

U.S. Comments on the Developments and Obstacles in the Implementation of the Basel Convention Strategic Plan

The Basel Convention Strategic Plan (2000-2010) includes a number of interrelated and mutually supportive strategies to implement activities on environmentally sound management (ESM). Grouped in clusters, the first includes: 1) the prevention, minimization, recycling, recovery and disposal of hazardous and other wastes subject to the Convention, taking into account social, technological and economic concerns; 2) the active promotion and use of cleaner technologies and production, with the aim of the prevention and minimization and other wastes subject to the Convention; and 3) the improvement and promotion of institutional and technical capacity-building, as well as the development and transfer of environmentally sound technologies, especially for developing countries and countries with economies in transition. This paper presents initial comments from the United States on the developments and obstacles in the implementation of the Strategic Plan. We are directing our comments to the first cluster.

I. Background

The Basel Convention was negotiated in the late 1980s in response to outrage over environmental incidents from the transport of hazardous wastes from developed to developing countries. Since then, the economic and environmental landscape has changed. Many countries that did not have the capacity to manage wastes when the Convention entered into force became more industrialized, developed this capacity, and recognized that the industry can generate jobs and elevate standards of living. Further, as economies grow and markets globalize, waste minimization policies that address end-of-life products and materials only are not effective in reducing the increasing amounts of waste associated with economic activity and material consumption. There is a need for integrated and long-term solutions, based on a life-cycle approach.

There is also greater emphasis within national governments and international institutions on fostering sustainable materials management - maximizing the safe and productive use and conservation of the earth's resources and facilitating legitimate, environmentally sound trade in recyclables. There is recognition of the many positive environmental benefits associated with these approaches - energy savings, reduction of GHG emissions, reduced life-cycle impacts on natural resources, etc. This is evidenced by the work undertaken in the OECD on resource productivity and sustainable materials management, and in the G-8 on 3Rs (reduce, reuse, and recycle) that emphasizes the waste management hierarchy in terms of facilitating the transboundary movement of valuable products/materials not as waste, but as reused, remanufactured or recycled goods.

The Convention has not kept pace with the times. Rather than encourage reuse and recycling over disposal, the Convention, as implemented, provides disincentives to recycling and impedes the legitimate, environmentally sound trade in recyclables. For example, by defining recycling as a disposal operation in Annex 4, the Convention hinders environmental progress toward a better outcome. The Convention needs to adapt.

to trends in waste management, such as the increasing use of EMS and certification programs (ISO, EMAS, etc.)

II. The U.S. Experience

The U.S. signed the Basel Convention in 1989 and the Senate gave its advice and consent to ratification in 1992. We hope to pass implementing legislation to enable us to ratify the Convention. Although the U.S. has reservations over some of the ways in which the Convention has evolved, we consider Basel to be a responsibility for all countries, and we generally operate in accordance with the Convention's provisions. Our Basel Article 11 bilateral agreements incorporate prior informed consent and are premised on the concept of ESM in that we export for disposal only to countries that have the technical capacity to manage hazardous waste in an ESM manner (Canada) and import hazardous waste for disposal from countries that do not (Mexico, Costa Rica, Malaysia and the Philippines).

In the U.S., the Resource Conservation and Recovery Act (RCRA) controls the generation, management, storage and transport of hazardous and non-hazardous wastes. RCRA has evolved significantly in terms of accommodating best management practices and addressing undue administrative burden. Our definition of solid waste attempts to tailor our regulations to the risks posed by particular waste streams. There is also a recognition that waste classification in terms of hazardous and non-hazardous is not clear cut. The emergence of non-traditional waste streams, such as electronics, fall into a gray area and require a more flexible, tailored approach that ensures ESM, while geared appropriately to the level of risk posed by a waste stream. Our universal waste and CRT rules are crafted with a more tailored control system to these "gray" wastes. We are adapting RCRA to a new paradigm that views end-of-life materials not as wastes destined for disposal, but as resources to be used as inputs in new products, and as a way to conserve energy and reduce GHG emissions. One national effort that we have launched is the Resource Conservation Challenge, which is aimed at finding flexible yet protective ways to conserve natural resources and energy, and reduce GHG emissions.

We have also enjoyed success in leveraging non-regulatory programs, such as our Plug-In and Waste-Wise programs. We have also found that certification programs are an effective tool for enhancing the regulatory command and control approach. Combining flexible regulatory and non-regulatory programs can be more effective than governmental controls only. It is our hope that the Basel Partnership Program will be successful in convincing industry and others to achieve legitimate and environmentally sound trade of end-of-life materials.

Finally, the U.S. is conducting important work regarding life-cycle analysis, a proven methodology for quantifying the environmental benefits and impacts of using one material in place of another. It allows us to consider the energy and resources going into a product and releases to the environment from the product summed across all aspects of the product life-cycle (e.g., material extraction, acquisition and processing, product production, transportation, installation, use, etc.) The USEPA is working to quantify the environmental benefits of using industrial materials through life-cycle analysis.

III. Specific Comments

Recognition of the Waste Hierarchy: Encouragement of Reuse and Recycling

Although the first cluster of strategies includes the promotion and use of cleaner technologies and production, with the aim of preventing and minimizing hazardous and other wastes subject to the Convention, as currently implemented, the Convention does not do enough to promote the legitimate and environmentally sound transboundary movement of end-of-life materials for recycling and reuse. The U.S. experience has illustrated the need for the flexibility to tailor the control system to the risks posed by particular waste streams and that the "one size fits all" approach is no longer an effective option. We are also concerned that classifying recycling as a disposal operation in Annex 4 hampers efforts to promote the utilization of wastes as resources.

The OECD has been successful in adopting innovative approaches, such as pre-approved facilities and encouragement of the use of EMS, ISO, EMAS and various certification programs, to facilitate the legitimate and environmentally sound transboundary movement of end-of-life materials. Basel needs to take note of industry progress and trends towards non-regulatory approaches.

Article 4.9(a), (b) and (c) of the Convention affords some flexibility:

Article 4.9: Parties shall take the appropriate measures to ensure that the transboundary movement of hazardous wastes and other wastes only be allowed if:

(a) The State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner; or (b) The wastes in question are required as a raw material for recycling or recovery industries in the State of import; or (c) The transboundary movement in question is in accordance with other criteria to be decided by the Parties, provided those criteria do not differ from the objectives of this Convention.

Distinguishing Reuse, Refurbishment, Remanufacturing and Recycling

It is unclear how and when the Convention applies to the transboundary movement of used materials destined for reuse after repair, refurbishment or upgrading in the importing country (used mobile phones and used tires, for example). The U.S. believes that follow-up work, as outlined in the MPPI Chairman's Paper, should be undertaken with regard to clarifying how the Convention applies in these situations.

The Ban Amendment

While we accept and support the objectives of the Convention, as drafted, the Ban Amendment fails to recognize that a number of countries now have technical capacity, and that recycling operations and waste management bring jobs. Other approaches might

be as effective in ensuring the goals of the Convention without prejudicing the legitimate transboundary movement and management of hazardous wastes. For example, facilities might be certified as environmentally sound for a certain period of time.

IV. Conclusions and Recommendations

- 1) Opportunities exist under Articles 4.9(a), (b), and (c) to improve implementation and streamline some of the controls under the Convention (e.g. notification procedures, shipments from non-Annex VII countries to Annex VII countries).
- 2) Certain waste listings should be clarified, especially with regard to materials going for reuse, refurbishment, remanufacturing and recycling. Specifically, we believe that follow-up work, as outlined in the MPPI Chairman's Paper, should be undertaken on clarifying how the Convention applies in these situations.
- 3) Some thought should be given to populating Annex II (Categories of Wastes Requiring Special Consideration) with non-traditional "gray" waste streams and developing a tailored approach for this category, or create a third category of wastes.
- 4) The Convention needs to provide incentives for reuse, refurbishment, remanufacturing and recycling:
 - Encourage the legitimate ESM transboundary movement of shipments of materials for refurbishment and remanufacturing by not categorizing them as hazardous waste. Address the risks associated with these materials through binding, voluntary or market-based approaches.
 - Encourage the legitimate ESM transboundary movement of shipments of materials for recycling at major facilities by not categorizing them as hazardous waste. Address the risks associated with these materials through voluntary auditing programs (such as within the insurance industry), EMS and certification programs.
 - Restructure Annex 4, such that it clearly differentiates between disposal and recycling operations. Rename the Annex to cover the array of materials management options.
- 5) Alternatives to the Ban Amendment should be considered that would ensure ESM, but also facilitate the legitimate transboundary movement of hazardous wastes.
- 6) If the principles of ESM are to be applied to waste generated at sea, the Parties must fully consider the work done by, and being done by, other international bodies such as the International Maritime Organization.

The U.S. is working with our stakeholders to obtain information to support our initial conclusions and recommendations. We will provide more detail by June 2009.