

## **BC-10/3: Indonesian-Swiss country-led initiative to improve the effectiveness of the Basel Convention**

### **A. Addressing the entry into force of the Ban Amendment**

*The Conference of the Parties,*

*Recognizing* that there are parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, especially developing countries, that are facing specific challenges with regard to controlling imports as they are unable to manage hazardous and other wastes in an environmentally sound manner but continue to receive such wastes, which results in serious harm and needs to be addressed as a matter of urgency,

*Noting* that, while the amendment to the Basel Convention adopted by the Conference of the Parties by its decision III/1 (Ban Amendment) is one way of meeting that challenge, there are other ways of meeting it responsibly, especially through stringently applying the prior informed consent procedure, strengthening environmentally sound management and putting in place national legislation,

*Bearing in mind* decision VIII/30, by which the Conference of the Parties emphasizes that the parties to the Convention have the ultimate power to agree on the interpretation of the Convention,

*Stressing* the need for the parties to agree on an interpretation of paragraph 5 of Article 17 of the Convention as an important step in the development of the Convention,

1. *Welcomes* the practical initiative and activities that have taken place in response to the call by the President of the ninth meeting of the Conference of the Parties for parties to expedite ratification of the Ban Amendment, so as to facilitate its entry into force, and invites parties to continue to take concrete actions towards encouraging and assisting parties to ratify the Amendment, including:

- (a) Specific actions, such as the Nordic Initiative, to assist parties facing legal and technical difficulties in ratifying the Ban Amendment;
- (b) Regional meetings;
- (c) Country-specific studies of the implications of ratification and entry into force of the Amendment;

2. *Agrees*, without prejudice to any other multilateral environmental agreement, that the meaning of paragraph 5 of Article 17 of the Basel Convention should be interpreted to mean that the acceptance of three-fourths of those parties that were parties at the time of the adoption of the amendment is required for the entry into force of such amendment, noting that such an interpretation of paragraph 5 of Article 17 does not compel any party to ratify the Ban Amendment.

### **B. Developing guidelines for environmentally sound management**

*The Conference of the Parties,*

*Recalling* subparagraphs 2 (a)–(d) of Article 4 of the Basel Convention,

*Recognizing* that harm to human health and the environment continues to be caused throughout the world by inadequate waste management procedures,

*Stressing* the critical importance of prevention and minimization of hazardous wastes and other wastes,

*Acknowledging* the existing activities undertaken by parties and others to ensure environmentally sound management of hazardous wastes and other wastes, including the development of technical guidelines, national legislation, reference documentation and other guidance, while also acknowledging that further dissemination of these activities is necessary,

*Stressing* the continuous need of parties to have access to sufficient information to ensure that hazardous waste and other wastes, including those subject to transboundary movement, are managed in an environmentally sound manner,

*Noting* that a more systematic and comprehensive effort is needed to improve guidance on environmentally sound management of wastes,

1. *Invites* the Secretariat to disseminate information that it receives on existing activities undertaken by parties and other stakeholders to ensure the environmentally sound management of hazardous wastes and other wastes;

2. *Decides* to complete the development of a framework for the environmentally sound management of hazardous wastes and other wastes, including consideration of ways in which the framework and its elements might be linked to the issue of transboundary movement of hazardous and other wastes taking into account subparagraph 2 (d) of Article 4 of the Convention;

3. *Decides* to mandate a technical expert group to undertake the work outlined in paragraph 2 of section B of the present decision, taking into account the elements listed in the annex to the present decision, and to submit a draft framework to the Open-ended Working Group at its eighth session and subsequently to the Conference of the Parties at its eleventh meeting for its consideration and possible adoption;

4. *Decides* that the above-mentioned technical expert group shall consist of members nominated by parties based on equitable geographical representation of the five regional groups of the United Nations, and will be open to observers;

5. *Requests* each regional group to nominate through its Bureau representative by 15 December 2011 six members with specific knowledge and expertise in the field. The expert group may call upon additional experts as needed;

6. *Requests* the expert group to elect its own co-chairs and organize its working modalities according to the rules of procedure of the Basel Convention.

## **C. Providing further legal clarity**

*The Conference of the Parties,*

*Noting* that a number of the provisions of the Convention are interpreted differently by parties and that the implementation and application of these provisions would benefit from additional legal clarity,

*Recognizing* that there needs to be a clear distinction between wastes and non-wastes for some used equipment and second hand goods and that imports of used and near end-of-life goods that soon become waste are a matter of serious concern in some countries,

1. *Requests* the Secretariat, assisted by legal and technical experts as appropriate,

(a) To prepare a study on the implementation of the Convention as it relates to the interpretation of certain terminology used in the Convention and a list of other relevant terms related to the implementation of the Convention, including:

- (i) Waste/non-waste;
- (ii) Hazardous waste/non-hazardous waste;
- (iii) Re-use;
- (iv) Direct re-use;
- (v) Refurbishment;
- (vi) Second-hand goods;
- (vii) Used goods;

(b) To prepare a draft report containing the study and possible options for the interpretation of the terms listed above, which shall be made available on the Basel Convention website;

2. *Invites* parties to provide comments to the Secretariat on the above-mentioned draft report and elements therein;

3. *Requests* the Secretariat to finalize the report in the light of the comments received and to submit it to the Open-ended Working Group at its eighth session for its consideration;

4. *Requests* the Open-ended Working Group, taking into account the above-mentioned report, to prepare draft guidance to provide national authorities, regional centres and all other stakeholders with consistent advice on the interpretation of the terms in question, building on existing guidance and examples of good practices, for consideration by the Conference of the Parties at its eleventh meeting;

5. *Requests* the Secretariat, assisted by legal and technical experts as appropriate and taking into account other initiatives such as the Partnership for Action on Computing Equipment, to prepare and make available on the Basel Convention website a study to identify options for dealing with the problem posed by used and end-of-life goods, which could include take-back obligations and clarification of the concept of “charitable donations”;

6. *Invites* parties to provide comments to the Secretariat on the above-mentioned study;

7. *Requests* the Secretariat to finalize the study in the light of the comments received and to submit it to the Open-ended Working Group at its eighth session for its consideration;

8. *Invites* the Open-ended Working Group to report on the above-mentioned study and its deliberations thereon to the Conference of the Parties at its eleventh meeting.

#### **D. Further strengthening the Basel Convention regional and coordinating centres**

*The Conference of the Parties,*

*Recognizing* that the Basel Convention regional and coordinating centres play an important role in training, technical assistance and awareness-raising and that this role should be strengthened,

*Noting* that many of the proposals included in the recommendations of the country-led initiative ultimately involve initiatives that are best taken at the regional and subregional levels and that the Basel Convention regional and coordinating centres are ideally placed to take them forward,

*Hence identifying* the need to expedite the ongoing review and strengthening of the operation of the centres,

*Requests* parties to integrate the following activities into the plan for the development of the Basel Convention regional and coordinating centres for the implementation of the Basel Convention:

(a) Convene regional meetings to inform parties about and assist them in ratifying the Ban Amendment or national measures to prohibit imports;

(b) Disseminate guidance on environmentally sound management through their training, assistance and awareness-raising activities;

(c) Develop a programme and deploy activities to bring actors together, to provide training and to coordinate joint actions to combat illegal traffic, with the support of the Secretariat and other stakeholders as appropriate;

(d) Consult parties within their regions and identify the real needs of vulnerable countries and the difficulties that they face in relation to unwanted imports of hazardous wastes;

(e) Take action to secure political and public engagement with the work of the Convention;

(f) Seek further collaboration with other agencies, non-governmental organizations and the private sector;

(g) Seek out and mobilize relevant expertise in other relevant international and regional organizations.

## **E. Combating illegal traffic more effectively**

*The Conference of the Parties,*

*Recognizing* the importance of preventing and combating illegal traffic in hazardous wastes and other wastes and that illegal traffic in wastes, especially hazardous wastes, constitutes one of the main challenges to be addressed by the parties to the Basel Convention in order to prevent harm to human health and the environment,

*Noting* that the provision of more legal clarity, strengthening the role of the Basel Convention regional and coordinating centres and building capacity would facilitate the work of enforcement agencies in preventing and combating illegal traffic more effectively,

*Recognizing* that coordinated action would be the most effective way of improving effectiveness in preventing and combating illegal traffic,

1. *Requests* the Secretariat to build on and enhance existing actions to stimulate cooperation between existing networks of enforcement agencies, including the International Network for Environmental Compliance and Enforcement, the European Union Network for the Implementation and Enforcement of Environmental Law, the Asian Network for Prevention of Illegal Transboundary Movement of Hazardous Wastes and the Green Customs Initiative;

2. *Requests* the Secretariat to stimulate the formation of new networks, in particular with other enforcement organizations or in regions where such networks currently do not exist;

3. *Requests* the Secretariat to strengthen further its collaboration with the World Customs Organization on the harmonization of Customs codes;

4. *Requests* the Secretariat to collect and disseminate examples of best practices in enforcement in addition to practical arrangements such as procedures for take-back in case of detected illegal traffic;

5. *Requests* the Basel Convention regional and coordinating centres to consult parties in their regions, with the support of the Secretariat and other stakeholders as appropriate, in order to develop programmes and to deploy activities to bring actors together, to provide training and to coordinate joint actions in this field;

6. *Invites* parties to report to the Secretariat on cases of illegal traffic, using the form for confirmed cases of illegal traffic, as adopted by the Conference of the Parties in decision IV/12, and invites the Secretariat to explore ways of making better use of the information to guide the decisionmaking of the Conference of the Parties;

7. *Requests* the Committee for Administering the Mechanism for Promoting Implementation and Compliance to oversee the activities to be undertaken to prevent and combat illegal traffic more effectively and to report on progress to the Conference of the Parties at its eleventh meeting.

## **F. Assisting developing countries that are facing specific challenges with regard to prohibiting the import of hazardous wastes**

*The Conference of the Parties,*

*Recognizing* that parties have the right to prohibit the import of hazardous wastes or other wastes and to define additional wastes as hazardous in accordance with Article 3, paragraph 1 of Article 4 and paragraph 2 of Article 13 of the Basel Convention,

*Noting* that there remain obstacles to the full use of these provisions by parties that wish to be protected by them,

1. *Requests* Basel Convention regional and coordinating centres to consult parties within their regions and to identify the needs of such developing countries and the difficulties that they face and to make this information available to the Secretariat for dissemination to parties;
2. *Requests* the Secretariat to facilitate and encourage greater use of the Basel Convention model legislation for the development or revision of national legislative and other measures for the prohibition of imports of hazardous wastes and further encourages parties to make use of this model legislation;
3. *Requests* the Secretariat to develop and disseminate material for use through the Basel Convention regional and coordinating centres for the purpose of raising awareness of these provisions in their regions;
4. *Encourages* parties to develop and update national lists of prohibited hazardous wastes and to transmit them to the Secretariat in accordance with Article 3 of the Convention and to cooperate with one another in the development of such lists;
5. *Encourages* the Secretariat to continue to adopt a proactive approach with regard to the collection of the information required under paragraph 1 of Article 4 and paragraph 2 of Article 13, especially the lists of prohibited wastes, and to disseminate such lists electronically to parties at six-month intervals;
6. *Requests* the Secretariat to assist parties to develop national legislation and other measures to protect themselves from unwanted imports of wastes;
7. *Requests* the Secretariat to assist parties towards a better understanding of the relationship between trade and the environment as relating to the transboundary movements of wastes.

## **G. Building capacity**

*The Conference of the Parties,*

*Recognizing* that some of the proposals set out in the present decision may require additional funding, expertise and technology transfer,

*Recognizing also* that the objective of the Basel Convention contributes towards the attainment of the Millennium Development Goals,

1. *Encourages* parties to endeavour to ensure that the management of waste is considered in the preparation and implementation of development strategies and that waste management is recognized as part of attaining the Millennium Development Goals regarding environmental sustainability;
2. *Encourages* the Secretariat to forge links with high-profile initiatives on matters such as climate change and human health, in particular taking into account resolution WHA.63.25 adopted by the World Health Assembly, and to continue to explore the possibilities for using the synergies process and the Strategic Approach to International Chemicals Management for that purpose;
3. *Encourages* the Basel Convention regional and coordinating centres to specify and quantify the needs for capacity-building for different parties, including capacity needed to improve national reporting to monitor implementation;
4. *Encourages* the Secretariat, the Basel Convention regional and coordinating centres and parties to take action to secure political and public engagement with the work of the Convention;
5. To that end, invites the World Health Organization, building on its earlier studies on health and environment, to initiate a study of the impact on human health of failures to manage wastes in an environmentally sound manner and to use the outcome of that study to demonstrate the importance of the Convention's work;

6. *Encourages* the Secretariat to continue to exercise its advocacy role to promote and stimulate the inclusion of hazardous waste issues and implementation into the work programmes and processes of other international entities, including United Nations entities;

7. *Encourages* the Secretariat, the Basel Convention regional and coordinating centres and parties to seek further collaboration with other agencies, non-governmental organizations and the private sector;

8. *Encourages* the Secretariat and the Basel Convention regional and coordinating centres to seek out and mobilize relevant expertise in other international and regional organizations.

## **Annex to decision BC-10/3**

### **Elements for the further development of a framework for the environmentally sound management of hazardous wastes and other wastes to be operationalized through tools or instruments for implementation and enforcement**

- **Categories**

In developing a framework for the environmentally sound management of hazardous wastes and other wastes, the environmentally sound management criteria and core performance elements under the work of the Basel Convention and other relevant organizations need to be considered, as do the following elements:

- (a) Occupational health and safety matters (e.g., regarding safety, health, liability and emergency response);
- (b) Environmental protection matters (e.g. prevention of pollution);
- (c) Facility-related matters (e.g. regarding construction and infrastructure);
- (d) Waste related matters (e.g. collection, sorting, pre-treatment, treatment, storage, downstream management);
- (e) Emission related matters (e.g. emission limit values to air, water and soil);
- (f) Organizational matters (e.g. valid licence or permit, monitoring, recordkeeping, information to be provided to authorities, aftercare, insurance, management abilities/training level environmental management systems);
- (g) Regulatory matters (consistency/complementarity).

- **Existing tools and instruments operationalizing these elements may include the following:**

- (h) Legislation;
- (i) Standards;
- (j) Guidelines;
- (k) Policies (e.g., green procurement);
- (l) Codes of good practice;
- (m) Voluntary agreements.

- **Measures needed to implement these elements may include:**

- (n) Certification programmes;
- (o) Licences and permits regularly validated;
- (p) Training, awareness-raising and compliance promotion;
- (q) Regular inspections and enforcement;
- (r) Mechanisms for ensuring corrective action.