

WASTE TRADE IN THE PHILIPPINES:

HOW LOCAL AND GLOBAL POLICY INSTRUMENTS CAN STOP THE TIDE
OF FOREIGN WASTE DUMPING IN THE COUNTRY

MARCH 2020



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**EcoWaste
Coalition**

Waste trade and the Philippines: How local and global policy instruments can stop the tide of foreign waste dumping in the country

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Greenpeace is a global, independent campaigning organization that uses peaceful protest and creative communication to expose global environmental problems and promote solutions that are essential to a just, green and peaceful future. Greenpeace has been present in the Philippines since 2000, working to safeguard the constitutional rights of Filipinos to a balanced and healthful ecology.

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The Ecological Waste Coalition of the Philippines, Inc. (EcoWaste Coalition) is a non-profit network of over 140 public interest groups in the Philippines that have coalesced to advance "a zero waste and toxics-free society where communities enjoy a safe and healthy environment." Founded in 2000, the EcoWaste Coalition strives to attain such a vision by fostering and supporting activism around priority issues and concerns in line with the Filipino people's constitutional rights to health and to a balanced and healthful ecology.

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This publication has been made possible in part through funding from the Marisla Foundation. The views expressed in this publication are not necessarily the views of the Marisla Foundation.

CONTENTS

Introduction	02	The legal imperative to ratify the Basel Ban Amendment	27
The Philippines – a dumping ground for the world's waste?	02	International legal bases	27
The thin line between legal and illegal waste trade	02	The Basel Convention and waste-related treaties have reached the status of customary international law	27
About this report	03	The States' duty not to cause harm can, in theory, be applied to waste trade	28
Overview	03	Growing international jurisprudence, a reflection of international duty to regulate waste trade	29
Solid Waste Management in the Philippines	05	Human rights obligations also call for strict measures (even the prohibition) on waste trade	30
Waste trade: an ASEAN and global problem	07	Philippine national legal bases	31
Waste in trade agreements	09	The 1987 Philippine Constitution	31
Waste Trade in the Philippines	10	Legislative policies related to waste trade	31
Waste shipments statistics	10	Jurisprudence	32
Waste shipments—where do they go?	11	Presidential pronouncements about the waste problem	33
Documented cases of illegal waste shipments in the Philippines	12	Analysis of Philippine laws and jurisprudence: are they up to the task?	34
Japan	12	The government has the power to take measures to stem the waste trade	34
Canada	12	The definition of waste in Philippine laws is a potential loophole	34
South Korea	15	RA 6969's provisions only deal with toxic, hazardous, nuclear waste, not recyclables per se	35
Australia	15	Philippine laws are not fully reflective of international trends and developments on waste trade	35
Hong Kong	15	The recycling conundrum	36
Existing policies and guidelines on waste shipments	16	Recommendations and way forward: what the Philippines can do to protect itself from waste importation	37
Importation process and requirements	16	The Philippines must immediately ratify the Basel Ban Amendment	37
Key government agencies – roles and functions	17	The Philippine government must enforce a comprehensive ban on all waste imports	38
DENR – Environmental Management Bureau	17	Other recommendations	40
Bureau of Customs	17	Appendices	41 - 44
Private Sector role	18		
The Basel Ban Amendment: Why this is a necessary instrument to control and prevent illegal waste trade	19		
The Basel Convention	19		
The Basel Ban Amendment: The long road to ratification	22		
Analysis of the Basel Convention and the Basel Ban Amendment: Issues and challenges	25		
Defining “waste”	25		
The Convention does not address the “root of the problem	26		

INTRODUCTION

The Philippines – a dumping ground for the world's waste?

"The Philippines is not a dumping ground!" These were the words on the placards of Filipino communities gathered at Subic Bay, around 150 kilometers north of the capital Manila, in the morning of April 30, 2019. Environmental groups, together with affected communities were bidding "good riddance" to the mixed municipal waste being repatriated to Canada. It was a campaign that took six years.

But even with the return of the so-called "Canada Waste," the work was far from over. In other parts of the Philippines, various other waste shipments—municipal or toxic waste, from all around the world—were regularly entering the country through both legal and illegal means.

The Canada waste dumping incident in the Philippines is a glaring example of the injustice surrounding the international trade in waste. Countries in the Global North, such as those in Europe and North America, despite resources that enable them to invest in the latest recycling and waste recovery facilities, regularly ship their waste to Global South countries which are ill-equipped and poorly prepared to deal even with their own domestic waste. Due to stricter regulations and higher costs for waste management, Global North countries have opted to send their waste to poorer countries whose environmental and worker safety regulations are absent or considerably looser, and where labor and operating costs are significantly cheaper. Rich countries are therefore able to practice exemplary recycling and waste treatment at home—while dumping all other low-worth waste they would rather not deal with in poorer nations.

This unequal relationship between rich and poor countries is at the heart of the global waste trade. From this, it persists due to the unfair global trade systems and inadequate local capacities, usually coupled with entrenched corruption.

The thin line between legal and illegal waste trade

In the past two decades, there have been several reported high profile cases of illegal waste trade in the Philippines, from mixed municipal waste clearly not meant for recycling, to shredded municipal waste meant as feedstock for cement kilns that double as waste incinerators, to toxic chemical wastes intended for dumping.

But these illegal waste shipments present only the tip of the iceberg of the entire picture of waste importation in the Philippines. Waste trade primarily for "recycling," and under certain conditions, is legal. Philippine law has allowed and continues to allow waste to enter the country in the form of electronic waste (including scrap computer equipment and used appliances), used lead acid batteries, plastic materials, used oil, and fly ash from coal-fired power plants.¹

But while this trade in toxic waste has provided input to a few industries which rely on imported waste for production, it has been a bane for the majority of Filipinos. These waste imports, although legal, are nevertheless all hazardous. Worse, despite their approval for importation into the country as "recyclables," the fact remains that the recycling industry in the Philippines is largely underdeveloped. For example, there have been many documented cases of imported electronic waste, used lead acid batteries, and plastic scrap, ending up in backyard recycling facilities, being processed crudely by workers with no personal protective equipment and with no environmental protection measures in illegal facilities, or in registered facilities that lack adequate environmental safeguards or permits.² These and other cases have led to toxic exposure of communities and potential contamination of their soil and water supplies. Clearly, even while waste importation for "recycling" is allowed, there is no sufficient and effective monitoring whether the waste would be properly handled once they entered Philippine shores. What can countries like the Philippines do in the face of all the attendant pitfalls surrounding the international trade in waste?

¹ See Department of Environment and Natural Resources, Department Administrative Order 2013-22

² <https://www.manilatimes.net/2016/09/15/business/green-business/ph-a-legal-dumpsite-for-imported-e-waste/285869/285869/> ;
http://www.greenpeace.to/greenpeace/wp-content/uploads/2019/09/LEAD-ASTRAY-THE-POISONOUS-LEAD-BATTERY-WASTE-TRADE_GP-1994.pdf ,
<http://www.ipsnews.net/1996/10/ips-environment-bulletin-philippines-greenpeace-links-lead-poisoning-to-recyclers/>

About this report

This report is a review of waste trade-related policies in the Philippines. It examines how current laws and regulations have fallen short of giving the country adequate protection against the detrimental impacts of waste trade—regardless of whether the importation was illegally or legally fulfilled.

The report shows how gaps in current policies and systems allow illegal waste to enter undetected into the country, and how waste, purportedly for recycling, continuously enters our ports—despite the lack of proper recycling facilities, and the absence of stringent monitoring systems to ensure the proper handling of the imported waste.

By exposing these gaps, the report calls on the Philippine government to urgently ratify the Basel Ban Amendment, and additionally impose a total comprehensive ban on all waste imports.

This report also comes at a time when the closing of China to waste importation has led to an unprecedented deluge of waste dumping in Southeast Asian countries. As its Southeast Asian neighbors close their doors to waste imports with bans and moratoriums, as well as enforce stricter monitoring, the Philippines, which currently lacks the same policies, may likely end up as the preferred destination for imported waste rejected by other countries.

While this paper deals with waste trade as a whole, it will also focus on the trade in plastic scrap, given the heightened attention to the increase in plastic waste generation globally. Plastic is a problematic waste stream, but until recently, its inherent hazards and toxicity were not recognized so that its trade was largely unregulated. Plastic scrap continues to be traded and accepted, giving rise to the uncontrolled dumping of contaminated, unrecyclable plastic waste in many countries in the Global South.

The country's exposure to continued waste imports is concerning. No waste importation ban or moratorium is in place—despite recent strong pronouncements regarding such measures by the President as well as the Department of Environment and Natural Resources (DENR). Also, the government still has not undertaken steps to ratify the Basel Ban Amendment, an international policy instrument that will additionally protect the country from the importation of all waste, including those shipped under the guise of recycling.

This report shows that preventing the entry of all waste imports into the country (including waste labelled for recycling) is the best strategy for countries such as the Philippines to protect its citizens and the environment from the harmful impacts of waste dumping.

Overview

This paper begins with a discussion on waste management in the Philippines, as well as its relation to the global waste problem. Waste trade in the country will then be looked into (including statistics, processes, policies, and procedures), and several high-profile cases of illegal waste shipments will be presented.

The report will then discuss the Basel Convention and the Basel Ban Amendment. Legal justifications, both international and national, for the ratification of the Basel Ban Amendment will be extensively discussed. This will be followed by recommendations on why the Philippines must ratify the Basel Ban Amendment, and in conjunction, implement a comprehensive ban on all waste importation.



"The Philippines is Not the World's Dumpsite"- local NGO groups, including Ecowaste Coalition, Greenpeace Philippines, Global Alliance for Incinerator Alternatives, BAN Toxics, and the global Break Free from Plastic movement call on the government and the world to stop waste imports to the Philippines.

SOLID WASTE MANAGEMENT IN THE PHILIPPINES

Solid waste management is one of the biggest environmental and governance challenges in the Philippines. A rising population and increasing urbanization, coupled with growing economies which disregard clean production and zero waste principles, stretches the country's waste management infrastructure. This then leads to other concerns such as negative impacts on the environment, public health and the overall well-being of citizens, especially the vulnerable like children and the elderly.

The latest data from the DENR Environmental Management Bureau (DENR-EMB) calculates the annual national waste generation rate for 2019 at 21,016,523 tons. Metro Manila contributes 3,406,662 tons of waste to this total, with approximately 9,286 tons of waste produced per day.³

The DENR-EMB projects that by 2020, the Philippines will generate 21,425,676 tons of waste annually, with 3,466,469 tons from Metro Manila alone.⁴ A 2012 World Bank study extends this further to 2025, estimating national waste generation at 77,776 tons per day, or close to 28.39 million tons per year, considering the country's population growth, particularly in urban areas.⁵

The most recent national Waste Analysis and Characterization Study found that 56.7 percent of municipal solid waste was generated by residential sources. A further 27.1 percent was from commercial establishments, with institutional facilities and the industrial or manufacturing sector contributing the remaining 12.1 percent and 4.1 percent, respectively.⁶

Republic Act 9003 (RA 9003) or the Ecological Solid Waste Management Act of 2000 is the country's primary policy on solid waste avoidance, reduction, treatment, and reduction. In implementing this law, the State is supposed to focus on waste avoidance and reduction, prioritizing efforts in product reuse, increased product durability and reducing consumption. Treatment and disposal are considered "less preferred options" in the waste management hierarchy.⁷

A key feature of RA 9003 is its devolution of implementation to Local Government Units (LGUs), with barangays assigned to undertake the segregation and collection of biodegradable, compostable and reusable wastes, and municipalities and cities given responsibility over the collection of non-recyclable materials and special wastes in their areas of jurisdiction.⁸ The multi-stakeholder National Solid Waste Management Commission (NSWMC) under the Office of the President is tasked with supervising the LGUs, by coordinating with the local solid waste management boards and providing technical assistance for the preparation, modification, and implementation of plans and programs.⁹

To operationalize the policy's focus on waste avoidance and reduction, RA 9003 likewise provides for the establishment of mandatory solid waste diversion targets. By 2005, LGUs should have diverted at least 25 percent of all solid waste from waste disposal facilities through re-use, recycling and composting and other resource recovery activities. These targets increase every three years.¹⁰

³ Department of Environment and Natural Resources – Environmental Management Bureau (DENR-EMB), Compliance Updates – Ecological Solid Waste Management Act (RA 9003), 2019 at <https://emb.gov.ph/wp-content/uploads/2019/11/Compliance-Updates-as-of-October-2019.pdf> accessed 2 December 2019) 4

⁴ Ibid.

⁵ Senate Economic Planning Office (SEPO) Philippine Solid Wastes at a Glance, November 2017 at https://senate.gov.ph/publications/SEPO/AAG_Philippine%20Solid%20Wastes_Nov2017.pdf (accessed 24 November 2019), 1

⁶ Department of Environment and Natural Resources – Environmental Management Bureau, National Solid Waste Management Status Report at <https://emb.gov.ph/wp-content/uploads/2019/08/National-Solid-Waste-Management-Status-Report-2008-2018.pdf> (accessed 24 November 2019), 1

⁷ DENR-EMB (2018) 6

⁸ Republic Act 9003 (2000) Sec 10

⁹ Ibid. Sec. 5

¹⁰ Ibid. Sec. 20

Nevertheless, solid waste management is a persistent challenge for many parts of the country. Available figures show a high level of variance in terms of compliance with RA 9003 provisions, and data gaps still remain. The National Solid Waste Management Strategy itself has also yet to be updated, with its most recent iteration covering the period from 2006 to 2016.

To illustrate, there is still a large discrepancy between submitted and approved local Solid Waste Management Plans. As of 2019, 1,610 LGUs have submitted their plans, but almost half of these have yet to be evaluated and approved. In addition, there are 105 LGUs that have yet to make their submissions (See Appendix I).¹¹

The available plans provide the data on compliance with RA 9003's mandatory solid waste diversion targets. The DENR-EMB cites "selected approved LGU solid waste management plans" to show a 65 percent target of solid waste. However, because no further information is provided, it is unclear whether this target has been achieved, or merely set. The data also do not detail which LGUs may have cumulatively contributed to this percentage.¹²

Data on waste segregation and collection also vary widely. As of 2018, selected LGUs have reported segregated collection rates of anywhere from 43 to 100 percent. As regards waste collection coverage, estimates from the DENR-EMB range from 30 to 99 percent compliance, with a higher coverage and more frequent collection in urban areas. LGUs have attributed their difficulties to the lack of necessary and appropriate equipment, shortage of workers, and insufficient coordination with, and cooperation from, their constituents.¹³

In terms of waste disposal, while there has been a decrease in the number of illegally operated open garbage dumps throughout the country, the DENR-EMB still identified 331 remaining illegal dumpsites as of 2019 (see figure in Appendix II).¹⁴

Furthermore, although there has been a gradual increase in the number of Sanitary Landfills, from 165 in 2018 to 186 in 2019, these may not be sufficient for the waste disposal of all the country's LGUs (see Appendix III).¹⁵ To illustrate, data from the NSWMC showed that in 2018, only 353 LGUs, or a mere 21 percent of the national total, were able to access the operating Sanitary Landfill facilities (see Appendix IV).¹⁶ It should also be noted that existing landfills receive mixed wastes, including organic matters such as food and garden discards, leading to the formation of potent greenhouse gases, particularly methane. In line with this, the DENR has recently issued guidelines on the establishment and operation of thermal waste-to-energy facilities as an alternative to the traditional sanitary landfills.¹⁷ However, this move is currently being contested by environmental groups given that Republic Act 8749, or the Philippine Clean Air Act of 1999, provides for an explicit ban on incineration of municipal, bio-medical and hazardous waste. This is reiterated in RA 9003, which excludes incineration from its identification of best practices for ecological solid waste management.

All the above data shows that RA 9003 is not being fully and properly enforced despite the mandatory nature of its provisions. Furthermore, its strict implementation is not fully supported by authorities at the national level, leaving low-income and developing LGUs with little assistance and resources to put this important law into practice. If fully implemented, from proper at-source segregation of waste to the substitution of products and packaging that are not environmentally acceptable, the law should help effectively reduce waste generation.

Currently, local government and national government agencies are struggling to deal with domestic municipal waste. This situation is made worse with the entry of foreign waste. The Philippines additionally has to deal with the illegal entry of mixed municipal waste, as well as other types of waste (plastics, e-waste, hazardous waste), which puts additional pressure on current waste systems.

¹¹ DENR-EMB (2019) 7

¹² DENR-EMB (2019) 3

¹³ DENR-EMB (2018) 9

¹⁴ DENR-EMB (2019) 14

¹⁵ *Ibid.*, 15

¹⁶ DENR-EMB (2018) 23

¹⁷ Simeon, LM. 2019. "DENR issues waste-to-energy guidelines." The Philippine Star at https://www.philstar.com/business/2019/12/08/1975133/denr-issues-waste-energy-guidelines?fbclid=IwAR3luadq4T4_c6lfACJbnDTP8aQPTB62EKu6-81_1WNuxQQxfvNLqi2Ue7Q (accessed 9 December 2019)

Waste trade: an ASEAN and global problem

Different types of products and items constitute the waste that the world is dealing with now. However, one type of waste—plastics—has been given significant global attention due to the scale of its impact over the last fifty years or so. The pervasiveness of plastic waste has become a global environmental concern. Studies show that 8.3 billion metric tons of plastic had been produced worldwide by 2017, most often for packaging and other single-use items that were disposed of immediately. Only 9 percent of this plastic waste was recycled.¹⁸ It is further estimated that with current production and waste management trends, roughly 12,000 million tonnes of plastic waste will be in landfills or the natural environment by 2050.¹⁹

The Chinese market had been the primary destination for plastics recycling—since 1992, the country has received an estimated 106 million metric tons of plastic waste, or 45 percent of all global imports.²⁰ However, with its Green Fence policy introduced in 2013 and fully implemented at the start of 2018, China effectively closed its doors to the import of plastic waste,²¹ citing environmental and economic reasons.²²

The waste displaced by these Chinese measures soon found its way to less regulated jurisdictions in East Asia and the Pacific. A study from Greenpeace Southeast Asia (GPSEA) found that the ASEAN region (the 11 countries that make up the Association of Southeast Asian Nations) in particular “experienced a 171% surge of plastic waste imports from 836,529 tonnes in 2016 to 2,231,127 tonnes in 2018.” By 2018, the ASEAN region had taken in 27 percent of global plastic waste imports, more than double the 11 percent that it received the year before (See Appendix V).²³

Besides plastic waste, e-waste comprised of “waste related to electrical and electronic equipment, such as computers, mobile phones, television sets, and refrigerators”²⁴ is also heavily imported. An estimated 41.8 million metric tonnes of this waste was generated in 2014, and this was projected to increase to 50 million metric tonnes by 2018. Data on the recycling of this waste ranges from anywhere between 10 to 40 percent, based on various studies.²⁵

A study from the United Nations Environment Program (UN Environment) approximates the value of the global e-waste waste market sector from collection to recycling at USD 410 billion a year, excluding a “very large informal sector.”²⁶ Because of the potential revenue that it offers, accepting imports of foreign waste is understandably an attractive proposition for many developing countries. However, studies have traced how waste that arrives through the waste trade are either “dumped or unsafely recycled.”²⁷ Hazardous materials are often mixed in with recyclable waste, and companies engaged for recycling may actually be dumping unprocessed or untreated waste. Mislabeling or mis-declaration of waste is also common, with shippers using “non-hazardous waste codes for hazardous wastes or using product codes for hazardous wastes.” In these cases, hazardous waste such as e-waste often enters destination countries as “secondhand goods.”²⁸

Many of these cases persist because developing countries often lack resources for monitoring, investigation and prosecution.²⁹ Furthermore, as a result of this unregulated industry, communities in developing countries are often left to cope with the effects of hazardous waste on ecosystems and human health. Moreover, work in the waste trade is largely informal and is relegated to the poorer segments of society, who are already economically vulnerable and marginalized.³⁰

¹⁸ Brooks, A., S. Wang and J. Jambeck. 2017. “The Chinese import ban and its impact on global plastic waste trade,” *Science Advances* 2018: 4, 1 citing R. Geyer et. al., “Production, use and fate of all plastics ever made,” *Science Advances* 2017:3

¹⁹ Greenpeace Southeast Asia (GPSEA). 2018. *Southeast Asia’s Struggle Against the Plastic Waste Trade*, 6 citing R. Geyer et. al., “Production, use and fate of all plastics ever made,” *Science Advances* 2017:3

²⁰ *Ibid.* 2

²¹ *Ibid.* 1

²² Sembiring, M. 2019. “Global Waste Trade Chaos: Rising Environmentalism or Cost-Benefit Analysis?” NTS Insight no. INI19-02, 4

²³ GPSEA (2018) 4

²⁴ Rucevska, I. et. al. 2015. “Waste Crime – Waste Risks: Gaps in Meeting the Global Waste Challenge” United Nations Environment Programme, 24

²⁵ *Ibid.* 7

²⁶ *Ibid.*

²⁷ *Ibid.* 8

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Sembiring (2019) 7

Realizing these risks, it was not long before Southeast Asian countries also began to regulate the entry of foreign waste.

Although **Malaysia** had initially sought to capitalize on the waste imports displaced by China's Green Fence, the country soon found that the increased waste shipments led to the "mushrooming of illegal businesses contributed nothing to the state coffers but instead incurred enforcement, monitoring, and cleaning up costs to the government."³¹ By January 2020, Malaysia had returned 150 containers of illegal plastic waste shipments totaling approximately 3,737 metric tonnes, to several OECD countries, including France (43 containers), United Kingdom (42), United States (17), Canada (11), Spain (10), Japan (5) and Singapore (4).

For its part, **Indonesia** in November 2019 adopted new regulations for scrap commodity imports. Through these, the country clearly espouses a "zero tolerance policy for contaminated waste, and should contamination be found, a shipment is made to turn back to the country of export."³² But although the country recently returned eight containers of contaminated household waste to Australia,³³ officials had previously related that "there are thousands of waste containers stuck in their ports, and it has been very difficult to repatriate them to the countries of origin."³⁴

Industry associations in the country have also raised concerns over the stricter measures, claiming that the "delay in customs clearance in Indonesian ports have led to waste being exported to Vietnam at a discount." The lack of raw materials, coupled with the high detention fees at the ports have allegedly caused the closure of three domestic companies.³⁵

In 2019, **Thailand** instituted measures to close down recycling and waste processing plants that did not comply with requirements under the Basel Convention for importing e-waste, and also reduced the quota of plastic waste that could be imported from other countries. Coupled with stronger inspection and investigation of shipments, the government has since curtailed several smugglers and seen significant declines in plastic waste imports.³⁶

Vietnam has also expressed that it would stop importation of plastic scrap by 2025, and that action would be taken against the thousands of unclaimed containers of trash in their ports.³⁷

Notwithstanding these individual directives, ASEAN has yet to come out with a collective position on the issue of waste importation. While ASEAN's recent Bangkok Declaration on Combating Marine Debris recognized the scale of the challenge posed by marine pollution, particularly from plastic and called for strengthened actions to address the increasing levels of marine plastic and their negative effects on the environment and human health, the Member States adopted a more general approach to address the problem, urging enhanced national policies, greater regional and international coordination and cooperation, and multi-stakeholder engagement.³⁸

A region-wide ASEAN ban, with stringent policies on enforcement against and monitoring of waste trade, will go a long way in helping countries in the region deter the illegal waste trade. It also potentially prevents the cross-border leakage of waste, particularly at a time when not all ASEAN countries are at the same level of enforcing waste trade bans. This will also send a strong message that Southeast Asia cannot and will not allow itself to be a dumping ground of other country's waste.

³¹ Ibid. 5

³² Rucevska et. al. (2015) 17

³³ Lamb, K. and A. Morton, "Indonesia sends rubbish back to Australia and says it's too contaminated to recycle." 2019. The Guardian at <https://www.theguardian.com/environment/2019/jul/09/indonesia-sends-rubbish-back-to-australia-and-says-its-too-contaminated-to-recycle> (accessed 22 November 2019)

³⁴ Rucevska et. al. (2015) 60

³⁵ "Plastic waste piles up as Indonesia's import crackdown backfires." 2019. The Straits Times at <https://www.straitstimes.com/asia/se-asia/plastic-waste-piles-up-as-indonesias-import-crackdown-backfires> (accessed 6 December 2019)

³⁶ "Curbs slash imports of plastic, e-waste." 2019. Bangkok Post at <https://www.bangkokpost.com/business/1707226/curbs-slash-imports-of-plastic-e-waste> (accessed 2 December 2019)

³⁷ Nguyen, D. 2019. "Vietnam to end plastic scrap imports from 2025." VN Express International at <https://v.express.net/news/business/economy/vietnam-to-end-plastic-scrap-imports-from-2025-3900351.html> (accessed 2 December 2019)

³⁸ Association of Southeast Asian Nations (ASEAN). 2019. Bangkok Declaration on Combatting Marine Debris in the ASEAN Region at <https://asean.org/storage/2019/06/2.-Bangkok-Declaration-on-Combating-Marine-Debris-in-ASEAN-Region-FINAL.pdf> (accessed 19 November 2019)

Waste in trade agreements

Environmental organizations and advocates have flagged Free Trade Agreements as possible entry points to facilitate the trade in hazardous waste. Before the Philippines-Japan Economic Partnership Agreement (PJEPA) was ratified in 2008, for example, civil society raised concerns, citing its “preferential treatment of toxic wastes, hazardous chemicals, and nuclear wastes.”³⁹ Public pressure compelled Japan to confirm through a side agreement “that Japan would not be exporting toxic wastes to the Philippines, as defined and prohibited under the laws of Japan and the Philippines, in accordance with the Basel Convention.”⁴⁰

PJEPA provides for zero rate tariffs on various waste items, including waste, parings and scrap of plastics, municipal waste or the ash and residue from its incineration, and clinical waste, such as adhesive dressings and other articles having adhesive layers, wadding gauze bandages and surgical gloves.⁴¹

Similarly, under the Philippine schedule of tariff commitments under the ASEAN-Australia-New Zealand Free Trade Agreement, the tariffs on plastic scrap and ash and residue from the incineration of municipal waste are also zero-rated. The elimination of customs duties on imports of clinical waste (such as syringes, needles, cannulae and the like) is more gradual; these began at a 20 percent rate in 2012, but have been reduced to 3 percent in 2019. By 2020, these imports are set to be duty free.⁴²

The DENR has attributed these provisions to the Harmonized System, which is used as the basis for the classification of goods in trade in many global agreements. During Senate deliberations on the PJEPA prior to its ratification, the DENR nonetheless assured the public that it would not be used as a vehicle for hazardous waste, citing the prohibitions in Republic Act 6969.⁴³

Nevertheless, DENR Administrative Order 2013-22 would later allow the importation of recyclable materials containing hazardous substances, including solid plastic materials such as waste parings and waste scraps. Although these guidelines set certain limitations, such as prohibitions against the importation of heterogeneous and unsorted plastic materials, and those that contain traces of toxic chemicals, such as asbestos, environmental groups have considered this a regulatory loophole that may be used to facilitate the entry of waste into the country.

The experience with PJEPA along with the environment and waste issues that surround it highlight the reality that trade agreements can perpetuate the movement and shipment of waste. Under the guise of free trade, waste is being freely distributed around the globe, mostly to poor and developing countries without the capacity and resources to deal with these wastes. It is therefore an imperative for the global community to ensure that free trade is not equated to “free waste”.

³⁹ “Six years after JPEPA: PHL the world's toxic waste dump site?” 2014. GMA News Online at <https://www.gmanetwork.com/news/money/economy/382652/six-years-after-jpepa-phl-the-world-s-toxic-waste-dumpsite/ story/> (accessed 23 November 2019)

⁴⁰ See: <https://www.mofa.go.jp/region/asia-paci/philippine/epa0609/letter.pdf>

⁴¹ See: PJEPA Annex I items number 39.15, 2621.10, 3825.10, 3825.30 and 3825.30

⁴² See: AANZFTA Annex I (Philippines) items number 26.21, 39.15, 3825.30

⁴³ Adraneda, K. 2007. “DENR pushes for JPEPA, assures no toxic dumping.” The Philippine Star at <https://www.philstar.com/headlines/2007/09/29/17279/denr-pushes-jpepa-assures-no-toxic-dumping> (accessed 23 November 2019)

WASTE TRADE IN THE PHILIPPINES

Waste shipments statistics

Specific provisions of Philippine law prohibit the import of waste into the country.

Under Republic Act 6969 (RA 6969), or the Toxic Substances and Hazardous Nuclear Wastes Control Act of 1990, it is unlawful to cause, aid or facilitate the storage, importation or bringing into the country, even in transit, of any amount of hazardous waste.⁴⁴ Violators of this prohibition may be meted a penalty of imprisonment of anywhere between twelve to twenty years, with exemplary damages of at least PHP500,000, for offenses committed by a corporation or association.⁴⁵

RA 6969 is also explicit that the persons or firm responsible or connected with the bringing or importation into the country of hazardous wastes shall be under obligation to transport or send back said prohibited wastes.⁴⁶

This is reinforced under Republic Act 10863 (RA 10863), or the Customs Modernization and Tariffs Act, which reiterates the prohibited importation and exportation of goods or parts thereof which importation and exportation are explicitly prohibited by law, rules and regulations.⁴⁷ It also adds that for violations of RA 6969, the vessel used to transport the hazardous waste shall also be forfeited in favor of the government.⁴⁸

RA 9003 likewise prohibits the importation of toxic wastes misrepresented as “recyclable” or “with recyclable content” and the transport and dumping in bulk of collected domestic, industrial, commercial and institutional wastes in areas other than accredited centers or facilities.⁴⁹ Violators may be found liable for a fine between ten thousand pesos (PHP10,000) and two hundred thousand pesos (PHP200,000), imprisonment of a period between thirty days to three years, or both.⁵⁰

However, it is important to note that DENR Administrative Order 2013-22, or the procedural manual for the implementation of RA 6969, does not currently list plastic waste among the classification of prescribed hazardous wastes. As such, application of these policies may be limited.



⁴⁴ RA 6969 (1990) Sec. 13(d)

⁴⁵ RA 6969 Sec. 14(b)

⁴⁶ RA 6969 Sec. 14(d)

⁴⁷ RA 10863 (2016) Sec. 118 (g)

⁴⁸ RA 10863 Sec. 1429 (f)

⁴⁹ RA 9003 Sec 48

⁵⁰ RA 9003 Sec 49

⁵¹ GPSEA (2018) 5

⁵² Ibid.

Environmental groups hold placards in front of the 60 container vans loaded with garbage that will be sent back to South Korea.

Waste shipments —where do they go?

Data from GPSEA shows that from 4,650 and 4,267 tons in 2016 and 2017 respectively, plastic waste imports to the Philippines ballooned to 11,761 tons in 2018.⁵¹ Most were exports from Japan, the United States, Taiwan, Indonesia and Hong Kong (see Appendix IV).⁵²

In the last two years, illegal waste imports have made headlines in the Philippines. With the present administration's position that "the Philippines will not be a dumping ground for other countries,"⁵³ both the government and the public at large have begun to pay close attention when shipments of waste are discovered.

But notwithstanding these recent high-profile apprehensions, GPSEA has cautioned that other shipments could have escaped detection entirely, citing the "patterns of mis-declaration, falsified documents, fake businesses, and loose regulatory systems" that have enabled illegal waste importation to prosper in the country.⁵⁴

In addition, while these mislabeled or mis-declared shipments have been held and/or returned, foreign waste still regularly enters the country through legal channels. Because monitoring of these shipments once they have been released is less comprehensive, it is not known how much of this trash ultimately ends up in the Philippines' waste stream.

For example, the BOC filed entries for the month of September 2019 alone include six shipments described as recyclable polycarbonate and four shipments labeled as scrap plastic. Twenty-three entries were for shipments of scrap metal, eight for wire scrap and three for semiconductor scrap. Waste paper was also imported for repulping, and six shipments were received that month. All of these were cargo received from the United States, Japan, the Republic of Korea and Hong Kong, but none were publicized or called out.

Furthermore, data from the United States Census Bureau shows an increase in the amount of plastic waste (HS 3915) imported into the Philippines. From 6.4 million kilograms for the whole of 2018, these imports were estimated at 6.3 million kilograms by September 2019 alone (see Appendix V).

In particular, data shows that mixed plastic waste imports from the US for the entire year of 2018 was around 2.6 million kilograms of the total 6.4 million kilograms imported. But 2019 data shows a dramatic increase in mixed plastic waste imports: almost 4.4 million kilograms of mixed plastic waste—nearly double 2018 figures—had been sent to the Philippines from January to September 2019.

How was mixed plastic waste legally sent to the Philippines? DENR DAO 2013-22 specifically allows only the importation of solid plastic materials, and disallows heterogeneous and unsorted mixed plastic waste, which usually requires further sorting before recycling and, because of its heterogeneous nature, would not all be recyclable.

It would therefore be equally important to ask, where do all these illegal plastic waste shipments go? What are the conditions of the facilities? How are these sorted and recycled, and what happens to the portions that cannot be recycled by facilities here in the Philippines? These questions highlight the need to scrutinize current waste trade policies of the country. More importantly, the lack of answers points to the need to curb waste trade as a whole.

⁵³ Mendez, C. 2019. "Palace: Philippines not other countries' dumping ground." The Philippine Star at <https://www.philstar.com/headlines/2019/05/25/1920751/palace-philippines-not-other-countries-dumping-ground> (accessed 19 November 2019)

⁵⁴ Greenpeace Philippines. 2019. "Greenpeace statement on the return of Hong Kong E-Waste shipment." at <https://www.greenpeace.org/philippines/press/2742/greenpeace-statement-on-the-return-of-hong-kong-e-waste-shipment/> (accessed 19 November 2019)

Documented cases of illegal waste shipments in the Philippines

There have been relatively few highly-publicized cases of illegal waste shipments to the Philippines. However, this represents only the illegal shipments that were uncovered and publicly exposed. Greenpeace and EcoWaste Coalition believe that there may be hundreds of other cases of illegal waste shipments that have eluded authorities. In some of these cases, the waste was uncovered and exposed following scrutiny and investigation by customs officers.

Japan

In 1999, 120 container vans shipped from Japan and initially labeled as recyclables were found to contain toxic and hazardous materials, including hospital waste. At the time, the Department of Foreign Affairs maximized available diplomatic channels to coordinate, and eventually secure the return of the trash, five months after the shipment was first intercepted. Decisive action from both the Philippine and Japanese governments was credited for the swift repatriation of the garbage.⁵⁵

Besides accepting accountability for the shipment, shouldering the costs for its return and initiating legal proceedings against the exporter, the Japanese government also committed to establish a bilateral working group with its Philippine counterparts "to prevent a recurrence of such an incident and review the export and import procedures of the two countries under the Basel Convention."⁵⁶

Canada

Perhaps the most controversial of the waste imports to the Philippines were those shipped from Canada from 2013 to 2014. In mid-2013, 55 container vans labeled as recyclable plastic scrap arrived at the port of Manila, shipped by exporter Chronic Plastics Incorporated to its Philippine counterpart, also called Chronic Plastics. A further 48 containers were sent by the same company to Live Green Enterprise in late 2013 to early 2014. Because both shipments remained unclaimed, the BOC opened 18 of the containers and found that they contained hazardous material, including mixed household waste and used adult diapers.⁵⁷

Cases were initiated against the Philippine companies involved for charges of smuggling, violations of the Tariff and Customs Code and violations of the guidelines on the importation of hazardous substances. The Manila Regional Trial Court denied the motion for the local disposal of the imported waste, ruling that "the disposal and destruction of the waste will violate important environmental laws such as RA 9003 and RA 9275." In addition, the court made a strong statement against the importation, pointing out that the Philippines is "not a trash bin," and emphasizing that the incident "should not be made a precedent for other countries to follow."⁵⁹

However, although the court eventually ruled that Chronic Plastics should be made to shoulder the costs of repatriating the trash, inquiries conducted by media outlets later found that the company had long ceased operations and could not be located.⁵⁹ There have been no updates on the status of the case against Live Green Enterprise, which was filed later.

⁵⁵ Ranada, P. 2015. "Illegal garbage dispute: Why can't Canada be like Japan?" Rappler at <https://www.rappler.com/nation/101721-canada-illegal-garbage-philippines-japan> (accessed 19 November 2019)

⁵⁶ Ibid.

⁵⁷ Gavilan, J. 2017. "Timeline: Canada garbage shipped to the Philippines," Rappler at <https://www.rappler.com/newsbreak/iq/188654-timeline-canada-garbage-philippines> (accessed 18 November 2019).

⁵⁸ See: <http://www.ecowastecoalition.org/complainants-laud-manila-court-order-to/>

⁵⁹ "Consignee that imported Canada garbage to PHL long closed." 2017. GMA News Online at <https://www.gmanetwork.com/news/news/nation/633509/consignee-that-imported-canada-garbage-to-phl-long-closed/story/> (accessed 19 November 2019).



Environmental activists from various groups hold placards during a protest rally against waste trade in Olongapo City, Philippines. The demonstration calls for the return of 103 shipping containers from Canada filled with waste to be returned back.

Unlike the earlier case involving the trash from Japan, the government of Canada at the outset refused to repatriate the waste, claiming that they could not legally “compel Chronic Plastics Incorporated to return the shipment to Canada” and suggesting that the waste could instead be processed in the Philippines. The government of the Philippines, through a DFA-DENR-BOC inter-agency committee, also responded with a softer stance, opting to consider the shipments as “commercial transactions between a Philippine importer and a Canadian exporter” and preferring to deal with the trash “without resorting to the Basel Convention.”⁶⁰ [57]

The DENR’s backtracking on its statements did little to allay the situation. Despite its initial statements that the shipments were in violation of international agreements and RA 6969⁶¹, the Waste Analysis and Characterization Study from the DENR-EMB released five months later concluded that the trash was not toxic or hazardous after all.⁶²

In 2019, at the request of RightOnCanada, a human rights advocacy group, lawyers at the Pacific Centre for Environmental Law and Litigation prepared a legal opinion which concluded that “there is a strong argument that Canada has violated the Basel Convention in respect of the transboundary movements of waste from Canada to the Philippines by the Canadian-based company Chronic Inc.”⁶³ The legal opinion notes that:

- “The shipments of the wastes were “illegal traffic” under Article 9 of the Basel Convention, since the wastes were falsely declared to contain homogeneous plastic scrap material when in fact these shipments contained mixed waste including household garbage and since the wastes were deemed to be hazardous under Philippine law.
- Article 9 of the Convention imposes an obligation on the State of export to ensure the return of wastes within 30 days from the time the State of export was notified of the illegal traffic.

- Philippine authorities notified Canada of the illegal traffic of these wastes as early as March 2014 and have sought Canada’s assistance in returning the wastes but Canada refused to take back any of the wastes. This refusal violates Article 9, paragraph 2 of the Basel Convention.
- In 2016, a court in the Philippines ordered that 50 containers of the wastes be returned to Canada, as required by Philippine law. The judge stated: “Our country should not be made a trash bin by other country. This should not be made a precedent for other countries to follow. If our country allows [sic] the disposal of the wastes from other countries to be locally disposed, we will become the place of disposing other countries’ wastes and garbage.”
- For more than five years, Canada has failed to take responsibility to properly manage the wastes in question, which were generated in Canada, and has left the Philippine government with the burden and costs of dealing with the wastes, contrary to Article 4, paragraph 10 of the Convention.
- Canada’s current statutory regime governing the transboundary movement of hazardous wastes fails to properly implement and enforce Article 4, paragraph 4 of the Basel Convention, which imposes a 30-day time limit for the State of export to ensure the return of wastes back to the State of export in the case of illegal traffic. Canada’s amended regulations permit a 90-day time limit.

In 2019, five years after the trash was discovered, and after considerable diplomatic tensions between the Philippines and Canada, 69 of the containers were eventually repatriated,⁶⁴ with the Canadian government shouldering PHP10 million in costs.⁶⁵ Twenty-six of the container vans had previously been disposed of in a private landfill in Tarlac. Environmental groups have flagged that the remaining eight containers are currently unaccounted for.⁶⁶

⁶⁰ Ranada, P. 2014. “Canada wants its illegal garbage processed in PH,” Rappler at <https://www.rappler.com/nation/71861-canada-ambassador-illegal-garbage-philippines> (accessed 18 November 2019).

⁶¹ Ibid.

⁶² Ranada, P. 2015. “Illegal Canadian garbage not toxic after all – DENR,” Rappler at <https://www.rappler.com/science-nature/environment/88032-denr-canadian-garbage-not-toxic> (accessed 19 November 2019)

⁶³ See <https://rightoncanada.ca/wp-content/uploads/2019/04/Legal-Opinion-re-Canadas-Violations-of-the-Basel-Convention-2019-04-10.pdf>

⁶⁴ Flores, H. 2019. “Canada trash sails from Philippines; envoys told to return,” The Philippine Star at <https://www.philstar.com/headlines/2019/06/01/1922695/canada-trash-sails-philippines-envoys-told-return> (accessed 19 November 2019)

⁶⁵ “Canada to pay PHP10 million for repatriation of trash – Justice Chief.” 2019. CNN Philippines at <https://www.cnnphilippines.com/news/2019/5/29/Canada-trash-payment-Justice-Secretary-Menardo-Guevarra.html> (accessed 24 November 2019)

⁶⁶ Orejas, T. 2019. “8 containers of Canadian trash missing, environmental groups says,” Philippine Daily Inquirer at <https://newsinfo.inquirer.net/1114676/8-containers-of-canadian-trash-missing-environmental-group-says>

South Korea

In 2018, containers shipped from South Korea to the port of Misamis Oriental were found to contain more than 6,000 tons of contaminated plastic waste and other wastes, including used batteries, bulbs, dextrose tubes, diapers and electronic equipment. These had arrived in two separate shipments and were discovered in a facility belonging to the shipper, Verde Soko, Inc.⁶⁷

An investigation conducted by the South Korean Ministry of Environment and Customs Service confirmed that the exported wastes “had not gone through the proper recycling process and were different from those declared in the export documents.”⁶⁸ Following bilateral negotiations between the South Korean and Philippine governments, and sustained campaign activities from local environmental health groups, 151 containers of the illegal waste were repatriated in 2019. Although return of the remaining 50 containers was set for February 2020, as of this report publication, it still has not pushed through as scheduled.

Illegal waste from South Korea has again featured in more recent incidents. In November 2019, the BOC intercepted another illegal shipment of electronic waste from this country, and deportation measures for this shipment have reportedly been initiated.⁶⁹ A carrier was also apprehended by the Philippine Coast Guard in the port of Zambales with a shipment of chemical waste. The ship's crew is currently under investigation.⁷⁰

Australia

In May 2019, nine containers of municipal waste from Australia were also discovered in the Mindanao Container Terminal in Misamis Oriental. The cargo was reported as “processed engineered fuel,” and had been imported by Holcim Philippines, Inc. for use as alternative fuel for its cement kilns.⁷¹

Holcim maintained that the shipment and its proposed use had been reported to, and cleared by, the DENR.⁷² Although customs officials at the port concurred and explained that the waste, comprised of plastic, rubber, wood, and paper, was “safe and would not pose any hazard to the public,” the shipment was detained on grounds of mis-declaration, and Holcim's accreditation was downgraded from “green” to “yellow.”⁷³

The DFA has come out with strongly worded statements on the need to return this trash to Australia,⁷⁴ but there have been no updates on whether measures are underway to carry this out.

Hong Kong

In May 2019, a container of electronic waste from Hong Kong was also discovered at the port, mislabeled as “assorted electronic accessories.” According to Bureau of Customs (BOC) officials, this shipment was intended as a “test cargo,” and that 70 more containers would have followed had it not been intercepted.⁷⁵ The trash was shipped back a month later.⁷⁶

⁶⁷ “Philippines returns tons of trash to South Korean,” Basel Action Network (BAN), 15 January 2019 at

<https://www.ban.org/news/2019/1/15/philippines-returns-tons-of-trash-to-south-korea> (accessed 18 November 2019).

⁶⁸ See: http://overseas.mofa.go.kr/ph-en/brd/m_20312/view.do?seq=14&srchFr=&srchTo=&srchWord=&srchTp=&multi_itm_seq=0&itm_seq_1=0&itm_seq_2=0&company_cd=&company_nm=&page=1

⁶⁹ “Customs seizes “misdeclared” electronic waste from South Korea.” 2019. ABS-CBN News at

<https://news.abs-cbn.com/news/11/23/19/customs-seizes-misdeclared-electronic-waste-from-south-korea> (accessed 24 November 2019)

⁷⁰ “Toxic waste shipment from South Korea seized in Zambales.” 2019. CNN Philippines at https://cnnphilippines.com/news/2019/11/23/south-korea-toxic-waste-zambales.html?fbclid=IwAR3cft0hDfalqkmcnr2yaQ9ORQ5p1HiZ27THY805_7ovgTxaLPsaKaTRjc?fbclid (accessed 24 November 2019)

⁷¹ “Duterte urged to also return garbage to HK, Australia.” 2019. Inquirer.net at

<https://globalnation.inquirer.net/175602/duterte-urged-to-also-return-garbage-to-hk-australia> (accessed 18 November 2019).

⁷² *Ibid.*

⁷³ Jerusalem, J. and E. Maandig, 2019. “Waste materials from Australia not illegal: Customs exec,” Philippine News Agency a

<https://www.pna.gov.ph/articles/1070587> (accessed 18 November 2019)

⁷⁴ Pazzibugan, D. 2019. “Locsin orders return of trash to Australia,” Inquirer.net at

<https://globalnation.inquirer.net/176092/locsin-orders-return-of-trash-to-australia> (accessed 18 November 2019)

⁷⁵ “Duterte urged to also return garbage to HK, Australia.” 2019. Inquirer.net at

<https://globalnation.inquirer.net/175602/duterte-urged-to-also-return-garbage-to-hk-australia> (accessed 18 November 2019)

⁷⁶ Mogato, A. 2019. “Hong Kong container carrying illegal waste shipped back,” Rappler at

<https://www.rappler.com/nation/232139-hong-kong-container-carrying-illegal-waste-shipped-back-june-2019> (accessed 18 November 2019).

Existing policies and guidelines on waste shipments

Importation process and requirements

Pursuant to RA 6969 and the administrative issuances governing its implementation, the importation of recyclable materials containing hazardous substances shall only be allowed upon prior written approval from the DENR Secretary. DENR Administrative Order 2013-22 further details the current procedures and standards for waste importers.

Prospective importers are required to register with the DENR through the EMB, specifying the types and quantities of the imported recyclable material, its physical and chemical characteristics and justification for its import.⁷⁷ They must describe how the waste will be handled, including the methods for its collection, packaging, labeling, transportation, and route, which must conform with internationally accepted standards. An emergency response plan is also required, with the steps that shall be taken in case of accidents that may occur while the waste is being transported.⁷⁸

Once duly registered, importers must apply for an Importation Clearance (IC) for each shipment of imported recyclable material. The IC must be secured thirty days before the actual importation, and once issued, is valid for six months.⁷⁹ An application for an IC must also specify the liabilities of parties for clean-up operations in case of spills and/or emergencies, the responsibility of the exporter to retrieve or return the waste if its denied entry into the Philippines, and the liabilities of parties to compensate for any damages to properties and life in case of emergencies and accidents.⁸⁰

Importers who do not first secure this clearance may be found liable for a PHP50,000 fine.⁸¹ The DENR may also require testing and sampling of imported recyclable materials at the importer's expense. Refusal may result in the cancellation of the IC.⁸²

Waste importers are further required to designate a Pollution Control Officer, and comply with the guidelines on proper hazardous waste storage and labeling and the online hazardous waste manifest system to convey the imported recyclable materials from the port to their premises.⁸³ They must also establish and maintain an appropriate and effective Contingency Program to address the health and environmental impacts from accidental releases of hazardous materials into the environment.⁸⁴ For importers intending to hold recyclable materials containing hazardous substances in excess of thirty days, a Treatment, Storage and Disposal (TSD) facility permit must also be obtained.⁸⁵

Furthermore, in compliance with the provisions of the Basel Convention, exporters should ensure that their countries' designated Competent Authorities have sent previous notification to the EMB.⁸⁶

Process flowcharts for registration of importers and for securing a pre-shipment importation clearance are attached as Appendix VI a, and VI b, respectively.

Apart from these guidelines, DENR Memorandum Circular 2017-11 further prescribes that all importers of recyclable materials containing hazardous substances are required to acquire an Environmental Compliance Certificate.

Customs Memorandum Order (CMO) 48-2019, issued in October 2019, also streamlines this process further and provides additional safeguards against illegal waste importation. This Order prescribes the implementation of the Cargo Targeting System, or the "cargo manifest risk assessment solution developed by the World Customs Organization to carry out international best practice on cargo risk assessment."⁸⁷ Under this system, foreign carriers with cargo destined for the Philippines are directed to submit electronic copies of their cargo manifests to the BOC before their arrival. These documents must include (among others) descriptions of the specific contents of the cargo, and the names and contact information of the shipper, consignee and notify party.⁸⁸

⁷⁷ DENR Administrative Order 2013-22 (2013) Sec. 10.2.1

⁷⁸ Ibid.

⁷⁹ Ibid. Sec. 10.2.3

⁸⁰ Ibid.

⁸¹ Ibid. Sec. 11.1

⁸² Ibid. Sec. 10.2.5

⁸³ Ibid. Sec. 10.2.4, also see: Sec. 6 and 7

⁸⁴ Ibid, also see Sec. 8

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Customs Memorandum Order 48-2019 (2019) Sec. 3.9

⁸⁸ Ibid. Sec. 4.1 and 4.3

Key government agencies – roles and functions

DENR – Environmental Management Bureau

As the implementing agency for RA 6969, the DENR, through the EMB, is mandated to monitor and prevent the entry, even in transit, of hazardous wastes and their disposal in the country. The agency may also subpoena witnesses and documents and to require other information as necessary to carry out its functions.⁸⁹ Within the EMB, these are primarily the responsibilities of the Environmental Quality Division-Hazardous Waste Management Section.

The DENR also serves as the Chairperson of an Inter-Agency Technical Advisory Committee composed of the Departments of Health, Trade, and Industry, Science and Technology, National Defense, Labor and Employment, Finance and Agriculture, the Director of the Philippine Nuclear Research Institute and a representative from a non-government organization that works in the areas of health and safety. This body should provide inputs for formulation of the rules and regulations for the implementation of the law,⁹⁰ though it has not been visibly active in recent years.

To better operationalize the safeguards under the law, the DENR Secretary may also deputize Environmental Protection Officers to perform a variety of functions, primarily with regard to inspection and examination of premises and vehicles that they believe to be used for the storage, processing, treatment, transport and disposal of hazardous waste. In relation to this, they are further authorized to collect samples for examination and testing, inspect and make copies of pertinent documents and take photographs or recordings as necessary.⁹¹

Bureau of Customs

As a frontline agency tasked with trade facilitation and border protection, the apprehension and investigation of illegal waste imports is often within the jurisdiction of the BOC. For 2019, the BOC's priority programs focused on (among others) the enhancement of Cargo Clearance and examination capabilities to improve trade facilitation that is compliant with international standards, the enhancement of intelligence and enforcement capabilities to improve risk management, detection and cargo targeting and the creation of a Quality Management System and integrity system to promote a culture of honesty and integrity and instill positive values in its personnel.⁹²

In line with this, CMO 38-2019, issued in July 2019, institutionalized an Environmental Protection and Compliance Division at the BOC (EPCD). This newly organized office is intended to serve as the BOC's specialized unit for environmental protection issues.⁹³

To perform its mandate, the EPCD has been given monitoring functions over the processing of shipments of (among others) hazardous substances, waste products, recyclable products and other chemicals and substances under the regulatory control of the DENR. It may also recommend the issuance of Alert Orders and Pre-Lodgment Control Orders against shipments suspected of containing goods in violation of the Customs Modernization and Tariff Act (CMTA) and other environmental laws.⁹⁴

The EPCD may also exercise investigatory powers over cases involving violations of environmental laws and make recommendations for prosecution of violations of the CMTA when these are committed in relation to environmental regulations. The office is further directed to coordinate with the other BOC divisions involved in the inspection of cargo, particularly the Piers and Inspection Division and the X-ray Inspection Project.⁹⁵

The institutionalization of a dedicated office to carry out these monitoring, recommendatory and coordinative powers is a step in the right direction toward ensuring that essential tasks are performed in a systematic and consistent manner. In the long run, the proper implementation may prevent situations wherein cargo containing imported waste goes unnoticed at ports for months after it has been unloaded, and may improve case build-up and prosecution of violations of environmental laws.

⁸⁹ RA 6969 Sec. 6

⁹⁰ RA 6969 Sec. 7

⁹¹ DENR Administrative Order 92-29 -

Implementing Rules and Regulations of RA 6969 (1992) Sec. 8-9

⁹² See: Bureau of Customs, "10 Point Priority Program" at <http://customs.gov.ph/mission-and-vision/>

⁹³ Customs Memorandum Order 38-2019 (2019) Sec. 2

⁹⁴ Ibid. Sec. 6

⁹⁵ Ibid.

Private sector role

While waste trade is sometimes conducted as a legitimate industry (minus the consideration of ethical issues), the UNEP Assessment observes that the “illegal traffic of waste has an adverse effect on trade and competition, putting law-abiding businesses at an economic disadvantage.”⁹⁶ Notwithstanding the apprehensions and repatriation of waste shipments in the recent cases of illegal waste importation, prosecuting the companies and individuals who serve as importers and/or consignees of the cargo has been another story entirely. Many of the companies and agents involved could not be found at their given addresses, and as such, even when charges could be initiated, it was much more difficult for any legal action to prosper.

RA 9003 provides both fiscal and non-fiscal incentives to encourage greater private sector participation in solid waste management. From 2010, private entities are entitled to claim tax and duty free importation of machinery, equipment, vehicles and spare parts used for collection, transportation, segregation, recycling, re-use and composting of solid wastes, subject to prohibitions on their manufacture and use and prior approval from the Board of Investments.⁹⁷ Alternatively, private entities may claim a tax credit equivalent to 50 percent of the value of the taxes and customs duties that would have been waived on the machinery, equipment, vehicle and spare parts, had these items been imported.⁹⁸



Furthermore, businesses that have registered with the NSWMC and have been issued ECCs by the EMB are entitled to simplified procedures for the importation of equipment, spare parts, new materials, and supplies, and for the export of processed products.⁹⁹ The law expands industry participation even further, by providing that a private sector representative shall serve as the vice-chairperson of the NSWMC.¹⁰⁰

Unfortunately, mainstream corporate understanding about, and efforts to improve solid waste management, are focused on recycling and reuse (downstream approaches), instead of on waste avoidance (for example, redesigning systems, packaging and delivery systems to avoid waste generation). Nevertheless, given the existing incentives and institutional mechanism under RA 9003, the private sector is well placed to also proactively institute measures to police their own ranks in an effort to curb illegal waste importation, and to contribute to less waste generated and to a green and circular economy in the Philippines.

This section briefly discussed existing waste trade policies, procedures, and guidelines meant to regulate the movement of legal waste, and prevent the entry of illegal waste deemed hazardous, toxic, and dangerous to public health and safety. However, despite these measures, the waste trade continues to be a problem, and the Philippines continues to be at risk of becoming a dumping ground of other country's unwanted waste. It is therefore clear that additional, and bold measures need to be taken to protect the country from the harmful effects of illegal waste.

Bureau of Customs Port Collector John Simon opens the container van containing 22 sling bags of 2.561 tons of “mixed electronic waste” before Hong Kong expatriation.

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⁹⁶ Rucevska, I. et. al. (2015) 13

⁹⁷ RA 9003 Sec. 45 (1a)

⁹⁸ RA 9003 Sec. 45 (1b)

⁹⁹ RA 9003 Sec. 45 (2)

¹⁰⁰ RA 9003 Sec. 4

THE BASEL BAN AMENDMENT:

Why this is a necessary instrument to control and prevent illegal waste trade

The Basel Convention

With the absence of a far-reaching zero waste and clean production framework on resource management, one of the impacts of increasing industrialization, growing incomes, creeping urbanization, and expanding global trade over the past century is the concomitant increase in waste—whether it be toxic, hazardous, nuclear, or the simple day-to-day discards and disposals of each person. As waste increased in both developed and developing countries, governments had the difficult task of ensuring its proper management—without risk or harm to its citizens and of course the environment. One convenient way developed by both the public and private sector of keeping the waste “under the rug” was to ship it out to another place willing to take the garbage.

The waste trade industry is worth billions and is expected to grow in the coming decades as waste generation increases. However, in the early years of this industry, there were many people who saw opportunities to make a quick return on investment—given the lack of both national and international laws on waste trade, unscrupulous traders shipped dangerous and hazardous wastes to developing countries, where their “local partners” would receive it and simply conveniently dump it without care or concern somewhere in the country. Several incidents of hazardous waste dumping in Africa and other parts of the developing world resulted in a global outcry and for calls for an international response to the growing crisis.

In the late 1980s, negotiations began for an internationally binding agreement to address the “toxic trade” menace.¹⁰¹ The result was the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (the Basel Convention).¹⁰² It was adopted on 22 March 1989 and entered into force on 5 May 1992. Being one of the most widely accepted multilateral environmental agreements, it has 187 State parties. The Philippines ratified the Basel Convention on 31 October 1993, and entered into force in the country on 19 January 1994 .

The Convention has attracted broad support, and there is a consensus among commentators that, although far from providing a perfect solution to the problem of trans-boundary movements of hazardous wastes, it does address most of the relevant issues and is therefore a step in the right direction.¹⁰³ One author adds that it is the first multilateral agreement to integrate environmental justice principles into international trade because of its overarching objective to protect human health and the environment from the adverse effects of hazardous waste and its recognition of the limited capabilities of developing countries to manage this waste.¹⁰⁴

The overarching objective of the Basel Convention is to protect human health and the environment against the adverse effects of hazardous wastes. Its scope of application covers a wide range of wastes defined as “hazardous wastes” based on their origin and/or composition and their characteristics, as well as two types of wastes defined as “other wastes”—household waste and incinerator ash.¹⁰⁵ The Convention sets forth general obligations requiring all parties to ensure that transboundary movements of wastes are reduced to the minimum consistent with environmentally sound and efficient management, and it reflects an approach premised upon the view that wastes should, as far as possible, be disposed of in the state in which they were generated (this has come to be known as the ‘proximity principle’).¹⁰⁶

¹⁰¹ See <http://www.basel.int/TheConvention/Overview/tabid/1271/Default.aspx>

¹⁰² See generally <http://www.basel.int/> ; Full text of the Convention, its Annexes, Protocols, and Amendments are available at <http://www.basel.int/TheConvention/Overview/TextoftheConvention/tabid/1275/Default.aspx>

¹⁰³ Philippe Sands. Principles of International Environmental Law, 2003 569.

¹⁰⁴ Lipman, Zada, Trade in Hazardous Wastes , 4, in International Environmental Law and the Global South, eds S Alam, S Atapattu, CG Gonzalez, J Razzaque, Cambridge University Press 2015, 4.

¹⁰⁵ See <http://www.basel.int/TheConvention/Overview/tabid/1271/Default.aspx>

¹⁰⁶ Philippe Sands. Principles of International Environmental Law, 2003 569.

The provisions of the Convention center around the following principal aims:¹⁰⁷

- The reduction of hazardous waste generation and the promotion of environmentally sound management of hazardous wastes, wherever the place of disposal;
- The restriction of transboundary movements of hazardous wastes except where it is perceived to be in accordance with the principles of environmentally sound management; and,
- A regulatory system applying to cases where transboundary movements are permissible.

Article 4 sets forth general obligations designed to minimize waste generation and its transboundary movement, and ensure its environmentally sound management:¹⁰⁸

- The parties must not allow exports to parties which have prohibited by legislation all imports, or where they have reason to believe that the wastes will not be managed in an environmentally sound manner, and are obliged to co-operate to improve and achieve environmentally sound management of such wastes.¹⁰⁹
- Parties may prohibit the import of such wastes and must consent in writing to any specific imports that they have not prohibited.¹¹⁰
- Parties must provide information on proposed transboundary movements of hazardous and other wastes to the states concerned, and prevent imports if they have reason to believe that the imports will not be managed in an environmentally sound manner.¹¹¹
- In order to encourage states to become parties to the Convention, wastes may not be exported to or imported from a non-party, and they cannot be exported for disposal to the Antarctic area.¹¹²
- Traffic that contravenes notification or consent requirements, or fails to conform with its documentation, or results in deliberate disposal in contravention of the Convention and general principles of international law, will be illegal and considered to be criminal.¹¹³
- The Convention discourages exports of hazardous and other wastes, which should only be allowed if the exporting state does not have the capacity, facilities or suitable sites to dispose of them in an environmentally sound or efficient manner, or if the wastes are required as a raw material for recycling or recovery in the importing state, or in accordance with other criteria decided by the parties.¹¹⁴
- Moreover, parties may not transfer to importing or transit states their obligation under the Convention to carry out environmentally sound management, and can impose additional requirements consistent with the Convention to better protect human health and the environment.¹¹⁵
- The transport and disposal of hazardous and other wastes may only be carried out by authorized persons, and transboundary movements must conform with generally accepted and recognized international rules and standards of packaging, labeling and transport, and take account of relevant internationally recognized practices, and be accompanied by a movement document until disposal.¹¹⁶

¹⁰⁷ See <http://www.basel.int/TheConvention/Overview/tabid/1271/Default.aspx>

¹⁰⁸ See Philippe Sands. Principles of International Environmental Law, 2003 569.

¹⁰⁹ Basel Convention, Arts. 4(2)(d), (e) and (h) and 10.

¹¹⁰ Basel Convention, Art. 4(1)(a) and (c)

¹¹¹ Basel Convention, Art. 4(2)(f) and (g).

¹¹² Basel Convention, Art. 4(5) and (6).

¹¹³ Basel Convention, Arts. 4(3) and 9

¹¹⁴ Basel Convention, Arts. 4(9)

¹¹⁵ Basel Convention, Art. 4(10) and (11)

¹¹⁶ Basel Convention, Art. 4(7)

Article 6, 7 and 8 provides for detailed conditions for the international regulation of transboundary movements of hazardous and other wastes between parties based upon a system of 'prior informed consent.'¹¹⁷ Articles 9 on Illegal Traffic¹¹⁸ emphasizes the criminal nature of any violations of the Convention, one of the few environmental treaties to do so.¹¹⁹

Annex I of the Convention provides for Categories of Wastes to Be Controlled based on waste streams and wastes having as constituents certain chemicals. Annex II lists wastes requiring special consideration. Annex III gives a list of Hazardous Characteristics (i.e., explosive, flammable, poisonous, etc.). Annex IV talks about disposal operations. Annex VIII, called List A, enumerates wastes characterized as hazardous, while Annex XI on List B are items not to be considered waste under Article 1, unless they contain categories of waste that need to be controlled and exhibits hazardous characteristics. There is also a Protocol on Liability and Compensation for Damage Resulting from Transboundary Movement of Hazardous Wastes and Their Disposal.¹²⁰

More recently the Basel Convention is taking on one of the major sources of waste and pollution around the world—plastics. The ubiquitous transboundary movement of plastic wastes and microplastics is becoming a major concern as their property of durability makes their particles remain for long period of time—these account for around 10 percent of the total waste generated and constitute approximately 90 percent of all trash floating on the ocean's surface, with 46,000 pieces of plastic per square mile.¹²¹ During the Basel Conference of the Parties from 29 April to 10 May 2019, governments amended the Basel Convention to include plastic waste in a legally-binding framework which will make global trade in plastic waste more transparent and better regulated, whilst also ensuring that its management is safer for human health and the environment.¹²² The discussions emphasized that the plastic problem must be tackled at source, as it will be impossible to clean up all the floating plastic in our oceans.

¹¹⁷ Sands (2003) 570

¹¹⁸ See <http://www.basel.int/Implementation/LegalMatters/IllegalTraffic/Overview/tabid/3421/Default.aspx>

Under the Basel Convention, illegal traffic is defined as a transboundary movement of hazardous wastes:

- without notification pursuant to the provisions of the Convention to all States concerned;
- without the consent of a State concerned;
- through consent obtained by falsification, misrepresentation or fraud;
- that does not conform in a material way with the documents; or
- that results in deliberate disposal (eg. dumping) of hazardous wastes in contravention of the Convention and of general principles of international law.

¹¹⁹ See <http://www.basel.int/Implementation/LegalMatters/IllegalTraffic/Overview/tabid/3421/Default.aspx>

¹²⁰ For the text of the Protocol, see <http://www.basel.int/TheConvention/Overview/TextoftheConvention/tabid/1275/Default.aspx>

¹²¹ See www.basel.int/Implementation/Plasticwastes/Overview/tabid/6068/Default.aspx

¹²² *Ibid.*

The Basel Ban Amendment: The long road to ratification

The transboundary trade in hazardous waste has presented developing nations with an untenable choice: (1) accept the potentially damaging environmental impact of legally importing hazardous waste in exchange for badly needed capital, or (2) attempt to prevent the illegal importation as well as the developing nation's limited means allow.¹²³ One author notes that this has emerged as an environmental justice issue: While Northern countries generate most of this waste, a large quantity is exported to the global South. This places a disproportionate burden on countries that frequently lack the capacity to deal with these wastes safely. It has serious impacts on human health and the environment in these countries and violates the principles of environmental justice.¹²⁴ Recall also the reason why the Basel Convention came to light: Among the tensions between different members of the international community, one in particular stood out: the desire of many developing countries, particularly in Africa, to ban the international trade in wastes, and the opposition to such an approach by many industrialized countries wanting to keep their waste disposal options open.¹²⁵

It is within the above context that the idea of the Basel Ban Amendment first came about. Adopted in 22 September 1995, the Basel Ban Amendment provides for the prohibition by each Party included in the proposed new Annex VII (i.e., Parties and other States which are members of the Organization for Economic Cooperation and Development (OECD), European Community (EC, now the European Union), Liechtenstein) of all transboundary movements to States not included in Annex VII of hazardous wastes covered by the Convention that are intended for final disposal, and of all transboundary movements to States not included in Annex VII of hazardous wastes covered by paragraph 1 (a) of Article 1 of the Convention that are destined for reuse, recycling or recovery operations.¹²⁶

At that time, some felt that the Basel Ban Amendment was a way to address challenges faced by developing countries and countries with economies in transition in controlling imports of hazardous and other wastes they were unable to manage in an environmentally sound manner but continued to receive.¹²⁷

After almost 25 years since the Basel Ban Amendment was first put on the table, it came into force on 5 December 2019 following the ratification of Croatia on 6 September 2019, becoming the 97th country to do so. It is worth noting that in ASEAN, only Brunei, Indonesia, and Malaysia have so far ratified the Basel Ban Amendment. The Philippines has so far not ratified the Basel Ban Amendment.

The Basel Ban Amendment will prohibit the following shipments from Annex VII countries:¹²⁸

- All shipments of "hazardous wastes" (defined broadly under the Convention, and including anything that is hazardous in the exporting or importing country) to non-Annex VII countries
- All shipments of a subset of hazardous wastes (i.e., those defined under Article 1(1)(a) of the Convention) to non-Annex VII countries for recycling and similar recovery operations specified in Annex IV B of the Convention.

¹²³ Bradford, Mark, The United States, China & the Basel Convention On The Transboundary Movements of Hazardous Wastes and Their Disposal, Fordham Environmental Law Review Volume 8, Number 2 2011 Article 3, 313.

¹²⁴ Lipman, Zada, Trade in Hazardous Wastes, 4, in International Environmental Law and the Global South, eds S Alam, S Atapattu, CG Gonzalez, J Razzaque, Cambridge University Press 2015, 1.

¹²⁵ Philippe Sands. Principles of International Environmental Law, 2003 567-568.

¹²⁶ See generally <http://www.basel.int/Implementation/LegalMatters/BanAmendment/Overview/tabid/1484/Default.aspx>

¹²⁷ See: <http://www.basel.int/Implementation/LegalMatters/BanAmendment/Overview/tabid/1484/Default.aspx>

¹²⁸ See: <https://www.bdlaw.com/publications/basel-ban-amendment-to-restrict-international-trade-in-hazardous-recyclables/>

Other potential implications of the Basel Ban Amendment, as observed by one leading international law firm, include:¹²⁹

- It will not apply if a waste is hazardous due to the national laws of the exporting or importing country but not according to Article 1(1)(a) of the Convention.
- It also does not affect shipments of “other wastes” under the Convention, which is significant in light of the recent amendment of the Convention to add certain plastic wastes as “other wastes” under Annex II.
- Entry into force at the international level means that the Annex VII-listed countries that have ratified the Basel Ban Amendment will be required to have legislation or other measures in place to implement the requirement to stop exports. That obligation will apply regardless of whether the destination country is a party to the Ban Amendment (or even to the Basel Convention itself)—it applies to all “states” not listed in Annex VII.
- Many developing countries have also ratified the Basel Ban Amendment, and they and others will likely adopt measures as a matter of their domestic law to refuse hazardous waste imports from Annex VII-listed countries.¹³⁰

Non-ratification of the Basel Ban Amendment, such as the current situation of the Philippines, puts the country at risk from the continued shipment of waste, hazardous or not, from developed countries. The safeguards and prohibitions of the Basel Ban Amendment cannot be taken advantage of by the Philippines, absent more stringent national laws on the prohibition of waste trade in general. Unscrupulous importers and exporters may continue to use the legal “loopholes” in the Basel Convention to continue the entry of potentially harmful and hazardous waste into the country.

¹²⁹ See: <https://www.bdlaw.com/publications/basel-ban-amendment-to-restrict-international-trade-in-hazardous-recyclables/>

¹³⁰ However, one author notes: “Although initially the Ban was unanimously supported by the South, some Southern countries, such as Bangladesh, the Philippines, India and Pakistan, have been reluctant to ratify it. These countries rely on the hazardous waste trade in recyclables to support their domestic industries. A complete ban would deprive them of an inexpensive source of raw materials, such as steel, zinc and lead, and impact on their domestic economies” Lipman, Zada, *Trade in Hazardous Wastes*, 4, in *International Environmental Law and the Global South*, eds S Alam, S Atapattu, CG Gonzalez, J Razzaque, Cambridge University Press 2015, 10-11.



Leaders of various environmental activist groups participate in a waste trade press conference in Olongapo City, Philippines.

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Environmental groups call for the Philippine government to ratify the Basel Ban Amendment, which prohibits the import of all waste for any reason, including "recycling".

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ANALYSIS OF THE BASEL CONVENTION AND THE BASEL BAN AMENDMENT: Issues and challenges

The Basel Convention regime has been in place for almost thirty years. Despite positive steps and the continuous development of mechanisms to prevent harmful and illegal waste trade, challenges and issues still exist. These increase the risk of environmental harm faced by developing countries such as the Philippines. The following section will present some of these issues and challenges, in support of calls for the immediate ratification of the Basel Ban Amendment.

Defining “waste”

A lot of the issues surrounding the Basel Convention revolve around its definition of waste. International legal regulation of waste began in the early 1970s with the adoption of two treaties that prohibited the disposal at sea of certain types of waste; and this raised the difficulty of defining waste, a matter that continues to cause legal difficulties today.¹³¹ Human activity generates waste in solid, liquid and gaseous forms, and these wastes have tended to be categorized by regulatory instruments at the national and international level according to two characteristics: their source (municipal or industrial, including agricultural and mining); and/or their hazardous qualities (non-hazardous, hazardous and ultra-hazardous).¹³²

The Basel Convention defines wastes in reference to their end use: they are ‘substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law.’¹³³ Under this definition, a substance which is not to be disposed of (perhaps to be recycled) may not be waste.¹³⁴ This then leads to a situation wherein defining waste is thus discretionary—traders, merchants, and even governments can circumvent the Basel Convention’s provisions by simply saying that the “waste” is not yet for disposal.

Waste exporters have been quick to exploit this situation—hazardous waste shipments to the global South are no longer labelled as exports for dumping or final disposal, but rather as commodities for recycling in the country of import.¹³⁵ In some cases this is a “sham” operation and the wastes ended up being burned or dumped.¹³⁶

Take for example the issue of e-waste. Most of these are classified as “recyclable” and not for disposal. Most e-wastes are shipped to developing countries in Asia and Africa, which includes the Philippines. Many of these countries lack, or do not enforce, labor or environmental laws that would mitigate or prevent the harms to human and environmental health that are associated with e-waste processing, resulting in significant risk to human and environmental well-being.¹³⁷ Waste disposal law in most developing countries tends to be significantly less burdensome than that in industrialized countries, and moreover, the authorities in developing countries generally lack the means to effectively monitor compliance with any standards they impose.¹³⁸

¹³¹ Sands (2003) 557

¹³² *Ibid.*

¹³³ Basel Convention, Art. 2(1)

¹³⁴ Sands (2003) 557

¹³⁵ Lipman, Zada, Trade in Hazardous Wastes, 4, in *International Environmental Law and the Global South*, eds S Alam, S Atapattu, CG Gonzalez, J Razzaque, Cambridge University Press 2015, 9.

¹³⁶ *Ibid.* See above discussions on Recent Illegal Waste Trade Cases in the Philippines, pages ____.

¹³⁷ Issues in International Trade Law: Restricting Exports of Electronic Waste Emily C. Barbour Legislative Attorney February 24, 2012, Congressional Research Service 7-5700 www.crs.gov/R42373, <https://fas.org/sgp/crs/misc/R42373.pdf>

¹³⁸ Bradford, Mark, The United States, China & the Basel Convention On The Transboundary Movements of Hazardous Wastes and Their Disposal, *Fordham Environmental Law Review* Volume 8, Number 2 2011 Article 3, 313 citing ALEXANDRE KISS AND DINAH SHELTON, *INTERNATIONAL ENVIRONMENTAL LAW* 320-21 (1991)

One leading scholar on international environmental law notes the lack of an international response or approach to waste at its root. Part of the problem is institutional: at the global level, no UN or other body has overall responsibility for waste, and this has led to a fragmented, ad hoc and piecemeal international response.¹³⁹ International environmental law is more developed in limiting or prohibiting certain methods of disposal of particular waste types, although no single instrument comprehensively and globally regulates waste disposal.¹⁴⁰ A recent scholarly article noted that "Yet, despite numerous environmental successes, advances, and innovations, scholars of international law—and international environmental law in particular—have failed to understand and grasp the dual ubiquity of waste: both as a phenomenon structuring individual and collective behavioral patterns on a global scale, and the very materiality of waste itself." Whereas it constitutes a primary environmental concern, waste remains relatively peripheral, both in the thinking of international lawyers and in international legal documents.¹⁴¹

This seemingly "gray area" in the definition of waste under international law poses risks and problems for a country like the Philippines. Local environment groups have called for a strict definition of waste—even goods marked for recycling or dismantling, so long as they have been discarded, should not be allowed to enter the country.

The Convention does not address the "root" of the problem

One of the major issues, or perhaps shortcomings, of the Basel Convention is its failure to address the root cause of the problem—waste generation that results from unsustainable production and consumption. As noted in this report, the amount of waste that the global community produces daily has increased rapidly in the past 50 years. This will inevitably result in an increase of transborder waste flow.¹⁴² Moreover, forecasts predict increases in waste production will mainly come from the global South in the next decades as these areas fully engage on the path of economic (capitalistic) development.¹⁴³

A leading author notes that current international treaties do not address the source of the waste problem by preventing waste generation; it merely shifts the disposal problem to another environmental medium,¹⁴⁴ which is the regulation of waste trade and movement. He adds that political efforts to encourage recycling, recovery and re-use of materials and products have not yet led to international legal commitments.¹⁴⁵

Despite the absence noted above, current international legal frameworks for regulating waste trade can be used as starting points for developing mechanisms to address waste generation. Emerging concepts such as the 'self-sufficiency principle' and the 'proximity principle', already articulated in the Basel Convention, can be used to encourage communities to limit the amount of waste they generate by requiring them to dispose of the waste they themselves produce.¹⁴⁶ There is some suggestion that the rules of international law might be encouraged to move in that direction: the establishment of quantitative targets and timetables for the recovery and re-use of hazardous and non-hazardous wastes is now on the international agenda, as is the emerging effort to encourage the use of cleaner technologies which aim at waste minimization, taking cue from Agenda 21 which endorsed both approaches, and still provides a useful framework against which future international waste management and prevention policies can be judged.¹⁴⁷

¹³⁹ Sands (2003) 554; See also Olivier Barsalou* and Michael Hennessy Picard, *International Environmental Law in an Era of Globalized Waste*, 17 *Chinese Journal of International Law* (2018), 889: Interestingly, international law does not have a general definition for waste. Existing definitions are convention-based and subject-specific. They provide very little in terms of conceptual or theoretical understandings of waste as a legal object

¹⁴⁰ Sands (2003) 562

¹⁴¹ Olivier Barsalou* and Michael Hennessy Picard, *International Environmental Law in an Era of Globalized Waste*, 17 *Chinese Journal of International Law* (2018), 888

¹⁴² Olivier Barsalou* and Michael Hennessy Picard, *International Environmental Law in an Era of Globalized Waste*, 17 *Chinese Journal of International Law* (2018), 888, citing Daniel Hoornweg, Perinaz Bhada-Tata & Chris Kennedy, *Environment: Waste Production Must Peak this Century*, 502:7473 *Nature* (2013) 615–617

¹⁴³ Barsalou and Hennessy (2018) 896

¹⁴⁴ Sands (2003) 554

¹⁴⁵ Sands (2003) 566

¹⁴⁶ See: Sands (2003) 576

¹⁴⁷ *Ibid.*

THE LEGAL IMPERATIVE TO RATIFY THE BASEL BAN AMENDMENT

International legal bases

There are existing international legal bases which can compel the Philippine government to ratify the Basel Ban Amendment, or at the very least impose or enact measures which replicate its prohibitions. These include customary law, the State duty not to cause harm, international jurisprudence, and the human rights regime.

The Basel Convention and waste-related treaties have reached the status of customary international law

The exponential and rapid growth of environmental law principles since the 1970s, owing to the emergence of an increased awareness and calls for greater international action to address these, has resulted in the emergence of general principles and customary norms in international law. As one leading publication on international environmental law puts it, the number of treaties and other international instruments reproducing the same legal norms concerning the environment continues to grow. The work of the International Law Commission shows that the repetition of the same norms in numerous international instruments can be considered as giving birth to new customary rules.¹⁴⁸ This is significant because customary laws and general principles of law are considered binding on all States, even if there is no treaty obligation in relation to the said custom or principle. The Philippine Constitution in fact makes reference to "generally accepted principles as part of the law of the land."¹⁴⁹

The same conclusion can be reached for chemical- and waste-related treaties such as the Basel Convention. Some of the Basel Convention's fundamental principles, such as the principles of proximity of disposal of wastes, environmentally sound management and prior informed consent to import of potentially hazardous substances, have arguably contributed to the development of customary international law in the relevant field.¹⁵⁰ Regional agreements further demonstrate the international consensus that, without regulation, hazardous waste may well be disposed of in a dangerous and damaging manner.¹⁵¹ These regional agreements include the Waigani Convention,¹⁵² the Agreement of the Commonwealth of Independent States on the Monitoring of Transboundary Shipments of Hazardous and Other Wastes; the Convention on the Protection of the Environment Through Criminal Law; and the Bamako Convention, among others.¹⁵³

Various conventions prohibiting dumping at sea provide further evidence that the prohibition on dumping is supported by international consensus, elevating the prohibition into a law of nations.¹⁵⁴ Yet more evidence of customary and global acceptance is the coordination by the Basel Convention regime with other related international bodies. Recent years have seen efforts to cooperate with organizations working in areas that complement and strengthen the Basel Convention regime, notably with the World Customs Organization and Interpol in the area of enforcement and with the International Maritime Organization in the area of marine pollution by substances subject to transboundary movement, as well as of dismantling of obsolete ships.¹⁵⁵

¹⁴⁸ ALEXANDRE KISS AND DINAH SHELTON, INTERNATIONAL ENVIRONMENTAL LAW 55 (Supp. 1994)

¹⁴⁹ See discussion below on the provisions of the 1987 Philippine Constitution.

¹⁵⁰ <https://legal.un.org/avl/ha/bcctmhwd/bcctmhwd.html>

¹⁵¹ International Environmental Law Gets Its Sea Legs: Hazardous Waste Dumping Claims Under the ATCA Raechel Anglin, YALE LAW & POLICY REVIEW 26:231 2007, 251-252

¹⁵² See Sands (2003) 572-573: The Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region (1995 Waigani Convention) was adopted by governments in the South Pacific region following negotiations under the auspices of the South Pacific Forum. The Waigani Convention was modelled after the Bamako Convention, and, like the latter treaty, it bans the import of hazardous and radioactive wastes into its area of coverage and regulates the transboundary movement of such wastes amongst parties thereto.

¹⁵³ See Sands (2003) 571-572: The Convention on the Ban of Imports into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa (1991 Bamako Convention) was adopted by African governments following negotiations under the auspices of the Organization of African Unity.¹⁶⁵ It establishes a regional regime to prohibit trade in waste, giving effect to the positions many African governments had adopted in the negotiations on the 1989 Basel Convention.

The Bamako Convention includes several other subtle but significant differences. Wastes to be used as raw materials for recycling and recovery may not be exported, and parties must appoint a national body to act as a 'Dumpwatch' to co-ordinate governmental and non-governmental bodies (Art 5(4)).

¹⁵⁴ Anglin (2007) 254

¹⁵⁵ See: <https://legal.un.org/avl/ha/bcctmhwd/bcctmhwd.html>

Yet another proof of the Basel Convention's customary status is its treatment under United States jurisprudence in relation to its Alien Tort Claims Act (ATCA).¹⁵⁶ One US Congressional study writes:¹⁵⁷ "The prohibition against dumping of hazardous wastes in developing countries" has developed into a customary norm of international law within the terms of ATCA jurisprudence. The anti-dumping norm is specifically defined in a widely accepted multilateral treaty. Moreover, this customary international norm is buttressed by international consensus, as demonstrated by a U.N. convention, regional conventions, and national implementing legislation."

The States' duty not to cause harm can, in theory, be applied to waste trade

There are general principles of international environmental law, which serve as guides for the global community in addressing environmental issues and challenges, and in the implementation of treaties and national laws. Such principles are general in the sense that they are potentially applicable to all members of the international community across the range of activities that they carry out or authorize and in respect of the protection of all aspects of the environment.¹⁵⁸

Of these general principles and rules, Principle 21 of the 1972 Stockholm Declaration,¹⁵⁹ and Principle 2 of the Rio Declaration,¹⁶⁰ the prevention and co-operation principles, are sufficiently well established to provide the basis for an international cause of action; that is to say, to reflect an international customary legal obligation the violation of which would give rise to a free-standing legal remedy.¹⁶¹ Arguably the most venerable of customary environmental law principles, arising from the Corfu Channel and Trail Smelter Arbitration cases, is the corollary that every sovereign state is obliged to ensure that activities within its jurisdiction do not damage, or compromise, the rights of any other state.¹⁶²

As such, it is possible to argue on the bases of the above principle that a State has the obligation to ensure that its exports (which include waste) do not cause harm or damage to the receiving/importing State. On the other hand, the receiving/importing State has the duty to its citizens to prohibit the entry and importation of harmful waste, in whatever form, state, or description it may be.

In the Philippines' case, there is a legal imperative, on the basis of these principles, to ratify the Basel Ban Amendment, to ensure that activities within its jurisdiction (i.e., importation of waste) do not cause harm to Filipinos. On the other hand, imposing stricter measures that prohibit waste trade, in addition to ratification of the Basel Ban Amendment, would be justified given that the exporting state has the equally binding duty not to cause harm to the importing state because of the waste shipment.

¹⁵⁶ The Alien Tort Claims Act (ATCA) is a US law on the jurisdiction of US courts in cases concerning violations of public international law .

It allows for non- US citizens to bring civil actions before US courts in certain situations. This applies even if the events in question occurred outside the United States. <https://www.ecchr.eu/glossary/alien-tort-claims-act-atca>

¹⁵⁷ Anglin (2007) 245

¹⁵⁸ Sands (2003) 187

¹⁵⁹ Principle 21 provides: States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

¹⁶⁰ Principle 2 provides: States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

¹⁶¹ Sands (2003) 188

¹⁶² Bradford, Mark, The United States, China & the Basel Convention On The Transboundary Movements of Hazardous Wastes and Their Disposal , Fordham Environmental Law Review Volume 8, Number 2 2011 Article 3, 310.

Growing international jurisprudence, a reflection of international duty to regulate waste trade

Further evidence of an increasing duty to regulate waste trade (or more specifically to prevent it) can be found in the growing international jurisprudence on the subject. One thing is clear from these cases – illegal waste trade shall not be tolerated, in violation of international and domestic laws; and that States have the authority to regulate waste trade in order to protect its citizens and the environment from the potential harm. Some of these cases will be discussed in the next paragraphs.

In the 2001 case of *European Communities—Measures Affecting Asbestos and Products Containing Asbestos*,¹⁶³ the WTO Appellate body ruled that measures imposed by France to ban the import of asbestos and products that contained it were valid and did not violate international trade treaties and agreements. The Appellate Body found that the measure “protects human life and health”, and that no “reasonable available alternative measure existed.”¹⁶⁴

On contrast, another WTO Appellate Body case did not uphold the imposition of an importation ban. In *Brazil—Measures Affecting Imports of Retreaded Tires* case,¹⁶⁵ Brazil took measures to combat the adverse effects of waste tires on both the environment and human health by prohibiting its importation of new and retreaded tires. However, some MERCOSUR¹⁶⁶ countries benefited from an exception on the import ban for retreaded tires. The WTO Appellate Body ruled that the ban discriminated against other countries and is therefore invalid. Of note here is that the tribunal did not question the justification of the ban (environment and human health considerations), but based its ruling on the unequal implementation of the same to the detriment of other countries.

An earlier case in Europe decided in 1988 by the European Court of Justice (ECJ) dealt with the imposition of a new bottle recycling scheme. In the *Danish Bottle* case,¹⁶⁷ the Danish government replaced the bottle recycling system with a more stringent system.

A law was introduced that stipulated that manufacturers only use bottles that could be collected and refilled for re-use and furthermore, required the returnable containers to gain formal approval by the National Agency for the Protection of the Environment. Foreign suppliers argued that it was a violation of the EU treaty due to discrimination. The ECJ held that *environmental protection was a permissible justification for such a discrimination*. However, for that justification to apply here, the new recycling system had to be proportionate in achieving the aim of environmental protection. The stricter system was held to be generally more eco-friendly and therefore acceptable. However, restrictions on certain bottle shapes were not allowed.

In this case from Germany, transparency and compliance with regulation was upheld by the ECJ. In the case of *Interseroh Scrap and Metal Trading GmbH v Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH (SAM)*,¹⁶⁸ a steel and metal scrap dealer claimed that an obligation to reveal the names of its waste suppliers to the consignee of the waste infringed its right to the protection of business secrets, impeded its economic activity and in effect caused a loss of clients. The obligation arose out of EU regulations on waste trade. In rejecting the claim, the ECJ said that as a consequence of the tracking procedure provided for in Article 18 of the regulation, *even when non-disclosure might be necessary to protect the business interest of the intermediary dealer, shipment documents including the waste producer's name must be available to both the authorities of the countries of dispatch and destination, and all the natural or legal persons involved in the shipment of waste*.

From this brief sampling of international jurisprudence, we can surmise the following: 1) measures that restrict waste trade and importation are valid on the basis of protecting human health and the environment; 2) they are valid trade restrictions so long as it is not discriminatory (i.e., applies to all without exception); and 3) compliance with regulations on waste trade is mandatory, even if trade and business practices will be at risk.

¹⁶³ See https://www.ecolex.org/details/court-decision/european-communities-measures-affecting-asbestos-and-products-containing-asbestos-28b31668-aebd-4bfd-9624-cb72c10c269e/?q=waste+trade&type=court_decision

¹⁶⁴ Note that according to Article XX(b) of GATT, a State can take such measures “necessary to protect human, animal or plant life or health” except if it is a “means of unjustifiable discrimination between countries where the same conditions prevail” or a “disguised restriction on international trade”.

¹⁶⁵ See https://www.ecolex.org/details/court-decision/brazil-measures-affecting-imports-of-retreaded-tyres-0ca7dda4-e5ad-45fc-b5b4-58ee308b-f95a/?q=waste+trade&type=court_decision ¹⁶⁶ Mercosur, Mercosul, or Nemby Nemuha, officially Southern Common Market, is a South American trade bloc established by the Treaty of Asunción in 1991 and Protocol of Ouro Preto in 1994. Its full members are Argentina, Brazil, Paraguay and Uruguay.

¹⁶⁷ See https://www.ecolex.org/details/court-decision/commission-v-denmark-1654df7c-8af9-483e-8220-9752cf0cf67/?q=waste+trade&type=court_decision

¹⁶⁸ See https://www.ecolex.org/details/court-decision/interseroh-scrap-and-metal-trading-gmbh-v-sonderabfall-management-gesellschaft-rheinland-pfalz-mbh-sam-bb285404-0056-4cd7-b61e-e1454667d0b7/?q=waste+trade&type=court_decision

Human rights obligations also call for strict measures (even the prohibition) on waste trade

Further support for the calls to ratify the Basel Ban Amendment can be taken from the human rights legal regime. There is growing discussion and acceptance of the nexus between human rights and the environment.¹⁶⁹ According to the UN Special Rapporteur on Toxic Wastes: Our incessant exposure to toxic substances from a multitude of sources directly implicates our human rights to life, to the highest attainable standard of health, to physical integrity, to safe water and food, to adequate housing, and—in an increasing number of States—the right to a healthy environment.¹⁷⁰ Included among many cases of human rights abuses involving business enterprises is the improper disposal of waste.¹⁷¹

A "Fifteen-Point Human Rights Agenda" to uphold "the people's right to chemical safety" issued by the Philippine Commission on Human Rights (CHR) in 2014 "acknowledges that trade of toxic wastes, products and technologies, collectively toxic trade, also forms a disincentive towards attaining Zero Waste resource management."¹⁷² The CHR supports the immediate ratification of the Basel Ban Amendment "to further safeguard the national interest against toxic waste dumping from overseas."

A 2005 UN Human Rights Council Resolution not only highlighted the threat to human rights of waste, but also noted its adverse impact particularly on developing countries: *Affirming* that the illicit movement and dumping of toxic and dangerous products and wastes constitute a serious threat to human rights, including the right to life, the enjoyment of the highest attainable standard of physical and mental health and other human rights affected by the illicit movement and dumping of toxic and dangerous products, including the rights to clean water, food, adequate housing and work, particularly of individual developing countries that do not have the technologies to process them.¹⁷³ The Resolution added that corporations from industrialized countries ship waste to developing countries without the capacity to dispose of the waste in an environmentally sound manner, nor the technologies or processes to diminish the adverse impacts on human rights.¹⁷⁴

Clearly, waste trade potentially violates basic human rights—rights that are universally accepted. The protection of these rights is not only a legal but also a moral obligation on the State.

¹⁶⁹ See for example UN Guiding Principles on Human Rights and the Environment, <https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/FrameworkPrinciplesReport.aspx>; and the work of the UN Special Rapporteur on Environment and Human Rights, www.srenvironment.org.

¹⁷⁰ <https://www.ohchr.org/EN/Issues/Environment/ToxicWastes/Pages/SRToxicWastesIndex.aspx>

¹⁷¹ *Ibid.*

¹⁷² See <http://chr.gov.ph/wp-content/uploads/2018/01/HRA-CHR-IV-A2014-007-The-Peoples-Right-to-Chemical-Safety-A-Fifteen-Point-Human-Rights-Agenda.pdf>

¹⁷³ UN Office of the High Commissioner for Human Rights, Human Rights Resolution 2005/15.

¹⁷⁴ The Resolution stated: Aware of the increasing rate of illicit movement and dumping by transnational corporations and other enterprises from industrialized countries of hazardous and other wastes in developing countries that do not have the national capacity to deal with them in an environmentally sound manner. Aware also that many developing countries do not have the national capacities and technologies to process such wastes in order to eradicate or diminish their adverse effects on human rights, including the right to life, the enjoyment of the highest attainable standard of physical and mental health, and other human rights affected by the illicit movement and dumping of toxic and dangerous products, including the rights to clean water, food, adequate housing and work.

Philippine National Legal Bases

Current Philippine law also provides legal bases to ratify the Basel Ban Amendment. These can be found in the 1987 Constitution, in various legislative policies, jurisprudential pronouncements, and the statements and policies of the current administration.

The 1987 Philippine Constitution

The 1987 Philippine Constitution provides the basic framework by which the environmental policy of the country finds its direction. First of this is Article II, Section 16, which states that, “[t]he State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature,” which the Supreme Court deemed as a provision that is self-executing in nature and that is a source of the citizen’s basic environmental rights.¹⁷⁵ An author on environmental policy in the Asia-Pacific notes that this declaration recognizes the importance given to the environment and the change in emphasis with respect to it.¹⁷⁶ Also found in Article II is Section 15, which states that, “[t]he State shall protect and promote the right to health of the people and instill health consciousness among them.”

Section 9, Article XVI also calls on the State to protect consumers from hazardous products.

Section 2, Article II provides that the Philippines adopts the generally accepted principles of international law as part of the law of the land. The principles of incorporation applies only to customary law and to treaties which have become part of customary law.¹⁷⁷

¹⁷⁵ See *Oposa v. Factoran*, 224 SCRA at 805 (1993)

¹⁷⁶ Enrico G. Valdez, *Philippines*, in ENVIRONMENTAL LAW AND ENFORCEMENT IN THE ASIA-PACIFIC REGION 371 (Terri Mottershead, 2002).

¹⁷⁷ Bernas, Joaquin G., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2003, 61.

¹⁷⁸ Sections 1 and 2, PD 1151.

¹⁷⁹ Section 42 (b), PD 1152.

¹⁸⁰ Section 1, PD 1586

¹⁸¹ Section 2, RA 6969.

¹⁸² Section 2, RA 9003.

¹⁸³ Section 2 (b), RA 9003.

¹⁸⁴ Section 2 (c), RA 9003.

¹⁸⁵ Section 2 (d), RA 9003.

¹⁸⁶ Section 48, RA 9003

Legislative policies related to waste trade

Philippine laws are replete with policies and statements which support calls for the ratification of the Basel Ban Amendment. Below is a survey of these legislative policies:

- As early as 1977, *Presidential Decree (PD) 1151*, or the **Philippine Environmental Policy**, called for the rational and sustainable use of resources for the benefit of the present and future generations.¹⁷⁸ Section 3 also recognizes the right of the people to a healthy environment—a prelude to the current provision in the 1987 Constitution,
- Following PD 1151 was PD 1152, **the Philippine Environment Code**. Title V of the law deals with Waste Management. Though it does not specifically deal with trade in waste, it noted as one of its goals “to encourage, promote and stimulate technological, educational economic and social efforts to prevent environmental damage and unnecessary loss of valuable resources of the nation through recovery, recycling and re-use of wastes and waste products.”¹⁷⁹
- The establishment of the **Philippine Environmental Impact Statement System** under PD 1586 significantly declared as a policy of the State to attain and maintain a rational and orderly balance between socio-economic growth and environmental protection.¹⁸⁰
- Republic Act (RA) No. 6969, the **Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990**, is the Philippine’s implementing legislation for the Basel Convention. It declares as a policy of the State, among others, to regulate, restrict, or prohibit the importation of chemical substances and mixtures that present unreasonable risk and/or injury to health or the environment.¹⁸¹
- The primary law dealing with waste management in the Philippines is RA 9003, the **Ecological Solid Waste Management Act of 2000**. The law declares as a policy of the State the adoption of a systematic, comprehensive, and ecological solid waste management program.¹⁸² The law also declares as State policies resource conservation and recovery,¹⁸³ guidelines for solid waste reduction and recovery,¹⁸⁴ and ensure the proper transport and disposal of solid waste through best environmental practices.¹⁸⁵ Specifically, the law prohibits the “importation of toxic wastes misrepresented as recyclable or ‘with recyclable content.’¹⁸⁶

Jurisprudence

Philippine jurisprudence also provides for legal justification to ratify the Basel Ban Amendment. In a line of cases, the Supreme Court emphasized the importance of ensuring and protecting the people's right to a balanced and healthful ecology in waste related issues—particularly the implementation of RA 9003.¹⁸⁷ The government must do all that it can to guarantee this fundamental right. In the cases below, the issue of waste management took center stage.

The case of *Province of Rizal v. Executive Secretary*¹⁸⁸ concerned the waste disposal crisis plaguing Metro Manila and the San Mateo landfill. The Supreme Court ordered the permanent closure of the said landfill due to its negative and harmful effects on the nearby residents, including its potential harm to water sources in the watershed areas. The Court emphasized the importance of RA 9003 on proper waste management and disposal. Moreover, the Court highlighted the importance of these kinds of environmental laws: "Laws pertaining to the protection of the environment were not drafted in a vacuum. Congress passed these laws fully aware of the perilous state of both our economic and natural wealth. It was precisely to minimize the adverse impact humanity's actions on all aspects of the natural world, at the same time maintaining and ensuring an environment under which man and nature can thrive in productive and enjoyable harmony with each other, that these legal safeguards were put in place. They should thus not be so lightly cast aside in the face of what is easy and expedient."

Metro Manila's waste problems were once again the center of this landmark case, this time concerning Manila Bay. In *MMDA v. Concerned Residents of Manila Bay*,¹⁸⁹ the Supreme Court ordered the government, through its various departments, agencies, and including LGUs, to implement and enforce its respective environmental mandates. The duty is not discretionary—meaning they cannot choose to implement or not at whim. The Court emphasized the need for immediate action: "The era of delays, procrastination, and ad hoc measures is over. Petitioners must transcend their limitations, real or imaginary, and buckle down to work before the problem at hand becomes unmanageable. Thus, we must reiterate that different government agencies and instrumentalities cannot shirk from their mandates; they must perform their basic functions in cleaning up and rehabilitating the Manila Bay". It also noted the importance of RA 9003: RA 9003 is a sweeping piece of legislation enacted to radically transform and improve waste management. It implements Sec. 16, Art. II of the 1987 Constitution.

Recent cases have held local government officials to task for failure to implement, or to adhere to the requirements of RA 9003. In *Ombudsman v. Vergara*,¹⁹⁰ the respondent-mayor of Cabanatuan City was found guilty by the Ombudsman of violating RA 9003. The case however affirmed his condonation through subsequent election—but serves as a reminder that failure to follow the law can lead to administrative and criminal charges being filed. In *Osmena v. Garganera*,¹⁹¹ the Supreme Court affirmed the closure of the Inayawan Landfill despite the challenges faced by the LGU. The Court reiterated that the LGU operated the landfill in violation of RA 9003 endangering the health of the people and the environment.

¹⁸⁷ Authors Note: It is interesting to highlight that from the research conducted for this report, no seminal or doctrinal cases involving RA 6969 was found; nor were any waste trade related cases reported and decided by the Supreme Court.

¹⁸⁸ G.R. No. 129546, December 13, 2005

¹⁸⁹ G.R. Nos. 171947-48, December 18, 2008

¹⁹⁰ G.R. No. 216871, 6 December 2017

¹⁹¹ G.R. No. 231164, March 20, 2018

Presidential pronouncements about the waste problem

Recent statements by President Rodrigo Duterte also reflect current government policies which can support the ratification of the Basel Ban Amendment.

At the start of the administration, the President noted his alarm at environmental issues, some of which include mining, dirty beaches and tourist havens, and more importantly on waste trade. In his 2019 State of the Nation Address, the President called on LGUs to implement environmental laws.¹⁹² He also cited Boracay Island's closure and rehabilitation,¹⁹³ and the on-going Manila Bay clean-up and implementation of the Supreme Court's decision, through the creation of a Manila Bay Task Force.¹⁹⁴

The President has also taken a tough stance on waste imported from other countries. The government has made it clear in its message, which environmental groups have been calling for, that the Philippines is not a dumping ground for waste. Recent efforts, as discussed in this paper, have been put in place to improve enforcement of environmental and even customs and tariff laws. However, as will be discussed, these may not be enough as legitimate businesses can be used for illegitimate purposes such as illegal trade in waste.

¹⁹² See <https://www.pna.gov.ph/articles/1075692> .

¹⁹³ See Executive Order No. 53, s. 2018, creating the Boracay Inter-Agency Task Force, available at <https://www.officialgazette.gov.ph/2018/05/08/executive-order-no-53-s-2018/> .

¹⁹⁴ See Administrative Order No. 16, s. 2019, creating the Manila Bay Task Force, available at <https://www.officialgazette.gov.ph/downloads/2019/02feb/20190219-AO-16-RRD.pdf> .



Three of the 51 container vans containing misdeclared mixed waste illegally sent by Verde Soko, Inc. to the Philippines last July and October, 2018 set for repatriation back to South Korea.

Analysis of Philippine laws and jurisprudence: are they up to the task?

The previous section noted the presence of constitutional, legislative, and jurisprudential justifications for ratifying the Basel Ban Amendment. The right to clean and healthy environment is sacred, and all government actions must align with this fundamental right. This section will briefly analyze some issues in Philippine laws related to waste trade. It will also determine if Philippine laws can also provide justification for ratification of the Basel Ban Amendment.

The government has the power to take measures to stem the waste trade

Philippine environmental laws and policies are sufficient and replete with legal bases for the government to take measures (even drastic ones) to stop waste trade into the country. This report highlights—and as many other reports and studies have done—that the Philippines is not capable of dealing with imported waste. The local or national waste produced by the country is also putting a strain on the environment and government services. More importantly, the unfortunate lax enforcement of environment and customs laws has made illegal waste trade even more lucrative.

Given this situation, the government can thus wield its power—with enough political will—to stop waste trade on the basis of protecting and ensuring the right to the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature. Examples of this will and might can be seen in the closure and rehabilitation of Boracay, the clean-up of Manila Bay, and the return of illegally shipped waste to its country of origin. This can then be channeled to take further action to ratify the Basel Ban Amendment and the stop waste trade altogether.

The definition of waste in Philippine laws is a potential loophole

One issue which can cause loopholes and is subject to abuse is the definition of waste in Philippine laws. Those banned and restricted, or regulated are hazardous wastes and chemicals, and nuclear waste as defined in RA 9003¹⁹⁵ and RA 6969.¹⁹⁶ Other types of waste include solid waste in general,¹⁹⁷ special wastes,¹⁹⁸ and white goods.¹⁹⁹ Add to this list recyclable materials²⁰⁰ which can also be considered as waste. Under current Philippine laws and based on the cited definitions, only hazardous and toxic wastes are banned from entry into the country. Other types of wastes—plastic bottles, electronic and electrical equipment, used batteries, just to name a few—can be imported and subsequently processed (whether through recycling or disposal) in the Philippines.

While it is true that these definitions, and the procedures and restrictions imposed are consistent with the Basel Convention, it is open to abuse and misuse due to poor implementation of the laws. A simple mis-declaration which can be easily overlooked can lead to the entry of illegal waste—just as was the case with the Canada waste. Due to the volume of transactions and shipments, both for import and export, physical inspection and verification cannot always take place. Recall also the earlier discussion on the problematic description of waste under the Basel Convention. Those coined as “recyclables”—which is most electronic and electrical equipment—do not come under the strict provisions of the convention.

This problem is made more complicated when one considers the implementation of RA 9003. The law mandates LGUs to deal with special wastes within its jurisdiction.²⁰¹ However, as is often the case, most LGUs do not have the capacity to handle the waste generated within their jurisdiction. As cited above, illegal dumpsites are still in use and many of the local solid waste management plans have not been reviewed and/or approved. This means local communities do not have an overall framework for the implementation of RA 9003, and more importantly, for the proper handling and management of waste. These challenges will be compounded if illegally shipped and traded waste enters the waste stream. Thus, there is a great risk of hazardous chemicals and toxins seeping into the environment because of improper waste handling and lack of management.

¹⁹⁵ See Section 3 (p), RA 9003.

¹⁹⁶ See Sections 5 (g), (h), and (i), RA 6969.

¹⁹⁷ See Section 3 (kk), RA 9003.

¹⁹⁸ See Section 3 (pp), RA 9003.

¹⁹⁹ See Section 3 (tt), RA 9003.

²⁰⁰ See Section 3 (z), RA 9003.

²⁰¹ See Section 10 and Section 17, RA 9003.

RA 6969's provisions only deal with toxic, hazardous, nuclear waste, not recyclables per se

RA 6969 is the Philippines' primary law for the implementation of the Basel Convention. It was enacted to put in place national implementation measures in line with the obligations in the said convention. As a result, the law merely reiterates and provides for the safeguard measures, which the Convention requires—and this is mostly for toxic and hazardous substances. As noted above, the treaty does not address or deal with waste trade (unless it is hazardous or toxic waste). This also reflects the absence of an international agreement or framework to tackle not just waste trade, but waste generation, disposal, and handling in general.

Given the above provisions in Philippine laws, taking note too of our definition of wastes, those items which are marked for “recycling”— items disposed of from another country—can come into the Philippines even if its components or parts contain hazardous chemicals. This then exacerbates our solid waste management problem since these “recyclables” add to the already stretched landfills and the few recycling facilities. Instead of being able to focus on the country's own waste, the service providers in this sector focus on more “profitable” and “lucrative” import deals from foreign countries, mostly the developed ones. The exporters there are willing to pay more to have the waste out of their country as quickly as possible. Unscrupulous importers then improperly dispose, or dump, these wastes at convenient locations in the country—perhaps in one of the hundreds of illegal dumpsites that still abound around the country.

Philippine laws, regulations and procedures related to waste trade are aligned with the requirements of the Basel Convention (please see the discussions above). There are checklists, certifications, oaths, inspections, manifests, reports, etc. that need to be complied with. These look stringent on paper, and compliance seems to be hard. However, as is the case with many environmental laws and rules in the Philippines, enforcement and ensuring compliance by government agencies is often lacking, prone to abuse, and corruption. What's more, these requirements tend to be box-ticking exercises, and enforcement stops when all the boxes are ticked and papers submitted. Little follow-through or further inspection is done—take for example the discretionary nature of inspections of some recycled materials, which is often abused and misused to the detriment of the environment.

Philippine laws are not fully reflective of international trends and developments on waste trade

As discussed in the section above on international legal justifications, there is now growing international acceptance of the need to curb waste trade. The Basel regime came about as a response to the dumping of hazardous wastes from developed to developing countries. During those times, other waste, garbage, and recyclables didn't seem to be a problem—countries can still cope and manage. However, in the last few decades we have seen a surge in technological development which has led to the production of more products and goods as never seen before. As a result, more waste and discards are now present in the natural environment. Marine plastic waste and litter has in recent months been highlighted as a serious issue.

There are now growing calls for the international community to jointly tackle the waste problem at its source. This can be done through an international treaty which establishes a legal framework for countries to follow. Shipping the waste and using it as a commodity for trade doesn't solve the problem—it merely shifts it to another country, making it someone else's problem. However, the reality is that in the long run, the waste accumulated will eventually affect our entire ecosystem and its impacts will spare no one—not even those who chose to ship and trade their waste away.

Many developing countries have also taken bold steps to curb waste trade and protect their people and environment from its potential harms and dangers. ASEAN states Malaysia, Indonesia and Brunei have ratified the Basel Ban Amendment. Brazil's decision to ban used tires was upheld on the basis of protecting the environment and people's health. Many African nations have taken a strong stance against waste trade as reflected in the implementation of their own regional treaty. Even China has refused this billion-dollar industry after realizing the risks are not worth it. Thus, the Philippines can look at the examples of its neighbors and other countries and take the necessary bold steps to address the waste trade problem.

The recycling conundrum

The key-word to legalized waste trade in the Philippines is “recycling.” It is therefore necessary to take a look at recycling when considering waste trade.

Recycling is the use of discards or the waste or by-products of industrial processes as input for other processes. By doing so, recycling helps reduce the need for more extraction of virgin resources. But while recycling offers benefits (it is better than disposal), it does not offer lasting solutions. As an industry, recycling is entirely dependent on the continuous production of waste. But recycling is not a strategy for sustainability precisely for the same reason. Relying on recycling as a primary strategy for dealing with waste can disincentivize waste reduction and minimization.

Those opposed to a ban on the international trade in waste interpret waste trade as a way to close the loop in a circular economy. This view condemns countries where labor and waste management costs are lower to be recipients of waste rejected for domestic processing. However, shipping waste around the world to look for markets where waste can be recycled is unsustainable and undermines the spirit of the Basel Convention.

Efforts towards recycling should continue. However, we should also recognize that recycling is not sufficient to tackle the exponential growth of waste. In this regard, systemic upstream approaches—such as reuse, waste reduction and redesign—are the preferred solutions to the waste crisis. Recycling needs to be seen as a just one part of a broader resource conservation strategy oriented primarily towards waste reduction.



Samples of the electronic waste taken from the container van to be shipped back to Hong Kong at the Mindanao Container Port Terminal in Villanueva, Misamis Oriental.

© GREENPEACE / FROILAN GALLARDO



Korean plastic bottle sample from a container van containing mixed waste illegally imported from South Korea.

© GREENPEACE / GERIC CRUZ

RECOMMENDATIONS AND THE WAY FORWARD:

What the Philippines can do to protect itself from waste importation

At its core, waste trade is an issue of justice. Trade of waste typically follows the route of least resistance and cheapest cost, and where either occurs, there is almost always an externalized cost in human and environmental impacts.

Past experiences have repeatedly shown that the Philippines is wide open to both illegal and "legitimized" waste trade. The country will remain vulnerable to continued exploitation if it does not take policy measures to close its borders against waste trade. At a time when many other countries are closing their doors to waste imports, the Philippines whose doors are still wide open, is becoming a more and more attractive waste destination.

This report therefore highlights the need for two urgent steps that must be taken by the government: 1) to immediately ratify the Basel Ban Amendment, and to additionally 2) to enforce a comprehensive ban on all waste importation.

The Philippines must immediately ratify the Basel Ban Amendment

Ratifying the Basel Ban Amendment will send a strong message that the Philippines is not a hazardous waste dumping ground for any reason, even for those wastes purportedly meant for recycling.

The Basel Ban Amendment entered into legal force on 5 December 2019. As such, its provisions and prohibitions now form part of the Basel Convention. However, the Amendment is only binding on countries that ratify it. Developed country parties (EU Member States, OECD Members, Liechtenstein) that have ratified the Basel Ban Amendment cannot send their hazardous waste to developing countries, regardless of whether the recipient country has ratified the Ban Amendment or not. At the same time, developing country parties that have ratified the Ban Amendment cannot receive hazardous waste from developed countries whether or not the latter has ratified the Amendment. However, if neither party has ratified the Basel Ban Amendment (even if they have ratified the Basel Convention), the Amendment will not apply.

At present, only 98 countries have ratified the Ban Amendment, compared to the 187 that have ratified the Basel Convention. The Philippines still remains vulnerable to hazardous waste dumping under the guise of recycling by developed countries that are either not parties to the treaty (US) or those that have not ratified the Ban Amendment (Australia, Canada, Japan, New Zealand and South Korea). It is therefore imperative for the Philippines to ratify the Basel Ban Amendment.

The Basel Ban Amendment has clear downstream impacts by preventing the movement of hazardous wastes from developed to developing countries. In addition, the Ban Amendment has positive upstream impacts by forcing developed countries to change production systems in order to prevent waste generation and avoid hazardous waste inputs, as well as change consumer and consumption habits.

The message of the Basel Ban Amendment is clear: developed countries must deal with their own hazardous waste. They cannot externalize costs by exporting it to developing countries. Any violations of the Basel Ban Amendment will be considered illegal traffic and subject to the non-compliance mechanism of the Convention as well as possible international condemnation.

Ratification is also called for by the international and national legal bases discussed in this report. Taking this bold step will align Philippine policies with global efforts to curb waste and waste trade. This action will also help prevent transboundary harm and pollution.

More importantly, ratification will help in protecting human rights, and the equally fundamental right to a clean and healthy environment. This is enshrined not only in international law, but in the Philippine's own constitution. Thus, the government has both a legal and moral imperative to take all measures to protect the people's right to a balanced and healthful ecology.

Greenpeace and EcoWaste Coalition are calling on the Executive Branch to urgently transmit the instruments of ratification to the Philippine Senate, so that the Senate can immediately concur with the ratification of the Basel Ban Amendment and revise relevant laws to reflect this ratification.

The Philippine government must enforce a comprehensive ban on all waste imports

It is important to note that the Basel Ban Amendment does not prohibit the "legitimate" export and import of other types of goods and products that are not banned or prohibited under the Basel Convention, or those that are not considered hazardous. Thus, these types of wastes, which may include household wastes, ashes from the incineration of household wastes, and certain plastic wastes that may still be difficult to recycle, can still be legally sent to and received by the Philippines, and will continue to strain our waste management systems.

One solution is to take the Basel Ban Amendment a step further and impose a comprehensive ban on all waste imports. This will allow the Philippines to focus on its own waste management issues and fully enforce and implement RA 9003; improve the recycling and re-processing facilities with government support and possibly incentives; enact measures that curb waste generation (i.e., single-use plastic ban, promotion of clean production technologies as well as reuse and refill systems, shift in consumer and consumption habits, mandate extended producers responsibility); and implement and promote a Zero Waste society.

This proposal finds legal justification within the context of the Constitution and our laws. The government has the legal authority and mandate to take measures, although extraordinary and unprecedented, to protect the people's fundamental right to a clean and healthy environment.

Several bills calling for such a comprehensive ban are already pending in the Philippine Senate and House of Representatives. Greenpeace and EcoWaste Coalition are calling on the President to certify these bills as urgent and for Congress to strengthen the provisions in the bills and ensure their passage into law.



5,100 metric tons of misdeclared, mixed plastic trash from South Korea and it's been lying around the perimeter of Verde Soko facility since July 2018 in Upper Bugac, Sta. Cruz, Municipality of Tagoloan, Misamis Oriental, Philippines.

Other recommendations:

Following the discussions laid out in this report, Greenpeace and EcoWaste Coalition are additionally calling on the government to:

1. *Strictly enforce and implement environmental and customs laws in order to stop the continued illegal entry of waste into the country.*

The Philippines has good laws on paper, but implementation and enforcement are always big challenges. This report highlights new initiatives related to the waste trade, which if properly implemented, can be effective measures for preventing illegal entry of unwanted waste.

2. To achieve this, coordination and cooperation between concerned agencies such as DENR and BOC should be improved. Sharing information and joint operations should be the norm. In addition, civil society should as appropriate, be tapped as active partners for implementation, to improve the credibility, transparency and legitimacy of the process.
3. *Ensure the importation process is more transparent and credible.*

Customs laws and processes must be made accessible, transparent and credible. The common impression is that dealing with customs officials means having to go through a maze and labyrinth of people, money, and power play. Making the process easily comprehensible is a good first step. This can then lead to other measures, which make the process more transparent and credible. Data and reports should be easily accessible, and more importantly, understandable. Freedom of information should be respected, and requests for data should be acted upon in a timely and adequate manner. The discretion provided to customs inspectors should also be reviewed and made more transparent, as this is an area where corruption may thrive, behind closed doors and through under-the-table deals.

4. *Study and craft amendments to our laws and rules.*

As discussed in this report, some amendments that can be further looked into include:

- a) Broadening the definition of waste shipments to include other wastes, aside from those that are conventionally considered hazardous;
- b) Support the development of local industries so that they would not have to rely on waste importation for inputs;
- c) Legislate new measures on reuse and refill systems, clean production technologies, extended producer responsibility, and the like; and additionally ban single-use plastics and packaging domestically; and,
- d) Impose stiffer penalties and fines for violations of RA 6969 and RA 9003.

APPENDICES

Appendix I

Number of LGU Solid Waste Management Plans submitted and pending evaluation – 2019

From DENR-EMB at: <https://emb.gov.ph/wp-content/uploads/2019/11/Compliance-Updates-as-of-October-2019.pdf>



Appendix II

Number of illegal dumpsites per region – 2019

From DENR-EMB at: <https://emb.gov.ph/wp-content/uploads/2019/11/Compliance-Updates-as-of-October-2019.pdf>



Appendix III

Number of Sanitary Landfills per region – 2019

From DENR-EMB at: <https://emb.gov.ph/wp-content/uploads/2019/11/Compliance-Updates-as-of-October-2019.pdf>



Appendix IV a

Number and percentage of LGUs with access to Sanitary Landfills, 2008 – 2018

<https://emb.gov.ph/wp-content/uploads/2019/08/National-Solid-Waste-Management-Status-Report-2008-2018.pdf>

Based on information provided by NSWMC, the number and percentage of LGUs with access to sanitary landfills have increased from 63 LGUs (3.9%) in 2008 to 228 LGUs (14%) in 2015. (See Table 3c).

Table 3c. Number and percentage of LGUs with access to SLFs, 2008-2018.

Parameter	Year							
	2008	2010	2013	2014	2015	2016	2017	2018
Population of the Philippines	88,543,800	92,337,852	98,449,090	100,420,642	101,883,764	103,320,222	104,918,090	106,512,074
Number of operating SLFs	21	29	72	86	101	118	135	166
Number of LGUs with access to SLFs	63	78	130	154	228	248	293	353
Percent of LGUs with access to SLFs	3.9%	4.8%	8.0%	9.4%	14.0%	15.17%	17.93%	21.78%

Source: NSWMC

Appendix IV b

Southeast Asia plastic waste import trends in tonnes

From: Greenpeace Southeast Asia (GPSEA). 2018. Southeast Asia's Struggle Against the Plastic Waste Trade

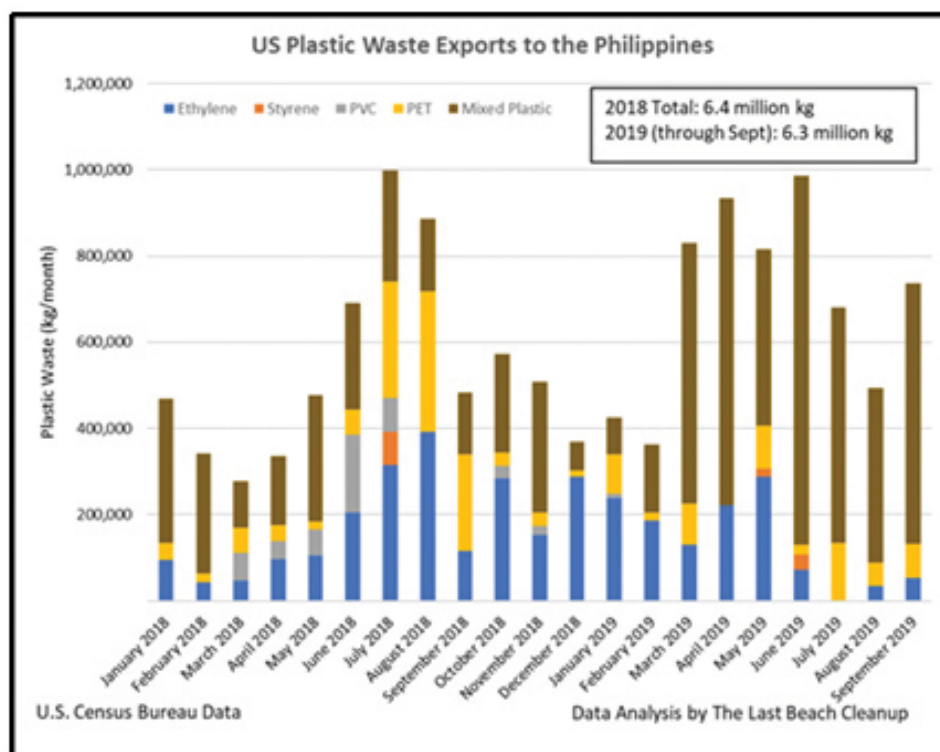
Table 1. Plastic Waste Import Trends (HS 3915) in tonnes

ASEAN Member States	2016	2017	2018
Malaysia	287,673	549,876	872,797
Thailand	69,487	152,244	481,381
Vietnam	347,840	659,057	492,839 ¹⁰
Indonesia	120,979	128,951	320,452
Myanmar	688	1,855	71,050 ¹¹
Philippines	4,650	4,267	11,761
Singapore	3,354	6,422	9,018
Lao People's Democratic Republic	1,181	3,008	4,791
Cambodia	647	1,685	1,688
Brunei Darussalam	30	116	185
ASEAN	836,529	1,507,481	2,265,962
% Global	5.38%	11%	27%
Global	15,553,548	13,410,919	8,358,867

Source: Trademap <https://www.trademap.org/> Import data accessed 1 June 2019

Appendix V

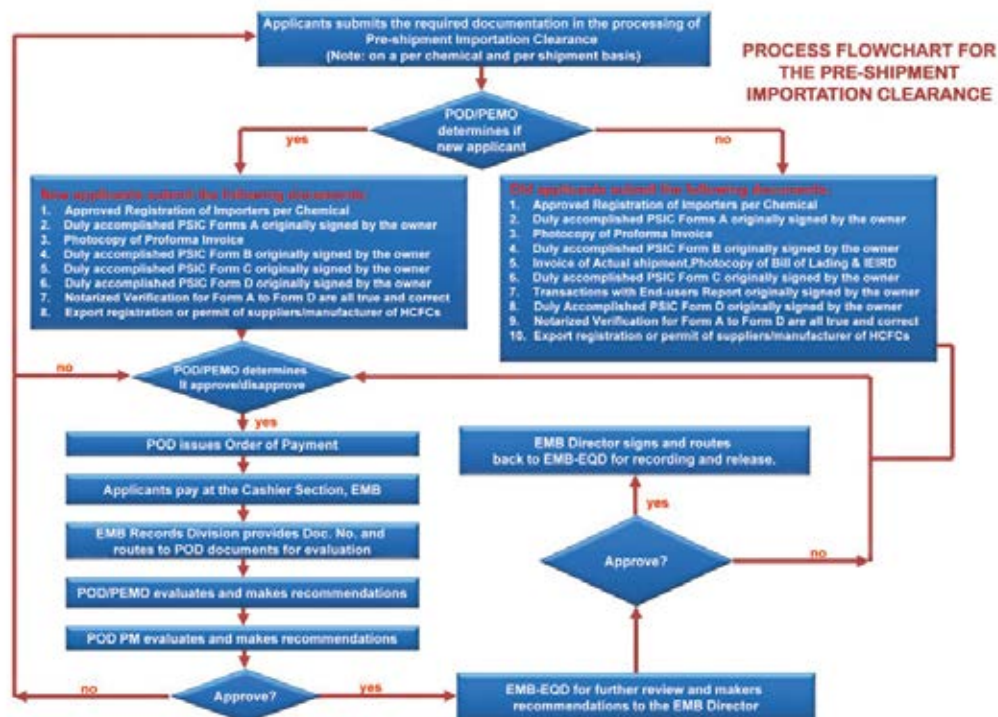
Plastic Imports from the United States



Appendix VI a

Process Flowchart for Registration of Importers

From: <https://emb.gov.ph/process-flowchart-for-pre-shipment-importation-clearance-psic/>



Appendix VI b

Process Flowchart for Securing a Pre-shipment Importation Clearance

From DENR-EMB at: <https://emb.gov.ph/process-flowchart-for-registration-of-importers-roi/>

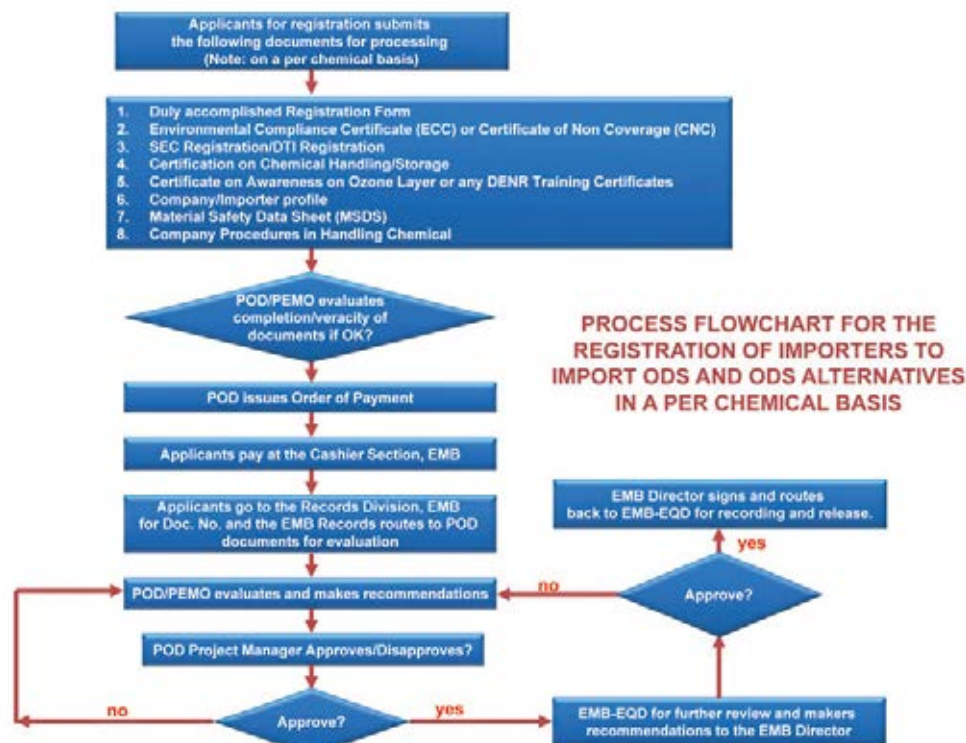


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Greenpeace is a global, independent campaigning organization that uses peaceful protest and creative communication to expose global environmental problems and promote solutions that are essential to a just, green and peaceful future. Greenpeace has been present in the Philippines since 2000, working to safeguard the constitutional rights of Filipinos to a balanced and healthful ecology.



EcoWaste Coalition

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The Ecological Waste Coalition of the Philippines, Inc. (EcoWaste Coalition) is a non-profit network of over 140 public interest groups in the Philippines that have coalesced to advance "a zero waste and toxics-free society where communities enjoy a safe and healthy environment." Founded in 2000, the EcoWaste Coalition strives to attain such a vision by fostering and supporting activism around priority issues and concerns in line with the Filipino people's constitutional rights to health and to a balanced and healthful ecology.