

March 12, 2021

Standing Committee on Environment and Sustainable Development  
Sixth Floor, 131 Queen Street  
House of Commons  
Ottawa ON K1A 0A6

*Sent by e-mail to ENVI@parl.gc.ca*

Dear members of the committee,

The David Suzuki Foundation appreciates the invitation to appear before the committee for its study of Bill C-204. Our presentation will reference the recent plastics amendments to the Basel Convention, which entered into force on January 1, 2021. A summary of the amendments is included in the annex to this submission. Canada ratified these amendments on December 29, 2020.

We also wish to draw to your attention the legal opinion of the Center for International Environmental Law, with respect to OECD countries' obligations for plastic waste exports under the Basel Convention, in particular the following excerpts (references in the original text have been removed):

*OECD members who are Basel parties (all OECD members except the US) now have two basic obligations with regards to trade in covered plastic wastes with other OECD members going forward. First, they must only allow trade in Annex II plastic wastes, including for recovery operations, in compliance with procedures outlined in the Basel Convention. These include (a) establishing either a lack of domestic facilities or the need for the wastes as a raw material in the country of import; (b) obtaining or providing assurances that the wastes will be handled in an environmentally sound manner; and (c) ensuring that all competent authorities in the importing, exporting and transit countries consent to the movement and that the wastes are properly labeled. Basel parties have an obligation to implement the Basel provisions fully — they cannot selectively choose aspects of the amendment for transposition in national legislation (e.g., parties cannot exempt certain types of Y48 waste from Basel control).*

*Second, they must not trade in these same Annex II plastic wastes with countries that are not Basel parties, whether or not they are OECD members (i.e., including the United States). There are a few possible or purported exceptions to this general rule to consider.*

*They are: (a) those OECD members that, even though they are Basel parties, informed the Secretariat that they were unable to accept the new amendment to the annexes within six months of the date of*

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*communication of the adoption; (b) those OECD members who have a separate bilateral or multilateral agreement covering trade in wastes.*

The CIEL legal opinion also analyzes the waste trade arrangement between the U.S. and Canada and determines that it does not ensure equivalent levels of control to Basel and is therefore not a valid basis for an exception to the obligations under the Basel plastic amendments (emphasis added):

*In late 2020, the U.S. and Canada concluded an “arrangement” to continue trading plastic wastes, principally those falling under the new listing Y48 of the Basel Convention, between themselves. **This arrangement, which contains 11 operative paragraphs, does not meet Article 11 of the Basel Convention requirements and must therefore be considered invalid.** First, the arrangement states that it is not legally binding, which is a key feature in providing equivalent control, as discussed earlier. Second, its control procedures entirely fail to guarantee environmentally sound management. Instead, the arrangement subjects waste in its scope to “all existing controls normally applied in commercial transactions.” This phrase is not defined in the arrangement. However, the same phrase is used in the OECD Wastes Trade Decision to describe the controls for waste on the OECD green list — and the OECD itself has admitted that this effectively amounts to no controls. Assuming a similar meaning here, the arrangement does not subject plastic waste trade to any controls specifically designed to ensure that wastes are managed in an environmentally sound manner. There is no system for notification and prior informed consent and no tracking or reporting requirements (for either private parties or the two governments). The remaining paragraphs largely consist of declarations (against all evidence) that the countries already manage the covered waste in an environmentally sound manner or intend to do so.*

*The US and Canada had a pre-existing (1986, amended 1992) bilateral agreement covering trade in some hazardous and other waste notified to the Basel Secretariat as an Article 11 agreement that the new arrangement purports to supplement through application to wastes not covered by the original. For purposes of clarity, the pre-existing agreement is also insufficient as an Article 11 agreement: it requires the exporter to provide less information that is important for ensuring safe disposal than Basel does; contains provisions to keep some of this information confidential, which Basel does not; and does not contain a requirement to minimize the generation of hazardous wastes or to treat it domestically wherever possible. However, while weak, that agreement, does at least contain the basic principle of “prior informed consent.” Therefore, it is illuminating that the two governments did not make an effort to amend that agreement to add the new plastics listing of Y48 but instead chose to create a new arrangement without this basic principle.*

The CIEL analysis concludes:

*This legal analysis clearly shows that for all OECD members, except the US, who are not party to the Basel Convention, and Turkey, who has notified its inability to accept the Plastic Amendment, the applicable law now governing all of their international trade in plastic wastes listed in Annex II of the Basel Convention is the Basel Convention itself.*

*While those Basel parties who have notified the Secretariat of their inability to accept the Plastic Amendments may de jure be able to continue trading in such wastes without controls, they are de facto limited by the fact that most of their trading partners will still be subject to such controls.*

*None of the other agreements currently notified to the Basel Secretariat as Article 11 agreements meet the requirements for Article 11 of ensuring an equivalent level of control and environmentally sound management for hazardous and other wastes as defined by the Basel Convention. Therefore, they cannot legally enable OECD members to continue trading in Basel covered plastic waste freely or subject only to limited controls.*

The full analysis is available on the CIEL web site.

Bill C-204 is a positive step toward implementing Canada's obligations under the Basel Convention. However, it should be strengthened to ensure it achieves its intended results.

First, the prohibition on plastic wastes exports "for final disposal" will be difficult to implement. Instead, the prohibition should be more broadly scoped with an exception for plastic wastes suitable for recycling.

#### **Recommendation 1**

Incorporate the language used in the Basel Convention (plastics amendments) to exclude plastic wastes suitable for recycling and control all other plastic waste exports, as EU countries have done in their implementing statutes with respect to non-EU countries. Under the Convention, plastic wastes presumed to be non-hazardous and not subject to the prior informed consent procedure are those **consisting exclusively of one non-halogenated polymer or resin, selected fluorinated polymers or mixtures of polyethylene, polypropylene and/or polyethylene terephthalate, provided the waste is destined for recycling in an environmentally sound manner and almost free from contamination and other types of wastes.**

Second, the "Basel Ban Amendment," which entered into force in December 2019, prohibits member states of the OECD, the European Union and Liechtenstein from exporting hazardous wastes (including as defined by the Basel Convention) to other countries, which are primarily developing countries. Although Canada has not ratified the Basel Ban Amendment, under the terms of the Convention, Annex VII parties like Canada cannot export hazardous wastes to a non-Annex VII party that has ratified the Ban Amendment as ratification of the amendment reflects a national import prohibition. With respect to plastic wastes and the more recent plastic amendments to the Basel Convention, best practice is for Annex VII parties to prohibit exports of plastic wastes characterized as "hazardous" or "requiring special consideration" under the Convention to non-Annex VII parties. EU countries have already adopted this approach in their national legislation.

#### **Recommendation 2**

Explicitly prohibit export of plastic wastes characterized under the Basel Convention as "hazardous" or "requiring special consideration" to non-OECD and non-EC countries.

We further recommend that Canada ratify the Basel Ban Amendment at the earliest opportunity.

Third, for plastic waste exports not subject to the prohibition, there is a need for greater accountability. This is particularly important given the high volume of waste trade between Canada and the U.S. The U.S. has never ratified the Basel Convention and does not regulate plastic waste exports. Enhanced accountability measures could reduce the risk that contaminated Canadian waste exported to the U.S. could be shipped to other countries without environmental controls. CEPA section 185 provides a framework for regulating import, export and transit of hazardous wastes, but plastic wastes are not currently subject to the section 185 requirements.

**Recommendation 3**

Make plastic wastes not prohibited by Bill C-204 subject to the CEPA section 185 requirements. Plastic wastes suitable for recycling (as described by the Basel Convention) could be excluded.

Thank you for your consideration.

Sincerely,

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## **Annex: What are the plastic waste amendments to the Basel Convention?**

The amendments refer to changes to the scope of the plastic wastes covered by the Basel Convention, as decided in May 2019, that will have a significant impact on the rules governing the movement of plastic waste across international boundaries. The changes to the Basel Convention were adopted by its governing body, the Conference of the Parties in its decision BC-14/12. Through three amendments to the annexes to the Convention, this decision specifies the new categories of plastic waste that will be subject to the Convention's:

- control procedure for transboundary movements (Prior informed Consent (PIC) procedure) and the conditions under which this procedure applies or not;
- provisions pertaining to waste minimization;
- provisions pertaining to the environmentally sound management of wastes.

The amendments as such do not imply a ban on the import, transit or export of plastic waste but rather a clarification of when and how the Convention applies to such waste.

Through decision BC-14/12, the COP approved the following changes to three annexes to the Convention:

- Annex II (waste that requires special consideration: subject to the PIC procedure): addition of new entry Y48 covering all plastic waste, including mixtures of plastic waste, except for the plastic waste covered by entries A3210 (in Annex VIII) and B3011 (in Annex IX);
- Annex VIII (waste presumed to be hazardous: subject to the PIC procedure): addition of new entry A3210 covering hazardous plastic waste;
- Annex IX (waste presumed to not be hazardous: not subject to the PIC procedure): addition of new entry B3011, replacing current entry B3010 after a specific date, covering plastic waste consisting exclusively of one non-halogenated polymer or resin, selected fluorinated polymers or mixtures of polyethylene, polypropylene and/or polyethylene terephthalate, provided the waste is destined for recycling in an environmentally sound manner and almost free from contamination and other types of wastes.

For the entire text of the new entries, in English or French, see decision BC-14/12:

[http://www.basel.int/Implementation/Plasticwaste/PlasticWasteAmendments/FAQs/tabid/8427/Default.aspx#LiveContent\[BC-14/12\]](http://www.basel.int/Implementation/Plasticwaste/PlasticWasteAmendments/FAQs/tabid/8427/Default.aspx#LiveContent[BC-14/12]).

*Source:*

*Questions and answers related to the Basel Convention Plastic Waste Amendments, Basel Convention website*