely not the objective of the Ban Amendment.

Comment [JHP11]: Excluding NGOs is not informal. It is hardly the same to be outside of the meetings having to comment now as we are forced to do without the ability to participate in ... [5]

Comment [JHP12]: These background documents were unfortunately drawn from erroneous and misleading data. BAN possesses valuable anecdotal data and yet we were ne ... [6]

Comment [JHP13]: BAN has much of this information but we were never asked to present any of it.

Comment [JHP14]: BAN has never received these reports.



CLI/2009/2/2.1
November 30, 2009

**INDONESIAN-SWISS COUNTRY-LED INITIATIVE (CLI)
TO IMPROVE THE EFFECTIVENESS OF THE BASEL CONVENTION
SECOND MEETING**

Wildhaus, Switzerland, 12-15 January 2010

**Analysis of reasons for the transboundary movement of hazardous wastes¹ where
environmentally sound management cannot be ensured**

Draft of 30 November 2009

I Context

1. This analysis has been prepared within the process of the Indonesian-Swiss Country-Led Initiative (CLI). The objective of this Initiative is to develop recommendations for the tenth meeting of the Conference of the Parties to the Basel Convention (COP 10) for a way forward to protect vulnerable countries without adequate capacity to manage hazardous wastes in an environmentally sound manner from unwanted import of hazardous waste and to ensure that transboundary movement of hazardous wastes, especially to developing countries, constitute an environmentally sound management of hazardous wastes as required by the Basel Convention. The initiative is a follow-up on Decision IX/26. In the annex to that Decision the President of the COP called upon all Parties:
2. *“to create enabling conditions, through, among other measures, country-led initiatives conducive to attainment of the objectives of the Amendment. Examples of such initiatives might include activities to address national enforcement capacity to monitor, detect and control illegal traffic, through such means as establishing criteria for clear characterization of such wastes; in case of doubt as to the hazardousness of certain materials, provisions requiring the application of the prior informed consent procedure and the use of precise custom codes; efforts to address their capacity to monitor and trace shipments of hazardous wastes; and the transposition of the objectives of the Ban Amendment into national legislation. Such country-led initiatives will serve to contribute to gathering momentum to encourage ratification of the Amendment and to expedite its entry into force.”*
3. The CLI is an informal, open-minded and dynamic consultations among key players within which three physical meetings are planned to addressing following issues:

Comment [JHP15]: The admission in this footnote can lead to many false conclusions regarding the Basel Ban which only applies to hazardous waste.

Comment [JHP16]: The title of this paper presupposes that TBM is somehow warranted when TBM can be assured despite other matters of concern. This statement also begs questions as to what is considered to be the limits of a definition of ESM. For example does ESM concern only what happens inside a facility, or does it concern itself also with the socio-economic and political limits and context of a given country or locale. For example, BAN would argue strongly that lower-waged countries cannot provide the safety nets and societal infrastructure to ensure ESM even if the facility provided is state-of-art. In our experience how a technology is allowed to operate and how it is required to be maintained and how it relates to the rest of its environment is as or more important than the ESM within the facility confines.

Further, we would argue that the Ban Amendment is not predicated on ESM alone but also whether countries are being disproportionately burdened from TBM and whether the TBM represents unwelcome externalities which harm the global commons or any location on earth.

Finally, we would assert that the Basel Convention itself calls for national self-sufficiency and a minimization of TBM and therefore outside of the question of ESM, an end to TBM of hazardous wastes is sought.

... [7]

Comment [JHP17]: This objective is prejudiced in that it assumes that TBM is just fine as long as it meets the ESM objective of the Convention. However there are some real concerns raised by exclusive look at ESM. And there are other objectives in the Convention and other objectives of the Basel Ban Amendment besides ESM. It is very dangerous to view everything through the prism of ESM for the following re...

... [8]

Comment [JHP18]: Yes but who is it that decides on the objectives of the Amendment. Apparently there are very differing views. It is not true that the objectives are limited to ESM and its achievement.

Also attainment of the objectives of the Amendment seems to cede that the Amendment cannot attain its objectives via entry into force. This cannot ...

... [9]

Comment [JHP19]: This is more to the point of actually achieving the ban in a legal manner. Work should proceed on implementing the Ban in national law as a priority in both Annex VII and non-Annex VII states.

Comment [JHP20]: Unfortunately many key players are left out of the discussion (e.g. NGOs)

¹ Examples of waste streams in this analysis include wastes which may not be defined as hazardous wastes in some countries.

- 1) identify, analyse and enhance the understanding of the problem why transboundary movement of hazardous wastes still takes place to countries where environmentally sound management cannot be ensured;
 - 2) develop options and solutions to meet this challenge;
 - 3) develop recommendations for the COP 10, containing the analysis of the problem and possible solutions or way forwards.
4. The first meeting was held in Bali, Indonesia, from 15 to 17 June 2009. The discussions in Bali resulted in identifying a list of possible reasons why there are still transboundary movement of hazardous wastes by importing countries where environmentally sound management cannot be ensured. The reasons were clustered into five groups:
- economic issues;
 - legal issues;
 - enforcement issues;
 - awareness raising and knowledge;
 - others.
5. After the meeting the list provided to other stakeholders and the received comments have been taken into consideration where appropriate. The detailed list can be found in Annex 2 of this paper.
 6. The purpose of this paper is to further analyse the reasons identified in this list and provides an analysis of the flows of hazardous waste across borders. Such an analysis should provide input to the process of developing possible options and solutions to ensure that the transboundary movements of hazardous wastes, especially to developing countries and countries with economies in transition, lead to an environmentally sound management of hazardous wastes as required by the Basel Convention. On the basis of comments and additional factual information that may be provided it will be further developed and discussed during the next meeting of the CLI in Switzerland in January 2010.
 7. The current paper starts with a quantitative analysis of generation of hazardous waste and transboundary movement. The rest of the paper is structured according to the five issues identified in the list of possible reasons. A list of key terms used in the paper is included in Annex 1. The remaining papers on the magnitude of the problems and possible mechanisms that may address these problems will be developed later in the process.

Comment [JHP21]: Again this is only one of the problems that the Basel Ban was meant to solve. By focusing on this to the exclusion of other issues gives an incomplete picture and an incomplete response to the mandate of the COP Decision IX/26.

II Hazardous waste generation and transboundary movement

8. The data presented in this section are based upon data from the national reporting to the Secretariat of the Basel Convention (SBC).

Generation of hazardous waste

9. Generation of hazardous waste is a reflection of the industrial processes generating wastes that contain hazardous substances and consumption of goods containing such substances.
10. Data on generation of hazardous waste and other waste are provided to the SBC in the context of the national reporting obligations of Parties to the Convention. Not all Parties to the Convention reported therefore the figures in the table do not represent the full picture. Only the data for the 47

Comment [JHP22]: This single statement renders this entire section and in large part his entire paper meaningless. Not only have only 47 of 173 Parties reported, but the non-Parties, one of which is the highest waste producing country in the world – the United States. But it is well known that globally and within nations there is no adequate way to report this data. Due to the vast amount of illegal traffic, mischaracterized traffic, and the lack of Harmonized Tariff Codes for wastes from which virtually all trade data is gathered, the numbers herein will only likely represent a tiny fraction of the total waste trafficking and further the distribution of such waste will be entirely distorted. Rather what is being reported here are those wastes which follow the Basel reporting regime currently and only among Parties – this is likely to be a small subset of legal traffic. Virtually none of the massive amounts of obsolete ships and hazardous electronic waste is being reported here. Yet this is what we know from observation is flooding from Annex VII to non-Annex VII. The conclusion that Article 1.1. b definitions are at all significant in the scheme of things when very few 1.1.b definitions have been registered simply underlines that fact that this data is worthless. Drawing conclusions from it is therefore extremely dangerous and foolhardy.

countries that had reported such data both for 2005 and 2006 are included. This lack of data results in a situation where it is not possible to get a full picture of the problems. It also hampers development of effective policies, both within the Convention and within countries.

Country	Number of countries that reported	Generated (tons) 2005	%	Generated (tons) 2006	%	Growth 2005 - 2006
Annex VII	22	56.548.109	74%	61.133.485	75%	8%
Non Annex VII	25	19.575.880	26%	20.812.454	25%	6%
Total	47	76.123.989	100%	81.945.939	100%	7%

Table 1. Generation of hazardous waste as reported to the SBC for the years 2005 and 2006.

11. Annex VII countries are also sometimes referred to as ‘developed countries’ while non-Annex VII countries are also referred to as ‘developing countries and countries with economies in transition’. The non-Annex VII² countries within the group of countries that reported generate approximately 25% of all hazardous wastes. This includes both hazardous waste as defined under Article 1.1.a (the globally harmonized definition of hazardous waste within the Basel Convention) and additional hazardous waste as defined in national legislation as specified in Article 1.1.b of the Convention³. It should be noted that not all Parties reported and that the figures therefore do not represent the total amount of hazardous waste as generated. This does, however, show that generation of hazardous waste is not only a problem in Annex VII countries, but also non-Annex VII countries generate important amounts of hazardous waste that has to be treated in an environmentally sound manner.
12. Generation of hazardous waste in developing countries may also be influenced because certain industrial activities are being outsourced from developed countries. An example is the tanning industry. This economic activity took place in Europe for a large number of years, but this now mainly takes place in North Africa. The leather that is produced after the tanning process is exported to Europe where it is transformed into leatherwear such as shoes and bags. With the outsourcing of the tanning process also the generation of hazardous waste from the process no longer occurs in Europe but the waste is generated in North Africa. This example shows that the mechanisms to prevent harm from hazardous waste may also have to look into certain aspects of industrial policy and production processes. Issues that may be relevant to consider later on in the CLI process in more detail could include:
- Which trends can be seen in geographical change of industrial production, causing hazardous waste no longer being generated in developed countries but rather in developing countries;
 - Does this delocalisation influence the choice of technology and does such production take into account the principles of pollution prevention and application of best available technologies;
 - Are specific policy responses possible?

Comment [JHP23]: This is hardly a revelation in particular given all of the migration of dirty industry designed to externalize real costs and harm to avoid paying the price for mitigating such harm. This is why the additional influx of wastes from the Annex VII countries is so immoral. Already the non-Annex VII countries bear the toxic brunt from dirty industry migration. Additionally they are being asked to take Annex VII post consumer waste! Only the latter environmental injustice can be addressed by Basel.

Comment [JHP24]: Yes, the transmigration of dirty technologies is very well established. Indeed most hazardous industries have already migrated. This includes electronics production, shiprecycling, metals smelting, plastics, chemicals etc. This is not addressed by the Basel Convention. Wastes which are addressed by the Basel Convention are another terrible layer of toxicity when they are exported to take advantage of cost externalities and cheap labor. One adds more injury to the other. Currently the Global South bears a disproportionate burden of toxic harm.

² Annex VII countries are Member Countries of OECD, EU (for the analysis the EU was considered to consist of the current 27 Member States) and Liechtenstein. All other countries are non-Annex VII countries

³ Insofar as Parties make this distinction themselves and report on this to the SBC

13. The main focus of this analysis will remain on harm originating from hazardous waste crossing borders. However, environmentally sound management of home generated hazardous waste will also require attention.

Transboundary movement of hazardous wastes and other wastes

14. Data from the Secretariat of the Basel Convention (SBC) are the best available data to analyze patterns of transboundary movement of hazardous waste. However, a number of aspects of these data have to be taken into account when analyzing them. The main issues are:

- not all countries report;
- differences in definitions of hazardous waste
- differences in reporting systems

These issues are explained in more detail in Annex 3.

15. Table 2 presents the best estimate of global transboundary movement of hazardous waste and other waste in 2006 taking into account the characteristics of the data from the SBC⁴. In total, over 11000 kilotons of hazardous waste and other wastes were reported to be subject to transboundary movement in 2006.

Country of export	Country of import					
	Annex VII		Non Annex VII		Total	
Annex VII	10.083.693	90%	154.549	1%	10.238.243	91%
Non Annex VII	218.576	2%	795.564	7%	1.014.140	9%
Total	10.302.269	92%	950.113	8%	11.252.383	100%

Table 2. Estimated transboundary movement of hazardous waste (metric tons, 2006)

Source: National reporting Basel Convention, combined data imports and exports.

16. The vast majority (90%) of transboundary movements is between Annex VII countries. Exports of hazardous waste amongst non-Annex VII countries are of a higher volume than transboundary movements between Annex VII countries and non-Annex VII countries. Only exports from Annex VII to non-Annex VII countries are covered by the Ban Amendment (amounting to 155 kton or 1% of all reported transboundary movement in 2006 according to SBC data). These data on transboundary movement are analyzed further in the next sections.

Transboundary movements amongst Annex VII countries

17. In 2006 90% of transboundary movement of all reported hazardous waste was amongst Annex VII countries.

The most common waste types that were shipped across borders of Annex VII countries are represented in Table 3.

Waste	Ycode	Tonnage (kton)
hazardous waste according to national legislation	Article 1.1.b	3.393

⁴ An explanation of the methodology applied to calculate this best estimate is given in Annex 3.

waste from industrial waste treatment	Y18	1.607
lead and lead compounds	Y31	787
oily wastes	Y9	736
zinc compounds	Y23	651
municipal waste	Y46	457
waste from incineration of municipal waste	Y47	390
acids	Y34	207
waste oils	Y8	206
waste from surface treatment of metals and plastics	Y17	160
non halogenated solvents	Y42	159
others		1.486
Total		10.238

Table 3: Types of hazardous waste shipped amongst Annex VII countries in 2006.

18. Nearly 80% (7.987 kton) of this waste is exported for recycling or (energy) recovery. The remaining 2.127 kton are being exported for final disposal, mostly for incineration (811 kton) or landfilling (601 kton).

Transboundary movements amongst non-Annex VII countries

19. Transboundary movement between non-annex VII countries amounted to 796 kton in 2006. By far the largest waste stream is wastes under article 1.1.b of the Convention. Nearly 75% of the total (or 594 kton) were imports of bulk waste such as granulated blast furnace slag, slag of sulfuric acid, gypsum from coal-fired power generation plants and other slags generated in a limited number of non-Annex VII countries and exported to neighboring non-Annex VII countries for metal or inorganic materials recovery. The second largest waste stream is lead and lead compounds (Y31) that are most likely associated with the recycling of spent lead-acid batteries. A small number of non-Annex VII countries import these from a number of countries within the same geographical region. This is the case for instance in South-East Asia and in South-America and the Caribbean region.

20. There are hardly any data on transboundary movements involving low income countries⁵ suggesting that these countries do not report such movements or they are hardly involved in transboundary movement of hazardous waste. In 2006 only from one low income country exports of hazardous waste were reported. This concerned wastes exported for final disposal in a richer non-Annex VII country. All other transboundary movements among non-Annex VII countries were for recovery. Most transboundary movements involving non-Annex VII countries are between countries that are classified as upper middle income countries or high income countries⁶.

⁵ The reference to countries according to their income is derived the classification as used by the Worldbank. The Worldbank distinguishes 4 classes of countries: low income, lower middle income, upper middle income and high income.

⁶ The Worldbank considers a number of non-Annex VII countries as high income country. This applies e.g. to some countries in the Caribbean region and in the Middle-East.

One cannot state that there are clear trends that hazardous waste is exported from poorer non-Annex VII countries to richer non-Annex VII countries or visa-versa. In some cases hazardous wastes are exported to poorer non-Annex VII countries, in other cases to richer non-Annex VII countries. This suggests that availability of installations willing to accept hazardous waste is more important than level of wealth for reported transboundary movements of hazardous waste among non-Annex VII countries.

21. When trying to find ways to better protect vulnerable countries from unwanted transboundary movements one might probably want to distinguish between bulk waste streams, generated by a limited number of (industrial) installations and treated by a small number of facilities (as illustrated by the examples of industrial bulk waste stream) and waste streams generated in small quantities by a large number of generators (as illustrated by the example of waste lead acid batteries).

Transboundary movements from non Annex VII countries to Annex VII countries

22. Certain Annex VII countries import hazardous wastes or other wastes from non-Annex VII countries. In total this was 219 kton in 2006. The following gives some examples of wastes imported by Annex VII countries from non-Annex VII countries:
 - Batteries (mainly waste lead-acid batteries, but also some Nickel-Cadmium batteries) are imported by an Annex VII country from a variety of non-Annex VII countries from different regions in the world;
 - Waste from industrial waste treatment operations, waste from municipal waste incinerators is being imported by Annex VII countries from non-Annex VII countries. Often these shipment go to neighbouring countries, but they may also be exported over long distances.
23. These are examples of Annex VII countries importing a limited number of specific waste types. This is an indication that these countries have specific treatment capacity for these wastes and also treat waste generated in non-Annex VII countries.
24. There are also Annex VII countries that import a large number of waste types from a limited number of countries. There are also indications that some non-Annex VII country are lacking capacity for treatment of hazardous waste in a more general way and that it has privileged relations with certain Annex VII countries to treat the hazardous waste generated inside their country. This is shown in the data because these non-Annex VII countries export a wide variety of waste streams to one or two Annex VII countries, often close to their borders.

Transboundary movements from Annex VII countries to non-Annex VII countries

25. In principle transboundary movements from Annex VII countries to non-Annex VII countries would be covered by the Ban Amendment. Based on reports to the SBC, it is noticed that practically no hazardous wastes are legally exported from Annex VII countries for final disposal in non-Annex VII countries. Reported exports include exports of the following waste types:
 - Hazardous waste classified as hazardous under national legislation of the exporting country (so-called Article 1.1.b wastes)
 - electronic waste, waste CRT glass and cables, waste lead-acid batteries

Comment [JHP25]: Suddenly we see the qualifier "legally". But within this qualifier are literal mountains of wastes from Parties and non-Parties alike. Nobody wants to report what is illegal or immoral. This entire exercise is derided from the flimsiest of hard. Any conclusions therefore are faulty. It is a foundation of sand.

Possible priority waste streams

26. Prior to the first meeting in Bali, participants were asked five questions aimed at facilitating the discussion. The responses from developing countries and countries with economies in transition to

these five questions⁷ reveal *inter alia* that they lack data on exports and imports of hazardous wastes, due to the fact that their legislation is inadequate to monitor movements, despite considerable efforts under the national reporting system of the Convention to collect such data. The seven most critical waste streams identified by the participants were:

- scrap metal;
- waste oil;
- waste lead acid batteries;
- e-waste;
- used pesticides;
- medical waste;
- polychlorinated biphenyls (PCBs).

III Further analysis of the identified reasons

27. Since 1992 a number of initiatives on environmentally sound management have been adopted under the Basel Convention, starting with the Guidance Document on the Preparation of Technical Guidelines for the Environmentally Sound Management of Wastes (COP2) and the Ministerial Declaration on ESM (COP5). Parties to the Basel Convention decided that environmentally sound management of hazardous wastes should not be limited to only Annex VII countries, but to all Parties under the Basel Convention, as it is reflected in the Ministerial Declaration's vision "*that the environmentally sound management of hazardous and other wastes is accessible to all parties, emphasizing the minimization of such wastes and the strengthening of capacity building*". For a number of reasons this vision has been poorly implemented, particularly in developing countries and countries with economies in transition. The reasons are further analyzed in this section grouped as follows:

- Economic issues;
- Legal issues;
- Enforcement issues;
- Awareness raising and knowledge.

28. The issues also have certain interrelations. The economy is the underlying driver for transboundary movement. However, the absence or unclarity of legal provisions, lack of enforcement, knowledge and awareness also contribute to the fact that exports and imports causing harm to human health and the environment are not adequately stopped.

Comment [JHP26]: It is unclear why the authors are raising this issue here. Is it to imply that were ESM available in developing countries then the issue of TBM would be moot and it would be OK to export to from rich to poorer countries. BAN asserts strongly that there are compelling reasons why any export that seeks to take advantage of cheaper costs is in fact taking advantage of hidden externalities. We assert that there is a direct correlation between low wages and opportunities for cost externalization.

Comment [JHP27]: It is not the economy per se. The driver in fact is a false economy that fails to account for externalities. Were these accounted for, economic drivers for export would virtually disappear.

Comment [JHP28]: Yes this is true in as much as our laws, including the Basel Ban Amendment are designed to correct false economics and internalize costs.

III.1 Economic issues

⁷ The paper presenting these five questions and the answers submitted by stakeholders can be found on the Basel Convention Website under: <http://www.basel.int/convention/cli/index.html> (18.10.2009)

29. The Ban Amendment prohibits all exports of hazardous wastes from countries in Annex VII of the Basel Convention⁸ to other countries not listed in this Annex. One of the expected side effects was that it would stimulate the Annex VII countries to reduce the generation of hazardous waste and transboundary movement of hazardous wastes and to become more self-sufficient in hazardous waste disposal. However, the Ban Amendment only addresses 1% of the reported transboundary movement. Moreover, where economic and trade forces are in play, transboundary movements of hazardous wastes, especially those destined for recovery and recycling operations, will continue to take place despite the presence of a Ban unless such trade is properly regulated and enforcement is ensured.

Comment [JHP29]: This is a complete fabrication based on false data. Even if we were to agree that the data set established above, this is a false assertion as it fails to track implementation of the Basel Convention around the world and correlate it with percentages of exports of waste streams over time.

30. The economic issues analyzed in this section look into three different aspects:

- The gap between demand for materials in installations in non-Annex VII countries and the amounts that are available locally.

It is scientifically outrageous to assert what is asserted herein. Even in the United States where there is no law controlling exports, efforts are underway to prevent export of mobile phones for example. Much electronic waste has been diverted from export to more benign management. To assert that this has not happened already manifold in Europe where the Basel Ban has been implemented is absurd. The economic dynamic would attest to the fact that were it not illegal to export hazardous wastes from Europe the volumes of traffic would be massive.

31. This demand gap drives transboundary movements of hazardous wastes and may lead to the transportation of hazardous wastes to countries / recycling facilities that are not able to manage them in an environmentally sound manner and constitute the risk that waste management of residues from the recycling process is not managed in an environmentally sound manner.

- The gap between costs of disposal in state of the art facilities and facilities that do not manage waste in an environmentally sound manner.

The idea that just because there is only one dataset available does not justify its usefulness when it so obviously unrepresentative.

32. This price gap may lead to transportation of hazardous waste to these low cost installations (i.e. installations that do not manage waste in an environmentally sound manner.

- The gap between the amount of waste generated in a given area and the capacity of the facilities in these areas that are capable of managing the waste in an environmentally sound manner.

Comment [JHP30]: Yes this is fact and belies what was said previously. The fact that this great economic driver does exist means that when only 1% is reported, the data is clearly faulty. Looked at the other way, when we know that there are laws in play, and great profits to be made, then exporters will intentionally fail to report.

33. Lack of national facilities to treat hazardous wastes may be the trigger for sending wastes to another country as not every country can have ESM facilities for every waste stream, facilities may have to be shared in the region.

Comment [JHP31]: The idea that commodity gaps drive wastes is misleading. In an age of globalization and free trade, it is very easy to export wastes and commodities. If a lack of material resources was a true driver, then in clean commodities would be exported to fill the gap. The fact that it is dirty wastes that are being used to fill the gap speaks to the fact that it is the exploitation of externalities that is the true driver. Thus this so-called demand gap is non-existent. It is just another way of describing the cost externality gap.

The demand gap

34. In many developing countries and countries with economies in transition there are two types of recycling sectors, a formal sector and an informal sector⁹. However, the existence of a formal recycling sector, using efficient technologies and state-of-the-art recycling facilities, is rare in these countries or they face difficulties in collecting sufficient amounts of recyclable waste from their home markets. Recyclable materials are managed through various informal sectors with low technology alternatives including manual separation of recyclable components. These practices that lead to environmental and human health damage are used, such as heating components to

Comment [JHP32]: This is a very simplistic way of describing externalities. There is a reason that there is a disparity in disposal/recycling costs. In some parts of the world there are opportunities to externalize costs. Wages can not be explained away as the reason by itself. This is due to the fact that there is a direct correlation between wages and societal protections and safety nets.

⁸ Member countries of the OECD and EU, as well as Liechtenstein

⁹ The informal sector refers to, in general, uncontrolled/streets operation and includes all economic activities which are not officially regulated and which operate outside the incentive system offered by a state.

Comment [JHP33]: This is the only legitimate reason/driver for hazardous waste exports. And unfortunately probably the driver least exercised.

recover precious metals, and release of residues into surface water bodies or the soil¹⁰. This informal sector of the economy employs thousands of people who are usually not aware of the hazard of exposure or hazards that exist in some recyclable materials and not trained and equipped to handle those safely. Nevertheless the informal sector provides an important source of employment and income for local communities.

Comment [JHP34]: How important a source of income is can only be judged by knowing what these workers would do for income were the recycling jobs to disappear and also to know how costly the work is in terms of health and impaired livelihood. So this statement in a vacuum appears biased as written.

35. For some Annex VII and non-Annex VII countries international trade in metal scrap and residues represents an important source of raw materials for their industries. Some of the trade statistics and data from the national reporting system of the Basel Convention show that there is an increase in the transboundary movements among non-Annex VII countries of both hazardous and non-hazardous wastes destined for recovery or recycling, for which the Ban Amendment would not apply. These movements will probably further increase as the demand for resources in some developing countries and countries with economies in transition increased due to their rapid industrial growth. Recyclables fill a part of that demand. As a result of enhanced international division of labour and outsourcing of production the limited number of manufacturing installations that can utilize recovered materials may lead to insufficient recycling capacity within certain non-Annex VII countries and thus be a driver for transboundary movements.

Comment [JHP35]: Conclusions cannot be drawn from this faulty data. It can only be used anecdotally. The sampling of this date both due to the poor response among countries as well as the vast known amount of illegal trade which is not reported makes this data meaningless. The statement "Some of the date" further makes this particular conclusion meaningless.

36. Non-recyclable waste mixed with recyclable materials is exported to many developing countries and countries with economies in transition, where it is manually sorted into recyclable fractions at a minimum cost due to low labour costs and little respect for human health, occupational health of workers and environmental protection. This can occur with waste streams such as electronic waste, cables, batteries and municipal waste fractions such as paper and plastic. The waste requires sorting before the recyclable parts can be further processed for recycling, leaving large amounts of residual for final disposal, some of which may be hazardous.

Comment [JHP36]: This is a very euphemistic way of speaking about cost externalization and the exploitation of weaker economies as a labor force. The exploitation of the labor force is also likely due to the correlation between cheap labor and a lack of infrastructural and institutional resources in a country to provide safety nets for its populace.

Comment [JHP37]: Yes. It is not a materials gap, it is a gap between places in the world where externalization is accepted and where it is not and this of course translates into what is called below the "price gap". Developing countries are capable of buying commodities on the global commodities markets. Rather certain businesses thrive by exporting wastes instead to places where externalities are still possible. Thus the raw materials are able to be obtained at a lower dollar price but not at a lower overall price (including cost to human health and the environment).

The price gap

37. Shipments of hazardous and non-hazardous wastes among non-Annex VII countries occur mainly for material recovery and recycling, in particular shipments of scrap metal and e-wastes. These shipments can be predominantly attributed to economical reasons such as: differences in recycling costs, importers may sometimes pay higher prices for recyclable material and high demand for recyclable materials, and some ambiguity as far as the classification scheme for wastes under the Basel Convention. However, certain facilities in non-Annex VII countries may be capable of accepting and processing certain hazardous wastes safely, in which case the country would benefit from economic profits from these operations whilst ensuring environmentally sound management of the wastes concerned. Information on concrete examples of such high-quality installations in non-Annex VII countries is scarce at the moment. The paper submitted by Japan on transboundary movement in Asia contains some information about treatment facilities in Asian non-Annex VII countries. Recycling continues to be very profitable business especially in non-Annex VII countries, as prices for raw materials remain positive despite the recent financial crisis, in particular prices of metals.

Comment [JHP38]: This sentence is not understandable unfortunately.

Comment [JHP39]: This statement is long on theory and short on facts. There are in reality very few state of art recycling facilities in developing countries and when they do exist they exist in a country context lacking the infrastructure and safety nets to allow those technologies to function in a safe and environmentally sound manner. The author here makes the fatal mistake of confining ESM to the facility, when in fact ESM can only be approached when the entire support system, legal, institutional, infrastructural likewise exists and is well resourced. This almost never is ... [10]

38. Low costs for recycling can be partly attributed to low prices and labour costs depending on each country's economic standards and partly due to low environmental, health and labour standards. The environmental and occupational health standards, including requirements on management of residues from recycling industries can be lower in a number of developing countries and countries

Comment [JHP40]: It is profitable because of externalities. It is not about commodity prices. Commodities are priced globally. It is dirty commodities that are cheaper.

Comment [JHP41]: There is a correlation between low wages and low environmental, health and labour "standards". And when one says standards one should not equate this to rules and regulations but rather the entire picture of societal safety nets.

¹⁰. Exporting Harm: The High-Tech Trashing of Asia, prepared by the Basel Action Network and Silicon Valley Toxics Coalition, February 15, 2002

with economies in transition, lower than those in developed countries. Hard data on actual costs of treatment in these installations are difficult to get.

Comment [JHP42]: Yes, and the two drivers that are the principle ones – labor costs and environmental externalization allowed, are inextricably linked with one another.

39. The Basel Convention has agreed guidelines on environmentally sound management of a number of waste streams. However, establishment, implementation and control of state of the art disposal and recycling operations may be very expensive.

40. Finally there is an issue of charitable donation of second-hand items or trade in such items. These items are less expensive than new ones, e.g. for computers, mobile phones and second-hand cars. Also medicines may be part of such charitable donation schemes. These items can be attractive for developing countries and countries with economies in transition as large parts of their population would not be in a position to afford buying new items.

Comment [JHP43]: This is true to an extent. However increasingly developing countries are rejecting such “goods” due to the known externalities of which “short lived” toxic products, are central.

41. There are several drawbacks of this. Certain materials sold as second hand goods may in fact be waste as they do not meet specifications anymore. The EEA report ‘Waste without Borders in the EU’ showed that exports of TVs to African countries such as Nigeria, Ghana and Egypt had such low declared value that it was most likely end-of-life electronic equipment. Recent visits of environmental inspectors from the Netherlands to facilities in Ghana confirmed this. So-called charitable donation could also consist of nearly expired medicines or nearly obsolete pesticides, the use of which may pose serious risks for human health and the environment.

Comment [JHP44]: BAN was the first to expose this issue in our film and report, “The Digital Dump: Exporting re-use and abuse to Africa” (2005)

42. Second-hand items typically have lower lifetime expectancy than new items. These second-hand items therefore will enter rather quickly into the waste stream in the country of destination, thus increasing the national challenge of managing this waste in an environmentally sound manner.

Comment [JHP45]: True, another externality made possible via export.

43. Moreover, second-hand equipment may be less performing, e.g. use more energy than new equipment. Their continued use in non-Annex VII countries does not help reduce greenhouse gasses.

Comment [JHP46]: True, another externality made possible via export.

The gap between generation of waste and treatment capacity

44. In order to be cost-effective state of the art installations may need to maximize their material input in order to be able to compete with installations applying lower standards. It may therefore not be feasible to have all types of facilities for different types of hazardous wastes in each country. Sharing facilities by countries in the region for economic reasons trigger transboundary movement of hazardous wastes. The lack of agreed standards makes it difficult to identify the adequate facility in the region for the treatment of hazardous wastes and to ensure that the hazardous waste is transported to an appropriate facility. Insufficient traceability of the waste streams for the appropriate facility might also be linked with an inadequate application of the procedures in the Basel Convention article 6(9) and 6(10).

Comment [JHP47]: This is not a major driver at the current time.

45. If waste suitable for being treated in such installations is not being collected locally, due to an inadequate collection system in the country, operators of such installations as well as local governments may be tempted to try to import waste from other regions, including Annex VII countries in order to keep these installations in operation. This applies in particular for waste treatment for which a gate fee applies for treatment. Wastes with a positive monetary value typically are collected extensively in developing countries.

Comment [JHP48]: This is true and the solution is NOT to import waste from countries that should be taking care of it themselves, but create the collection scale needed in country in order to properly run facilities.

46. Data on transboundary movement as presented in section 2 of this paper indicate that for a number of countries hazardous waste is exported because there is lack of installations inside their country to treat this waste locally.

Comment [JHP49]: Again this data is unworthy of use. However this paragraph is nevertheless true. And this is the only type of waste trade that is really justifiable under the obligations of the Convention – when it moves not to exploit externalities but rather to seek best ESM in its broadest sense.

An example: Electronic waste

47. The movement of electrical and electronic wastes, particularly used and end-of-life personal computers, is becoming a global issue. As markets expand and communities gain the benefits of increased access to information technology, many developing countries and countries with economies in transition face new challenges in managing used and end-of-life electronic products. In addition to personal computers other used electronic devices such as: monitors, printers, keyboards, central processing units, typewriters, PVC wires, television sets, mobile phones and telephones are discarded at a very fast pace as technologies change rapidly. Used and end-of-life electronic equipment winds up in informal recycling facilities in developing countries and countries with economies in transition. According to the report by the Basel Action Network¹¹, dismantling operations in these informal facilities are carried out with no or very little protection to workers or the environment. In many cases unusable products are burned in the open pits to recover precious metals while those parts with no, or limited economic value, are dumped in uncontrolled sites, releasing pollutants to the environment. This is in spite of the fact that there are technology and skills available to promote environmentally sound management, including proper repair and refurbishment that can extend the use of equipment, provide employment, and make valuable equipment available to those involved in the informal sector.

Comment [JHP50]: For some reason the author does not mention at the outset the biggest challenge of all and that is the importation of e-wastes from developed countries which feeds the informal sector. Most of this trade is illegal. That is the biggest challenge. The lack of mention here at the outset is suspect.

III.2 Legal issues

48. There are several legal issues that allow hazardous waste to continue to be shipped. These include:

- Ineffective legislation
- Lack of legal clarity

Comment [JHP51]: This is only partly true and continues to ignore the fact that infrastructure and safety nets in country do not likely exist in locations where facilities might be state of the art. Further it must be highlighted that as long as the massive feedstock of illegal or unwanted imports exist, the formal sector can never compete with the informal sector which externalizes costs. Finally, it is NOT true that in developing countries all proper e-waste management technologies exist. Almost never do ESM facilities exist for the two most significant e-waste trade hazardous fractions – Cathode Ray Tubes and circuit boards in developing countries.

Ineffective legislation

49. In addition to the development of expertise on environmentally sound management of wastes, it is very important to have laws and/or regulations for the effective implementation and enforcement of transboundary movements of hazardous wastes and other wastes, as required by the Basel Convention. They should include measures to prevent and punish those in contravention of the Convention¹², or involved in illegal traffic¹³. The Basel Convention (Art. 4, para 4), requests Parties to take appropriate legal, administrative and other measures to implement and enforce the provisions of the Convention. Many countries are civil law countries and upon ratification, the

Comment [JHP52]: What about lack of enforcement and lack of legislation. A very common problem is that many developing countries have not correctly implemented the Basel Convention into national law. And when they have, it is not adequately enforced. This again is often due to a lack of resources in developing countries. Which is why the Basel Ban, which places the onus on developed countries to enforce trade rules is so vital.

¹¹ Exporting Harm: The High-Tech Trashing of Asia, prepared by the Basel Action Network and Silicon Valley Toxics Coalition, February 15, 2002

¹² Article 4 (4) of the Basel Convention: “Each Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Convention, including measures to prevent and punish conduct in contravention of the Convention.”

¹³ Article 9 (5) of the Basel Convention: “Each Party shall introduce appropriate national/domestic legislation to prevent and punish illegal traffic [...]”

treaty automatically becomes part of national law. However, even in such cases, because of the general nature of treaties, including the Basel Convention, Parties still need to pass further legislation or regulations to make the Convention fully operational.

Comment [JHP53]: This is a very important point.

Legislation may be ineffective if:

- Legislation is completely absent or certain key provisions are not included;
- The provisions as included into the legislation are not fully implemented or applied poorly;
- Effective enforcement structures are lacking.

50. Effective legislation is a challenge for all countries. The EU has identified implementation of the EU shipment regulation as a specific challenge in the recent Communication from the European Commission on implementing European Community Environment Law¹⁴. The EU addresses these challenges by developing concerted actions, including coordinated enforcement actions (e.g. the Enforcement Actions program in cooperation with IMPEL, the network of European Environmental Enforcement Agencies. Recently the European Commission launched a feasibility study to investigate if the introduction of an EU waste implementation agency might be installed to improve implementation of EU waste legislation. Application of the EU Regulation on Shipment of waste was identified as one of the area's where better implementation is required and where such an agency might provide for improvements. The example of the EU shows that even in parts of the world with highly developed economies and enforcement structures, effective implementation and enforcement is already a challenge. This suggests that this challenge is even more important in developing countries and countries with economies in transition. Moreover most of these countries lack enforcement capabilities to ensure that any imports and exports are in compliance with obligations under the Basel Convention and that any illegal imports and exports are prevented.

Comment [JHP54]: This is an important point that speaks to the necessity of the Ban. The ban rightly places the onus for enforcement and obligation on Annex VII countries, not on developing countries.

51. The draft model national legislation, which was prepared by the Secretariat of the Basel Convention and the Legal Working Group, provides practical guidance to countries for the establishment of legal institutions and instruments. It contains provisions such as: identification of responsible authority, definitions, obligation of the authority, control of the management of hazardous waste and other wastes, monitoring the generation of hazardous wastes and other wastes, and enforcement provisions. Not only should adoption of such legislation be promoted, but also its application in practice. The Secretariat and the Parties also developed a checklist on implementing the Convention and the Compliance Committee made considerable efforts to develop a mechanism to address non-compliance by Parties. This should help addressing the implementation gap that still exists in a number of countries.

Comment [JHP55]: BAN has also produced model legislation which is available from our website.

52. As part of other legal measures that the Parties can adopt on the control of transboundary movement of hazardous wastes and other wastes, they may exercise a right to partially or totally prohibit the import of hazardous wastes or other wastes for disposal and inform the other Parties of their decision, pursuant to Article 13 (Art. 4, paragraph 1). Pursuant to the same article 13, Parties may also adopt decisions to limit or ban the export of hazardous or other wastes and inform each

¹⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and social Committee and the Committee of the Regions on implementing European Community Environmental Law. (COM 2008 – 773 of 18 November 2008)

other of such decisions. At the time of writing the number of the Parties who exercised their right and notified the other Parties through the Secretariat is limited (13 Parties). Article 11 further provides that the Parties may enter into bilateral, multilateral or regional agreements or arrangements regarding transboundary movement of hazardous wastes or other wastes with Parties or non-Parties provided that such agreements or arrangements do not derogate from the environmentally sound management of hazardous wastes and other wastes as required by the Convention. Also other Conventions e.g. the Waigani Convention¹⁵ have similar possibilities.

Comment [JHP56]: BAN's list is 67 countries if one counts national bans and regional decisions to ban imports. 67 countries have indicated that they have a national import ban on hazardous waste. While this number has not been verified in some time, it is clear that the 13 figure while possibly accurate with respect to countries that have reported under Article 13, it is misleading when readers are likely to accept that figure as the number of countries having banned by policy or law the importation of hazardous waste.

53. Under all circumstances the exporter of waste has a major role to play to assure that the legal requirements in the country of export for shipment of the waste are complied with. If countries are properly informed about import and export bans via the information exchange provisions of the Convention (Article 13), the exporter has to take back its waste for the safe disposal of the material in case of a transboundary movement of hazardous wastes or other wastes is deemed to be illegal as the result of conduct on the part of the exporter or the generator of the waste. Also the authorities of the country of export shall ensure that the wastes in question are taken back by the exporter or the generator or, if necessary, by itself into the country of export, or, if impracticable, are otherwise disposed of in accordance with the provisions of the Convention (Article 9).

Comment [JHP57]: Not just possibilities. These regional agreements including Bamako, Izmir protocol and Waigani and the Central American Accord all include import bans.

Comment [JHP58]: And import and transit countries.

Lack of legal clarity

54. There is a lack of clarity on non-hazardous waste and hazardous waste classification system under the Basel Convention. E.g. globally agreed and applied criteria and test methods for classes H10, H11, H12, and H13 are missing, while chapeaus in Annex VIII and IX make reference to the use of hazardous characteristics contained in the Annex III. Furthermore, there seems to be a number of ambiguities in the interpretation and definition of other terms such as waste/ non waste, reuse / direct reuse and refurbishment, and hazardous characters as national approaches for application of these terms may vary from one country to another. This may result in situations where waste is exported without notification where this would have been required. It may also lead to unclear, incorrect, incomplete or late notifications. The EU is in the process of developing guidance on these issues in the context of its recently adopted framework Directive on waste (Directive 2008/98/EC. More information can be found at: <http://ec.europa.eu/environment/waste/framework/index.htm>. In the follow-up of the CLI this material might be useful as reference material.

Comment [JHP59]: This is a very broad generalization that BAN would disagree with. There is SOME lack of clarity but since the elaboration of Annexes VIII and IX this is not so true. It is very damaging to the Convention to make the claim that the definitions are not clear. When most of the definitions are very clear.

Comment [JHP60]: Characteristics.

55. It is not clear how and when the Basel Convention applies to transboundary movement of used materials destined for reuse, repair, refurbishment, or upgrading in the importing country. The Basel Convention does not apply to those materials that are still products and not wastes. However, criteria to determine when materials are still suitable for reuse, repair, refurbishment or upgrading and when these do not meet such criteria and are to be considered as waste need to be established and agreed upon in order to facilitate the correct implementation of the requirements of the Basel Convention in this area. The fact that the listings of e-waste in Annexes VIII and IX make reference to procedures such as reuse, repair and refurbishment by themselves do not provide for sufficient guidance. Such guidance may build on the ongoing work within the partnerships on computing equipment and mobile phones.

Comment [JHP61]: Again this is a sweeping over-statement. Much work has been done on this in the EU and in the context of the MPPI partnership in Basel.

Comment [JHP62]: Guidelines have been developed on this in the MPPI.

56. Another key difficulty is that Parties are not always notifying national hazardous wastes (Article 1.1.b wastes) as required by Article 3, and yet are expecting Parties of export to comply with their

¹⁵ A convention involving island states in the South Pacific region banning imports of hazardous wastes and radioactive waste.

national definitions of wastes. Previous efforts under the Convention to stress this should be reiterated, because there have been issues/incidents where a Party of import claimed there was illegal traffic when in fact the Party of export had never been notified of their national definitions beyond the harmonized waste lists.

Comment [JHP63]: This is true.

57. For example, it has been Canada's experience that some non-Annex VII countries consider certain e-wastes intended for recycling operations as "hazardous waste" and prohibit their import, but this information has only been transmitted between the two competent authorities and has not gone through the Article 3 notification process as required under the Basel Convention.

Comment [JHP64]: This happened in the case of Canada exporting to China. However the China ban was very well known and yet Canada never bothered to confirm this with China and just kept on with its illegal exports until BAN notified the Secretariat to notify China to in turn notify the Secretariat of the ban. Canada however knew full well that China had banned imports as it was common knowledge.

58. There have also been problems encountered with some non-Annex VII countries where the Environment Department prohibits the import of e-waste as a hazardous waste, but the Trade Department of the same country allows the import for economic trade reasons and they take precedence over the environment. Therefore, internal cross departmental jurisdictional legal authorities have impacted on the legal clarity for exports to these countries.

Comment [JHP65]: True. This speaks to a need for training and workshops.

III.3 Enforcement issues

59. Enforcement of the provisions laid down in the legislation is key. If this is not done it is very likely that unscrupulous economic operators will seek ways to dispose of their waste via the cheapest disposal options. The following issues may lead to increased shipments:

- Lack of capacity for border controls or controls inside the country
- Lack of training of enforcement officer
- Complexity of the provisions

60. Lack of capacity is a general problem. This is the case in Annex VII countries and even more so in non-Annex VII countries.

Lack of training

61. Enforcement of the provisions regarding transboundary movement involves activities of a number of actors within a country. In most countries that developed enforcement strategies and –activities the following enforcement agents are involved:

- competent authorities;
- environmental inspectors;
- customs officers;
- police officers;
- judiciary and prosecutors.

62. To implement effective enforcement activities all these actors need specific training. In particular the customs officers can play a key role as they are often the first to be in a position to discover illegal traffic in the course of their normal control activities at the border. However, customs officers have to control a large number of goods and control of hazardous waste, likely to be a

relatively small quantity, does not automatically get the attention it might need. Therefore customs officers must be made aware of the importance of enforcement of the requirements regarding import and export of hazardous waste and must be trained to:

Comment [JHP66]: Very true.

- screen the documentation accompanying shipments to identify shipments of waste that may be illegal;
 - select shipments for physical inspections, to be done either with or without the support of environmental inspectors.
63. Physical inspections should only be done by staff that has had specific training and is specifically equipped with the right knowledge, tools and infrastructure to address hazards for health and the environment related to hazardous waste.

64. Insufficient training of enforcement- and customs officers may result in situations where officers are not aware if and/or which hazardous waste imports are permitted under their national legislation, and simply do not check for them. Only the documentation as required under the prior informed written consent procedure and the requirements for the documentation to accompany a shipment during transport contain the detailed information necessary to fulfil the obligations under the Basel Convention. Customs officers however are not used to screening these documents because they are different from the documents used for shipments of goods. Also these normal customs forms accompany shipments of waste. A complicating factor for the customs officers is that these normal commercial control documents use the nomenclature for the 'goods' (including waste) of the World Customs Organization. This nomenclature does not distinguish very well between hazardous waste and non hazardous waste in most cases. For a number of non hazardous wastes, such as uncontaminated metal scrap, separately collected and sorted waste paper and uncontaminated plastic scrap, the nomenclature does foresee specific codes to be used on the customs documents. For other wastes, including e-waste may be difficult to distinguish waste and second-hand goods that are not waste. Already within developed countries these controls have proven to be difficult, let alone for developing countries and countries with economies in transition. As one of the countermeasures against this situation, Japan developed specific domestic codes to distinguish used electronic equipment from new products depending on whether or not they are individually packaged for retail sale, so that customs and enforcement officers will be able to practice improved monitoring and targeted inspection of used electronic equipment. The EU also developed guidance on this issue and the SBC is planning to develop such guidance on a global level.

Comment [JHP67]: Packaging is not a distinguishing factor between new and used and used is not a distinguishing factor from waste.

Complexity of the provisions and differences in interpretation and application

65. When wastes are meant for recycling and are classified as non-hazardous wastes there may be conflicts between the countries involved about the applicable procedure. Economic operators may use this difference in interpretation to circumvent controls. Similar problems may occur when materials are considered to be waste in one country and secondary materials in others. In that case they could be considered as products by authorities in the exporting or importing country, and not subject to provisions of the Basel Convention. This has proven to be particularly difficult for waste streams such as e-waste and end-of-life vehicles. Also for certain non-hazardous wastes, such as used tyres and used clothing similar problems may occur. The enforcement and custom officers often lack time and the necessary training to be able to identify what is exported or imported, what documents are required to accompany transboundary movement of hazardous waste, whether or not these shipments were notified and consent granted to export or import. Proper monitoring of

Comment [JHP68]: Secondary Materials can be wastes certainly. Why is this term being used here as it has no legal standing in the Convention.

such shipments requires proper training so that any illegal traffic can be detected before the shipment leaves the exporting country or enters the importing country.

66. Ambiguities in waste classification and characterization issues hamper effective enforcement.

Economic operators may declare in certain cases a specific cargo as non-hazardous and ship it as such, whereas they should have declared it to be a hazardous waste. This declaration may be unintentional, due to the complexity of the classification and characterization process, or an intentional attempt to circumvent legal requirements. Due to these ambiguities national authorities will also have difficulties to judge which shipment of hazardous waste is against their rules and regulations. It is particularly difficult to 'spot' such shipments if the exporter by neglect or malice did not notify a shipment as transboundary (hazardous) waste shipment.

Comment [JHP69]: It is misleading to call lack of training on Basel implementation "ambiguity". There is far less ambiguity than there is improper enforcement.

67. Article 6 (11) of the Convention states that "any transboundary movement of hazardous wastes or other wastes shall be covered by insurance, bond or other guarantee as may be required by the State of import or any State of transit which is a Party." While the insurance obligation may not directly be a reason for the transboundary movement of hazardous wastes where environmentally sound management cannot be ensured, difficulty has been experienced in conducting the necessary insurance and risk assessment, due to lack of technical capacity.

68. A particular problem occurs for integrated markets, such as e.g. the European Union (EU). In the EU the internal borders between the 27 member countries no longer exist and goods (including wastes) can circulate freely between these countries. Border controls by the customs no longer exist between the internal borders of the EU member states. Only for goods entering or leaving the countries of the EU would customs controls and checks be applied. Such a situation does not exist for countries outside areas with integrated markets since border controls are foreseen in those cases. Therefore in integrated market specific measure are needed to assure adequate control of transboundary movement of waste. The EU Regulation 1013/2006 on shipments of waste (as amended) provides for the legal framework to address the specific risks associated with transboundary movement of wastes, including a prior informed written consent procedure for hazardous wastes and certain other wastes. Member States of the EU are required to organise inter alia, for spot checks on shipment of waste. Checks on shipments may take place in particular:

- (a) at the point of origin, carried out with the producer, holder or notifier;
- (b) at the destination, carried out with the consignee or the facility;
- (c) at the frontiers of the Community; and/or
- (d) during the shipment within the Community.

69. Moreover, the EU-legislation states that Member States shall cooperate, bilaterally or multilaterally, with one another in order to facilitate the prevention and detection of illegal shipments. They shall identify those members of their permanent staff responsible for this cooperation and identify the focal point(s) for the physical checks on shipments. Member states shall also lay down rules on penalties applicable for infringement of the provisions of the regulation.

70. However, harmonised and effective enforcement is more difficult in this context. IMPEL, the network of environmental enforcement agencies in the EU, and the European Commission have developed several programmes for combined enforcement actions in seaports and at border crossings within the EU to improve application of the regulations and prevent harm to human health and/or the environment.

71. The dock workers handling containers with hazardous wastes rarely know what is inside these containers, which could pose a significant risk to their occupational health. Custom officers, as well as dock workers, should be informed and trained on the hazards posed by hazardous wastes so that appropriate safety and protective equipment can be used when inspecting such shipments.
72. It also often seems to be almost impossible to obtain data from the movement document/manifest, or bill of lading, because most of these are processed manually, and data is not computerised. These manual checks by custom officials are very difficult to carry out when there are a large number of consignments. In addition, not many ports or border crossings have capabilities to test and verify if these consignments are hazardous or non-hazardous, and whether or not the shipment coincides with what is declared on the movement document/manifest. Following the receipt of wastes by the disposal or recycling facility, the importer (disposer or recycler) does not always send to the exporter and the competent authority of the country of export a certificate indicating receipt of wastes at the designated facility, method and approximate date of disposal or recycling indicating that the operation has been completed as per the notification and consent, as required by Article 6, paragraph 9 of the Basel Convention. Finally, the delays in processing notifications, obtaining approvals, completing movement documents/manifests, create opportunities for unscrupulous exporters to revert to illegal traffic and bypass some of the administrative burden.
73. In addition, the lack of information about which installations handle and process waste in environmentally sound manner, and which installations do not, hampers the effectiveness of enforcement in the country of export in their efforts to prevent the movement of waste destined for installations that cannot handle the waste in an environmentally sound manner.

Comment [JHP70]: This is not a relevant point with respect to the Basel Ban Amendment.

III.4 Awareness Raising and knowledge

74. Although some countries are taking steps in the right direction, many developing countries and countries with economies in transition still do not have the necessary expertise and infrastructure to manage hazardous wastes in an environmentally sound manner. The governments often lack information about how much and what types of pollutants are released, and what risk they pose to people and the environment if not managed properly.
75. Furthermore there is nearly no information about which facilities in developing countries and countries with economies in transition do manage hazardous wastes in an environmentally sound manner. There is also very little information on trends and patterns of movements of hazardous wastes amongst developing countries and countries with economies in transition. The lack of agreed standards makes it difficult to identify the adequate facility in the region for the treatment of hazardous wastes and to ensure that the hazardous waste is transported to an appropriate facility. Also it is not clear if the transportation of waste to a facility capable of treating the waste in an environmentally sound manner and to which consent for its import is given is ensured after the waste has entered the country of import.

Comment [JHP71]: This has little to do with the Basel Ban Amendment

Comment [JHP72]: This statement is true and belies earlier assertions about trade movements. The fact is there is very little information. All trends on movements are informed to date by anecdotal data.

IV Preliminary conclusions

Generation of hazardous wastes

- The export and import data for hazardous waste presented in this paper are incomplete and there are significant gaps in the data reported by Annex VII and non-Annex VII countries. The data should be used with some caution.
- While 75% of reported hazardous waste is generated in Annex VII countries, quantities generated in non-Annex VII countries are significant and growing.

Comment [JHP73]: The data should not be used at all.

Transboundary movements

- The vast majority of reported transboundary movements of hazardous waste (around 90% in tonnage) take place between Annex VII countries.
- Reported exports from Annex VII to non-Annex VII countries comprise only 1% (in tonnage) of total hazardous waste movements
- According to reported data 7% of total hazardous waste movements are between non-Annex VII countries. However many non-Annex VII countries lack adequate data on exports and imports of hazardous wastes.
- Flexible solutions to mitigate hazardous waste movement problems will need to consider the number of generators and/or the amounts and distribution patterns of materials involved. Practically no hazardous wastes are transported from Annex VII countries to non-Annex VII countries for final disposal.

Comment [JHP74]: This data is not worth drawing conclusions from. It is not correct for this paper to do so.

Reasons for movements

Economic

- Shipment of hazardous waste among non-Annex VII countries occurs mainly for recovery and material recycling
- Recycling continues to be a very profitable business especially in non-Annex VII countries
- For some countries international trade in metals scrap and metallurgical residual is an important source of raw materials for their industries.
- Trade of used and near end-of-life electronic equipment is or is becoming a global issue. The large non-resalable fractions of these items are often burned on open pits to recover precious metals.
- In many non-Annex VII countries a large informal recycling sector provides employment and income but conditions are poor leading to harm to human health and releases of hazardous substances into the environment.
- Charitable donations of near -end-of-life electronic equipment, motor vehicles, pharmaceuticals and pesticides may present particular risks for the environment and human health.
- Not all countries (including some Annex VII countries) can support a full recycling sector for all types of hazardous wastes, due to a range of factors including; geographical isolation, lack of population, lack of infrastructure or the lack of an economy of scale.

Comment [JHP75]: The flip side of this recycling is that it is at the same time an "excuse" for cost externalization (cost avoidance) by exporting countries. Without making that clear this statement is misleading.

Comment [JHP76]: Recycling is also very profitable in developed country if it is seen as a service and is not forced to compete with exporters that externalize the costs for which the service provided by recyclers would internalize.

Comment [JHP77]: Again this, as written is a very misleading statement! It is an important source because scrap and waste that is contaminated and not a pure commodity is a cheaper source of raw materials due to the externalities allowed. If the toxic management was enforced (ESM) the prices would not be cheaper and it would no longer be an "important" source.

Comment [JHP78]: Further, near-end-of-life equipment will soon die in a country likely to be lacking in any infrastructure to deal with it.

Comment [JHP79]: And this informal sector has grown due largely to illegal imports that externalize costs.

Comment [JHP80]: Of major importance.

Legal

- Even developed regions such as the EU recognise the challenge of having effective legislation and therefore it may be assumed that few non-Annex VII countries have effective legislation on hazardous wastes despite the availability of the Convention's model national legislation. Sufficient enforcement structures are similarly lacking.

- Few parties have yet exercised their right to prohibit the import of hazardous wastes and to inform other parties of the prohibition through the secretariat.
- The hazardous characteristics established by the Basel Convention to identify hazardous wastes (Annex III) are unclear, and consequently the references to the hazardous characteristics in the chapeaux to Annexes VIII and IX detract from the ready identification of hazardous wastes that these annexes were intended to enable.
- Criteria to distinguish between products that are still serviceable and those that are so close to the end of their lives as to be properly classed as waste have yet to be established.

Comment [JHP81]: This is not true. What is true is that few have informed the Secretariat.

Comment [JHP82]: This is overstated. It is not that difficult to make a determination regarding hazarodousness under the Convention. The chapeaus are hardly ever needed to be used due to the examination of the waste streams and their current designation on Annex VIII and IX.

Enforcement

- In many countries insufficient training of relevant enforcement officials lead to failures to check whether shipments are permitted.
- This is exacerbated by the lack of distinction in the World Customs Organisations nomenclature between wastes and products (especially where those products are near end-of-life), and between hazardous wastes and non-hazardous wastes.
- Ambiguities in waste classification and characterization hamper effective enforcement as economic operators may incorrectly declare a shipment non-hazardous unintentionally (or in some cases, intending to deceive), and national authorities may also have difficulty in determining whether the shipment is permitted.
- There are particular problems in integrated markets where border controls within the region have been abolished. These problems need to be addressed specifically in order assure effective enforcement.
- Administrative difficulties such as delays in processing notifications, obtaining approvals, completing movement documents due to the complexity in the application of provisions required by the Basel Convention add to the difficulties to properly enforce these provisions.
- There is also a lack of information in many countries about which installations may receive hazardous wastes under environmentally sound conditions and which installations do not comply with such conditions. This hampers the effectiveness of enforcement in exporting countries.

Comment [JHP83]: True and important.

Comment [JHP84]: This is irrelevant in terms of the Basel Ban Amendment and indeed all countries are meant to be self-sufficient in waste management to the degree possible under the Convention regardless of the availability of ESM.

Awareness raising

- There is an urgent need to develop, especially in non-Annex VII countries, the necessary awareness and expertise to be able to regulate the management of hazardous waste, especially wastes that move across international borders.
- The lack of agreed standards makes it difficult to identify the adequate facility in the region for the treatment of hazardous wastes and to ensure that the hazardous waste is transported to an appropriate facility.
- There is very little information about the performance of facilities in non-Annex VII countries, or about trends and patterns of movements of hazardous waste between non-Annex VII countries. The existence of such information would permit the identification of waste streams that cause particular problems, the locations in which those problems are manifest and the development of possible solutions.

Comment [JHP85]: This is dangerous language because it implies that it might be fine to export to good facilities regardless of TBM and the importing country's infrastructure outside of the facility.

Comment [JHP86]: Again, it is not primarily a matter of facilities and their alleged capability in developing countries, but of the context and infrastructure present, and safety nets present to maintain such technology and monitor it.

At the same time the current analysis also suggests that addressing the challenges may have to focus on a number of waste streams in a distinct manner, taking into account the different aspects of economy, legislation, enforcement and knowledge and awareness.

- Hazardous waste generated in large quantities

Certain hazardous wastes are generated in large quantities by a limited number of generators. This is in particular the case for certain hazardous wastes from manufacturing industries and the electricity sector. These waste streams constitute a large part of the tonnage of waste subject to transboundary movement amongst non-Annex VII countries, although the number of movements is probably limited. They may require a specific approach in the context of the CLI.

Comment [JHP87]: This is all supposition as the data is simply insufficient to draw such conclusions.

- Hazardous waste generated in small quantities by a large number of generators

Certain waste streams are hazardous, but more difficult to manage due to the fact that the number of actors involved is so big. Typical waste streams with these characteristics are:

- waste lead acid batteries;
- waste oils;
- medical waste;
- e-waste
- waste pesticides
- contaminated metal containing wastes e.g. galvanic sludges

On top of the challenges to assure a sufficient network of treatment facilities add the logistic challenge to collect sufficient amounts of material from a large number of sources that generate wastes in small quantities. This requires more effort in awareness raising and also mechanisms that direct these wastes to high quality facilities, where dumping of these materials would be much cheaper.

- Hazardous waste shipped as product

This applies to a number of waste streams, including e-waste, and pesticides, already mentioned above. Moreover this issue also applies to the following waste streams that are subject to the provisions of the Basel Convention:

- medicines,
- end-of-life vehicles
- used tyres¹⁶

Specific issues depend on the type of treatment. It may be that while developing solutions a distinction has to be made for situations where waste is exported for final disposal, for recycling or recovery or for repair or refurbishment.

It may be worthwhile to explore the possibilities to address the different issues with targeted measures instead of trying to find measures that would address all different waste types in the same way.

ESM recycling should always be encouraged and supported wherever possible. If hazardous materials are not recycled in environmentally sound manner (when/where they can be), the alternative is environmentally sound final disposal.

Comment [JHP88]: This statement is naïve in that it seemingly does not address ESM characteristics and necessities in society at large but seems to only concern itself with facility ESM. ESM is far broader than that and indeed characteristics outside of a facility are likely to be more important for ensuring ESM than those found within a facility.

¹⁶ Whether tyres are subject to the provisions of the Basel Convention differs by country

Annexes

Annex 1: Key terms used in the paper

Waste:	substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law (Article 2.1 of the Basel Convention)
Hazardous waste:	a) waste belonging to any category contained in Annex I, unless they do not possess any of the characteristics contained in Annex III (Article 1.1.a of the Basel Convention; constitutes the globally harmonized part of the definition of hazardous waste) b) wastes that are not covered under paragraph (a) but are defined as, or are considered to be hazardous wastes by the domestic legislation of the Party of export, import or transit (Article 1.1.; of the Basel Convention; constitutes the national part of the definition of hazardous waste)
Disposal	any operation specified in Annex IV to the (Basel) Convention. Annex IV consists of two parts: <ul style="list-style-type: none">• A: operations which do not lead to the possibility of resource recovery, recycling, reclamation, direct reuse or alternative uses (e.g. landfilling or incineration)• B: operations which may lead to resource recovery, recycling, reclamation, direct reuse or alternative uses (e.g. recycling of materials or energy recovery)
Annex VII countries	Countries to which would have to apply the export ban for hazardous wastes for shipments to non-Annex VII countries. These are Parties and other States which are members of OECD, EC and Liechtenstein

Annex 2: List of possible reasons



08. July 2009



CLI/2009/8

List of Possible Reasons Discussed by the 1st Meeting of the CLI – Summary by Co-Chairs –

Possible reasons for the transboundary movement of hazardous wastes¹⁷ where environmentally sound management cannot be ensured include¹⁸:

Comment [JHP89]: BAN has commented on these ideas above so we will refrain from commenting again here.

1. Economic Issues (= drivers for transboundary movement):

- Demand-gap, different state of development and different type of industries lead to different:
 1. demand for used and end-of life products for recovery / recycling as material input,
 2. demand for used products for refurbishment and repair (wastes turn into non-wastes),
 3. demand for used products for “second hand” use, however, imported used products may turn out to be waste (non-wastes turn into wastes),
 4. demand for hazardous waste to secure jobs in informal processing sector of waste management,
 5. requirement that residues from recycling industries be managed in an environmentally sound manner.

This demand gap may lead to the transportation of hazardous wastes to countries / recycling facilities that are not able to manage them in an environmentally sound manner and constitute the risk that waste management of residues from the recycling process is not managed in an environmentally sound manner.

- Price-gap, costs for disposal and prices for recycling differ because of:
 1. different environmental standards,
 2. different technical facility standards,
 3. different health standards,
 4. different labour standards,
 5. different social standards,
 6. different economic standards (e.g. prices and labour costs),
 7. informal¹⁹ processing sector very active – formalising this sector to promote ESM is challenging,

¹⁷ Examples of waste streams in the report include wastes which may not be defined as hazardous wastes in some countries.

¹⁸ The list of reasons stated in this document is based on various experiences and situations, relating to several obligations of the Basel Convention and some may be outside the text of the Basel Convention.

¹⁹ Informal sector refers to, in general, uncontrolled/streets operation and includes all economic activities which are not officially regulated and which operate outside the incentive system offered by as state.

- 8. economies of scales of waste management facilities.
- Lack of national facilities to treat hazardous wastes (trigger for sending wastes to another country as not each country can have ESM facilities for each waste stream, facilities may have to be shared in the region).
- Shared industries (e.g. car industry that is located in more than one country, thus products and wastes are moved across borders during the production process, bearing the risk of unbalanced sharing of responsibility for the waste management of this industry).
- Inadequate hazardous waste collection system in the importing country.

2. Legal Issues (= implementation issue):

- Lack of legal clarity, namely with regard to:
 1. definition/classification of hazardous / non-hazardous waste and differentiation between waste / non-waste,
 2. definition/classification of reuse / direct reuse, including repair, refurbishment, upgrading but not major reassembly,
 3. Basel (Art. 1.1(a)) defined as hazardous wastes and domestically defined/controlled hazardous waste (Art. 1.1(b)).
 4. specific issues such as which country, exporting or importing, has the responsibility to issue the notification form (different countries seem to have different positions on this),
 5. Obligations under the Basel Convention.

Legal clarity is crucial to avoid problems and to address the challenge of “illicit” transboundary movements of hazardous wastes.

- Gaps in legislation, e.g. existing legislation seems often not to cover adequately:
 1. materials that are not declared as hazardous waste when exported and which are determined to be hazardous waste in the receiving countries,
 2. problem when products stored in tax free zones turn into waste due to the fact that they arrive close to their expiry dates and there is not enough time to trade them and their expiry dates pass,
 3. ensure that the exporting country has the obligation to verify whether the import of a certain hazardous waste is prohibited in the country of import (Article 4.1(b)),
 4. ensure that hazardous wastes that have been exported without appropriate prior informed consent by importing country are taken back by the exporter or exporting country (Article 9.2)).
- Lack of clarity concerning the relationship of the Basel transboundary movement regime with the rules and principles of other regional and international control systems, free trade agreements and perhaps integrated markets²⁰.
- Different competent authorities to issue permission, lack of coherence between different ministries / agencies.
- Different approaches taken within a country, e.g. when in a federal system different regions / states within one country take different approaches.

²⁰ The issue of integrated markets may need further research.

- Different approaches taken by countries, e.g. the same material is treated as hazardous by some but not by other countries.
- Limited legal force of the technical guidelines developed under the Basel Convention, as they are voluntary.

3. Enforcement Issues (= implementation issue):

- Lack of capacity of border control:
 1. lack of adequate infrastructure such as laboratories to analyze samples of imported hazardous wastes,
 2. lack of knowledge of the classification and criteria for hazardous waste and awareness of requirements under the Basel Convention,
 3. lack of sufficient competent personnel,
 4. impossibility to control all imports and exports,
 5. lack of knowledge on health and safety issues for customs staff when opening containers.
- Difficulty of risk profiling of containers inspection or no environmental aspects (e.g. trends, main waste stream) included in national risk profiling;
- Custom tariff codes differ from Basel waste lists and codes, making enforcement by custom officers difficult.
- Customs officials are more focused on control of imports than exports.
- Lack of capacity other than for border control:
 1. lack of expertise and knowledge with respect to the requirements of the Basel Convention
 2. lack of knowledge of what is a hazardous waste,
 3. lack of sufficient competent personnel,
 4. lack of knowledge and data by Competent Authority of what type of wastes are imported, to which facilities they are imported, and how they are treated.
 5. Lack of legal capacity
- Exporters, who take part in illegal trade activities, are becoming increasingly sophisticated.
- Integrated markets without internal border control may make enforcement more difficult.²¹
- Difficulty of formalising an informal processing sector to promote ESM.
- The legal uncertainties lead generally to problems of enforcement.
- No uniform level of enforcement at the region and federal level.

4. Awareness Raising Issues and Knowledge (= implementation issue):

- Lack of awareness and knowledge on the requirements of the Basel Convention and on what is a hazardous waste or not.
- Lack of knowledge of which facilities can ensure ESM. Technical standards relate to facilities and not to countries (OECD-membership is no guarantee for ESM and vice versa).

²¹ May need further research.

- Lack of certainty that an exported waste will be treated at the facility as ensured by the importer.
- Lack of knowledge on the type of documentation required to accompany the hazardous waste transboundary movements.

5. Others (= implementation issue):

- Increase in production of hazardous waste is due to changing consumption patterns and therefore results in increasing transboundary movements.
- “Illicit” transboundary movements, such as charity, donations, humanitarian aid (e.g. expired pharmaceuticals, soon to be expired pesticides, used and end-of-life electronic products), as a replacement for environmentally sound disposal in the exporting country.
- Difficulties of inter-agency coordination (i.e. high level office in the country takes a lead on development projects, difficulty for environmental agencies to control).
- Administrative difficulties in applying the Basel Convention (i.e. delays in processing notifications; obtaining responses from importing authorities; difficulty in obtaining movement documents and certification) may have impact and promote illegal movements.
- Lack of sustainable financing of national waste policies such as through the use of economic instruments, fees, taxes, prioritising waste policy etc.²².
- Lack of data accuracy due to difficulties in obtaining inventory information on the generation and disposal of hazardous waste and on export and import statistics, leading to lack of data clarity with respect to the exportation/importation and disposal of wastes. In the case of disposal, this applies where the competent authority of the exporting state does not receive the required notification from the disposer regarding the completion of the disposal.
- The influence and impact the waste generators or exporters have in arranging exports for their wastes, making decisions on final destinations for their waste, and what documentation to be completed and what should accompany shipments.
- There is anecdotal evidence that waste may be traded whilst in transit and therefore may not arrive at the intended facility for disposal/recycling.
- Need for environmentally sound management facility-related technical standards to be developed under the Basel Convention, taking into account the needs of environmentally sound transportation and treatment of residues as well as the needs of the Stockholm Convention and the Montreal Protocol.

²² Further clarification is needed.

Annex 3: Data quality of the data on transboundary movement as provided by the SBC and methodology to analyse them

Data quality

Data from the Secretariat of the Basel Convention (SBC) are the best available data to analyze patterns of transboundary movement of hazardous waste. However, a number of aspects of these data have to be taken into account when analyzing them. The main issues are:

- not all countries report;
- differences in definitions of hazardous waste
- differences in reporting systems

Not all countries report

There are two reasons why the data from the SBC are incomplete. Firstly, countries not party to the Convention will not report their transboundary movements to the SBC. Secondly, not all Parties to the Convention fulfill their reporting obligations or transmit data every year.

The best way to remediate for this under-reporting is to compare and combine data reported on imports and exports from the countries that provided information. If all countries would report on transboundary movement, all movements are reported twice: once by the exporting country and once by the importing country. This double reporting can be used to fill the gaps that are present because certain countries did not report data. E.g. information about transboundary movement between the US and Canada can be obtained from the report of Canada. Even if the US did not provide this information, the data are available in the dataset provided by Canada. The last available year of reporting with verified reports is 2006.

When comparing data from reported imports with those from reported exports it is clear that these do not match. Differences of more than 20% are a rule. Partly this is due to the fact that not all countries reported their data (see above). For example, if country A did report and country B did not there may be differences if the transboundary movement between the two countries is not in balance. If country A imports 1 million tons of waste from country B and exports 0.5 million tons of waste to that country the difference between import and export data in the dataset of the SBC will be 0.5 million tons. As mentioned above the best way to remediate for this it to compare and combine data reported on imports and exports.

This will however, not totally remove discrepancies. The second reason for discrepancies is the difference in national definitions of hazardous waste and differences in reporting systems.

Differences in national definitions of hazardous waste

The Basel Convention contains a definition of hazardous waste that is not fully harmonized. Article 1.1.a is the harmonized part of the definition and is based on wastes in Annex I exhibiting characteristics of Annex III of the Convention. Annex VIII and IX with the lists of waste for the Convention are based upon this Article. Article 1.1.b indicates that any other waste considered as hazardous in national legislation is also hazardous waste for the Convention. This is the non-harmonized part of the definition of hazardous waste in the Convention. When Parties report on transboundary movement of hazardous waste they should also report on transboundary movement of wastes that are hazardous according to Article 1.1.b. The other countries involved in transboundary movements of these wastes may not always report on these movements as the waste may not be hazardous under their national legislation.

Comment [JHP90]: BAN would strongly disagree with this assertion. It is the case where data can be so incomplete as to be completely worthless with respect to drawing conclusions from it. This is the case with this data as I am sure any statistician reviewer would assert. Not all of the problems with the database are presented here.

First:

- 1) Most countries are not reporting PIC data at all.
- 2) PIC data is only for legal shipments when anecdotal evidence suggests that this amount is dwarfed by illegal // non-notified waste trade.
- 3) Finally there is no way to get a handle on un-notified trade because waste trade data is not gathered in the Harmonized Tariff System – the means by which trade data is gathered.
- 4) Even if there were specific codes for all hazardous wastes in the Harmonized Tariff System, there would be a huge incentive to mischaracterize waste exports. Such mischaracterized waste exports are already very common.

For the above reasons this data is useless with respect to drawing any real conclusions. In fact anecdotal information derived from journalistic, NGO investigations, and enforcement actions are far more useful sources of information.

Comment [JHP91]: These are NOT the primary reasons this data is fatally flawed. See above comments.

Reporting systems as applied by countries

Two aspects are highlighted: control of transboundary movement of non hazardous waste and the point of measurement of the amounts of waste subject to transboundary movement.

1. Non hazardous waste within the control system

In certain countries the prior informed written consent procedure for transboundary movement of waste is not only applied to hazardous wastes, but also to certain nonhazardous wastes. The notion of 'controlled waste' in these countries is larger than the notion of 'hazardous waste'. Not all Parties that reported their data to the SBC have dealt with this issue in the same manner. The most notable example is the case of the Netherlands and Germany in the 2006 data. The data provided by the Netherlands show export of hazardous waste to Germany that is 1,6 million ton larger than the reported imports by Germany of hazardous waste imported from the Netherlands. However, apart from imports of hazardous waste, Germany also reports on additional imports of 1,6 million tons of controlled non-hazardous waste from the Netherlands. The SBC puts the data of controlled non-hazardous waste in a separate table with the end-notes for the data, but does not include them in the database of transboundary movement of hazardous waste. This implies that the data from Germany and the Netherlands correspond to the same amount, but they are reported differently by the two countries. The main waste streams Germany excluded from their report are:

- wood from construction and demolition sites; and
- sewage sludge from urban waste water treatment plants.

Both waste streams are typically non hazardous wastes both in the Netherlands and in Germany. Their transboundary movement however, requires notification under the EU Waste Shipment Regulations. Regarding this particular aspect the German way of reporting seem better in line with the requirements of the Basel Convention than the data from the Netherlands.

2. Amounts reported

Within the control system of hazardous waste there are several possibilities to report on the amount of waste that was handled, e.g.:

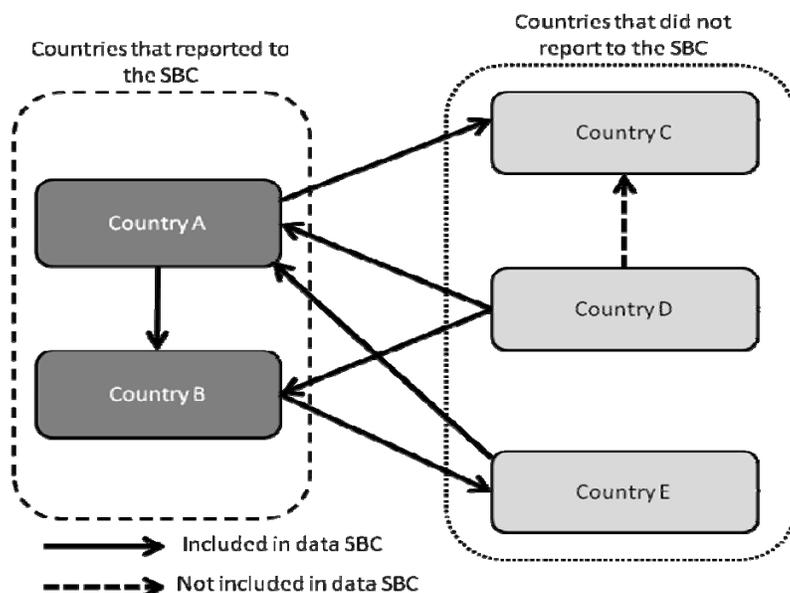
- amount notified;
- amount exported or imported;
- amount treated.

The differences between the amounts one would find may be quite different depending on the nature of the amounts that are reported. In particular the amounts of waste notified may be much larger than the amounts that are imported or exported in reality. Economic operators may wish to include a certain degree of flexibility when notifying their shipments in order to avoid having to do another notification when the amounts would exceed their expectations when preparing the notification. Information on the amounts that are treated at the installation in the country of destination are not always known by the authorities involved. It cannot be excluded that different authorities report different types of quantitative data within the reporting system of the Basel Convention.

Methodology to analyse data

Transboundary movement by definition involves several countries. In all cases there is a country of origin and a country of destination. In some cases also one or more countries of transit are involved. When

analyzing the data on transboundary movement in this report we were faced with the problem that data from a number of countries were missing, as explained above. Since reported transboundary movements always involve several countries it is possible in certain cases to get information about movements involving countries that did not report themselves, by analyzing the data reported by the other countries involved in these particular movements. This is illustrated in the figure below.



In the figure only country A and B had reported on transboundary movements to the SBC. Country A exports waste to countries B and C and imports waste from countries D and E. Country B exports to country E and imports from country A and D. Country C exports waste to D and imports waste from A. The data from then SBC include transboundary movements between countries A and B twice. Country A reports its exports to B as exports and country B reports the same movement as imported waste from A. Even though countries C to E did not report themselves, the data from the SBC nevertheless contains information about movements these countries were involved with where these involve either country A or B. Only the movement of C to D is not covered by the data at the SBC, because neither of the two countries reported their data.

By combining data from reported import with data from reported exports to countries that did not themselves report to the SBC a best estimate can be made of the real amount of waste subject to transboundary movement. Only movements that involve countries where none of the countries have reported would be missing. Since the number of countries that reported is rather high, it may be assumed that the coverage of the dataset from the SBC is rather good.

Comment [JHP92]: This statement is outrageous. It fails to take into account non-notified exports (illegal) which are by far the vast majority. The dataset of SBC therefore is useless.

Best estimate of global transboundary movement in 2006

Table 1 presents the best estimate of global transboundary movement of hazardous waste and other waste in 2006 taking into account the characteristics of the data from the SBC as mentioned above.

Country of	Country of import
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export	Annex VII		Non Annex VII		Total	
Annex VII	10.083.693	90%	154.549	1%	10.238.243	91%
Non Annex VII	218.576	2%	795.564	7%	1.014.140	9%
Total	10.302.269	92%	950.113	8%	11.252.383	100%

Table 1: Best estimate of global transboundary movement in 2006 (amounts in tons)
Source: National reporting Basel Convention, combined data imports and exports.

Table 2 and 3 provide the data based on reports of exports and imports only.

Country of export	Country of import					
	Annex VII		Non Annex VII		Total	
Annex VII	9.128.087	97%	134.048	1%	9.262.135	99%
Non Annex VII	61.259	1%	70.046	1%	131.305	1%
Total	9.189.346	98%	204.094	2%	9.393.440	100%

Table 2 Estimation of global transboundary movement in 2006 (amounts in tons)
Source: National reporting Basel Convention export data.

Country of export	Country of import					
	Annex VII		Non Annex VII		Total	
Annex VII	8.338.387	89%	28.763	0%	8.367.150	90%
Non Annex VII	204.631	2%	776.165	8%	980.795	10%
Total	8.543.018	91%	804.928	9%	9.347.946	100%

Table 3 Estimation of global transboundary movement in 2006 (amounts in tons)
Source: National reporting Basel Convention import data.

Annex 1

a.1 Elements for inclusion in a possible way forward

The Ban Amendment has been ratified by some parties but not by others, and has not yet come into force. Some parties intend to ratify, others intend not to ratify the ban in its present form. The following elements have been identified as possible components of an initiative to improve standards to ensure that the transboundary movements of hazardous wastes will be managed in an environmentally sound manner and that vulnerable countries do not receive wastes that they do not want.

1. Standards of Environmentally Sound Management (ESM)

ESM relates to facilities, waste streams, waste management systems, and to national legislation. Elements of ESM should include consideration of emissions, efficiency, and management; other considerations might include contribution to chemicals management, climate change, lifecycle analysis and environmental impact assessment. ESM standards should be consistent with other international agreements.

Possible measures:

- Defining standards / criteria
 - At national level;
 - At international level;
- Making available and disseminating information about standards;
- Making available and disseminating information about capacity to fulfil these standards;
- Ensuring accountability and compliance
 - internal measures by the facility, including environmental management systems, measurement- and control, record keeping;
 - measures by external actors e.g. inspections by enforcement officers;
- Developing an international independent certification scheme;
- Possible add-on: a differentiated scheme allowing for dynamic application: e.g. different standards could be defined reflecting different levels of ESM.

2. Linking standards of ESM to TBM:

Linking ESM standards to TBM requirements might strengthen and clarify the Convention by ensuring that waste movements are minimised and take place only under high standards of management. This could help decision-making under current procedures; could be used for movements between Annex VII countries and between non-Annex VII countries; could augment the Ban decision; and might provide for information on how to apply the proximity principle in certain cases.

3. Ensuring that vulnerable countries do not receive wastes that they do not want:

- Highlighting the right of countries to prohibit the import of hazardous wastes (Art 4);

Comment [JHP93]: This is a very dangerous "substitution" ploy as it absolutely does not address the true objectives and reason for being of the Basel Ban Amendment and it assumes that the Basel Ban should be substituted rather than implemented! This is not the rationale behind the President's Statement. Not to come up with alternatives but rather find ways to implement the ban. This is turning back the clock.

First, all countries currently have the theoretical right to not receive wastes they do not want. That is precisely what the "Prior Informed Consent" principle is about. ... [11]

Comment [JHP94]: We would argue that ESM relates to even more than that. It relates to internalizing costs. It relates to not disproportionately burdening peoples because of economic status. And we would point out that it relates to ... [12]

Comment [JHP95]: Yes, and what about the country having laws, and police and tort law to enforce, monitor and maintain all that has just been mentioned. How about the country having infrastructure to handle the hazardous wastes? ... [13]

Comment [JHP96]: If all this was really in place do you think the wages would remain low and there would remain an incentive to export to countries with all this in place?

Comment [JHP97]: The fundamental flaw of certification schemes is that they only certify facilities, and facilities alone are not the determiner of ESM. That is why BAN's certification made sure that it included the Basel Ban within it. ... [14]

Comment [JHP98]: Why would one want to create a system of double standards? That is the problem we have now, lack of an even playing field due to inequities of wealth on the planet.

Comment [JHP99]: The author seems to forget that this is already in the Convention. And seems also to forget that it is the goal of the Convention to minimize transboundary movement – not to justify it by standards.

Comment [JHP100]: This will in no way augment the Basel Ban Amendment – any TBM from Annex VII to non-Annex VII is a violation of the Ban Amendment! It undermines the amendment. This statement makes no sense. ... [15]

Comment [JHP101]: This notion has nothing to do with the intent of the Basel Ban Amendment which went far beyond the notion of "unwanted waste". That notion is already the law of 173 countries and is known as the Ban Amendment. ... [16]

Comment [JHP102]: This is already a right. I agree that more countries should exercise it. However it must be noted that doing so creates an injustice. The reason why the Basel Ban Amendment was designed the way it is ... [17]

- Improving and facilitating the mechanism through which such prohibitions are notified;
- Encouraging countries which prohibit the import of hazardous waste to provide the SBC with full list of the hazardous wastes covered by the prohibition.

Comment [JHP103]: Yes

Comment [JHP104]: Yes

4. Providing further legal clarity in particular on:

- The coverage of the Basel Convention, and in particular the distinction between wastes and used goods;
- The distinction between hazardous and not hazardous;
- The harmonisation of reporting codes;
- Terms such as re-use, repair and refurbish.

Comment [JHP105]: Much of this work is being done in the MPPI, PACE, and EU. It is useful but BAN fails to see how this is going to promote the objectives of the Basel Ban Amendment.

5. Improvement of existing tools, promotion of better application of existing measures and instruments within the Convention, and possible extensions or enhancements of the convention:

- Facilitating take-back obligations (Art 8 & 9);
- Guidance to improve the use of the possibilities of documents received on completion of disposal (Article 6(9)), e.g. no release of financial guarantees if proof of ESM is not supplied;
- Immediate implementation of the Ban by those parties that have ratified the amendment;
- Extending the provisions of the Convention to cover second-hand goods and charitable donations e.g. by making producers responsible for taking back such goods if they become waste;
- Streamlining reporting mechanisms and improving feedback of results to those providing the information;
- Strengthening the implementation of the notification procedure for national definitions of hazardous waste (Art 3);
- Promotion of the Convention and engaging the public and politicians.

Comment [JHP106]: This is a very interesting point, worthy of investigation. Already to our knowledge the Annex VII countries for which obligations under the Ban exist, have all implemented the Ban in national law (e.g. the EU). Non-Annex VII countries should be invited to alert the SBC under the appropriate reporting mechanisms that their ratification is tantamount to a national import ban.

Comment [JHP107]: Interesting idea in its own right, but does little to help implement the Ban or its objectives.

Comment [JHP108]: Good idea

Comment [JHP109]: It is very difficult to understand how a document that is supposed to find ways to implement the ban fails to state that the Convention as well as the Ban Amendment should be promoted. Does this not speak to the true intent of the Swiss-Indonesian CLI?

6. Support for the Basel Convention Regional Centres:

The Regional Centres play a key role in promoting the effective implementation and application of the Convention and their role should be strengthened and adequate financing of any additional tasks should be safeguarded.

7. Dealing with illegal traffic

Establishing networks and maintaining cooperation between actors at all levels is important to address illegal traffic:

- At national level, between environmental inspectorates, customs and police is important because each has specific competences and roles within the administrative system;

Comment [JHP110]: This is the place where very active promotion of the Basel Ban Amendment should be taking place.

- At regional level via BCRCs, IMPEL TFS, Asian Network etc.;
- At international level via INECE, World Customs Organisation.

With a number of organisations (WCO, IMPEL TFS) memoranda of understanding with the Secretariat of the Basel Convention have been developed and others could be developed.

The networks could also play a role to:

- Facilitate dissemination of knowledge about illegal practices and good practice in enforcement and control;
- Improve knowledge about understanding of the notification procedure for businesses;
- Explore ways of improving enforcement (also by seeking experiences from other conventions, e.g. CITES);
- Explore ways of developing tools for enforcers, for example reducing time scales and assisting with linguistic obstacles.

Comment [JHP111]: These are all good ideas but have little to do with implementing the Ban Amendment. These things should be done in any event. They are no substitute for the Basel Ban Amendment's entry into force or implementation.

8. Building Capacity:

- Specifying and quantifying clearly the needs for capacity building for different Parties. The Regional Centres might take the lead in this;
- The networks mentioned under section 7 above could also play a role in capacity building;
- Securing resources through political engagement with the process;
- Securing funds e.g. through fees for certification;
- Use of a revolving fund based on fees for notifications of shipments;
- Technology transfer;
- Forging links with high-profile initiatives, e.g. climate change.

Comment [JHP112]: The Capacity building that is needed is on assisting countries to ratify the Ban Amendment

Page 2: [1] Comment [JHP5] Jim Puckett 5/5/2010 11:09:00 AM

We would argue that this is not the central concern or objective of the Ban. It is unacceptable that this Swiss-Indonesian CLI only decide on focusing on one objective of the ban of their choosing. There are several objectives. It is a fact that waste is moving for reasons of externalizing costs resulting in many concerns addressed by the Basel Ban Amendment. Impacts include developing countries bearing a disproportionate burden of global environmental harm. Another involves a disincentive for clean production and waste prevention. Yet this work only sees the Ban in a narrow sense of developing country capacity. Capacity issues also have to be better defined. Many have argued that the United States does not have the capacity to deal with all wastes which raises whether “capacity” means “ability to afford the capacity”. Further, many see the “capacity” question as only being about capacity at facility level. Too often general national infrastructural and societal safety net structures are ignored as being probably the most important aspect of “capacity”. The lack of such systems being in place, legal or otherwise, create the most opportunities for cost-externalization via export.

Further, limiting the value of the Basel Ban Amendment to simply that of capacity of developing countries ignores the advantages of the Ban in perpetuating upstream solutions via green design or cleaner production.

It also ignores the question of whether it is right to disproportionately burden certain populations with environmental risk and harm, because risk and harm from hazardous waste can never be completely mitigated. Why should low wage countries bear a disproportionate burden of waste simply because they are poor, even if they employ the best technologies in the world.

Finally, limiting the argument to ESM completely ignores the Basel Convention obligation to become self-sufficient in waste management (Article 4,2,b). The Ban Amendment simply states which countries should be first in achieving this goal – Annex VII countries.

Page 2: [2] Comment [JHP6] Jim Puckett 5/5/2010 10:46:00 AM

This is highly suspect as this question has nothing to do with the rationale behind the Basel Ban but sounds like, because other factors besides export can lead to harm, then we might be apologists for the harm export causes.

Page 2: [3] Comment [JHP7] Jim Puckett 5/5/2010 10:46:00 AM

Where did the notion of “unwanted” come into play? This is not language from the Basel Ban and implies that countries can be persuaded to want their countries to be used

Page 2: [4] Comment [JHP9] Jim Puckett 5/5/2010 11:13:00 AM

If these opportunities are being envisaged for developing countries, this point is extremely onerous and absolutely off point. The Basel Ban Amendment in no way was designed to present opportunities to for developing countries to achieve economic benefit from recycling and disposal. Rather it was to achieve benefit by not having to pay the hidden costs of hazardous wastes.

Page 2: [5] Comment [JHP11] Jim Puckett 5/5/2010 11:16:00 AM

Excluding NGOs is not informal. It is hardly the same to be outside of the meetings having to comment now as we are forced to do without the ability to participate in argument shaping discussions. As what is being produced here is not a legal negotiation between parties, there is absolutely no excuse for having NGOs locked out of the process.

Page 2: [6] Comment [JHP12] Jim Puckett 5/5/2010 11:18:00 AM

These background documents were unfortunately drawn from erroneous and misleading data. BAN possesses valuable anecdotal data and yet we were never approached to provide input.

Page 3: [7] Comment [JHP16] Jim Puckett 4/20/2010 9:15:00 AM

The title of this paper presupposes that TBM is somehow warranted when TBM can be assured despite other matters of concern. This statement also begs questions as to what is considered to be the limits of a definition of ESM. For example does ESM concern only what happens inside a facility, or does it concern itself also with the socio-economic and political limits and context of a given country or locale. For example, BAN would argue strongly that lower-waged countries cannot provide the safety nets and societal infrastructure to ensure ESM even if the facility provided is state-of-art. In our experience how a

technology is allowed to operate and how it is required to be maintained and how it relates to the rest of its environment is as or more important than the ESM within the facility confines.

Further, we would argue that the Ban Amendment is not predicated on ESM alone but also whether countries are being disproportionately burdened from TBM and whether the TBM represents unwelcome externalities which harm the global commons or any location on earth.

Finally, we would assert that the Basel Convention itself calls for national self-sufficiency and a minimization of TBM and therefore outside of the question of ESM, an end to TBM of hazardous wastes is sought.

In summary there are a lot of reasons why this linkage in the question between TBM and ESM are misguided at the outset.

Page 3: [8] Comment [JHP17] Jim Puckett 4/20/2010 12:42:00 PM

This objective is prejudiced in that it assumes that TBM is just fine as long as it meets the ESM objective of the Convention. However there are some real concerns raised by exclusive look at ESM. And there are other objectives in the Convention and other objectives of the Basel Ban Amendment besides ESM. It is very dangerous to view everything through the prism of ESM for the following reasons a) ESM definition in the minds of most is limited to technology that takes place in the confines of a waste management facility. b) The Convention requires a minimization of TBM regardless of ESM. c) ESM often disregards other externalities of TBM such as impacts on global commons. d) ESM disregards disproportionate burdening that may take place (e.g. on developing countries due to their low-wages). e) the Ban also exists to ensure that costs are more appropriately internalized upstream in the waste chain, providing an incentive for more effective preventative measures such as Green Design.

Page 3: [9] Comment [JHP18] Jim Puckett 4/20/2010 10:49:00 AM

Yes but who is it that decides on the objectives of the Amendment. Apparently there are very differing views. It is not true that the objectives are limited to ESM and its achievement.

Also attainment of the objectives of the Amendment seems to cede that the Amendment cannot attain its objectives via entry into force. This cannot be ceded. So far it has not but it would be very possible for it to be voted on for entry into force. Ceding or giving up on the intent of the Parties by a consensus decision to being unachievable is very dangerous.

Page 11: [10] Comment [JHP39] Jim Puckett 4/25/2010 10:15:00 AM

This statement is long on theory and short on facts. There are in reality very few state of art recycling facilities in developing countries and when they do exist they exist in a country context lacking the infrastructure and safety nets to allow those technologies to function in a safe and environmentally sound manner. The author here makes the fatal mistake of confining ESM to the facility, when in fact ESM can only be approached when the entire support system, legal, institutional, infrastructural likewise exists and is well resourced. This almost never is the case in a non-Annex VII country. The list of non-facility support mechanisms needed in a country to ensure ESM is long and in fact far more important to the eventual ESM outcome than what takes place inside a facility.

Page 32: [11] Comment [JHP93] Jim Puckett 5/5/2010 10:43:00 AM

This is a very dangerous “substitution” ploy as it absolutely does not address the true objectives and reason for being of the Basel Ban Amendment and it assumes that the Basel Ban should be substituted rather than implemented! This is not the rationale behind the President’s Statement. Not to come up with alternatives but rather find ways to implement the ban. This is turning back the clock.

First, all countries currently have the theoretical right to not receive wastes they do not want. That is precisely what the “Prior Informed Consent” procedure does. The Basel Ban Amendment however was a repudiation of PIC, saying that consent was not good enough, but rather what was needed was a full ban. How then is going back to the concept of preventing “unwanted” waste changing anything? It does not.

Further the notion of ESM ignores all of the objectives of the Basel Ban save one – good technology at facility level. Indeed this is also already a requirement of the Convention and it fails to address the

disproportionate burdening of developing countries, the national self-sufficiency in waste management principle, and the need for eliminating disincentives for cost internalization at source.

This is not a way forward. It is a way backwards!

Page 32: [12] Comment [JHP94] Jim Puckett 5/5/2010 10:43:00 AM

We would argue that ESM relates to even more than that. It relates to internalizing costs. It relates to not disproportionately burdening peoples because of economic status. And we would point out that it relates to the infrastructure of a society to support systems, laws, and facilities to ensure ESM can exist. All of these things are present only with a certain level of wealth in society.

We would also strongly argue that ESM relates to fulfilling the other criteria of the Basel Convention and other international environmental law including the self-sufficiency principle found in Basel 4.2.b.

Page 32: [13] Comment [JHP95] Jim Puckett 5/5/2010 10:43:00 AM

Yes, and what about the country having laws, and police and tort law to enforce, monitor and maintain all that has just been mentioned. How about the country having infrastructure to handle the hazardous waste residuals? Emergency response, capacity, you have just mentioned? ing adequate occupational health and safety clinics and monitoring. And speaking of “other international law”, what about international law as in the Basel Convention which requires national self-sufficiency and reducing transboundary movements to a minimum.

Page 32: [14] Comment [JHP97] Jim Puckett 5/5/2010 10:43:00 AM

The fundamental flaw of certification schemes is that they only certify facilities, and facilities alone are not the determiner of ESM. That is why BAN’s certification made sure that it included the Basel Ban within it. This is an option here as well. Certifications are voluntary and as such do not have to wait for entry into force.

Page 32: [15] Comment [JHP100] Jim Puckett 5/5/2010 10:43:00 AM

This will in no way augment the Basel Ban Amendment – any TBM from Annex VII to non-Annex VII is a violation of the Ban Amendment! It undermines the amendment. This statement makes no sense.

Page 32: [16] Comment [JHP101] Jim Puckett 5/5/2010 10:43:00 AM

This notion has nothing to do with the intent of the Basel Ban Amendment which went far beyond the notion of “unwanted waste”. That notion is already the law of 173 countries and is known as the Basel Convention and its Prior Informed Consent regime. Again this represents nothing more than a “way backwards”.

Page 32: [17] Comment [JHP102] Jim Puckett 5/5/2010 10:43:00 AM

This is already a right. I agree that more countries should exercise it. However it must be noted that doing so creates an injustice. The reason why the Basel Ban Amendment was designed the way it was, was to put burden on exporting countries to stop the trade. The legal and Administrative burden for halting this ugly exploitive form of trade rests in the countries that initiate it. It is an injustice to make the victims of the trade pay for preventing it.