



Business and Industry Advisory Committee to the **OECD**

Comité Consultatif Economique et Industriel Auprès de l' **OCDE**

OECD - Basel Harmonisation

BIAC Comments

General Considerations

The Business and Industry Advisory Committee (BIAC) to the OECD welcomes the opportunity to share its views regarding the current efforts of the Working Group on Waste Management Policy (WGWMP) to harmonize the Council Acts on transboundary movement of materials for recovery and recycling with the UN Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. BIAC's interest is in transboundary shipments of secondary materials for recovery and recycling, which is essential for resource conservation and sustainable development. The vast majority of the trade in recyclable waste and in secondary materials for this purpose is within the OECD whose industries rely on the unhindered supply of these materials.

BIAC would welcome initiatives to simplify trade mechanisms and to establish transparent and predictable rules and faster response times for approvals by Competent Authorities. This would be advantageous to the economic and environmentally sound management of recyclable materials. Simplified, expedited and effective mechanisms are also to the advantage of Competent Authorities who can then discharge their responsibilities more efficiently.

The views of BIAC members regarding harmonization are influenced by their national laws and regulations, whilst control regimes and waste lists vary widely. For example, the problem of distinguishing clearly between wastes and secondary raw materials has not been solved. Nonetheless, BIAC has agreed on certain principles regarding harmonization.

In addition the issue as to whether the Basel Convention would be found to be in violation of WTO rules is a matter of debate. Document OECD: COM/ENV/ TD(97)41/FINAL has identified a list of trade related issues that could arise in relation to the Basel Convention. The BIAC promotes principles, the adoption of which, have the intention to lessen the likelihood of conflict between trade and environment.

Considerations of the Basel and OECD Systems

The OECD and Basel control schemes have very different purposes and foundations. The Basel Convention is an international agreement that aims to reduce or eliminate all transboundary movements of hazardous wastes including hazardous recyclables. On the other hand, the Council Acts on the transboundary movement of wastes for recovery were negotiated with the express intention of preserving the ability to continue the transboundary movements of recyclables among OECD countries. Developments in the 1990s at the OECD level have led to differentiation of requirements for wastes destined for recovery and those destined for disposal (OECD: [COM/ENV/TD(97)41/FINAL], page 9.) The Basel Convention has yet to acknowledge that requirements should differ for recyclables as opposed to wastes destined for disposal. This is particularly important in view of the on-going OECD work program on life cycle-based product policies where take-backs and other strategies could be

undermined by trade decisions made in a non-OECD forum. All of the comments that follow have to be interpreted in the light of the understanding in this paragraph.

The OECD system classifies wastes based on consideration of risk factors. The Basel system classifies wastes based on consideration of intrinsic hazard. Furthermore, the OECD system gains its strength through consensus. By contrast, the Basel Convention decision-making process is dominated by countries with little or no economic, social or environmental stake in recyclables. Finally, the OECD agreement is regarded by the BIAC members as a proven and stable agreement while the facilities of the Basel Convention are uncertain. Industry experience with both agreements leads us to support the OECD approach rather than the Basel Convention system.

Recently, the OECD countries decided to embark on an exercise to harmonize the Basel and OECD lists and the associated control regimes. While harmonization may represent an administrative simplification for the authorities, the environmentally sound trade in recyclables within the OECD may be negatively affected unless all the trade-desirable features of the OECD agreement are fully preserved for now and in the future. Preserving those features also would provide for regulatory stability and continuity irrespective of issues that may arise with respect to the Basel Convention in the future.

BIAC Principles Regarding the OECD Harmonization and Amendment Process

The BIAC views the existing process as including three different steps:

- harmonization of the lists of the two agreements
- amendment of the OECD agreement and its harmonization with the Basel Convention; this step may include some transfer of powers from the OECD to the Basel Convention
- review and improvements to the OECD trade in recyclables

With respect to the harmonization of the two lists, BIAC believes that it should neither lead to expanding Annex I of the Basel Convention to enable additions of OECD traded materials to Annex VIII, nor should it require that every waste on the OECD amber list be included in Basel Annex VIII. Additionally, there is an opportunity for the OECD to review some of the amber listings and decide whether these materials constitute a risk or, for whatever reason, were placed on the amber list for other purposes. (This “housekeeping” would clarify rationales and assist harmonization.)

With respect to the amendment of the OECD Council Acts and their harmonization with the Basel Convention, the BIAC believes in the need to include all of the following critical elements:

- The OECD objective of “preserving the ability to continue the transboundary movements of recyclables among OECD countries” must be ensured for now and in the future.
- The risk based approach of the OECD agreement must be preserved.
- The expedited procedures for intra-OECD trade, such as pre-consented facilities and tacit approval, must be retained.
- The ability of the OECD to re-classify a Basel waste from Annex VIII to Annex IX for trade within the OECD under an OECD multi-lateral agreement must be recognized. (The converse, reclassification from Annex IX to VIII, is not required in view of the generally recognized greater ability of OECD countries to manage recovery and recycling.)
- Finally, there is a need to maintain a formal activity within the OECD to address any issues that are detrimental to the current functioning of the OECD industries.

In addition to the foregoing, the BIAC proposes that there remain a mechanism for review and updating of the control procedures. For example, there is an urgent need regarding deadlines. The present procedures were established prior to current e-commerce and have to be modernized. The present approval deadlines are not honored and rarely achieved. They should be shortened with every attempt to meet them.

BIAC proposes that the OECD consider a stepwise approach to the above process. If the outcome of the harmonization of the lists is known and finally approved at a Basel COP meeting, the establishment of a consensus in the amendment of the OECD Council Acts may be facilitated.

The OECD can strengthen and improve the Basel review mechanism by reviving and supporting earnest discussion of a proposal in a prior New Zealand “non paper”. The New Zealand government tabled the idea that review of waste listings be preceded by a vetting through a subgroup of true scientific and technical experts. Any application would be reviewed as to its scientific and technical soundness, completeness and balance. The comments of this subgroup could then be considered in the final review consideration of the Basel Technical Working Group. (This vetting does not require more meetings or indeed a budget as it could be accomplished entirely by e-mail.)

Conclusions

In summary, BIAC would support harmonization and amendments that reflect the principles listed above. BIAC will provide any technical assistance that may be required to facilitate this process.