

**Deborah Grout, U.S. Department of State, July 13, 2000**

## Elements of the Basel Convention

## 1. Sets up a notice and consent regime for transboundary movements of hazardous and other waste

- Responsibilities of the exporter:\* 1) send notice and wait for consent; 2) do not ship if have reason to believe the waste won't be handled in an environmentally sound manner (ESM) in importing country; and 3) repatriation of the waste under some circumstances.
- Responsibilities of the importer: 1) importing country should only consent if waste can be handled domestically in an ESM; 2) importer must treat or dispose of waste in an ESM.
- Responsibilities of all parties: 1) handle own hazardous and other wastes in an ESM; 2) do not trade in wastes with non-Parties

\* Exporters from OECD member countries (plus Liechtenstein) may also be prohibited from exporting to non-OECD countries if they or the importing country have ratified the Basel ban amendment.

In addition, Basel contains the following objectives:

- Transboundary movements of hazardous and other wastes should be reduced to a minimum consistent with their environmentally sound management;
- Hazardous wastes should be disposed of as close as possible to their source of generation;
- The generation of hazardous waste should be minimized.

## Ratification Process

- The agency wishing to participate in negotiating an international agreement seeks Circular 175 (C-175) authority from the Secretary of State.
- The C-175 document is developed through an interagency process.
- The negotiating team negotiates with other countries to develop a text consistent with the C-175's instructions.
- When all participating countries agreed on the text of the agreement, it is delivered to a depositary and a date set for opening for signature.
- In the U.S., there is another C-175 process prior to signing the agreement.
- Unless the agreement can be signed by the President as an executive agreement, it is delivered to the Senate for its advice and consent.
- If the agreement contains obligations that cannot be met within current legislative authority, implementing legislation must be adopted.
- Once a legal determination is made that the U.S. can comply with its obligations under agreement, the instruments of ratification are prepared and delivered to the depositary.
- History of Basel Ratification Efforts

1989	Negotiations conclude and Convention opened for signature
1990	U.S. signs the Convention
1992	Senate gives advice and consent to ratification
1991-92	First attempt at Basel implementing legislation (Bush Administration bill, H.R. 2398)
1994	Administration Principles and Swift-Synar bill (H.R. 3965)
1994-95	Decisions II/12 and III/1 adopting the ban amendment first as a decision, and then as an amendment to the Convention. Note: the amendment will not enter into force until it is ratified by 2/3 of the countries present at the time the amendment was adopted (62 or 63). Current efforts

## Reasons for Ratifying the Basel Convention

- The implementing legislation would necessarily include new statutory authorities allowing the U.S. to better control its waste exports.
- Becoming a Party to the Basel Convention would strengthen our position in other multilateral environmental negotiations, and improve all our "waste" relationships
- Ratification would help to provide our domestic waste recycling and reclamation industry with the same access to the international market in recyclable wastes that our competitors have
- Being a Party would allow the U.S. to participate in the continuing development of the Basel Convention's programs and decision-making

#### Basel Liability Protocol\*

##### Scope:

- Applies to most treatment and disposal options from the time the transboundary movement starts (or leaves the exporting country's area of national jurisdiction) until the notification of completion of disposal has occurred. For options such as accumulation and exchange, the Protocol applies until the completion of the subsequent disposal option.
- Applies only to damage within the national jurisdiction of a contracting Party or certain developing small island transit States, except for personal injury, property damage, and certain costs of preventative measures taken outside of any national jurisdiction, if the State responsible for the damage is a contracting Party.
- Does not apply to countries that are parties to certain Article 11 agreements which notify the Secretariat that they have another liability regime in effect that complies with the objectives of the Protocol.
- Full text of the Protocol available at: [www.basel.int](http://www.basel.int)

##### Liability:

- The "notifier" is liable until the "disposer" has taken possession of the waste
- Thereafter the disposer is liable
- Exceptions for damage resulting from armed conflict, Acts of God, compliance with the compulsory measures of a public authority, or the wrongful intentional conduct of a third party
- Special provisions for Article 1.1.b. wastes and re-imported wastes
- Provides for joint and several liability
- Additionally, liability may be based on fault
- Right of recourse is provided against other liable parties

#### Financial Guarantees

- Both the notifier and disposer must carry insurance or other financial guarantees (only States may use a declaration of self-insurance)
- Direct action against the insurer is permitted
- Limits of liability are to be set out in Annex B of the Protocol at COP VI in 2002. States may set limits of liability higher, but not lower than those in Annex B. Importers and exporters must carry insurance covering at least the liability limits specified in Annex B.

#### OECD Waste Agreement Negotiations

Council Decision C(92) 39, the "red, amber, green" agreement, is being renegotiated as the Amended Council Act.

All the other OECD waste-related agreements are being repealed, with a few provisions carried forward in the Consolidated Council Act.

The purpose of the changes is to "harmonize" the OCD control system with the Basel Convention, streamlining procedures and reducing duplication where possible.

- With some exceptions, Basel Annex VIII "hazardous" wastes will be incorporated by reference as OECD "amber" wastes, and Basel Annex IX "nonhazardous" wastes will be incorporated by reference as OECD "green" wastes.
- applications to list new wastes will be brought to Basel instead of the OECD, and will be automatically incorporated in the OECD lists of wastes, in the absence of an objection.
- We are still negotiating for language to retain the Article 11 status of the agreements that allows us to trade in wastes with our OECD partners despite our Basel non-Party status.