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控制危险废物越境转移及其处置巴塞尔公约

缔约方大会

第七届会议

2004年10月25—29日,日内瓦

临时议程*项目6

汇报缔约方大会第六届会议通过的 各项决定的执行情况

对附件七所涉议题的分析

秘书处的说明

一、导言

1. 回顾不限成员名额工作组在其第III/5号决定中请秘书处向缔约方大会第七届会议提交不限成员名额工作组关于对附件七所涉议题的最后分析报告,供其作出决定。

二、执行情况

2. 不限成员名额工作组在其2004年4月的第三届会议上商定,列于文件UNEP/CHW/OEWG/2/7中的文件、连同各方提交给不限成员名额工作组第三届会议的评论意见汇编、以及在该届会议期间提出的评论意见,共同构成其关于对附件七所涉议题的最后分析报告,供缔约方大会第七届会议审议。

3. 不限成员名额工作组关于对附件七所涉议题的最后分析报告列于本说明的附件。

三、提议采取的行动

4. 请参阅不限成员名额工作组提交缔约方大会审议和酌情予以通过的、载列各项相关决定草案的汇编文件UNEP/CHW.7/2。

* UNEP/CHW.7/1。

附件

不限成员名额工作组关于对附件七所涉议题的最后分析报告

目录

第一部分	对附件七所涉议题的分析 ¹	3
第二部分	与不限成员名额工作组第三届会议举行之前就此议题向秘书处提交的书面意见的汇编 ²	17
第三部分	在不限成员名额工作组第三届会议期间发表的评论意见	
	A. 不限成员名额工作组第三届会议的报告节录(第八章, 第57—64段).....	32
	B. 从巴塞尔行动网络收到的修订意见.....	33

¹ 先前已作为文件 UNEP/CHW/OEWG/2/7 的附件分发。

² 先前已作为文件 UNEP/CHW/OEWG/3/INF/6 分发。

第一部分

关于附件七所涉议题的第二期分析报告

2003 年 9 月 15 日

目 录

	<u>页次</u>
一. 任务规定	4
二. 对附件七的分析(1998—2002 年)	4
三. 背景情况	4
A. 禁运修正	4
B. 第一期分析工作结果	5
四. 第二期分析工作结果	5
A. 综述	5
B. 对各项审评要点的审议	5
六. 前景展望	10

附 录

一. 关于附件七议题的第 VI/8 号决定执行情况 第二期研究的职责规定	12
二. 缔约方大会就附件七问题作出的决定	13
三. 资料来源	16

一. 任务规定

1. 在其关于分析附件七所涉议题的第 VI/34 号决定中，缔约方大会第六届会议请秘书处：

(a) 最迟应于缔约方大会第七届会议举行之前及时完成第二期分析工作。为此，应充分利用现已掌握的资料、并酌情获得进一步的资料；

(b) 于 2003 年向有关附属机构的一届会议提交分析报告的第一稿，并及时将分析报告的最后一稿提交该附属机构于该年份举行的最后一届会议审议，然后再行将之提交缔约方大会第七届会议，供其作出最后决定。

2. 在同一项决定中，缔约方大会还特别请不限成员名额工作组将其关于附件七所涉议题的最后分析报告提交缔约方大会第七届会议。

二. 对附件七的分析(1998—2002 年)

3. 在其 1998 年第四届会议的第 IV/8 号决定中，缔约方大会决定探讨附件七所涉各项议题，并请其各附属机构——即技术工作组与法律和技术专家分组携手合作——向缔约方提供重点论述附件七所涉议题的有记录和证明的详尽分析。

4. 在其 1999 年第五届会议的第 V/4 号决定中，缔约方大会对秘书处编制的列述附件七所涉议题的第一期分析报告表示欢迎，并商定第二期分析工作应仅限于相关的八项审评要点。

5. 关于附件七所涉议题的第 IV/8 号决定执行情况的第二期研究报告于 2001 年 5 月间最后编制完毕。在其 2002 年 5 月间的第二届联席会议上，技术工作组和法律工作组商定，秘书处应尽力在最大程度上完成第二期分析工作，并将该阶段的成果提交缔约方大会第六届会议。其后，缔约方大会在其第六届会议上通过了关于这一事项的第 VI/34 号决定。

6. 经缔约方大会通过的第二期分析工作的八项审评要点列于此项分析报告草稿的附件一。

三. 背景情况

A. 禁运修正

7. 在其 1995 年第三届会议上，缔约方大会通过了关于对《巴塞尔公约》作出修正的第 III/1 号决定。该项决定中所载列的修正将在通过该项修正时出席会议的四分之三缔约方的批准后开始生效——亦即 62 个缔约方¹；缔约方在实施此项禁运修正过程中最经常问及的议题包括如下各项：

(a) 对各种危险废物实行无害环境管理的概念方面缺乏连贯性；

(b) 潜在的经济影响，特别是在拟作回收处理的危险废物方面的潜在经济影响；

(c) 能力建设方面的努力不够；

(d) 其与制约和控制危险废物越境转移的其他全球性或区域性体系之间的关系、以及其与各项贸易协定之间的关系。

¹ 截至 2003 年 8 月止，共有 37 个缔约方批准了此项修正；在通过第 III/1 号决定时出席并参加表决的缔约方中有 30 个缔约方批准了此项修正。

B. 第一期分析报告

8. 此项分析的第一期工作主要是于 1999 年 3 月至 5 月间进行的数据和信息资料收集活动。第一期分析工作的各项任务包括以下各项：

(a) 在附件七国家和非附件七国家范围内对废物越境转移情况进行全球性评估，并对属于该附件范围内的国家与不属于该附件范围内的国家相互之间的废物越境转移情况进行全球性评估；

(b) 审查是否在缔约方禁止危险废物出口后出现过运送任何类别的废物的情形；

(c) 对关于废物的全球贸易和贩运情况、可作再循环处理的材料的贸易和相关能力情况、以及酌情对危险废物的生成情况的现有统计数据进行分析，包括对由下列各组织和机构提供的此类统计数据进行分析：经济合作与发展组织(经合组织)、欧洲联盟、联合国贸易与发展会议(贸发会议)以及巴塞尔公约秘书处；

(d) 对经合组织国家和非经合组织国家分别采用的标准进行分析。

9. 第一期分析工作的结果突出表明，在设法从各缔约方收集 1993—1996 诸年份的相关数据和资料方面遇到了很大困难。自 1998 年以来，在依照第 13 条和第 16 条收集危险废物进出口数据方面的工作已有了很大的改善；目前各方已可提供可予定量的资料。

四. 第二期分析工作结果

A. 综述

10. 在审议第二期分析工作成果过程中，缔约方和其他利益相关者均认识到，各方对所得出的分析结论的看法不尽相同，更何况此项分析研究工作本身亦未能得出确切的定论；如要最后完成此项分析工作，还需要做出进一步的重大努力和获得必要的资源，而且迄今在此项分析过程中所取得的进展尚不足以协助缔约方推进批准进程和实施第 III/1 号决定中所载列的修正。

B. 对各项审评要点的审议

11. 已从第二期分析工作中确认了若干项显著要点。以下第 1-5 小节对这些要点作了探讨。

1. 审评附件七对环境、经济和其他方面产生的影响

12. 一些国家表示，缺乏关于对危险废物实行无害环境管理这一概念的明确公认定义是它们在审查附件七所涉影响过程中遇到的困难之一。有人尝试用现行的国际无害环境管理定义或办法与《巴塞尔公约》的定义和办法进行对比，并设法在这一对比的基础上订立一系列环境无害管理指标，从而确立一个据以对一国的效绩进行评价的框架。但这一尝试未能提供据以对附件七所涉环境、经济和其他层面进行审查所需要的信息和资料；这更突出地表明仅根据实践经验进行一项研究将会遇到的各种困难。

13. 缔约方已商定了若干用以指导无害环境管理工作的原则；在讨论越境转移议题时值得对这些原则加以考虑。缔约方还特别商定，应把自给自足原则与就近处理原则和尽最大限度减少越境转移的原则结合起来加以考虑，并应认识到，在应用这些原则时须顾及各不同国家所处的不同境况。根据这些原则，应尽可能在邻近于危险废物生成地点对之加以处理或处置。

然而，在某些情形中，亦可采取把某种危险废物运往位于另一国家的专门设施加以处置的办法，以期对此类危险废物实行无害环境的和高效率的管理。

14. 可作再循环处理材料的现有重要国际贸易流动中的大多数材料可能并未在《公约》附件八之中进行分类（即按照《公约》第 1 条第 1(a) 款被列为危险废物的废物名录）。由一个政府间组织——国际铅锌研究小组 (www.ilzsg.org)——于 1997 年针对附件七对铅锌贸易所产生的影响问题进行了一项研究；该研究提出了下列两项要点：

(a) 就锌而言，《巴塞尔公约》把除那些表现出危险特性的锌废屑和锌残余物之外的其他各种类别列为附件九中的名录 B 材料。而表现出危险特性的锌废屑的数量仅占锌总量的一个很小的百分比；

(b) 就铅而言，从长远观点看，此种金属产生的影响往往更为复杂，特别是在附件七国家和非附件七国家之间的相互竞争方面。总体上说，附件七的再循环作业者可能会比非附件七再循环作业者更具竞争力。

15. 按照《巴塞尔公约》所作的分类，世界范围内每年因工业或其他废物生成活动而生成的危险废物总量并没有确切的数字，而只能根据各种不同的计算方法得出彼此不同的大致数目²。然而，实践结果表明，要在国际一级订立在全球范围内尽最大限度减少危险废物生成量的数量指标十分困难；缔约方大会在其第 VI/14 号决定(资料的传递)中请秘书处探讨可否制定旨在便利作出决策的危险废物指标。目前，可在国家范围内提供一些尽最大限度减少某些危险废物的指标。就附件七而言，目前尚无法提供任何能够表明工业化程度和类型方面的资料，而且亦无法提供可说明附件七和非附件七国家中所生成的危险废物的工业活动性质的资料，其中包括与危险废物相关的技术和工艺方面的资料。

2. 审评执行第 III/1 号决定的体制和法律框架

16. 此项研究确定了一套可作为理想办法在国家一级建立、从而推动实施《巴塞尔公约》及其各项修正的法律和体制基础设施的各种要素；同时还进一步表明，目前仅有少数缔约方具备所有这些要素，而且它们有效实施《公约》及其各项修正的能力亦取决于其基础设施完备程度和经济发展水平³。在贯彻落实第 III/1 号决定过程中所遇到的各种切实的障碍包括：缺乏对危险废物越境转移实行控制的相关立法或缺乏对此种废物实行无害环境管理的规章条例，以及在各缔约方之间缺乏协调通用的危险废物定义和分类办法。

17. 研究结果表明，非附件七各国对危险废物实行管理的能力彼此存在着显著的差异。非附件七国家中亦有一些有能力对危险废物和其他废物实行无害环境管理的国家。在此种情形中，实行无害环境管理的能力常常取决于具体的危险废物流类别。有些国家具备为支持对危险废物实行管理所需要的某些基本基础设施，包括必要的法律和体制框架等，但这些国家仍然缺乏从事对危险废物实行无害环境管理工作的训练有素的人员和财力资源。另一组国家则仅在危险废物管理工作的基础设施方面投入了极为有限的资源，尽管它们正处在高强度工业发展阶段。其他国家则可被列为几乎没有什么基础设施的最不发达国家。尽管各附件七国家在废物管理效绩方面的相互差异不是那么显著，但其中一些国家、特别是那些已成为经合组织成员国的经济转型国家，目前仍然在努力发展或增强其废物管理基础设施及回收和再循环能力。应在此指出，某些附件七国家实行无害环境管理的能力可能亦仅限于某些特定类别的危险废物流。

² 自 1998 年以来，缔约方依照第 13 条和第 16 条提供的数据的收集、可靠性及其汇编整理方面已有了重大改进。

³ 参阅 2001 年 5 月 29 日的文件 UNEP/CHW/TWG/18/INF/3, B 节。

3. 审评附件七对以下方面产生的影响：各国减少危险废物生成及其越境转移的义务；尽量减少废物生成方案的现行努力及其效果；以及废物管理基础设施

18. 由一个咨询公司编制的报告指出，预计可通过第 III/1 号决定所载列的修正进一步推动在附件七国家中采用更清洁的生产方式和尽最大限度减少危险废物的生成。亦可预期该项修正可增强附件七国家为提高其在危险废物处置方面的自给能力而作出的努力。该项报告最后指出，还需进一步分析该修正对非附件七国家所产生的环境影响。作为该项研究的一个组成部分，绘制了一个概念性关系示意图，旨在表明该修正在理论上预期可能会产生的效果。此外，还针对目前的状况订立了一套初步基准。同时，此项分析还认定，在目前的初期阶段中，只可能对该项修正对附件七国家的潜在影响作出理论上的或概念上的预测。

19. 根据缔约方依照第 13 条提供的资料⁴，拟作越境转移的危险废物数量不断增大。在这一发展趋势中，拟作回收或再循环处理的危险废物数量也有所增加，而在同时期内拟作最终处置的危险废物数量则持续下降。各非附件七国家之间的危险废物越境转移数量也有所增加；同时各附件七国家之间为作回收或再循环处理的危险废物越境转移数量也有所增加。此外，危险废物生成量也出现上升趋势，且这一现象在国家和全球两级均呈快速发展之势。根据在《巴塞尔公约》下所汇报的越境转移情况，作越境转移的危险废物大多为含有金属的废物(类别 Y31、Y22、和 Y23 等)以及含有溶剂的废物(类别 Y42)。

20. 必须在此强调，在目前阶段中，只能针对特定情形介绍附件七可能产生的任何影响，而要把所介绍的这些影响普遍化则是不明智的。由于各国或各区域所处的社会、经济、环境、地域或气候特点彼此各不相同，因此不能、也无法作出此种归纳，特别是还应考虑到我们并未掌握各种相关的原始数据、亦无法对之加以比较或确保其准确性。此外，鉴于在国家一级的废物分类中存在着许多含混不清之处，特别是在诸如废锌碎片、锌废屑、锌块或废铜碎片及其化合物等类废物方面，必须审慎行事。

21. 以下介绍了两个有案可查的个案⁵：

(a) 个案 1：一个拥有铅矿储藏的非附件七国家认定，若由其本国对之进行开采则在经济上不合算。该国于 80 年代后期建立了一个铅回收工厂；但由国家供应的二级来源铅不足以确保该铅冶炼厂得到有效和高效率的利用。为此，该国便自 1994 年始主要从一个附件七国家内的一个单一来源进口废铅酸蓄电池。该国所在区域内的其他非附件七国家亦从事同样的工作。在修正其相关环境法过程中，该国议会要求禁止危险废物的进口，但同时决定在 2002 年年底之前不包括废旧蓄电池。该国议会之所以未禁止废旧蓄电池的进口，是因为该国的国内废旧蓄电池来源尚不足以维持符合经济效益的生产水平，因此仍需进口此种废旧电池，直至本地供应可满足其经济需要时为止。与此同时，附件七国家(废旧蓄电池的主要供应来源)业已依照第 III/1 号决定停止了废旧铅酸蓄电池的出口。自 1998 年以来，废旧蓄电池的主要供应来源一直是非附件七国家。这一时期内，在鼓励和改进从本地来源收集废旧电池的进程进展缓慢。此外，那些不符合该国环境和卫生要求的小型再循环作坊却仍然进行着非法经营；

⁴ 参阅 2000 年间依照第 13 条提交的资料汇编(国家汇报)。

⁵ 系从官方出版物中收集到的资料。

(b) 个案 2: 某一非附件七国家自 1994 年以来一直在个案基础上对新废物的进口实行限制, 并于 1996 年开始禁止铅和锌废渣的进口, 导致了该国二级锌工业产出急剧下降。该国的铅业亦经历了类似的困难, 其主要的铅生产厂家之一更因此而被迫关闭。面对锌铅供应日益短缺的情况, 该国政府经对其进口政策进行审查后, 又决定允许对来自国内来源的废旧铅酸蓄电池进行更为广泛的加工。1999 年间, 该国政府进一步决定允许进口锌废屑和废渣, 但同时规定仅允许那些符合相关环境标准的二级锌制造商进行此种进口。

4. 审评向非附件七国家提供能力建设援助的情况

22. 在这一审评要点下, 对贯彻执行《巴塞尔公约》序言第 21 段的努力进行了一项分析; 该段阐明的要求是向非附件七国家提供对在其国内生成的危险废物和其他废物实行无害环境管理方面的能力建设援助, 包括提供财政援助和技术援助。

23. 《巴塞尔公约》第 10 条提供了一个向缔约方提供技术援助、以协助它们建立本国对在其国内生成的或进口的危险废物实行无害环境管理的能力的框架。秘书处业已为发展中国家和经济转型国家举办了若干次关于危险废物管理所涉各个层面的研讨会和讲习班。秘书处还为此举办了多次区域会议, 旨在促进在各国之间相互交流专门知识和经验; 其后, 又通过举办国家范围内的研讨会或讲习班对这些区域会议的成果作了进一步的详细讨论和审议。此外, 秘书处目前正在着手协助缔约方订立对危险废物实行无害环境管理的各种方法, 并支持它们建立相关的体制能力。《巴塞尔公约》各区域中心便是推动各缔约方获得适用知识、专门知识和技术的潜在的区域执行机制。

24. 目前正在各国政府、各政府间组织、国营和私营部门及其他非政府组织之间探讨如何增强在对危险废物和其他废物实行无害环境管理方面采取多重利益相关者处理办法和逐步促进开展适宜的相互配合, 所涵盖的范围包括尽最大限度减少此类废物的生成和酌情与工业界建立伙伴关系。同时还针对关于在为对危险废物实行无害环境管理的能力建设活动提供资金方面采取新的和替代性处理办法问题开展了讨论。这包括促进发展合作的多边和双边渠道。

《关于实行无害环境管理的巴塞尔宣言》使我们有机会增强对发展中国家和经济转型国家提供援助、以改进其危险废物管理工作, 其中包括尽最大限度减少此类废物的生成。在其 2002 年 12 月间举行的第六届会议上, 缔约方大会通过了《至 2010 年的巴塞尔公约实施工作战略计划》。该《战略计划》确认了共同、但却有区别的责任的原则。

5. 分析危险废物的处置、再循环或回收处理作业对人类健康和环境构成的风险以及对此类风险进行评估的指标

25. 在这一要点下开展的工作旨在探讨目前对危险废物所涉危害和风险的了解程度; 还包括审查可用于增进对可能风险情况的了解程度的方法。业已由一个咨询公司对现有相关文献进行了一项初步审查, 其目的是收集涉及下列诸方面的资料:

(a) 那些参与对危险废物所涉卫生、安全和环境问题进行研究的国际、国家和工业组织开展工作的情况;

(b) 危险废物再循环、资源回收和处置所涉及的卫生、安全和环境危害及其潜在影响。

继而提出了一套简化方法, 用以评估因接触某些类别的危险废物而对人类健康和环境构成的风险, 并提出了一个有秘书处参与的、旨在进一步制定这一方法的未来协作研究项目。

26. 对废物的处置、特别是在管理不当的情况下进行的处置可能会对人类健康构成风险。据报告发生在附件七国家内的几乎所有健康问题都可能发生在非附件七国家，但在后一类国家中此种风险程度可能会大大加剧，因为后一类国家应对此种风险的能力十分匮乏，且亦不具备确保采取有效保护措施、实行污染控制或避免污染的财政资源和基础设施或处置设施。这包括对居民和工人构成的职业卫生风险。此种风险可来源于不能对在国内生成的或进口的危险废物和非危险废物实行得当的管理。此外，生活在危险废物处置设施附近的居民的健康亦可能会因此而受到影响。废物中所含有的危险化学品可通过各种途径进入饲料和食物链，并可对饮用水造成污染。对于与受到污染的场址邻近或位于其周边的贫困社区而言，此种污染可能会产生更为严重的后果。

27. 仍需开展大量工作，详细记录危险废物管理和与之相关的风险对人类健康所产生的总体影响，即使在所涉处置作业据认为符合适当标准的情况下亦不能例外。此外，废物和危险废物的非法贩运亦很可能对人类健康构成风险。尽管目前我们已掌握了大量零散不全的知识，但仍无法全面地记录某些类型的废物所构成的潜在风险。目前在《巴塞尔公约》范畴内针对附件三废物的危险特性所开展的工作将有助于增进在此领域内的相关知识。

6. 审评为执行第 III/1 号决定而采取的各种步骤

28. 此项审评要点主要关注的是第 III/1 号决定与关于危险废物越境转移的那些相关国际协定之间的相互关系；同时还对在协助各缔约方批准此项修正方面所取得的进展进行了评估。

29. 作为批准或加入《巴塞尔公约》的进程的一个组成部分，若干国家要求秘书处对第 III/1 号决定中所载列的修正的批准问题作出澄清。根据秘书处与《巴塞尔公约》各区域中心为促进此项修正得到批准而开展的协作工作，一些国家除进行其内部或国内的评价工作之外，亦采取了各种旨在单独地批准此项修正或在批准或加入《公约》的同时予以批准的步骤。这一处理办法使我们能够更深入地了解了各国为执行第 III/1 号决定而采取的某些法律和体制步骤的实质运作情况。此外，若干缔约方还采取了技术、法律和其他措施（例如与信息有关的措施等），以确保此项修正的目标得到各利益相关者的确当遵守，特别是对那些废物设施的经营者而言。目前尚未对为执行第 III/1 号决定而采取的各种步骤采用一种系统性的或全面的分析、以进行彻底的和知情的评价。目前正在这一领域内逐步积累知识和经验，特别是通过由《巴塞尔公约》各区域中心所采取的首创行动来积累此方面的知识和经验。

30. 关于与各项国际协定之间的关系问题，重要的是各缔约方应采取各种步骤，避免在控制或涉及危险废物越境转移的各种不同法律制度之间出现差异。在此方面，有两类重要的国际协定⁶。其中第一类包括各项全球性多边环境协定，诸如《关于持久性有机污染物的斯德哥尔摩公约》、《关于在国际贸易中对某些危险化学品和农药采用事先知情同意程序的鹿特丹公约》、以及《关于消耗臭氧层物质的蒙特利尔议定书》等，以及一些关键的区域协定，诸如《关于禁止向非洲输入危险废物和在非洲境内对此种废物的越境转移和管理实行控制的巴马科公约》、《关于禁止向论坛岛屿国家进口危险和放射性废物及在南太平洋区域内对危险废物的越境转移和管理实行控制的瓦伊加尼公约》、以及各项区域协定和行动计划等。另一类协定包括在国际海事组织（海事组织）主持下通过的《防止倾弃废物和其他物质污染海洋公约》（即 1972 年的《伦敦公约》）、在世界贸易组织（贸易组织）主持下订立的各项相关协定、在经合组织及世界海关组织（海关组织）的统一制度下订立的各项条例或通过的方案等。此外，此项修正与《联合国危险货物运输示范建议》、以及与全球化学品分类和标签统一制度之间的相互关系亦具有特殊的重要性。

⁶ 参阅 2002 年 10 月 10 日关于国际合作的文件 UNEP/CHW.6/31。

7. 审评危险废物再循环处理相对于健康风险和环境破坏的成本效益和成效

31. 似可从以下四个方面来评估和计算为作再循环处理而出口危险废物所涉及的成本和效益：即环境、健康、贸易和经济这四个领域。作为第一步，首先对相关文献进行了调查，设法从各方收集针对此项修正在这四个领域内可能产生的影响的各种不同看法，并根据调查结果对之进行分析，其后再行制定一种详尽的评价工具，以便在查明某些个案中的具体危险废物再循环处理业务所涉及的效益之后加以应用。

32. 金属废物和金属残余物所涉国际贸易是附件七国家和非附件七国家的工业部门的重要供货来源。附件七国家和非附件七国家并不总是有能力和经济实力建造或经营旨在对多种材料进行回收的复杂的工业体系。其中一些处理作业所造成的污染要比另外一些作业更高，并可对环境造成污染。一方面，由非正规部门对含金属废物进行的回收或再循环处理被视为造成污染的重大来源；各缔约方和其他各方业已发现有些欺诈性再循环处理设施，造成了极为严重的问题，特别是对发展中国家和经济转型国家产生了极为不利的影响。另一方面，许多研究结果表明，如能进行健全的回收或再循环处理，则可节省资源并减少排放和废物的生成量。能够打入国际市场的经营者可采用较新的和更清洁的技术，而相比之下那些被排斥在市场之外的经营者则无力采用新型清洁技术。

33. 过去 10 年间，国际贸易量增长速度已远远超过生产量的增加速度。不论是对原材料还是对终端产品或次级原材料而言，情况都是如此。与原材料供应情况形成鲜明对照的是，大量的次级原材料是从附件七国家出口、并由非附件七国家进口的；许多非附件七国家都在次级原材料的使用方面进入了专门化阶段，而许多附件七国家则在可予回收或可作再循环处理的材料的收集和加工方面进入了专门化阶段⁷。如何以健全方式对产生于回收作业、再循环处理、废物材料的分解或拆解的残余物进行管理对于保护人类健康和环境免受此种作业的危害十分重要。为协助非附件七国家酌情改善其回收或再循环处理作业的效绩和工作效率，应支持从附件七国家向非附件七国家转让清洁和无害环境技术，包括通过制定相关的经济文书来进行此种转让。某些拟作回收处理的危险废物流的无害环境管理可能因此必须通过采取特定的区域或分区域处理办法或解决办法来实现，例如，在各小岛屿国家中采取此类办法。

8. 审评附件七在进一步推动《公约》各项目标的实现、 包括尽最大限度减少危险废物的生成及其 越境转移的目标方面所产生的影响

34. 已对各不同组织为向附件七缔约方和非附件七缔约方的国家政府和工业界提供关于尽最大限度减少废物生成和采取清洁生产方面的指导所采取的各种举措作了确认和介绍⁸。各方特别注重尽最大限度减少废物生成的总体工作和清洁生产活动在何种程度上亦延续到尽最大限度减少危险废物的生成的领域。迄今为止在本要点下进行的审评结果表明，尽管业已为促进清洁生产和尽最大限度减少废物生成的概念开展了整整 10 年国际活动，但具体而言在尽量减少危险废物方面的活动仍然不足和不力。在此方面的一个主要障碍是没有能力在地方或国家范围内把尽量减少危险废物领域内所取得的现有知识、专门技能和经验转化到《巴塞尔公约》的实施工作中去。其结果是，各种尽量减少废物的方案为在世界范围内减少所生成的危险废物数量及其越境转移所做的努力和成果方面的信息和材料极少。

35. 随着《巴塞尔公约》实施工作向前推进，以及订立了各种旨在控制危险废物和其他废物越境转移的各项区域协定和在这一领域内适用的国家立法等，业已在世界范围内形成了一种

⁷ 《欧洲联盟废物再循环和废物管理简讯》，2001 年 3 月 27 日第 6 期，关于再循环及国际贸易与环境事项，第 24 页。

⁸ 参阅 2001 年 5 月 29 日文件 UNEP/CHW/TWG/18/INF/3，第 9 节。

有能力制约附件七国家和非附件七国家内部以及在这两类国家之间的危险废物越境转移的体系。《巴塞尔公约》的生效、以及经合组织就危险废物越境转移的控制所作的各项决定——于 90 年代初期在危险废物的现有进出口方面提高了透明度、以及其后于 90 年代中期又达到了促进减少拟作最终处置的危险废物越境转移数量的效果。

六. 前景展望

36. 自 90 年代中期以来，许多国家的政策逐步出现了重大转变，其中既包括附件七国家、也包括非附件七国家：即从重点强调条例的制定和实施逐步转向利用废物作为一种潜在的资源的、更注重市场机会的政策。在废物处理方面的所取得的进展、以及针对某些废物流创建新的市场等发展趋势，使各国转而重新注重促进回收或再循环工业，并将之作为有效使用自然资源和节省能源的一种手段。

37. 那些处于迅速工业化进程的国家对次级原材料的需求量日益增大，主要是为了保持其社会和经济发展的速度。在此范畴内，迫切需要建立某些危险废物或其他废物的回收或再循环能力。越来越多的非附件七国家业已掌握了次级原材料使用方面的专门知识。⁹

38. 在第二期分析工作中得出的结果表明，需要进一步注重以下各关键领域：

(a) 在实际运作中切实实行无害环境管理的方式；

(b) 转让尽量减少危险废物生成方面的经验以及在《巴塞尔公约》范畴内加以应用的方式方法；

(c) 订立各种指标，用以评估危险废物的处置、再循环或回收所涉及的人类健康和环境风险；

(d) 订立对危险废物生成情况进行测定的指标；

(e) 制定各种手段，对危险废物的再循环处理相对于健康风险和环境破坏的成本效益情况进行评价。

39. 自于 1999 年间通过了《关于实行无害环境管理的巴塞尔宣言》以来，各缔约方及其合作伙伴已在其后的 10 年中开始侧重《巴塞尔公约》及其各项修正和议定书的切实实施工作。在这一新构想的指引下，缔约方大会在其 2002 年的第六届会议上通过了《巴塞尔公约实施工作战略计划（至 2010 年）》。《战略计划》再度重申了《巴塞尔宣言》的前景构想，即应使所有缔约方均能参与对危险废物和其他废物实行无害环境管理的工作，并强调应尽最大限度减少此种废物的生成和增强此方面的能力建设活动。在执行《战略计划》的范畴内计划或业已开展的若干项活动对于此项分析工作的某些要点而言具有相关性。这主要适用于促进为开展能力建设和尽量减少危险废物生成的活动提供技术援助。

40. 如果不能调集可预测的和大量的财力和其他资源，则发展中国家和其他需要得到援助的国家便无法建立起以无害环境方式管理危险废物和其他废物的能力和尽最大限度减少此类废物的生成的能力。

⁹ 参阅上文脚注 7。

附录一

关于附件七议题的第 IV/8 号决定执行情况第二期研究的职责规定

1. 意识到国际上日益关注有关以无害环境和高效率方式尽最大限度减少危险废物的生成及其越境转移的必要性，
2. 回顾第 IV/8 号决定请技术工作组与法律和技术专家协商小组合作，向各缔约方提供重点论述附件七议题的有记录和证据的详尽分析，并决定在第 III/1 号决定中所载列的修正生效之前不对附件七作任何改动，并确认此项工作不应妨碍今后针对附件七作出任何决定，
3. 回顾于 1998 年在比勒陀利亚举行的技术工作组与法律和技术专家协商小组联席会议上所进行的广泛讨论；该次讨论的核心问题是附件七研究工作的职责范围以及商定拟列入该项研究的各项初步要点，
4. 回顾缔约方针对这些分析要点向秘书处提交的评论意见，
5. 第二期分析工作的目的是以透明、客观和全面的方式探讨被视为对于缔约方大会具有重要意义的健康、环境、社会经济及其他事项，以便协助各缔约方批准该项禁运修正。

审评工作要点

6. 各国谨此确认，此项分析工作应仅限于调查附件七和非附件七国家下列方面的要点：
 - (a) 审评附件七对环境、经济和其他方面产生的影响；
 - (b) 审评执行第 III/1 号决定的体制和法律框架；
 - (c) 审评附件七对以下方面产生的影响：各国减少危险废物生成及其越境转移的义务；尽量减少废物生成方案的现行努力及其效果；以及废物管理基础设施；
 - (d) 审评执行《巴塞尔公约》序言第 21 段各种方法，促进向非附件七国家提供援助（能力建设）以便对其国内生成的危险废物和其他废物实行无害管理，包括提供资金和技术援助；
 - (e) 分析危险废物的处置、再循环或回收处理作业对人类健康和环境构成的风险以及对此类风险进行评估的指标；
 - (f) 审评为执行第 III/1 号决定而采取的各种步骤，包括其与关于危险废物越境转移的国际协定之间的关系，以便协助各缔约方批准《禁运修正》；
 - (g) 审评危险废物的再循环相对于健康风险和环境损害的成本效益/成效；和
 - (h) 研究附件七在促进实现《公约》各项目标、包括减少危险废物的生成和越境转移目标方面的影响。

附录二

缔约方大会就附件七问题作出的决定

第 III/1 号决定. 对《巴塞尔公约》的修正

本会议,

忆及《巴塞尔公约》缔约方大会第一届会议曾要求禁止从工业化国家向发展中国家输入危险废物;

忆及缔约方大会第 II/12 号决定;

注意到:

- 本届会议指示技术工作组按照《巴塞尔公约》继续进行废物危险特性说明方面的工作(第 III/12 号决定);
- 技术工作组已经开始进行拟订危险废物清单和不受《公约》约束的废物清单方面的工作;
- 这些清单(UNEP/CHW.3/Inf.4)虽已能提供有益指导,但还不够全面,而且尚未得到充分接受;
- 技术工作组将拟定各项技术准则,以协助拥有主权的任何缔约方或国家缔结关于危险废物的越境转移的协定或安排,包括按第 11 条缔结的协定或安排。

1. 指示技术工作组充分优先考虑完成危险特性说明和清单及技术准则的拟订方面的工作,以便将其提交缔约方大会第四届会议通过;
2. 决定缔约方大会应在其第四届会议上就一份(几份)清单作出决定;
3. 决定通过对《公约》的下列修正:

“新插入序言段落 7 之二:

“‘确认危险废物的越境转移,尤其是向发展中国家的转移,极有可能不构成本公约所规定的危险废物无害环境管理’;

“新插入 4A 条:

“‘1. 附件七所列各缔约方应禁止向未列于附件七的缔约方作拟进行附件四 A 节所列作业的危险废物的一切越境转移。

“‘2. 附件七所列各缔约方应于 1997 年 12 月 31 日之前逐步终止、并自该日期起禁止向未列入附件七的国家作《公约》第 1 条(a)款之下所述拟进行附件四 B 节所列作业的危险废物的一切越境转移’。

“附件七

“属于经合组织成员国和欧共体成员国的缔约方和其他国家,列支敦士登。”

IV/8. 关于附件七的决定

缔约方大会,

申明第 III/1 号决定中所列各项目标,

注意到第 III/1 号决定中所列修正尚未生效, 因此也注意到大会第 IV/7 号决定, 其中促请各缔约方作为优先事项批准这一修正,

还注意到阿拉伯国家和其他国家对修改附件七所表示的深切关注,

重申广泛批准第 III/1 号决定中所列修正并使该修正生效的重要性, 同时认识到在该修正生效之前修改附件七的困难,

进一步注意到各缔约方拟定的供列入附件七的各项建议,

1. 决定直至第 III/1 号决定所列修正开始生效之前不对附件七作任何修改;
2. 还决定探讨附件七所涉各项议题, 并请技术工作组与法律和技术专家小组合作, 向各缔约方提供有记录的详细分析, 其中应重点论述与附件七有关的问题;
3. 请上述两个小组就此事项向缔约方大会第五届会议作出汇报;
4. 确认拟进行的工作不妨碍今后就附件七作出任何决定。

第 V/4 号决定. 第 IV/8 号决定 (关于附件七的决定) 执行情况报告

缔约方大会,

1. 欢迎为巴塞尔公约秘书处编制的附件七问题第一期分析工作报告;
2. 请各缔约方、非缔约方和非政府组织就该报告向秘书处提出可改进其内容的补充意见和看法;
3. 同意技术工作组及法律工作组在其 1999 年 4 月份联席会议上所通过的第二期分析工作审评要点;
4. 请秘书处继续进行第二期分析工作, 并编制一份审评要点执行情况报告, 供技术工作组及法律工作组审议;
5. 还请技术工作组及法律工作组继续监督此项分析工作的行进, 必要时向秘书处提供指导, 并向缔约方大会第六届会议报告相关进展情况。

第 VI/34 号决定. 对附件七所涉问题的分析

缔约方大会,

回顾对附件七所涉问题进行分析的目的是以透明、客观和全面的方式探讨被视为对于缔约方大会具有重要意义的各项保健、环境、社会经济及其他事项, 以便协助各缔约方批准载于关于对《巴塞尔公约》修正的第 III/1 号决定内的《禁运修正》,

还回顾第二期分析工作应限于调查载于业经确定的八项审评要点，

又回顾其第 V/4 号决定—关于第 IV/8 号决定执行情况的报告（关于附件七的决定），

重申决定在载于第 III/1 号决定内的修正生效之前不对附件七作任何修改，

注意到在编制有关附件七问题的分析报告方面取得了一些进展，

决定最迟在缔约方大会第七届会议之前完成此份分析报告，

1. 请秘书处最迟应在缔约方大会第七届会议之前及时完成第二期分析报告的编制工作。为此，应充分利用现已掌握的资料并酌情获取进一步的资料；

2. 还请秘书处于 2003 年把分析报告的第一稿提交不限成员名额工作组的一届会议，并及时将分析报告的最后版本提交该工作组的最后一届会议审议，然后将之提交缔约方大会第七届会议，由其作出最后决定；

3. 进一步请秘书处应邀支持各缔约方批准载于决定 III/1 号内的《禁运修正》；

4. 邀请各缔约方及其他各方向秘书处提供能帮助秘书处开展工作的相关材料或文献；

5. 请不限成员名额工作组继续监督此项工作的进行情况，并向秘书处提供指导，以确保其及时最终完成此项工作；

6. 还请不限成员名额工作组把附件七所涉问题的最后分析报告提交缔约方大会第七届会议。

附录三

资料来源

在编制本报告草稿过程中使用了下列文件：

- 文件 UNEP/CHW/TWG/18/INF/3：环境资源管理公司针对关于附件七议题的第 IV/8 号决定执行情况的第二期研究编制的报告，包括由一位顾问就法律和体制层面编制的一份相关报告，2001 年 5 月 29 日
- 文件 UNEP/CHW.5/INF/4：第 IV/8 号决定(关于附件七的决定)的执行情况—第一期分析工作的结果，1999 年 11 月 15 日
- 文件 UNEP/CHW.6/34：分析与附件七有关的议题，包括对附件七所涉议题的分析结果摘要，2002 年 8 月 30 日

文件 UNEP/CHW/TWG/LWG/1/8 和 UNEP/CHW/TWG/LWG/2/9，其中分别列有技术工作组和法律工作组第一和第二次联席会议的报告，2002 年 2 月 12 日和 2002 年 7 月 4 日。

第二部分. 针对秘书处不限成员名额工作组第三届会议 举行之前提交的这一议题发表的书面评论意见汇编

Australia

January 2004

In Decision OEWG-II/6, the Open-ended Working Group, considering the first draft of the analysis of issues related to Annex VII prepared by the Secretariat, invites Parties and others to submit to the Secretariat, by 31 January 2004, any further technical or specific comments or information taking into account, as appropriate, the points contained in Annex III to the report of the second session of the Open-ended Working Group that would not reopen discussion or raise new issues.

Australia, taking into account the point contained in paragraph 12 of Annex III to the report of the second session of the Open-ended Working Group, wishes to submit the specific comments set out below. Paragraph 12 states: “The issue of the existing structure of Annex VII as a potential obstacle to the ratification of the Ban Amendment was raised by some Parties.”

Australia has consistently argued that the distinction between Annex VII and non-Annex VII countries will remain problematic until environmental criteria are developed under the Basel Convention to distinguish between the two groups of countries.

In this context, we note that paragraph 17 of the first draft of the analysis of issues related to Annex VII prepared by the Secretariat, document UNEP/CHW/OEWG/2/7, states:

17. “Marked differences are noted among non-Annex VII countries in terms of their capacity to manage hazardous wastes. Non-Annex VII countries include some countries with a capability for the environmentally sound management of hazardous and other wastes. In this case, a capacity for environmentally sound management may often be specific to particular hazardous waste streams. There are countries with some of the basic infrastructure needed to support hazardous wastes management, including the necessary legal and institutional framework, but which still lack the skilled personnel and financial resources to ensure environmentally sound management. Another group of countries have invested only limited resources in infrastructure for hazardous waste management, even though they are in the process of intensive industrial development. Others could be classified as least developed countries with minimal infrastructure. Although there is a less marked difference in waste management performance among the Annex VII countries, a number of these countries, in particular those with economies in transition that are members of OECD, are still developing or reinforcing their waste management infrastructure and recovery and recycling capacity. It should be noted that the environmentally sound management capacity of some Annex VII countries may also be confined to certain specific hazardous waste streams.”

We do not regard the issues described above as problematic so far as the capacities of Annex VII countries are concerned. If an Annex VII country lacks the capacity to manage hazardous wastes in an environmentally sound manner, other Parties must not allow hazardous wastes to be exported to that country, in accordance with paragraphs 8 and 10 of Article 4 of the Convention.

Paragraph 8 of Article 4 states: “Each Party shall require that hazardous wastes or other wastes, to be exported, are managed in an environmentally sound manner in the State of import or elsewhere”.

Paragraph 10 of Article 4 states: “The obligation under this Convention of States in which hazardous wastes and other wastes are generated to require that those wastes are managed in an environmentally sound manner may not under any circumstances be transferred to the States of import or transit.”

The issues described in paragraph 4 above are problematic, however, if a non-Annex VII country has a capacity for the environmentally sound management of hazardous and other wastes. An Annex VII Party that has ratified the ban amendment must not allow hazardous wastes to be exported to a non-Annex VII country, but if the importing country has the relevant capacity, such a prohibition would not be based on the lack of capacity to manage hazardous wastes in an environmentally sound manner. It would be based only on the fact that the importing country in question was not listed in Annex VII.

This would raise questions about how and why countries were listed in Annex VII. It should be noted that the Parties have done nothing, in the more than eight years since Decision III/1 adopted Annex VII on 22 September 1995, to develop a process to ensure that listing in Annex VII is based on considerations that are demonstrably linked to environmental competency.

Despite this lack of a Basel Convention process, the membership of Annex VII has expanded and is continuing to do so. In 1995, Annex VII contained 26 member countries of the OECD: today it contains 30. This year it will also contain six member states of the European Community who are not members of the OECD. In just over eight years, the number of countries listed in Annex VII will have increased from 27 to 37 without any oversight by the Parties to the Basel Convention.

It should also be noted that the Parties have been able to develop a capacity to oversight amendments to Annexes VIII and IX. In February 1998, Decision IV/9 incorporated List A, identifying wastes characterized as hazardous and List B, identifying non-hazardous wastes, as Annex VIII and Annex IX respectively. Less than two years later, in December 1999, Decision V/24 adopted a procedure for reviewing and adjusting these lists of wastes. Less than five years later, in December 2002, Decision VI/35 adjusted the lists for the first time.

The fact that good progress has been made in developing a procedure for adjusting Annexes VIII and IX raises further questions as to why no progress has been made with Annex VII. Of course, Decision IV/8 decided to leave Annex VII unchanged until the amendment contained in Decision III/1 entered into force, but this does not preclude the development of a procedure for amending Annex VII, even if such a procedure is not yet in use.

Canada

Ottawa, Ontario
K1A 0H3
January 22, 2004

Ms. Sachiko Kuwabara-Yamamoto
Executive Secretary
Basel Convention Secretariat
15, Chemin des Anemones
1219 Chatelaine (Geneva)
Switzerland

RE: Canadian Input on the Analysis of Issues Related to Annex VII Paper prepared by the Basel Secretariat:

Dear Ms. Kuwabara-Yamamoto:

At OEWG 2 held in Geneva last October countries were asked to submit comments on the Basel secretariats paper "Analysis of Issues Related to Annex VII". Canada feels that the secretariat paper presented at OEWG 2 appears to be a balanced and a representative view of positions taken by various parties on the Annex VII issue. It is for this reason Canada's comments, at this time, reflect minor changes focusing primarily on attachments to the paper rather than substantive changes within the paper.

In order to keep the number of documents referenced within reasonable limits, Canada suggests UN and OECD documents only be used. Canada believes that referencing the following documents would be useful in assisting countries in answering questions related to the Ban amendment:

- Basel Convention Guidelines (May want to be selective on the guidelines identified; specifically those related to ESM)
- Implementation of Decision IV/8, May 2001, Environmental Resources Management
- Institutional and Legal Framework for the Implementation of Decision III/I, 29 May 2001, Kummer EcoConsult
- Capacity Building Needs of Developing Countries, June 2003, Center for Environmental Technologies
- Trade Measures in Multilateral Environmental Agreements, October 1999, OECD Joint Session of Trade and Environment
- Also retain the UNCTAD; Lead Acid Battery Case Study and Zinc Dross. Case Study already referenced in text

Please do not hesitate to contact me should you require further information.

Yours sincerely,

France Jacovella, P.Eng.
Director, Transboundary Movement Branch
Environment Canada
Tel: (819) 956-5263 / Fax: (819) 997-3068
E-mail: france.jacovella@ec.gc.ca
cc. Pierre Portas, Senior Programme Officer / Technical. Basel Convention Secretariat

Egypt

1. General comments

The main purpose of the analysis is to assist countries to ratify and implement the Ban Amendment. Although the Ban Amendment has yet to become a legally binding instrument, it is morally binding and has successfully prevented large scale dumping of hazardous wastes in developing countries. The Ban Amendment has played an essential role in protecting human health and the environment against the adverse effects that may result from such wastes. It represents a significant achievement for the environment.

Priority should be attached to attaining the necessary ratifications that would expedite its entry into force.

2. Examination of the environmental, economical and other implications of annex VII, paragraph 12

It should be made clear that by preventing the transfer of hazardous wastes to developing countries, the Ban Amendment constitutes a major step towards achieving environmentally sound management.

3. Evaluation of the institutional and legal framework for the implementation of decision III/1 – paragraph 16

Paragraph 16 needs to be revised and corrected. The lack of domestic legislation in developing countries (non-Annex VII countries) does not constitute a legal obstacle to the ratification of the Ban Amendment.

The Ban Amendment places requirements on developed countries (annex VII countries) to ensure that hazardous wastes are not exported to non-annex VII countries. It is assumed that developed countries have the capacities to develop the institutional and legal infrastructure to ratify and implement the Ban Amendment.

4. Evaluation of capacity building assistance to non-Annex VII countries – paragraph 23

The Basel Convention Regional Centres should play a principal role in facilitating the ratification of the Ban Amendment. Workshops and seminars should be organized to improve understanding of the Ban Amendment and raise awareness of the importance of its ratification.

5. Evaluation of the steps taken to implement decision III/1 – paragraph 30

With regard to the relationship between Annex VII and agreements under the World Trade Organization (WTO), it is important to note that free trade does not apply to hazardous wastes.

6. Future Prospects – paragraph 37

Paragraph 37 needs revision and clarification. It does not give consideration to the environmental and health effects of recycling hazardous wastes.

Israel**STATE OF ISRAEL****Ministry of the Environment**

ISRAEL: Comments on issues related to the analysis of Annex VII – Phase II, Presented to the Secretariat of the Basel Convention according to Decision OEWG-II/6

January 2004

Israel wishes to express its appreciation for the effort and the work done by the Secretariat in the studying and analyzing various aspects and problems emerging from Annex VII, and to make the following comments and observations in accordance with Decision OEWG-II/6.

I. Examination of the environmental, economical and other implications of Annex VII.

1. Paragraph 4 of Annex III to the report of the second session of the Open-Ended Working Group, states: *"In order to provide an accurate picture of the situation, it should be noted that many Parties do not encounter major difficulties with regard to the concept of environmentally sound management."* (henceforth - **ESM**).

2. One of the major difficulties mentioned in phase II of the Annex VII study and discussed in the meetings of the Parties, is the absence of a clear definition of the concept of ESM. In order to overcome this absence, some criteria should be determined, in addition to those that already exist in the Convention (mainly in Chapter IV), phase II of the analysis of issues related to Annex VII and in the recent publication on ESM published by the Secretariat, including the following:

(1) The availability of legal and administrative tools, which will enable a Party to achieve ESM of hazardous wastes are:

- a. Appropriate legislative infrastructure: laws, regulations, directives and guidelines;
- b. Proper control and implementation tools, including surveillance, monitoring and reporting activities;
- c. Elaboration of emergency response capacity to treat chemical accidents.

(2) An appropriate level of industrialization and technical development, in particular of industrial resource recovery, recycling, reclamation, direct re-use or alternative uses.

(3) The capacity to handle hazardous wastes in an environmentally sound manner, measured by its -

- a. Technical capacity for recovery and recycling of secondary raw materials;
- b. Ability to support a viable secondary raw material recovery and recycling industry;
- c. Existing capacities for environmentally sound treatment and disposal of hazardous wastes.

(4) The potential contribution to the development of cleaner production technologies and enhancement of

sustainable development on the national, as well as, on the regional and global levels.

In addition, a Party that has ESM proven capacities, as specified, should be required to refrain from exporting hazardous wastes and other wastes to countries lacking appropriate treatment and management capacities.

II. Evaluation of the steps taken to implement decision III/1

3. Following are comments relating to Paragraph 12 of Annex III to the report of the second session of the Open-Ended Working Group that states: *"The issue of the existing structure of Annex VII as a potential obstacle to the ratification of the Ban Amendment was raised by some Parties"*.

4. The division between Annex VII countries and non-Annex VII countries does not reflect the level of professional, technological and institutional environmental treatment of hazardous wastes in the different countries, as elaborated in Paragraph 17 of the first draft of the analysis of issues related to Annex VII prepared by the Secretariat (Document UNEP/CHW/OEWG/2/7), that states:

"Marked differences are noted among non-Annex VII countries in terms of their capacity to manage hazardous wastes. Non-Annex VII countries include some countries with a capacity for the environmentally sound management of hazardous wastes and other wastes. In this case, a capacity for the environmentally sound management may often be specific to particular hazardous waste streams. . . ."

Although there is a less marked difference in waste management performance among the Annex VII countries, a number of these countries, in particular those with economies in transition that are members of OECD, are still developing, or reinforcing their waste management infrastructure and recovery and recycling capacity. It should be noted that the environmentally sound management capacity of some Annex VII countries may also be confined to certain specific hazardous waste streams."

It is our understanding that the analysis emphasizes the importance of making a specific assessment of environmental capacities of each individual Party in relation to its inclusion in annex VII.

5. An inevitable conclusion from the aforementioned is that the export of hazardous wastes to Annex VII countries that lack the infrastructure and capacity to manage them in an environmentally sound manner, appears to be in contradiction to the objectives of the Basel Convention as expressed in Article 4 Paragraphs 8 and 10 that state:

Paragraph 8- *"Each Party shall require that hazardous wastes or other wastes, to be exported, are managed in an environmentally sound manner in the State of import or elsewhere."* ;

Paragraph 10- *"The obligation under this Convention of States in which hazardous wastes and other wastes are generated to require that those wastes are managed in an environmentally sound manner may not under any circumstances be transferred to the States of import or transit."*

The above-demonstrated inconsistencies raise legal and constitutional issues that should be considered and solved.

6. As stated in Article 4 Paragraph 9: *"Parties shall take the appropriate measures to ensure that the transboundary movement of hazardous wastes and other wastes only be allowed if: ... (b) The wastes in question are required as raw material or recovery industries in the States of import;"*

It seems that due to the present structure of Annex VII, it is not possible to meet this objective of the Convention.

7. It should also be noted, that since the adoption of decision IV/8 - *"to leave Annex VII unchanged until the amendment contained in Decision III/1 enters into force,"* some countries, among them those with economies in transition, have joined the OECD and other countries are expected to join the EU in the near future. These countries therefore will automatically be included in Annex VII.

In addition to the legal implications of this situation *vis a vis* Decision IV/8, it is also important not to overlook its environmental implications.

8. Concerning questions raised during the second session of the Open-Ended Working Group in regard to *"The relationship of Annex VII with international trade rules and WTO was raised as an important issue"*, we support the expressed notion *"that it would be useful for the secretariat to prepare a text containing factual information."*

Within this context the following matters might be considered *inter alia*:

- a. Are wastes intended for recycling or recovery treatment defined as a "product" according to WTO rules;
- b. What are the impacts on international trade caused by the present structure of Annex VII, and especially regarding hazardous waste recycling and recovery industries in non-Annex VII countries, compared to similar industries located in Annex VII countries.

It is worthwhile noting that these matters are referred to in Chapters I, XI, XII and XX of the GATT agreements and might be considered.

We expect that these comments will be considered and integrated in the future study on issues related to Annex VII.

Japan

February 2004

Japan appreciates the secretariat's work in preparing the draft of the analysis contained in UNEP/CHW/OEWG/2/7. Decision OEWG II/6 invites the Parties to submit comments on the draft. Japan considers that the Analysis should be objective and neutral, and should address the Parties' concerns adequately, in order to provide the Parties with enough information to consider the Annex VII issue, a necessary step towards the ratification of the Ban Amendment. From this point of view, Japan wishes to submit the following specific comments.

1. Japan considers that the cases in paragraph 21, which are gathered from existing official publications, are useful in understanding the actual implications of Annex VII. Japan welcomes the possible addition of cases as long as they are also from existing official publications. Adding cases from other sources should be avoided, because otherwise there might be numerous cases ranging in quality which would spoil the balance and quality of the report.

2. Regarding the issue of the relationship with agreements under the WTO, taking into account the discussion at OEWG2, Japan suggests that the following paragraph of factual information be added after paragraph 32.

32 bis. Regarding the relationship with agreements under the WTO, in the past meetings of the Basel Convention, some parties, in view of the importance of a mutually supportive relationship between trade and the environment, supported the listing of parties in Annex VII based on the parties' waste-management capacity rather than OECD membership. There have also been some studies published that analyze the issues of this relationship.¹ Under the WTO, the Committee of Trade and the Environment (CTE) has been undertaking negotiations on "the relationship between existing WTO rules and specific trade obligations (STOs) set out in multilateral environmental agreements (MEAs)" according to the Doha Ministerial Declaration adopted in November 2001. To date, its discussions have been focused on developing a common understanding of the mandate, and the results of the negotiations have yet to be seen.

¹ For example: Robert Housman, et al., *The Use of Trade Measures in Select Multilateral Environmental Agreements*, UNEP (Environment and Trade 10), 1995.

Basel Action Network (BAN)

6 February 2004

General Comments

The mandate of the terms of reference for phase II of the Annex VII analysis states that “the purpose of this analysis is to explore, in a transparent, objective and comprehensive manner, health, environmental, social, economic and other issues related to Annex VII that are considered important to the Conference of Parties and to assist Parties to ratify the ban amendment.”

The requirements are unequivocal that the exploration of the issues must be transparent, objective and comprehensive, and be included with a view to assist Parties in ratifying the Basel Ban Amendment. There are certain points in the present document that we believe are likely to fail the test of meeting fair standards of objectivity and comprehensiveness and moreover are, on balance, not aimed to assist Parties to ratify the ban amendment.

One crucial point that has been bypassed often is the economic costs on the environment and human health - the price tag for pollution. BAN has consistently advocated that this type of study or analysis be undertaken in order to fully comprehend the repercussions of waste trade and its impact on the local environment and community. This is the other side of the economic coin of the trade in hazardous wastes that is consistently unaccounted for. The terms of reference bears out the need for this type of analysis, and yet this has never been done.

There are also areas of flagrant imbalance and non-objectivity in the analysis. One striking example is right at the very beginning, when the list of issues regarding implementation of the ban amendment all contain negatives and no positives. This imbalanced portrayal belies the fact that in 2003, 8 ratifications occurred for the Ban Amendment and one has already occurred in January of 2004. The amendment has been on a steady pace of achieving more than 5 ratifications per year and recently this average is seeing a clear increase. Compared with a similar instrument like the London Protocol (receiving 2.66 ratifications per year, thus far) that bans the dumping of industrial wastes at sea, the Basel Ban Amendment has received excellent support. Presently there are now 44 total ratifications in total. Surely, these 44 nations see something positive or have experienced something positive in ratifying the Ban Amendment. Have these experiences been translated or communicated into the analysis? Wouldn't the experiences of those that have ratified the ban be vital with respect to the consideration of assisting parties to ratify the ban? So far the paper is lacking in this regard, and as such reveals a certain imbalance and lack of objectivity in contradiction to its mandate.

The comments that follow are consistent with the mandate to not consider new issues or attempt to raise new issues not dealt with already in the current analysis. The comments below are given to help steer the present analysis closer to what the terms of reference have originally called for in terms of balance, objectivity and with a view to assisting the Parties to Ratify the Ban Amendment.

Specific Comments

III. A.

There is a need to mention the positive experiences of Parties who have ratified the Ban Amendment in this survey or summary of issues raised by Parties. Recently, the Ban has seen an increase in ratifications with 9 in the last 13 months. The Parties who have ratified the Amendment have something valuable to contribute in the analysis, as to why they ratified, and

the noted benefits of doing so. Thus, it is imperative to include such positive issues in order to arrive at a balanced and well-rounded analysis of the Annex VII issue. As this new text must be provided for by those countries that have ratified the ban, we would request that the Parties that have already ratified the ban be asked to submit some observations in this regard before the text is finalized.

IV. B. 1.

Para. 13. This paragraph is incorrect in that some of the noted “principles” are in fact obligations of the Convention. The “proximity principle” which does not in fact exist in the Convention is therefore not really of significant standing in the Basel Convention. Finally, despite the fact that the self-sufficiency principle and least transboundary movement principles are actually obligations of the Convention, it is incorrect to state so vaguely: “recognizing that the application of those principles will vary from country to country.” Finally, in stating unequivocally that: “in some cases, however environmentally sound and efficient management of certain hazardous wastes may be achieved at specialized facilities located in another country”, the statement in a way flies in the face of the obligations of the Convention, and likely the Ban Amendment. Further, there is no recognition of Annex VII itself here which the analysis is supposed to be about. Annex VII was created to respect the special needs of developing countries as well as the special responsibilities of developed countries. Therefore, we strongly suggest that the text should be dramatically altered to read as follows:

The Convention calls on all Parties to minimize the transboundary movement of hazardous wastes and to strive for national self-sufficiency in hazardous waste management. Thus there must be an effort to build capacity for such environmentally sound management in each country in order to reduce transboundary movements. Developed countries have a special role in this regard vis a vis, developing countries.

Para. 14. The first sentence of paragraph 14 makes an assertion of fact, which we believe to be true, yet it is not supported by any citation of evidence or sources proving the factual claim. The study mentioned in the second sentence only examines zinc and lead, and would thus, fail to qualify as supportive of the previous assertion in the paragraph.

The statement in subparagraph (a) is fine, however, it discusses a percentage of the total zinc wastes traded that are in fact hazardous under the Convention and this bears no relation to subparagraph (b) which starts a discussion about competitiveness. In fact, subparagraph (b) doesn’t assert anything other than the fact that something “could” occur. The fact that something “could” occur in the future, is hardly relevant here, as the list of things that “could” occur, should they be cited in full would be a long list indeed.

For the foregoing reasons, we suggest that paragraph 14 be deleted as being unhelpful in fulfilling the mandate of the study.

IV. B. 2.

Para. 16. There is a significant logical flaw in the conclusion arrived at by the study as stated in the first sentence in this paragraph, as it misinterprets the requirements under the Basel Convention and Decision III/1. BAN had commented on this fact earlier in our comments on the consultant’s incorrect conclusion.

While the Convention imposes an obligation on all Parties, Decision III/1, on the contrary, only calls for implementation on the part of Annex VII countries, namely those countries that are member group of mostly industrialized nations called the Organization for

Economic Cooperation and Development (OECD), the European Union and Liechtenstein. Thus, it is incorrect to assert that the countries that must implement the ban have inadequate capacity or resources to do so. Rather, the ban was designed precisely to place responsibility on countries that were certain to have all of the infrastructure and economic development to implement the ban. The thrust of the entire paragraph -- that OECD countries lack the infrastructure, resources or legislative capacity to implement the ban, which only they must implement is an utter falsehood. Moreover, the study with its faulty conclusion fails in fulfilling the terms of reference requirement of assisting parties in ratifying the Ban Amendment, as it regrettably discourages any ratification from occurring. For these reasons the paragraph should be deleted.

IV. B. 3.

Para. 17. Again this section is a discussion of the implementation of decision III/1 which only must be implemented by Annex VII countries. Therefore, we cannot understand the relevance of statements about the lack of capacity of non-Annex VII countries. As there is little revealed in this paragraph regarding OECD countries, we suggest deleting this paragraph. At the very least all references to non-OECD countries should be deleted as the paragraph is meant to deal with implementing Decision III/1.

Para. 18. The discussion in the final three sentences refers to a matrix and a baseline. As this analysis is not meant to be a summary of other papers but a stand alone document, we would suggest deleting the last three sentences of this paragraph.

Para. 19. Oddly there is no discussion here about the increase or decrease of hazardous waste flows from Annex VII countries to non-Annex VII countries as plotted over time. This is the most relevant data with respect to the ban as it is not designed to minimize other waste flows, only those from Annex VII to non-Annex VII. This data can also help Parties revisit the significance of the ban which can ultimately assist them in ratifying the Ban Amendment. All others are irrelevant to the issues concerning the ban and Annex VII.

Para. 21. The cautionary statement in para. 20 requires that the two cases cited in this paragraph be sufficiently described to highlight the particular nature of the cases to the country in which they were derived from. Having had the opportunity to look at the actual paper cited for the first case, BAN noted some objective details missing from the case summary. We suggest the following adjustments in order to more accurately reflect the paper in question:

One non-Annex VII country developed a lead recovery industry in the late 1980s due to the huge capital outlay needed to mine its lead deposits. In spite of an admitted lack of a national effort to collect domestic used batteries, the country made a determination that the national supply of lead through secondary sources was insufficient to ensure a viable and efficient use of the lead smelters. As a consequence, the country imported lead-acid batteries principally from a single source in an Annex VII country until 1994. As the lead recycling industry developed in this non-Annex VII country, lead poisoning in workers and the community around the recycling plants became commonplace. In fact, the rise in lead poisoning incidents and the hazards of such recycling plants prompted some regions in the same non-Annex VII country to shut down all used battery processing factories.

In the process of amending the environmental law, the legislative assembly of that country requested the banning of hazardous waste imports, with exception of used batteries, up to the year 2002. The exemption was based on the commonly used argument by the battery recycling industry that because the supply from domestic sources was insufficient to reach an economic production level, used batteries were

needed to be imported until the local supply could satisfy the economic needs. Yet this argument was made in the absence of an adequate domestic collection system for locally generated waste batteries.

Meanwhile, the Annex VII country (principal source of used batteries) stopped its export of used lead-acid batteries, in line with decision III/1. Since 1998, the used batteries are imported principally from non-Annex VII countries. In the meantime, progress in encouraging and improving the collection of used batteries at the local level remain slow. In addition, small-scale recyclers which do meet the country's environmental and health requirements are still operating illegally.

BAN has not been able to find the source of the second case noted here. But given the experience in reading the case above, and comparing it to the summary, we believe it would be prudent to allow the Parties to actually review this case. In order to arrive at a more transparent and objective summary of the case, BAN suggests that subparagraph (b) be placed in square brackets and remain open for modifications until the source for the case has been given to Parties for review, and for the Parties to weigh in with comments on whether the case has been adequately summarized and whether its argumentation is sound.

IV. B. 5.

Para. 27. This paragraph largely claims that there is a lack of data regarding the health impacts from hazardous waste management operations. This is certainly not the case. There are numerous studies in existence. In fact several studies even exist which document health effects from the importation and subsequent handling and management of toxic waste. Some that come to mind are studies conducted in Cambodia following the importation of mercury-laden waste from Taiwan which included several deaths as a result. Likewise, imported mercury wastes caused the death of 2 workers at the Thor Chemical plant in South Africa. Studies of shipbreaking workers that have been done also, evaluate health impacts and the prospective deaths from cancer from asbestos alone. It is vital that the Secretariat cite this existing and published information. There is no relevance here with respect to illegal traffic and thus this sentence should be removed, particularly as it seems to imply that there are no health impacts from the legal traffic of hazardous wastes. Finally, the reference to an Annex III list of "wastes" is incorrect, as Annex III is a list of hazardous characteristics and not wastes.

IV B. 6.

Para. 29. Here it must be noted that ratification and implementation are two different things. In other words it is clear that while all Parties are urged to ratify the Convention, only the Annex VII countries are to implement it. The group of countries that were among the first to implement the Basel Ban was the European Union member states. Therefore, we propose that the EU experience and steps for implementation be reflected here. The EU experience is a well-documented, the existence of which, belies the assertion here that the information does not exist.

IV. B. 7.

Para. 32. Here the term "sham" recycling needs to be augmented. Sham recycling refers to recycling that is not really recycling at all. What is more often the case is "dirty" recycling – highly polluting operations. Thus we would recommend the formulation: "sham and dirty recycling". The final sentence in this paragraph is extremely misleading. The implication here is that only those that freely trade in waste might get access to newer and cleaner technologies. This is patently false. Everyone in the world has access to clean

technologies if they are made available. There are no trade restrictions of any kind on clean technologies! This latter sentence needs to be scrapped.

Para. 33. This paragraph is extremely imbalanced and not all objective. Suddenly the text is calling wastes “secondary raw materials”. These are “wastes” and in fact are hazardous or other wastes in the Basel context which are known to cause environmental harm when disposed or recycled. Nothing in this paragraph suggest why scrap and wastes migrate from Annex VII to non-Annex VII countries. This is quite amazing as it is a well-known phenomenon which spawned the Basel Convention itself. Hazardous waste migrates to take advantage of cheaper recycling labor, lack of environmental and occupational protections etc. found in developing countries or weaker economies. It is small wonder that the flows of wastes from Annex VII to non-Annex VII countries and not the other way around. The Basel Convention calls for selfsufficiency in waste management. This paragraph seems to have forgotten this obligation completely. Further, this paragraph implies that all that is necessary to allow the export of hazardous wastes from Annex VII countries to non-Annex VII countries is enhanced technology in the non-Annex VII country. However, regardless of technology levels, pollution is still transferred. What remains unanswered by technological “solutions” are the incentives to prevent waste in the first place, the fact that technology alone cannot guarantee levels of environmental and human health protection, and finally, the justice issue of allowing weaker economies to receive a disproportionate burden of the world’s waste simply because they are relatively poor. This paragraph must be deleted.

New Para. 34 The contents in item 7 do not properly bear or coincide with the terms of reference it was intended to fulfill. The heading in Item 7 refers to an evaluation of the cost-benefit and effectiveness of hazardous waste recycling versus health risks and environmental damage, yet no mention is made of existing efforts in the international community to determine the environmental costs of the emissions of toxic substances. One such study was commissioned by the Nordic Research Council on the economic valuation of emissions of several toxic substances. In this regard, we suggest that the following paragraphs be inserted as a new paragraph 34, under item 7:

There have been efforts in placing negative economic values to the adverse environmental effects of toxic substances. One such effort was commissioned by one Annex VII country. It was designed as an aid to policy-makers in arriving at a rational decision on how to prioritize measures in curbing pollution from particular hazardous substances.

In determining the economic value for a particular substance, the study compiled recent weighting/ranking methodologies on the adverse impact of several substances, particularly their physical effects. The monetary values were based on surveys conducted by several Annex VII countries. From there the study developed a best, low, and high estimate of the environmental cost of a particular substance. An anchor substance was chosen in order to come up with an evaluation of the other substances. In this case, the study chose lead as the anchor substance due to its known effects, and for the numerous studies that have been carried out to assess the damage caused by its emissions.

Some of the resulting values of the study are:

<i>Substance</i>	<i>Best estimate*</i>	<i>Low estimate*</i>	<i>High estimate*</i>
<i>Dioxin</i>	<i>2.2E+06</i>	<i>8.4E+05</i>	<i>6.0E+06</i>
<i>TBT</i>	<i>261</i>	<i>98</i>	<i>697</i>
<i>Chromium 6+</i>	<i>163</i>	<i>61</i>	<i>434</i>
<i>Mercury</i>	<i>111</i>	<i>41</i>	<i>296</i>
<i>PCB</i>	<i>96</i>	<i>36</i>	<i>256</i>
<i>Cadmium</i>	<i>32</i>	<i>12</i>	<i>87</i>
<i>Lead</i>	<i>6.1</i>	<i>2.3</i>	<i>16</i>

* Prices are in Norwegian Kroner per gram.

Thus, if a 25,000 metric ton capacity/year lead-acid battery recycling plant operating in a non-Annex VII country, importing lead acid batteries has a 98% lead recovery rate, with 2% fugitive emissions, that means 500 tons of lead per year is being emitted in the vicinity of the plant. Applying the study values, based on the low estimate of NOK 2.3 per gram of lead emission, the low estimate would equate to an environmental cost of the 500 tons of lead emission as NOK 1,150,000,000 (US\$166,064,982) per year to the country where this particular plant is located. Under the best estimate the environmental cost would be pegged at NOK 3,050,000,000 (US\$440,433,213) per year.

The values presented under this study and others like it can greatly aid Parties in their analysis of the economic benefits and cost of hazardous substances. Too often these costs resulting from emissions and residues in even state of the art recycling operations are not calculated, and result in cost externalities and dramatic economic inefficiencies.

V. 8.

The title of this section and the content of paragraphs 34 and 35 have little to do with one another. What is needed here is an examination of how the Ban Amendment impacts waste minimization. We maintain that there is a strong correlation. Therefore we suggest the following paragraph.

New Paragraph for Section 8:

The ban, by closing off cheap and dirty options for waste management can force cost internalizations which in turn drive “green design” and thus hazardous waste minimization. One such example is found in the European Union which after ratifying and implementing the Basel Ban in 1997, was thereafter forbidden from exporting electronic wastes to weaker economies. As a result, the pressure to design for less toxics and recycling and enhanced collection became far more acute in Europe, in comparison to North America where a free trade in electronic wastes to non-Annex VII countries persists to this day. It is largely due to the closing-off of the export “escape hatch” that has pressed Europe into more rapidly adopting legislation to enhance European recycling of electronic waste and to phase-out toxic inputs to electronic products to ensure that such domestic recycling has less economic and environmental impacts within Europe.

VI.

Paras. 36 and 37. The pronouncements made in these paragraphs were more accurate for the period from the mid to the late 1990's than with the realities of the new decade. For the most part the global privatization trend has dissipated, and in its wake lies the ruins of the failure of deregulation in crucial industries. What paragraph 36 misses out on is that with the new century there have been increasing efforts globally to ratchet up corporate responsibility

for their products through legislation. At times this effort has been called extended producer responsibility, and has contributed to more environmentally sustainable designs of products and production processes. So far these trends are noticeable in Europe, China and Japan, e.g. with respect to take-back legislation with respect to automobiles and electronics. Further, para. 37 fails to mention that the advent of new sustainable designs ushers less toxic secondary materials that can be recycled and used by rapidly industrializing countries without the accompanying pollution.

For the above reasons, we suggest the following modifications to paras. 36 and 37:

36. Since the mid-1990's, there has been a gradual and significant policy shift in many countries, both Annex VII and non-Annex VII, away from a strong focus on regulation towards market driven opportunities. The deregulation trend has tapered down as failure in certain sectors covered by deregulation has become apparent. In the area of waste management, the new century has brought on a renewed focus on the polluter pays principle and its extension to post-consumer waste pollution – calling for manufacturer responsibility in the full life cycle management of their products or extended producer responsibility (EPR). One of the first applications of EPR was with automobiles, and now has captured one of the largest sources of post-consumer wastes – electronics. EPR provides a feedback mechanism that internalizes costs back to those first responsible for creating them. This mechanism leads to obvious economic incentives to drive cleaner production and greener products.

37. Rapidly industrializing countries have a growing demand for secondary raw materials to sustain the pace of their social and economic development. Unfortunately, in order fuel this growth these countries are forced to take in hazardous and other wastes together with the secondary raw materials that they require materials which in many instances need not be hazardous, and polluting were there more attention paid to hazardous use reductions upstream. In this context, there is a critical need for EPR as one tool to drive the development and application of environmentally sustainable designs of products and processes, and to build a capacity for the transfer of clean production technologies, and also for environmentally sound recovery or recycling of non-hazardous wastes.

Para. 38. There are key elements that are not mentioned in the future work, which we suggest should be included as new sub-paragraphs f and g:

f. Evaluation of the implementation experience of countries that have ratified Decision III/1.

g. Development of economic valuation of the health and environmental impact of hazardous substances.

第三部分. 不限成员名额工作组在其第三届会议上 对此项议题发表的评论意见汇编

A. 不限成员名额工作组第三届会议报告中论及与附件七所涉议题的分析有关的内容节录

“57. The Working Group took up the item at its 6th meeting, on the afternoon of 28 April. In its consideration of the item, it had before it an analysis prepared by the Secretariat for the Group’s second session on issues related to Annex VII (UNEP/CHW/OEWG/2/7), a consolidation of comments received on the study during the period between the Group’s second and third sessions (UNEP/CHW/OEWG/3/INF/6) and a note by the Secretariat prepared for the current session on analysis of issues related to Annex VII (UNEP/CHW/OEWG/3/10).

58. The representative of the Secretariat introduced the documentation under the item and reviewed the work done to date. Noting that five Parties and one environmental non-governmental organization had provided comments on document UNEP/CHW/OEWG/2/7 during the inter-sessional period, she asked for further comments and guidance from the Parties so that the analysis could be finalized in time for the seventh meeting of the Conference of the Parties, as contemplated in decision VI/34 of the Conference of the Parties and decision OEWG-II/6.

59. There was considerable debate under the item. A number of representatives, one speaking on behalf of a regional grouping, said that the analysis contained in document UNEP/CHW/OEWG/2/7 should be finalized during the Working Group’s current session, in accordance with decision VI/34 of the Conference of the Parties. Those representatives repeatedly stressed that the point of the analysis, as stated in the preamble to decision VI/34, was to assist Parties to ratify the Ban Amendment contained in decision III/1, which they characterized as vital to the environmentally sound management of hazardous wastes in developing countries. The importance of the Basel Convention regional centres in regard to facilitating ratification and implementation of the Ban Amendment was highlighted.

60. A number of representatives drew attention to the enormous problems posed for developing countries by the massive new wave of exports of end-of-life equipment and pointed out the consequent importance of the Ban Amendment.

61. The representatives of two environmental non-governmental organizations criticized the draft analysis for presenting what they called an unrealistic picture of the costs and benefits to a country of ratifying the Ban Amendment. That, they said, would discourage developing countries from ratifying the amendment, which was arguably the most significant environmental achievement since the 1992 United Nations Conference on Environment and Development, and reflected an apparent effort on the part of some Parties to undermine the amendment. They argued that the analysis was unbalanced and did not serve its intended purpose.

62. Many representatives outlined proposed changes to the analysis and the draft decision contained in the note by the Secretariat, in the light of which the Working Group agreed to establish a contact group, chaired by Mr. Pavel Suian (Romania), with the task of reviewing how to deal with the comments submitted and preparing a draft decision on the item for the Working Group and elements for a decision by the Conference of the Parties. A number of representatives, noting the history of difficult negotiations under the item, argued that it was essential for the contact group to limit itself to those tasks and to avoid revisiting issues on which agreement had previously been reached or raising new issues.

63. The Working Group took up the item again at its 9th meeting, on the morning of Friday, 30 April, at which time it adopted a decision on the item on the basis of the draft contained in

the relevant conference room paper. The decision as adopted is set out as decision OEWG-III/5 in annex I to the present report.

64. At the same meeting, the Working Group approved the text of a draft decision on the item for possible adoption by the Conference of the Parties at its seventh meeting on the basis of the draft decision contained in the relevant conference room paper. The draft decision as approved by the Working Group is contained in annex II to the present report.”

B. 巴塞尔公约行动网络针对与附件七相关的议题的分析 (第二阶段)提交的评论意见¹(2004 年 4 月)

General Comments

After many years of work and many hundreds of thousands of dollars spent in meeting costs on the Annex VII study, the result is a paper that *does not* assist the Parties to ratify the Ban Amendment as is its mandate. Indeed the document seems to be intent on doing the opposite.

As it stands now, the study suffers from bias and imbalance, with far more statements that appear to be critical of the ban than statements illustrating its obvious merits.

The mandate of the terms of reference for phase II of the Annex VII analysis states that “the purpose of this analysis is to explore, in a transparent, objective and comprehensive manner, health, environmental, social, economic and other issues related to Annex VII that are considered important to the Conference of Parties and to assist Parties to ratify the ban amendment.”

The requirements are clear that the exploration of the issues must be transparent, objective and comprehensive, and be included with a view to assist Parties in ratifying the Basel Ban Amendment. The present document fails the test of meeting fair standards of objectivity and comprehensiveness, and moreover is, on balance, not aimed to assist Parties to ratify the ban amendment.

One striking example is found at the very beginning of the document, where the list of issues regarding implementation of the Ban Amendment all contain negatives and no positives. This imbalanced portrayal belies the fact that in 2003 8 ratifications occurred for the Ban Amendment and one has already occurred in January of 2004. The amendment has been on a steady pace of achieving more than 5 ratifications per year and recently this average is seeing an increase. Compared with a similar instrument like the London Protocol (receiving 2.66 ratifications per year, thus far) that bans the dumping of industrial wastes at sea, the Basel Ban Amendment has received excellent support. Presently there are now 44 total ratifications in total. Surely, these 44 nations see something positive or have experienced something positive in ratifying and/or implementing the Ban Amendment. Most significantly the Annex VII countries that have implemented the Ban (including the entire European Union) have not had their very positive experience translated or communicated into the analysis. Wouldn't the experiences of those that have ratified the ban be vital with respect to the consideration of assisting parties to ratify the ban? So far the paper is lacking this vital information, and as such reveals a certain imbalance and lack of objectivity in contradiction to its mandate.

Another crucial point that continues to be bypassed is the economic costs on the environment and human health - the price tag for pollution. While there has been repeated mention of economic benefits from toxic waste, no recognition is made of the far greater costs that are hidden in medical costs, loss of arable land, fisheries, contamination of air, water, remediation

¹ 对先前提交的评论意见的修订。

costs, enforcement costs etc. Without this kind of economic assessment of these externalized costs the study lacks all credibility.

The comments that follow are consistent with the mandate to not consider new issues or attempt to raise new issues not already dealt with in the current analysis. The comments below are given to help steer the present analysis closer to what the terms of reference have originally called for in terms of balance, objectivity and with a view to assisting the parties to ratify the Ban Amendment.

Specific Comments

III. A.

There is a need to mention the positive experiences of Parties who have ratified the Ban Amendment in this survey or summary of issues raised by Parties. Recently, the Ban has seen an increase in ratifications with 9 being deposited in the last 13 months. The Parties who have ratified the Ban Amendment have something valuable to contribute in the analysis, as to why they ratified, and the noted benefits of doing so. Thus, it is imperative to include such positive issues in order to arrive at a balanced and well-rounded analysis of the Annex VII issue. As this new text must be provided by those countries that have ratified and/or implemented the ban, we would request that those parties be asked to submit some observations about this experience before the text is finalized.

IV. B. 1.

Para. 13. This paragraph is incorrect in that some of the noted “principles” are in fact obligations of the Convention. The “proximity principle”, on the other hand, does not in fact exist in the Convention and is therefore not of significant standing in this paper. Further, despite the fact that the self-sufficiency principle and least transboundary movement principles are actually obligations of the Convention, it is incorrect to state these obligations so vaguely as: “recognizing that the application of those principles will vary from country to country.” Further, the statement, “...in some cases, however environmentally sound and efficient management of certain hazardous wastes may be achieved at specialized facilities located in another country”, flies in the face of the obligations of the Convention, and likely the Ban Amendment. Further, there is no recognition of Annex VII itself here which the analysis is supposed to be about. Annex VII was created to respect the special needs of developing countries as well as the special responsibilities of developed countries. Therefore, we strongly suggest that the text be dramatically altered to read as follows:

The Convention calls on all Parties to minimize the transboundary movement of hazardous wastes and to strive for national self-sufficiency in hazardous waste management. Thus there must be an effort to build capacity for such environmentally sound management in each country in order to reduce transboundary movements. Developed countries have a special role in this regard, vis-à-vis, developing countries.

Para. 14. The first sentence of paragraph 14 makes an assertion of fact, which we believe to be true, yet it is not supported by any citation of evidence or sources proving the factual claim. The study mentioned in the second sentence only examines zinc and lead, and would thus, fail to qualify as supportive of the previous assertion in the paragraph.

The statement in sub-paragraph (a) is fine. However, it discusses a percentage of the total zinc wastes traded that are in fact non-hazardous under the Convention and this bears no relation to

sub-paragraph (b) which begins a discussion about competitiveness. In fact, sub-paragraph (b) doesn't assert anything other than the fact that something "could" occur. The fact that something "could" occur in the future without evidence of its propensity to do so, is hardly relevant here, as the list of things that "could" occur, should they be cited in full would be a long list indeed.

For the foregoing reasons, we suggest that paragraph 14 be deleted as being unhelpful in fulfilling the mandate of the study.

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While the Convention imposes obligations on all Parties, Decision III/1, on the other hand, only calls for implementation on the part of Annex VII countries, namely those countries that are members of the Organization for Economic Cooperation and Development (OECD), the European Union and Liechtenstein. Thus, it is incorrect to assert that the countries that must implement the Ban Amendment have inadequate capacity or resources to do so. Rather, the Ban Amendment was designed precisely to place responsibility on countries that were certain to have all of the infrastructure and economic development to implement the ban. The thrust of the entire paragraph -- that countries lack the infrastructure, resources or legislative capacity to implement the ban, when only the OECD states must implement it, is an utter falsehood. The analysis with this faulty conclusion fails in fulfilling the terms of reference requirement of assisting parties in ratifying the Ban Amendment, as it regrettably discourages any ratification from occurring. For these reasons the paragraph should be deleted.

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Para. 17. Again this section is a discussion of the implementation of decision III/1 which only must be implemented by Annex VII countries. Therefore, we cannot understand the relevance of statements about the lack of capacity of non-Annex VII countries. As there is little revealed in this paragraph regarding OECD countries, we suggest deleting this paragraph. At the very least, all references to non-OECD countries should be deleted as the paragraph is meant to deal with implementing Decision III/1.

Para. 18. The discussion in the final three sentences refers to a matrix and a baseline. As this analysis is not meant to be a summary of other papers but a stand-alone document, we would suggest deleting the last three sentences of this paragraph.

Para. 19. Oddly there is no discussion here about the increase or decrease of hazardous waste flows from Annex VII countries to non-Annex VII countries as plotted over time. This is the most relevant data, as the ban is not designed to minimize other waste flows, only those from Annex VII to non-Annex VII. This data can also help Parties revisit the significance of the ban, which can ultimately assist them in ratifying the Ban Amendment. All other data are irrelevant to the issues concerning the ban and Annex VII.

Para. 21. The cautionary statement in para. 20 requires that the two cases cited in this paragraph be sufficiently described to highlight the particular nature of the cases to the country in which they were derived from. Having had the opportunity to look at the actual paper cited for the first case, BAN noted some objective details missing from the case summary. We

suggest the following adjustments in order to more accurately reflect the paper in question:

One non-Annex VII country developed a lead recovery industry in the late 1980s due to the huge capital outlay needed to mine its lead deposits. In spite of an admitted lack of a national effort to collect domestic used batteries, the country made a determination that the national supply of lead through secondary sources was insufficient to ensure a viable and efficient use of the lead smelters. As a consequence, the country imported lead-acid batteries principally from a single source in an Annex VII country until 1994. As the lead recycling industry developed in this non-Annex VII country, lead poisoning in workers and the community around the recycling plants became commonplace. In fact, the rise in lead poisoning incidents and the hazards of such recycling plants prompted some regions in the same non-Annex VII country to shut down all used battery processing factories.

In the process of amending the environmental law, the legislative assembly of that country requested the banning of hazardous waste imports, with exception of used batteries, up to the year 2002. The exemption was based on the commonly used argument by the battery recycling industry that because the supply from domestic sources was insufficient to reach an economic production level, used batteries were needed to be imported until the local supply could satisfy the economic needs. Yet this argument was made in the absence of an adequate domestic collection system for locally generated waste batteries.

Meanwhile, the Annex VII country (principal source of used batteries) stopped its export of used lead-acid batteries, in line with decision III/1. Since 1998, the used batteries are imported principally from non-Annex VII countries. In the meantime, progress in encouraging and improving the collection of used batteries at the local level remain slow. In addition, small-scale recyclers which do meet the country's environmental and health requirements are still operating illegally.

BAN has not been able to find the source of the second case noted here. But given the experience in reading the actual cited case above, and comparing it to the analysis summary, we believe it would be prudent to allow the Parties to actually review this case. In order to arrive at a more transparent and objective summary of the case, BAN suggests that subparagraph (b) be placed in square brackets and remain open for modifications until the source for the case has been given to Parties for review, and for the Parties to weigh-in with comments on whether the case has been adequately summarized and whether its argumentation is sound.

IV. B. 5.

Para. 27. This paragraph largely claims that there is a lack of data regarding the health impacts from hazardous waste management operations. This is certainly not the case. There are numerous studies in existence. In fact several studies even exist which document health effects from the importation and subsequent handling and management of toxic waste. Some that come to mind are studies conducted in Cambodia following the importation of mercury-laden waste from Taiwan which included several deaths as a result. Likewise, imported mercury wastes caused the death of 2 workers at the Thor Chemical plant in South Africa. Studies of shipbreaking workers that have also been done evaluate health impacts and the prospective deaths from cancer from asbestos alone. It is vital that the Secretariat cite this existing and published information. Further, no relevance here with respect to illegal traffic and thus this sentence should be removed, particularly as it seems to imply that there are no health impacts from the legal traffic of hazardous wastes. Finally, the reference to an Annex

III list of “wastes” is incorrect, as Annex III is a list of hazardous characteristics and not wastes.

IV B. 6.

Para. 29. Here it must be noted that ratification and implementation are two different things. In other words it is clear that while all Parties are urged to ratify the Ban Amendment, only the Annex VII countries are to implement it. The group of countries that were among the first to implement the Basel Ban was the European Union member states. Therefore, we propose that the EU experience and steps for implementation be reflected here. The EU experience can be well-documented, thus belying the assertion here that the information does not exist.

IV. B. 7.

Para. 32. Here the term “sham” recycling needs to be augmented. Sham recycling refers to recycling that is not really recycling at all. What is more often the case is “dirty” recycling – highly polluting operations. Thus we would recommend the formulation: “sham and dirty recycling”. Further, the final sentence in this paragraph is extremely misleading. The implication here is that only those that freely trade in waste might get access to newer and cleaner technologies. This is patently false. Everyone in the world has access to clean technologies if they are made available. There are no trade restrictions of any kind on clean technologies! This latter sentence needs to be scrapped.

Para. 33. This paragraph is extremely imbalanced and not objective. Suddenly the text is calling wastes “secondary raw materials”. These are “wastes” and in fact are hazardous or other wastes in the Basel context which are known to cause environmental harm when disposed or recycled. Nothing in this paragraph suggests why scrap and wastes migrate from Annex VII to non-Annex VII countries. This is quite amazing as it is a well-known phenomenon which spawned the Basel Convention itself. Hazardous waste migrates to take advantage of cheaper recycling labor, lack of environmental and occupational protections etc. found in developing countries or weaker economies. It is small wonder that the flows of wastes from Annex VII to non-Annex VII countries and not the other way around. The Basel Convention calls for self-sufficiency in waste management. This paragraph seems to have forgotten this obligation completely. Further, this paragraph implies that all that is necessary to allow the export of hazardous wastes from Annex VII countries to non-Annex VII countries is enhanced technology in the non-Annex VII country. However, regardless of technology levels, pollution is still transferred. What remains unanswered by technological “solutions” are the incentives to prevent waste in the first place, the fact that technology alone cannot guarantee levels of environmental and human health protection, and finally, the justice issue of allowing weaker economies to receive a disproportionate burden of the world’s waste simply because they are relatively poor. This paragraph is of such bias; it must be deleted.

New Para. 34 The contents in item 7 do not properly bear or coincide with the terms of reference it was intended to fulfill. The heading in Item 7 refers to an evaluation of the cost-benefit and effectiveness of hazardous waste recycling versus health risks and environmental damage, yet no mention is made of existing efforts in the international community to determine the environmental costs of the emissions of toxic substances. One such study was commissioned by the Nordic Research Council on the economic valuation of emissions of several toxic substances. In this regard, we suggest that the following paragraphs be inserted as a new paragraph 34, under item 7:

There have been efforts in placing economic values to the adverse environmental

effects of toxic substances. One such effort was commissioned by one Annex VII country. It was designed as an aid to policy-makers in arriving at a rational decision on how to prioritize measures in curbing pollution from particular hazardous substances.

In determining the economic value for a particular substance, the study compiled recent weighting/ranking methodologies on the adverse impact of several substances, particularly their physical effects. The monetary values were based on surveys conducted by several Annex VII countries. From there the study developed a best, low, and high estimate of the environmental cost of a particular substance. An anchor substance was chosen in order to come up with an evaluation of the other substances. In this case, the study chose lead as the anchor substance due to its known effects, and for the numerous studies that have been carried out to assess the damage caused by its emissions.

Some of the resulting values of the study are:

Substance	Best estimate*	Low estimate*	High estimate*
Dioxin	2.2E+06	8.4E+05	6.0E+06
TBT	261	98	697
Chromium 6+	163	61	434
Mercury	111	41	296
PCB	96	36	256
Cadmium	32	12	87
Lead	6.1	2.3	16

* Prices are in Norwegian Kroner per gram.

Thus, if a 25,000 metric ton capacity/year lead-acid battery recycling plant operating in a non-Annex VII country, importing lead acid batteries has a 98% lead recovery rate, with 2% fugitive emissions, that means 500 tons of lead per year is being emitted in the vicinity of the plant. Applying the study values, based on the low estimate of NOK 2.3 per gram of lead emission, the low estimate would equate to an environmental cost of the 500 tons of lead emission as NOK 1,150,000,000 (US\$166,064,982) per year to the country where this particular plant is located. Under the best estimate the environmental cost would be pegged at NOK 3,050,000,000 (US\$440,433,213) per year.

The values presented under this study and others like it can greatly aid Parties in their analysis of the economic benefits and cost of hazardous substances. Too often these costs resulting from emissions and residues in even state of the art recycling operations are not calculated, and result in cost externalities and dramatic economic inefficiencies.

V. 8.

The title of this section and the content of paragraphs 34 and 35 have little to do with one another. What is needed here is an examination of how the Ban Amendment impacts waste minimization. We maintain that there is a strong correlation. Therefore we suggest the following paragraph.

New Paragraph for Section 8:

The ban, by closing off cheap and dirty options for waste management can force cost internalizations which in turn drive "green design" and thus hazardous waste

minimization. One such example is found in the European Union which after ratifying and implementing the Basel Ban in 1997, was thereafter forbidden from exporting electronic wastes to weaker economies. As a result, the pressure to design for less toxics and recycling and enhanced collection became far more acute in Europe, in comparison to North America where a free trade in electronic wastes to non-Annex VII countries persists to this day. It is largely due to the closing-off of the export “escape hatch” that has pressed Europe into more rapidly adopting legislation to enhance European recycling of electronic waste and to phase-out toxic inputs to electronic products to ensure that such domestic recycling has less economic and environmental impacts within Europe.

VI.

Paras. 36 and 37. The pronouncements made in these paragraphs were more accurate for the period from the mid to the late 1990's than with the realities of the new decade. For the most part the global privatization trend has dissipated, and in its wake lies the ruins of the failure of deregulation in crucial industries. What paragraph 36 misses out on is that with the new century there have been increasing efforts globally to ratchet up corporate responsibility for their products through legislation. At times this effort has been called extended producer responsibility, and has contributed to more environmentally sustainable designs of products and production processes. So far these trends are noticeable in Europe, China and Japan, e.g. with respect to take-back legislation with respect to automobiles and electronics. Further, para. 37 fails to mention that the advent of new sustainable designs ushers in less toxic secondary materials that can be recycled and used by rapidly industrializing countries without the accompanying pollution.

For the above reasons, we suggest the following modifications to paras. 36 and 37:

36. Since the mid-1990's, there has been a gradual and significant policy shift in many countries, both Annex VII and non-Annex VII, away from a strong focus on regulation towards market driven opportunities. The deregulation trend has tapered down as failure in certain sectors covered by deregulation has become apparent. In the area of waste management, the new century has brought on a renewed focus on the polluter pays principle and its extension to post-consumer waste pollution – calling for manufacturer responsibility in the full life cycle management of their products or extended producer responsibility (EPR). One of the first applications of EPR was with automobiles, and now has captured one of the largest sources of post-consumer wastes – electronics. EPR provides a feedback mechanism that internalizes costs back to those first responsible for creating them. This mechanism leads to obvious economic incentives to drive cleaner production and greener products.

37. Rapidly industrializing countries have a growing demand for secondary raw materials to sustain the pace of their social and economic development. Unfortunately, in order fuel this growth these countries are forced to take in hazardous and other wastes together with the secondary raw materials that they require materials which in many instances need not be hazardous, and polluting were there more attention paid to hazardous use reductions upstream. In this context, there is a critical need for EPR as one tool to drive the development and application of environmentally sustainable designs of products and processes, and to build a capacity for the transfer of clean production technologies, and also for environmentally sound recovery or recycling of non-hazardous wastes.

Para. 38. There are key elements that are not mentioned in the future work, which we suggest

should be included as new sub-paragraphs f and g:

- f. Evaluation of the implementation experience of countries that have ratified Decision III/1.*
 - g. Development of economic valuation of the health and environmental impact of hazardous substances.*
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