

Basel Convention Extends to Include Transboundary Movements of Plastic Waste

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The significant extension aims to manage plastic waste in an environmentally sound manner and support less developed nations that import waste.

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On May 10, 2019, following two weeks of negotiations involving 1,400 delegates, at the Conferences of Parties to the Basel, Rotterdam and Stockholm Conventions, it was agreed to extend the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (the Basel Convention) to include plastic waste (as well as making certain changes to the Rotterdam and Stockholm Conventions). The framework regarding the Basel Convention will look to implement a transparent and traceable system for the export and import of most plastic wastes under which exporting states must now obtain prior written consent from importing states.

This development represents a step change in the global management of plastic waste and places plastic waste within a globally recognised legal standard for the control of international movements of waste.

The Basel Convention

The Basel Convention came into force in 1992 as a response to a number of controversies concerning the transportation of hazardous waste to countries that did not have appropriate infrastructure and regulations to handle such waste. The Basel Convention's overarching objective is to protect human health and the environment, with three principal aims: minimize the generation of hazardous waste, dispose of hazardous waste as close to the source of production as possible and reduce the movement of hazardous waste.

The Basel Convention requires exporting states to notify the competent authorities of the importing states and obtain the importing state's prior written consent for the transit of hazardous waste. The Basel Convention Ban Amendment, adopted in 1995, provides for the prohibition of all transboundary hazardous waste movements — intended for final disposal, reuse, or recycling — from certain parties (predominantly OECD member states) to certain other parties (predominantly non-OECD member states).

The Basel Convention is the most comprehensive international environmental agreement on hazardous and other wastes and is almost universal, with 187 parties, including the European Union.

The Basel Extension — Plastic-Specific Measures

The extension of the Basel Convention to include most plastic wastes is an effort to reduce plastic waste and pollution by placing the regulation of plastic waste within an existing international legal framework. An amendment to Annex II of the Basel Convention will identify most plastic wastes as a category requiring special consideration.

Currently, developed countries are able to export lower-quality plastic waste to private entities in developing countries without approval from the importer's government or responsible authority. The new rules should mean that contaminated plastic waste, and most plastic waste mixes, will require prior consent from importing countries before they are traded, with the exception of mixes of polyethylene, polypropylene, and polyethylene terephthalate (more commonly known as PET). This means that much plastic waste becomes part of the prior informed consent process, which is the cornerstone of the Basel Convention.

Importing countries receiving mixed and unsorted plastic waste from foreign sources are expected to have the right to refuse non-compliant shipments — a measure intended to compel exporting companies to facilitate the export of clean, recyclable plastics. The implementation of a traceable system for the export and import of plastic waste will aid global traceability and management, though it will be for the individual country signatory to decide how this particular measure is implemented domestically. Careful planning will be required to ensure the operation of a unified, global system accessible by all signatory countries is successful.

The measures are intended to make the global trade in plastic waste more transparent. Part of this transparency involves equalising the imbalance between more and less developed countries, and introducing a level of accountability currently lacking in the export/import system. The US, for example, is not a signatory, but it could be impacted if and when it attempts to export plastic waste to a signatory nation.

Conclusion

This amendment of the Basel Convention is part of a developing global effort to reduce plastic pollution. In March 2019, the UN Environment Assembly met in Nairobi to direct an expert group to explore a new global convention on plastic waste, and in May 2019 the International Maritime Organization met in London to discuss plastic pollution from seagoing vessels.

Norway first proposed the amendment to the Basel Convention in September 2018, with support from the European Union. The use of an existing international instrument to enshrine the new measures, significantly reduced consultation and adoption time to nine months.

The amendment to the Basel Convention is expected to come into force in January 2021.

Latham & Watkins will continue to follow and report on developments in this area.

This blog post was prepared with the assistance of Martin Cassidy in the London office of Latham & Watkins.