



Canadian
Environmental Law
Association

EQUITY. JUSTICE. HEALTH.



a toxics-free future



April 15, 2019

The Right Honourable Justin Trudeau, P.C., M.P.
Prime Minister of Canada
Langevin Block Ottawa
Ontario K1A 0A2

Dear Prime Minister Trudeau:

On [January 30, 2019](#) and on [February 11, 2019](#), we wrote to you requesting that you ensure the expeditious return to Canada of thousands of tons of wastes that were illegally exported from Canada and dumped in the Philippines in 2013 and 2014, in contravention of Canada's obligations under the Basel Convention.

The government has not responded to either letter and has taken no action to have the wastes returned. Instead, the government issued media statements claiming that Canada did not act improperly in 2013-2014 and is not acting improperly now.

The view that Canada acted illegally in violation of the Basel Convention in 2013-2014 and is continuing to act illegally now is outlined in a recent legal opinion from the Pacific Centre for Environmental Law and Litigation Law Corporation (attached).

The legal opinion notes:

- 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. To date, Canada has 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 5 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.

We respectfully request the Canadian government to act on this legal opinion and its Basel Convention obligations and provide a clear and definite date by which it will repatriate its garbage so that this protracted ordeal can finally be promptly ended. Canada should meet the standard set by the Republic of Korea which has acted to promptly arrange the return of its wastes illegally dumped in the Philippines, citing Convention obligations. Further, while Canada was not legally obliged to obey the 2016 Philippine court order, it certainly had a moral responsibility to do so. The Canadian government should not ignore the court order.

The United Nations (UN) conference of the 187 countries who have ratified the Basel Convention, which takes place every two years, will take place in Geneva starting April 29, 2019. The meeting will be the 30th anniversary of the treaty and it provides Canada an opportunity to demonstrate its commitment to the treaty by announcing the takeback of the wastes illegally exported to the Philippines.

This is much more than a legal or technical matter. It is also a moral issue that demonstrates Canada's level of respect for the citizens of developing countries and how the nation demonstrates proper conduct. Leaving Canada's garbage in another country for five years reveals values that clash with moral responsibility.

As noted in our letter of February 11, 2019, we applauded your earlier statements that Canada is back as a responsible global citizen and intends to provide strong, positive leadership at the United Nations, particularly on environmental issues. Part of this leadership must include upholding Canada's commitments to the treaties it has ratified and demonstrating responsible values internationally.

We look forward to receiving a positive response.

With hope,



Kathleen Ruff
Director, RightOnCanada.ca



Theresa McClenaghan, Executive Director and Counsel
Canadian Environmental Law Association



Aileen Lucero
National Coordinator
EcoWaste Coalition



Tadesse Amara, PhD
IPEN Co-Chair, Pesticide Action Nexus, Ethiopia



Jim Puckett
Founder, Director, Basel Action Network

Copy to:

Hon. Catherine McKenna, Minister, Environment and Climate Change Canada

Andrew Scheer, Leader, Conservative Party of Canada

Jagmeet Singh, Leader, New Democratic Party of Canada

Rhéal Fortin, Leader, Bloc Québécois

Elizabeth May, Leader, Green Party of Canada

April 10, 2019

Our file: 2019-03-0025

VIA ELECTRONIC MAIL

Kathleen Ruff
215 Highland Road
Smithers, BC V0J 2N6
(kruff@starlynx.ca)

Dear Ms. Ruff:

RE: PRIVILEGED & CONFIDENTIAL
In the matter of Canada's violations of the *Basel Convention*
Legal Opinion

You have asked us to provide you with our legal opinion on whether Canada has violated the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* (the "*Basel Convention*")¹ in relation to the transboundary movements of certain wastes from Canada to the Philippines in 2013 and 2014.

This legal opinion contains our legal advice to you, which is subject to client-solicitor privilege and is therefore confidential. However, you have the absolute right to waive that privilege by sharing or otherwise distributing this legal opinion.

Below, we first provide our brief answer in Part A. Then, in Part B, we provide an overview of the facts. In Part C, we briefly describe the *Basel Convention*. Finally, in Part D, we provide our legal analysis and opinion on Canada's violations of the *Basel Convention*. Attached as Appendix at the end of the legal opinion is a detailed chronology of facts and events upon which we based our opinion.

A. Brief Answer

In our opinion, there is a strong argument that Canada has violated the *Basel Convention* in respect of the transboundary movements of wastes from Canada to the Philippines in 2013 and 2014 by the Canadian-based company Chronic Inc.

Chronic Inc. and its Philippine-based consignees transported 103 container vans of wastes from Canada to the Philippines in 2013 and 2014. The container vans were falsely declared to contain homogenous plastic scrap material when in fact these shipments contained heterogenous waste including baled household garbage.

¹ *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*, 22 March 1989, 1673 UNTS 57 (entered into force 5 May 1992) (the "*Basel Convention*").





The *Basel Convention* applies to the shipments of wastes in question because the contents of the container vans were wastes deemed to be hazardous under Philippine law and therefore are “hazardous wastes” within the meaning of the *Basel Convention*, or in any case were household wastes within the meaning of “other wastes” under the *Basel Convention*.

In our opinion, there is a strong argument that Canada has failed to discharge its obligation under Article 9 of the *Basel Convention* to ensure that the shipments of wastes in question are returned to Canada. Article 9 imposes an obligation on the State of export to ensure the return of wastes where the movement of the wastes are deemed to constitute “illegal traffic”.

The shipments of wastes in question were “illegal traffic” under Article 9, paragraph 1(a) because Chronic Inc. did not obtain consent from Philippine authorities to transport heterogeneous household garbage waste. Alternatively, the shipments were “illegal traffic” in accordance with Article 9, paragraph 1(b) because Chronic Inc. obtained consent from Philippine authorities to transport the wastes through falsification, misrepresentation or fraud. In any case, the shipments are deemed to be “illegal traffic” under Article 9, paragraph 1(c) because the contents of the shipments did not conform in a material way with the declarations provided within the notification and movement documents that accompanied the shipments.

In the case of “illegal traffic” of hazardous or other wastes as a result of conduct by an exporter, Article 9, paragraph 2 imposes an obligation on the State of export to ensure the return of the wastes or, if impracticable, otherwise dispose of the wastes in accordance with the provisions of the *Basel Convention*. The provision imposes a 30-day timeline from the time the State of export was notified of the illegal traffic.

Philippine authorities have notified Canada of the illegal traffic of these wastes as early as March 2014 and have sought Canada’s assistance in returning the wastes. To date, Canada has refused to take back any of the wastes in question. Canada’s continued failure to ensure the return of the wastes in question violates Article 9, paragraph 2 of the *Basel Convention*.

Aside from Canada’s violation of Article 9, Canada has also failed to meet several provisions under Article 4, which sets out the general obligations of Parties.

Firstly, Canada has violated Article 4, paragraph 10, which forbids the transfer of the obligation to properly manage hazardous or other wastes from the State in which the wastes are generated to the State of import. In this matter, Canada has failed to take responsibility to properly manage the wastes in question, which were generated in Canada, and have left the Philippine government with the burden of dealing with the wastes, contrary to Article 4, paragraph 10.

Secondly, prior to legislative amendments that came into effect in 2016, Canada has failed to impose criminal liability for illegal traffic in household wastes contrary to the requirements under Article 4, paragraph 3 and Article 9, paragraph 5.

Lastly, Canada’s current statutory regime governing the transboundary movement of hazardous wastes fails to properly implement and enforce the provisions of the *Basel Convention* as required under Article 4, paragraph 4. The *Basel Convention* 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. However, the relevant statutory regime in Canada imposes a 90-day time limit for the





return of wastes. Canada's failure to properly implement the 30-day time limit violates Article 4, paragraph 4 of the *Basel Convention*.

B. Material Facts

In this section, we provide a brief overview of some of the key material facts. You will find a chronology of events in Appendix A that contains more details about the facts that we have considered for this legal opinion and their sources.

1) The Shipments of 103 Container Vans

In 2013 and 2014, around 103 container vans arrived at the Manila International Container Port ("MICP") in Manila, the Philippines. The consignor for these 103 container vans was Chronic Inc., a plastic export company based in Ontario, Canada, which shipped these container vans from a port of origin in Canada. The consignee for these shipments included Chronic Plastics and Live Green Enterprises, both Philippine-based companies.

The contents of these 103 container vans were falsely declared to be recyclable homogenous plastic scrap materials.

Inspections conducted by Philippine authorities on some of the initial 55 container vans revealed that these shipments in fact contained heterogenous waste including "**plastic bottles, plastic bags, newspapers, household garbage, and used adult diapers.**" Some of the container vans were also leaching fluids into the holding area where they were impounded.

In November 2014, the Philippine Department of Environment and Natural Resources ("DENR") released the results of a Waste Assessment and Character Study ("WACS") that was conducted on a sample of the initial 55 container vans. The WACS results indicated that a significant portion of the content tested contained "**baled municipal solid waste or garbage destined for immediate local disposal that cannot be recycled.**" However, the WACS concluded that the wastes were neither toxic nor hazardous.

Various non-governmental groups contested the WACS finding that the wastes were neither toxic nor hazardous. According to BAN Toxics executive director Richard Gutierrez, the WACS only classified the wastes according to kind, but failed to analyze the safety of the substances that compose the wastes. A more comprehensive study such as a leachate test could reveal whether the used adult diapers found in some of the container vans contained feces or urine that could carry infectious bacteria or diseases.

In June 2015, the Philippine Bureau of Customs ("BOC") inspected some of the remaining 48 container vans and found that they contained "non-hazardous 'municipal solid waste' of used mixed and unsorted, or 'heterogeneous' waste, including household and street garbage."

2) Responses by Philippine and Canadian Authorities

Government authorities in the Philippines have worked to find appropriate responses to address these shipments of waste through both diplomatic and domestic channels. The Philippine





government has sought assistance from Canada to return the container vans back to their port of origin without success.

Since discovering these shipments of waste in 2013, container vans from Chronic Inc. have been impounded and they have been, and continues to be, held in storage at port facilities.

The DENR, the BOC, and the Philippine Department of Foreign Affairs (“DFA”) established an interagency committee dedicated to dealing with the treatment of these waste shipments. Since March 2014, members of the interagency committee have repeatedly reached out to the Canadian embassy and the Canadian government for assistance in returning the container vans back to Canada in accordance with the *Basel Convention*.

To date, the Canadian government has not been willing to take back the shipments. In June 2014, then Canadian Ambassador Neil Reeder informed the DFA that Canada had “no domestic or international authority to compel the shipper to return the shipment to Canada.”

In July 2015, with no assistance from Canada for returning the shipments back to their port of origin, the BOC disposed 26 of the container vans of waste into a landfill in the Municipality of Capas, Province of Tarlac. The disposal to landfill of Canada’s waste was strongly opposed by local environmental and other non-governmental organizations.

In October 2016, amendments made to Canadian law governing the transboundary movement of hazardous substances came into effect.² These were amendments made to Canada’s *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations*,³ promulgated under the *Canadian Environmental Protection Act, 1999*.⁴ Among other things, the amendments:

- expanded the definition of “hazardous waste” under the legislation to include municipal waste if they are classified as hazardous in the importing country, or if the waste falls under the definition of “hazardous waste” or “other waste” under the *Basel Convention* and the importing country is a party to the *Basel Convention*; and,
- required the return of shipments where the importing country has refused acceptance and arrangements for an alternate destination facility cannot be made.

After the change in legislation, Canadian Prime Minister Justin Trudeau indicated in a press conference held during the 31st ASEAN Summit in November 2017 that it was “now theoretically possible” to return the container vans back to Canada. However, so far, Canada has not ensured the return of these shipments, despite repeated calls for Canada to do so by Philippine authorities and by environmental and other non-governmental groups in both Canada and the Philippines.

² Regulation SOR/2016-273 and Order in Council P.C. 2016-930 (21 October 2016), online: <<http://www.gazette.gc.ca/rp-pr/p2/2016/2016-11-02/html/sor-dors273-eng.html>>.

³ *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations*, SOR/2005-149, online: <<https://laws-lois.justice.gc.ca/eng/regulations/SOR-2005-149/index.html>>.

⁴ *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33, online: <<https://laws-lois.justice.gc.ca/eng/acts/c-15.31/>>.





3) Prosecutorial Proceedings

Besides diplomatic efforts, Philippine authorities have also pursued domestic prosecutorial proceedings against Chronic Plastics and Live Green Enterprises, the Philippine-based consignees of the container vans, for violations of Philippine law.

In February 2014, the BOC filed complaints with the Philippine Department of Justice (“DOJ”) against the owner of Chronic Plastics and its licensed customs brokers for importing 50 x 40-foot container vans of wastes falsely declared as assorted plastic scrap from Canada in violation of various local law including the *Tariff and Customs Code of the Philippines* (“TCCP”) and the *Republic Act 6969*.

The *Republic Act 6969* prohibited the import of hazardous waste.⁵ The *TCCP* held the importer criminally liable for unlawful imports and for importing articles by means of false or fraudulent customs declarations.⁶

BOC Chief John Sevilla said in a press statement, “It is very clear that these waste materials were shipped to the Philippines illegally. There were violations in the process for importation and misdeclarations made on paper. Moreover, we must be mindful of the threat to public health and safety that these wastes could bring to our people.”

In November 2014, the DOJ approved the filing of charges against the owner of the consignee Chronic Plastics and its licensed customs brokers in relation to the 50 of the 130 container vans of wastes.

In July 2015, the BOC further filed complaints with the DOJ against the owner of the consignee Live Green Enterprises for the importing 48 x 45-foot container vans of waste, also falsely declared as plastic scraps from Canada, in violation of local law including the *TCCP* and DENR Administrative Order (“DAO”) 1994-28 entitled “Interim Guidelines for the Importation of Recyclable Materials Containing Hazardous Substances.”

DAO 1994-28 prohibited the importation of “heterogenous and unsorted plastic materials” and required the regulated import of plastics to contain “no traces of toxic materials.”⁷ Allowable homogenous plastics could be imported if there is a pre-shipment importation clearance from the DENR’s Environment Management Bureau.⁸

While the criminal proceeding against Chronic Plastics was pending trial, the prosecution applied to the court for permission to present evidence of the container vans to court by way of

⁵ *Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990)*, section 13(d), online: <http://lawlibrary.chanrobles.com/index.php?option=com_content&view=article&id=77387:republic-act-no-6969&catid=2142&Itemid=738>.

⁶ *Republic Act No. 1937 (Tariff and Customs Code of the Philippines)*, sections 3601 & 3602, online: <<http://www.chanrobles.com/republicactno1937book2title8.html#BOOK%202,%20TITLE%208>>.

⁷ DENR Administrative Order No. 28 Series of 1994, online: <https://www.env.go.jp/recycle/yugai/reg/philippines/940726_en.pdf>.

⁸ *Ibid.*





video or images, and for permission to dispose locally the contents of the container vans.⁹ In a decision dated June 30, 2016, Judge Tita Bughao Aliguag of the Regional Trial Court of Manila Branch 1 rejected the prosecution's request to allow local disposal of the wastes. Instead, the Court ordered the 50 container vans to be returned to Canada in accordance with the *Republic Act 6969*.¹⁰ The Court went on to state:

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 allow [*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.¹¹

C. The Basel Convention

The *Basel Convention* is an international treaty designed to control and reduce the transboundary movement of hazardous wastes. The treaty responded to the increase in environmental awareness during the 1970s and 1980s and the recognition of the growing human health and environmental problems associated with the transport of hazardous wastes, particularly from the developed world to developing countries.¹² It was adopted in 1989 in Basel, Switzerland and entered into force in 1992.¹³ To date, 187 countries have ratified the *Basel Convention*, including Canada and the Philippines.¹⁴

1) Transboundary Movement under the Basel Convention

The *Basel Convention* provides the proper procedure for the transboundary movement of certain wastes between countries who are Parties. The procedure involves three key elements: notification, consent, and accompanying movement documents.

Before the transboundary movement can commence, the competent authority of the State of import must receive written notification.¹⁵ The notification must contain, among other things, accurate description of the nature and composition of the waste to be transported and the intended method of disposal.¹⁶

After the State of import has received and reviewed the notification, the waste can only be transported if the exporter has received written consent from the State of import for the

⁹ Decision of Judge Tita Bughao Aliguag of the Regional Trial Court of Manila Branch 1, Criminal Case No. 14-311191 & 14-31192-96 (30 June 2016).

¹⁰ *Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990)*, section 14(d), online: <http://lawlibrary.chanrobles.com/index.php?option=com_content&view=article&id=77387:republic-act-no-6969&catid=2142&Itemid=738>: "The person or firm responsible or connected with the bringing or importation into the country of hazardous or nuclear wastes shall be under obligation to transport or send back said prohibited wastes."

¹¹ Decision of Judge Tita Bughao Aliguag of the Regional Trial Court of Manila Branch 1, Criminal Case No. 14-311191 & 14-31192-96 (30 June 2016) at page 5.

¹² Secretariat of the Basel Convention, *The Convention: Overview*, online: <<http://www.basel.int/TheConvention/Overview/tabid/1271/Default.aspx>>; see also, generally, *Basel Convention*, preamble.

¹³ United Nations Treaty Collection, online: <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-3&chapter=27&clang=en>.

¹⁴ *Ibid.*

¹⁵ *Basel Convention*, *supra* note 1, Article 6, paragraph 1.

¹⁶ *Ibid.*, Article 6, paragraph 1 & Annex V A.





transport.¹⁷ Moreover, the exporter must receive confirmation that the State of import has verified the existence of a contract between the exporter and disposer of the waste specifying that the waste would be disposed of in an environmentally safe manner consistent with the *Basel Convention*.¹⁸

Every movement of wastes must be accompanied by a movement document from the point at which transboundary movement commences to the point of disposal.¹⁹ Upon delivery of the waste, the disposer must sign the movement document.²⁰ Like the written notification, the movement document must accurately describe the nature and composition of the waste transported.²¹

Transboundary movement of wastes that does not conform to the procedure are deemed to be “illegal traffic” under the *Basel Convention*.²²

Further details about relevant provisions of the *Basel Convention* will be discussed in Part D of this legal opinion in the context of Canada’s violations.

2) Domestic Implementation of the Basel Convention

Both the Philippines and Canada implement the *Basel Convention* through their respective domestic legislation. In the Philippines, a key legal instrument for the implementation of the *Basel Convention* is the *Republic Act 6969*. In Canada, the *Canadian Environmental Protection Act, 1999* (“*CEPA*”) is the primary legislative vehicle for implementing the *Basel Convention*, particularly provisions under Part 7, Division 8 of that Act and the *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations* (“*Export Import Regulations*”) promulgated under that Act.

D. Canada’s Violations of the *Basel Convention*

In our opinion, there is a strong argument that Canada has violated the *Basel Convention* in respect of the transboundary movements of wastes from Canada to the Philippines in 2013 and 2014.

In this section, we first discuss the application of the *Basel Convention* to the shipments of wastes in question, in which we conclude that the *Basel Convention* applies. We then discuss what in our view is the main way in which Canada has violated the *Basel Convention*—by failing to meet its obligation under Article 9 to take back the shipments of wastes in question. We devote the remaining parts of the legal opinion on other ways in which Canada has violated the *Basel Convention*, particularly in relation to the General Obligations provisions under Article 4.

¹⁷ *Ibid.*, Article 6, paragraphs 2 & 3.

¹⁸ *Ibid.*, Article 6, paragraphs 2 & 3.

¹⁹ *Ibid.*, Article 4, paragraph 7(c).

²⁰ *Ibid.*, Article 6, paragraph 9.

²¹ *Ibid.*, Annex V B.

²² *Ibid.*, Article 9, paragraph 1.





1) Application of the Basel Convention

In our opinion, the *Basel Convention* applies to the transboundary movements²³ of wastes in question. Both Canada and the Philippines are Parties to the *Basel Convention*. The question to consider is whether the wastes in question fall within the scope of Article 1.

Article 1 of the *Basel Convention* provides the applicable scope of the treaty. It reads:

1. The following wastes that are subject to transboundary movement shall be “hazardous wastes” for the purposes of this Convention:
 - (a) Wastes that belong to any category contained in Annex I, unless they do not possess any of the characteristics contained in Annex III; and
 - (b) Wastes that are not covered under paragraph (a) but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit.
2. Wastes that belong to any category contained in Annex II that are subject to transboundary movement shall be “other wastes” for the purposes of this Convention.

[...]

The wastes in question are “hazardous wastes” within the meaning of Article 1, paragraph 1, and in any case would fall within the definition of “other wastes” within the meaning of Article 1, paragraph 2.

Determining whether the wastes in question fall within Article 1, paragraph 1(a) requires, to a large extent, knowledge of the chemical content of the wastes and cross-referencing the chemical content with the chemical substances listed in Annex I, Annex VIII, and Annex IX of the *Basel Convention*. In the absence of this information, we cannot determine whether the wastes in question fall within paragraph 1(a).

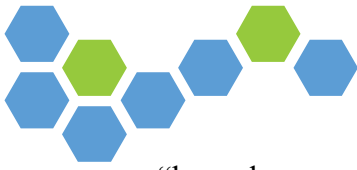
However, paragraph 1(b) provides that wastes are defined as “hazardous wastes” within the meaning of the *Basel Convention* if the domestic legislation of a Party of import or export considers such wastes to be hazardous. At the time of that the shipments occurred, household waste did not fall within the meaning of hazardous waste under Canada’s *CEPA* or the *Export Import Regulations*. However, the wastes were considered hazardous in Philippine law.

As described in the Material Facts above (and further detailed in Appendix A), Philippine authorities conducted a WACS on a sample of the container vans in November 2014. While the WACS indicated that a significant portion of the content tested contained “baled municipal solid waste or garbage destined for immediate local disposal that cannot be recycled,” the study concluded that the wastes were neither toxic nor hazardous. This finding was contested by other non-governmental groups, which criticized the WACS for simply classifying the waste content without analyzing the safety of the substances that compose the waste content.

Regardless, the conclusion of the WACS is irrelevant. The *Basel Convention* does not define “hazardous wastes” through testing. In accordance with Article 1, paragraph 1(b), wastes are

²³ In our opinion, the shipments of wastes from Canada to the Philippines clearly fall under the definition of “transboundary movement” based on a plain reading of its definition in Article 2, paragraph 3 of the *Basel Convention*.





“hazardous wastes” if they are considered hazardous *by domestic legislation*. Judge Tita Bughao Aliguag of the Regional Trial Court of Manila Branch 1 had no difficulty in finding that the wastes in question fell within the meaning of hazardous wastes under *Republic Act 6969*, the Philippines’ key legal instrument for implementing the *Basel Convention*.

The *Republic Act 6969* prohibits the import of hazardous wastes and imposes criminal liability upon the importer of hazardous wastes:

Sec. 13. *Prohibited Acts*. – The following acts and omissions shall be considered unlawful:

[...]

- d) Cause, aid or facilitate, directly or indirectly, in the storage, importation, or bringing into Philippines territory, including its maritime economic zones, even in transit, either by means of land, air or sea transportation or otherwise keeping in storage any amount of **hazardous and nuclear wastes** in any part of the Philippines.

Sec. 14. *Criminal Offenses and Penalties*. –

[...]

- d) The person or firm responsible or connected with the bringing or importation into the country of **hazardous or nuclear wastes** shall be under obligation to transport or send back said prohibited wastes

[...]

(emphasis added)

In rejecting the prosecution’s motion to allow for the disposal of the wastes locally, the Court held that the wastes in question fell within sections 13 and 14 of the *Republic Act 6969* and held that “[w]hat the law provides is the automatic sending/transporting and bringing back the waste to its country of origin.”²⁴ The Court’s decision indicates that the wastes in question are considered hazardous by *Republic Act 6969*, and thereby fall within the meaning of “hazardous wastes” under Article 1, paragraph 1(b) of the *Basel Convention*.

In any case, the wastes in question are “other wastes” within the meaning of Article 1, paragraph 2 because the wastes belong to a category of waste listed in Annex II. In particular, the wastes in question fall within category Y46 “Wastes collected from households” and are therefore subject to the *Basel Convention*.

2) Canada’s Failure to Meet Obligations for Illegal Traffic

In our opinion, there is there is a strong argument that Canada has violated Article 9 of the *Basel Convention*. The transboundary movements of the wastes in question fall within the meaning of “illegal traffic” under Article 9 and Canada has failed to discharge its obligation under Article 9 to take back or dispose of such wastes.

²⁴ Decision of Judge Tita Bughao Aliguag of the Regional Trial Court of Manila Branch 1, Criminal Case No. 14-311191 & 14-31192-96 (30 June 2016) at page 5.





i) *The Shipments Were “Illegal Traffic”*

Article 9 defines “illegal traffic” as follows:

1. For the purpose of this Convention, any transboundary movement of hazardous wastes or other wastes:
 - (a) without notification pursuant to the provisions of this Convention to all States concerned; or
 - (b) without the consent pursuant to the provisions of this Convention of a State concerned; or**
 - (c) with consent obtained from States concerned through falsification, misrepresentation or fraud; or**
 - (d) that does not conform in a material way with the documents; or**
 - (e) that results in deliberate disposal (e.g. dumping) of hazardous wastes or other wastes in contravention of this Convention and of general principles of international law,shall be deemed to be illegal traffic.

(emphasis added)

In our opinion, the shipments in question are “illegal traffic” pursuant to paragraph 1(b) or (c), and in any case pursuant to paragraph 1(d). We discuss each in turn.

In shipping the 103 container vans from Canada to the Philippines, the Canadian exporter Chronic Inc. and its Philippine-based consignees declared that the container vans contained homogenous recyclable plastic scrap material. The declaration was patently false. In fact, the container vans contained heterogenous waste including “plastic bottles, plastic bags, newspapers, household garbage, and used adult diapers.” The WACS results indicated that a significant portion of the content tested contained “baled municipal solid waste or garbage destined for immediate local disposal that cannot be recycled.”

Neither Chronic Inc. nor its consignees obtained the consent of Philippine authorities to transport heterogenous plastic waste and household waste into the country. In fact, Philippine authorities could not have given consent because Philippine law would have prohibited the importation, as evidenced by the commencement of prosecutorial proceedings by Philippine authorities against the consignees and by the decision of the Regional Trial Court of Manila discussed above. Therefore, the wastes in question entered the Philippines without the consent of Philippine authorities and were “illegal traffic” under paragraph 1(b) of Article 9.

Whatever permission from Philippine authorities that Chronic Inc. or its consignees did obtain in order to enable the 103 container vans to enter the Philippines was the result of falsification, misrepresentation or fraud. Chronic Inc. and its consignees knew or ought to have known that the 103 container vans contained heterogenous plastic waste and household waste when they falsely declared to Philippine authorities that the vans contained homogenous recyclable plastic scrap material. Therefore, the transport of the wastes in question were “illegal traffic” under paragraph 1(c) of Article 9.

Finally, for every shipment of wastes, the written notification to the State of import and the movement document that accompany the shipment must, in accordance with the *Basel Convention*, include accurate descriptions about the nature and composition of the waste





transported.²⁵ In these documents, Chronic Inc. and its consignees made declarations as to the contents of the container vans that were materially different from what the vans actually contain. Therefore, the shipments in question were “illegal traffic” under paragraph 1(d) of Article 9.

ii) Canada’s Failure to Take Back Illegal Traffic Waste

Canada failed and continues to fail to discharge its obligation in respect of the illegal traffic of the 103 container vans of wastes pursuant to Article 9, paragraph 2 of the *Basel Convention*, which provides:

2. In case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the exporter or generator, the State of export shall ensure that the wastes in question are:
 - (a) taken back by the exporter or the generator or, if necessary, by itself into the State of export, or, if impracticable,
 - (b) are otherwise disposed of in accordance with the provisions of this Convention,within 30 days from the time the State of export has been informed about the illegal traffic or such other period of time as States concerned may agree. To this end the Parties concerned shall not oppose, hinder or prevent the return of those wastes to the State of export.

For the shipments of wastes in question, they are illegal traffic within the meaning of Article 9, paragraph 1 of the *Basel Convention* as a result of the conduct of Chronic Inc., the Canadian-based exporter. Canada, as the State of export, is therefore required under Article 9 to ensure that the wastes are taken back to Canada within 30 days from the time that Canada was informed about the illegal traffic.

Philippine authorities notified the Canadian embassy and the Canadian government about these shipments of wastes and requested Canada’s assistance in returning them as early as March 2014. For five years, Canada has refused to take appropriate action to ensure the return of the wastes, in violation of Article 9.

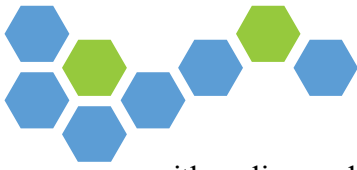
Canada may alternatively ensure the proper disposal of the wastes in question in accordance with the provisions of the *Basel Convention*. However, this option is only available to Canada if the return of the wastes would be “impracticable”.

Initially, the reason that Canadian authorities gave for refusing to take back the wastes was that Canadian law did not provide a mechanism to compel the return of illegal shipments to the port of origin. Even if Canadian law did not allow Canada to compel the exporter Chronic Inc. to repatriate the wastes, the *Basel Convention* is clear that Canada must take back the wastes “if necessary, by itself”. There is no discernible obstacle that would make it “impracticable” for the Canadian government to take it upon itself to repatriate the wastes in question.

In any event, the legal loophole was fixed by legislative amendments that came into effect in October 2016. Under the amended *Export Import Regulations*, in the event that shipments of wastes are not accepted by the country of import, the exporter must ensure that the wastes are

²⁵ *Basel Convention*, *supra* note 1, Annex V A & V B.





either disposed of in an alternative facility in the country of import with the consent of that country or return the wastes back to Canada.²⁶

After the legislative amendments came into effect, Canadian Prime Minister Justin Trudeau said that it was now “theoretically possible” to repatriate the wastes in question, but said that questions remained as to who had the financial responsibility.²⁷ Again, the *Basel Convention* is clear that the obligation to take back the waste falls ultimately upon the State of export itself if necessary. Canada’s continued failure to ensure that the wastes in question are returned to their port of origin is a breach of Canada’s obligations under Article 9 of the *Basel Convention*.

3) Other Violations of the Basel Convention

Aside from Canada’s failure to take back the wastes in question contrary to Article 9 of the *Basel Convention*, Canada has also failed to meet its obligations under several other provisions of the *Basel Convention* that are found under Article 4, which sets out the general obligations of the Parties.

i) Failure to Ensure Environmentally Sound Management

Canada has failed to discharge its obligation to ensure that the wastes in question are properly managed in accordance with Article 4, paragraph 10, which states:

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

In other words, the obligation to properly manage hazardous and other wastes rests always with the State in which the wastes were generated. This obligation shall never be transferred to the State of import.

In this matter, Canada has failed to discharge its obligation to properly manage the 103 container vans of household wastes in question, which have been generated in Canada. Instead, the burden of managing and addressing the wastes contained in these shipments has been borne by the Philippine government.

Since discovering the first of the 103 container vans, Philippine authorities have had to take responsibility for managing these wastes. An interagency committee consisting of the DENR, BOC, and DFA was established specially to deal with the matter. The Philippine government has had to pay for the cost of inspecting and testing the contents of the container vans for hazardous substances, and for the cost of storing the container vans in a safe manner. As of July 2015, it is

²⁶ *Export Import Regulations*, *supra* note 3, s. 9.

²⁷ Mara Cepeda, “Trudeau says ‘now theoretically possible to get back’ Canada trash in PH”, *Rappler* (14 November 2017), online: <<https://www.rappler.com/nation/188422-justin-trudeau-canada-trash-philippines-possible-to-get-back-asean-2017>>.





estimated that the Philippine government has had to pay around ₱240 million (US\$4.7 million) in rental costs and demurrage.²⁸

Despite repeated calls by Philippine authorities, the Regional Trial Court of Manila, and non-governmental groups in both countries for Canada to take back the container vans in accordance with the *Basel Convention*, the Canadian government has so far refused to take responsibility for the wastes. In fact, the then Canadian Ambassador Neil Reeder indicated in 2014 that Canada's preference would be for the shipments to be processed in the Philippines.²⁹

In July 2015, having failed to ensure the assistance of Canada to return the shipments, Philippine authorities began disposing some of the contents of the container vans into a local landfill. A total of 26 container vans of wastes were so disposed. However, the majority of the 103 container vans still require proper disposal.

Canada's continued refusal to take responsibility for the proper management of the wastes in question, thereby causing the burden of managing the wastes to fall upon the Philippine government, contravenes Article 4, paragraph 10 of the *Basel Convention*.

ii) *Failure to Impose Criminal Liability for "Illegal Traffic"*

Prior to legislative amendments that came into effect in October 2016, Canada failed to prohibit the transport of certain types of wastes that may be deemed illegal traffic under the *Basel Convention*, contrary to requirements under Article 4, paragraph 3 and Article 9, paragraph 5.

Article 4, paragraph 3 imposes the following obligation: "The Parties consider that illegal traffic in hazardous wastes or other wastes is criminal." Article 9, paragraph 5 requires each Party to "introduce appropriate national/domestic legislation to prevent and punish illegal traffic."

The *CEPA* and the *Export Import Regulations* are the legislative vehicles through which Canada implements the *Basel Convention*. Export from and import into Canada of hazardous wastes must conform to the requirements under the *CEPA* and the *Export Import Regulations*. An exporter who fails to comply with these statutory requirements when exporting hazardous waste may be found liable to an offence under the *CEPA*.

However, prior to legislative amendments that came into effect in October 2016, not all wastes subject to the *Basel Convention* were considered "hazardous waste" under the *CEPA* and the *Export Import Regulations*. In particular, household waste did not fall within the scope of the *CEPA* and the *Export Import Regulations* even though, as discussed above, the transport of household wastes is subject to the *Basel Convention*.

Therefore, prior to October 2016, the *CEPA* and the *Export Import Regulations* did not impose criminal liability upon those who traffic in household wastes even though such traffic in household wastes may be deemed "illegal traffic" under the *Basel Convention*. Canada's failure to include household waste within the regulatory regime of the *CEPA* and the *Export Import*

²⁸ Letter from Basel Action Network to Basen Convention Executive Secretary, RE: Canadian Non-Compliance with the Basel Convention (27 July 2015).

²⁹ See Appendix A – Chronology: Apr. 24, 2014 & Jun. 9, 2014.





Regulations, and therefore its failure to consider illegal traffic in household waste as a punishable offence, violated Article 4, paragraph 3 and Article 9, paragraph 5 of the *Basel Convention*.

After the amendments came into effect, the definition of hazardous waste under the *Export Import Regulations* was expanded to include municipal waste if they are classified as hazardous in the importing country, or if the waste falls under the definition of “hazardous waste” or “other waste” under the *Basel Convention* and the importing country is a party to the *Basel Convention*.³⁰ As such, the definition of “hazardous waste” under the *Export Import Regulations* only became consistent with the *Basel Convention* after October 2016.

iii) *Failure to Implement and Enforce the Provisions of the Basel Convention*

Even with the legislative amendments that came into effect in 2016, the current statutory regime in Canada fails to properly implement and enforce the *Basel Convention* as required under Article 4, paragraph 4, which states:

Each Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Convention, including measures to prevent and punish conduct in contravention of the Convention.

Canada has failed to take appropriate measures to implement and enforce Article 9 of the *Basel Convention* dealing with “illegal traffic” of hazardous and other wastes. In the case of illegal traffic as a result of the conduct of the exporter, Article 9 imposes a 30-day time limit on the State of export to take back the wastes or, if that is impracticable, dispose of the wastes in accordance with the provisions of the *Basel Convention*.

A consequence of the legislative amendments in 2016 was to impose a legal requirement on the exporter to return shipments back to Canada where the importing country has refused acceptance and where arrangements for an alternate destination facility cannot be made.³¹ However, instead of a 30-day time limit, the amended *Export Import Regulations* requires an exporter to return the shipments within 90 days after the day on which the Minister is notified or within any other period of time that is agreed to by the Minister and the competent authority of the country of import.³²

The 90-day time limit within the *Export Import Regulations* fails to properly implement and enforce Article 9 of the *Basel Convention*, which requires shipments of illegal traffic to be returned within 30 days.

³⁰ *Export Import Regulations*, *supra* note 3, s. 1.1.

³¹ *Export Import Regulations*, *supra* note 3, s. 9.

³² *Export Import Regulations*, *supra* note 3, ss. 9(p)(iii) & (q)(iii).



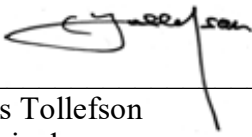


Canada's failure to properly implement the 30-day time limit for the return of shipments of illegal traffic violates Article 4, paragraph 4 requiring a Party to take appropriate measures to implement and enforce the provisions of the *Basel Convention*.

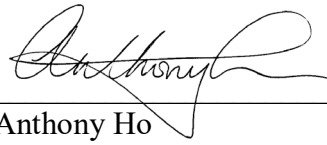
Yours truly,

PACIFIC CENTRE FOR ENVIRONMENTAL LAW
AND LITIGATION LAW CORPORATION

Per:



Chris Tollefson
Principal
Tel: (250) 888-6074
Email: ctollefson@pacificcell.ca



Anthony Ho
Associate
Tel: (778) 678-3818
Email: anho@pacificcell.ca





Appendix A – Chronology³³

Jun. 23, 2013 – 35 container vans, declared to contain recyclable
Aug. 4, 2013 “homogenous” plastic scrap materials, arrived in three batches from Canada to the Manila International Container Port (“MICP”) in Manila, the Philippines:

- Jun. 23, 2013: 10 x 40ft container vans;
- Jul. 21, 2013: 9 x 40ft container vans;
- Sep. 17, 2013: 5 x 40ft container vans; and,
- Aug. 4, 2013: 11 x 40ft container vans.

The shipper was Chronic Inc., a Canadian company based in Ontario. The consignee was Chronic Plastics, a company based in Valenzuela City, the Philippines with a processing site in that country.

The Philippines’ Department of Environment and Natural Resources (“DENR”) was responsible for issuing Import Certifications. The Philippines’ Bureau of Customs (“BOC”) processed the shipments.

The DENR’s Environment Management Bureau (“EMB”) became concerned about shipments to Chronic Plastics when there was inconsistency between the rate of Import Certifications applications for the shipments and the estimated capacity of Chronic Plastics’ processing site to handle the materials.

Aug. 8, 2013 The EMB inspected Chronic Plastics’ processing site and found that “imported plastics [were] mixed and heterogeneous”, in violation of the *Republic Act No. 6969: Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990* (“*Republic Act 6969*”) and the DENR’s Administrative Order No. 1994-28.

As a result of the EMB’s investigation, the DENR began reviewing the Import Certifications applications associated with shipments for Chronic Plastics. The DENR also alerted BOC to impound any shipments that arrive until the matter could be reviewed.

Aug. 10 – 21, 2013 Another 15 container vans shipped by Chronic Inc. arrived at

³³ This chronology is compiled from various sources listed at the end of this appendix. For the purpose of this legal opinion, we assume all the facts in this compiled chronology to be true. Our legal analysis and conclusions may change if any of the facts are untrue.





the MICP:

- Aug. 10, 2013: 5 x 40ft container vans; and,
- Aug. 21, 2013: 10 x 40ft container vans.

At the request of the DENR, these shipments were held at the MICP.

Sep. 2013 The 50 container vans that had arrived between June and August 2013 were impounded pending clearance from the DENR.

Dec. 2013 – Jan. 2014 Chronic Inc. shipped another 48 container vans from Canada to the MICP. These 45-foot container vans were declared to contain plastic scraps.

The consignee, Live Green Enterprise, did not claim the shipments and these 48 container vans did not draw the attention of Philippine authorities until May 2015.

Jan. 21, 2014 The original 50 container vans, which had been impounded and left unclaimed at the bay area of the MICP, was by now leaching fluids and was posing health and environmental risk.

As part of the procedure for dealing with shipments that are not claimed for long periods of time, the BOC opened 18 of the 50 vans for inspection. The BOC discovered that the 18 vans contained “**plastic bottles, plastic bags, newspapers, household garbage, and used adult diapers**”. Such wastes are classified as hazardous under the *Republic Act 6969*.

The Philippines’ Department of Health Bureau of Quarantine began obtaining clearance to disinfect the 18 opened vans using an organic method of disinfection, which cost the government ₱20,000 (US\$393).

The BOC did not open the remaining 32 vans to prevent further contamination in case they too contained hazardous waste.

Feb. 20, 2014 The BOC filed a smuggling complaint to the Philippine Department of Justice (“DOJ”) against Adelfa Eduardo, owner of Chronic Plastics, and against Chronic Plastic’s licensed customs brokers Leonora Flores and Sherjun Saldon, for importing shipments of garbage disguised as assorted plastic scrap from Canada in violation of the *Tariff and Customs Code of the Philippines* (“TCCP”) and the *Republic Act 6969*.

The *Republic Act 6969* prohibits the importation of hazardous





waste to the Philippines. The *TCCP* holds an importer criminally liable for illegal imports.

BOC Chief John “Sunny” Sevilla said in a press statement, “It is very clear that these waste materials were shipped to the Philippines illegally. There were violations in the process for importation and misdeclarations made on paper. Moreover, we must be mindful of the threat to public health and safety that these wastes could bring to our people.”

Mar. 2014 The DENR, the BOC, and the Department of Foreign Affairs (“DFA”) established an interagency committee specially to deal with the treatment of illegal waste shipments.

The DFA began writing to the Canadian embassy seeking their assistance to return the container vans back to Canada in accordance with the *Basel Convention*.

Apr. 3, 2014 Philippine organizations (BAN Toxics, Greenpeace, Ang Nars Party-List, Ecowaste Coalition, Mother Earth Foundation, Green Convergence, Public Services Labor Independent Confederation, and Ateneo School of Government) picketed the Canadian embassy and delivered a petition letter to Canadian Ambassador Neil Reeder asking for the immediate return of the 50 container vans back to its Canadian port of origin.

Apr. 14, 2014 Public rallies were held near the Canadian embassy in Makati City, the Philippines. Canadian embassy officials (Political Counsellor James Christoff and Trade Commissioner Karra-Lee Gerrits) received representation from the petitioners.

Apr. 24, 2014 Canadian Ambassador Neil Reeder informed the DFA that Canada “would like to explore with the Philippines options for processing the rest of the shipment – in accordance with Philippine law – in the Philippines.”

Jun. 9, 2014 Canadian Ambassador Neil Reeder informed the DFA that Canada had “no domestic or international authority to compel the shipper to return the shipment to Canada.” He explained that, while Canadian law imposed penalties on violations of import and export laws, it did not provide a mechanism to compel the return of illegal shipments to the port of origin.

Further, he said that the owner of exporter Chronic Inc., Jim Makris, “ha[d] not been successful to date in finding a third country to which the shipment could be sent.”





Lastly, he suggested that, since the container vans were still held in MICP, the Philippines use authorities available to it to compel the owner of the shipments to remove them.

- Jun. 2014 onwards Philippine government authorities and non-governmental organizations around the world continued to ask Canada to ensure the return of the container vans back to the port of origin.
- Aug. 2014 BOC transfers 23 of the 50 container vans from MICP to the Port of Subic to help decongest the MICP.
- Oct. 2014 The cost to the Philippine government for storage space for the 50 container vans so far was estimated to be about ₱66 million (US\$1.5 million).
- Oct. 9, 2014 DENR Secretary Ramon Paje indicated that one of the management options being explored by the interagency committee was treating the wastes in the Philippines. The Philippines would ask Canada to bear the costs associated with the treatment.

Based on the recommendation of the Philippine Department of Health, the container vans would need to be transferred to a site for disinfection due to the health risk that they pose to workers and communities in the port area. The interagency committee estimated the cost of transferring the 50 container vans to a treatment site at ₱400,000 (US\$8,900) or ₱8,000 (US\$179) per container van. The disinfection process will cost ₱900,000 (US\$20,100) or ₱18,000 (US\$402) per container van. Though the container vans were in the custody of the BOC, the agency indicated that it did not have the money to pay for these costs.

- Nov. 14, 2014 The DENR published the result of a Waste Assessment and Character Study (“WACS”) conducted by the interagency committee on the contents of the 50 container vans. The WACS revealed that a significant portion of the content tested were “baled municipal solid waste or garbage destined for immediate local disposal and cannot be recycled.” However, the WACS concluded that the wastes were neither toxic nor hazardous. The DENR’s recommendation was to return the shipments to the port of origin.

The results of the WACS were contested by various non-governmental groups. According to BAN Toxics executive director Richard Gutierrez, the WACS only classified the waste according to kind, but failed to analyze the safety of the





substances that compose the waste. A more comprehensive study such as a leachate test could reveal whether the used adult diapers found in some of the container vans contained feces or urine that could carry infectious bacteria or diseases.

Nov. 27, 2014 The DOJ approved the filing of charges against Adelfa Eduardo, owner of Chronic Plastics, and against Chronic Plastic’s licensed customs brokers Leonora Flores and Sherjun Saldon.

Mar. 18, 2015 In a House of Representatives inquiry held in Manila, Ecology Committee representatives voiced concern and outrage regarding the shipment of waste from Canada and the refusal by the Government of Canada to address the problem. The Canadian embassy declined to attend but released a statement stating:

The Embassy of Canada welcomes the recent determination by the Department of Environment and Natural Resources (DENR) that contents of the containers shipped to the Philippines by a private Canadian company are neither toxic nor hazardous, but are comprised of a mix of plastics and residual waste. We would refer you to DENR for more information on their study.

The case is a private commercial matter involving a Canadian company and its Philippines partner, but the Embassy engaged the Government of the Philippines and its appropriate agencies to actively seek to assist and resolve it in keeping with the spirit of collaboration and cooperation that characterises our countries’ relations. Currently, there are no domestic laws which the Government of Canada could apply to compel the shipper to return its containers to Canada. The Government of Canada has worked with the shipper and with the Government of the Philippines to find a solution to this waste shipment, in accordance with our two countries’ respective regulations and legislative frameworks.

We are pleased that this matter has been resolved and would refer you to DENR for an update on their behalf.

Apr. 8, 2015 In an email to Jim Puckett of the non-governmental group Basel Acton Network (BAN), Environment Canada’s Gwen Goodier referred to Canada’s *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations*





(“*EIHWRM*”) under the *Canadian Environmental Protection Act, 1999*, stating: “In the *EIHWRM Regulations*, the definitions of hazardous waste and hazardous recyclable material do not capture waste and recyclables collected from households.”

Apr. 26, 2015

DENR Secretary Ramon Paje was quoted in a news article stating that the interagency committee was exploring the option of disposing the wastes in the 50 container vans in landfills in the Philippines “for the sake of [the Philippines’] diplomatic relations” with Canada.

May 14, 2015

.....

At the 12th Conference of the Parties to the *Basel Convention*, non-governmental groups BAN and BAN Toxics denounced the Canada over the dumping of wastes in the Philippines. They announced their intention to file a complaint and notification of non-compliance with the Secretariat of the *Basel Convention*.

The Manila City Council adopted a resolution calling for Canada to take back the 50 container vans.

May 22, 2015

.....

The BOC discovered 48 additional container vans, which had arrived at the MICP between December 2013 and January 2014 and had hitherto remained unclaimed by the consignee Live Green Enterprise. These 45-foot container vans, shipped by Chronic Inc., were declared to contain plastic scraps.

Gerardo Macatangay, head of the BOC’s Auction and Disposal Division at the MICP, recommended the issuance of “decrees of abandonment” on these 48 container vans. The DENR called for Canada to take back these container vans.

Jun. 2015

.....

The BOC discovered that the contents of the 48 container vans consigned to Live Green Enterprise contained “non-hazardous ‘municipal solid waste’ of used mixed and unsorted, or ‘heterogeneous’ waste, including household and street garbage.”

Jul. 2015

.....

An estimated 1,375 tons of wastes from 26 of the original 50 container vans were disposed into a landfill operated by the Metro Clark Waste Management Corporation (“MCWMC”) in the Municipality of Capas, Province of Tarlac. The disposal to landfill of Canada’s waste was strongly opposed by local environmental and other non-governmental organizations.

Jul. 16, 2015

.....

The Sangguniang Panlalawigan (provincial legislature) of the Province of Tarlac conducted a public hearing on the Canadian





waste deposited at the MCWMC landfill and banned further disposal of wastes from Manila within the province.

At the public hearing, Gerardo Macatangay, head of the BOC’s Auction and Disposal Division at the MICP, revealed that Chronic Inc. had shipped a total of 103 container vans to the Philippines (50 from the first batch of shipment consigned to Chronic Plastics, 48 from the second batch consigned to Live Green Enterprise, and another 5 container vans that arrived between 2013 and 2014).

Jul. 30, 2015 The BOC filed complained before the DOJ against Nelson Manio, owner of Live Green Enterprises, for the unlawful importation of waste that had been falsely declared as “plastic scraps” in violation of Section 3601 of the *TCCP* and the DENR Administrative Order (“DAO”) 1994-28 entitled “Interim Guidelines for the Importation of Recyclable Materials Containing Hazardous Substances.” These charges related to the 48 container vans that arrived in the MICP from December 2013 to January 2014.

DAO 1994-28 prohibited the importation of “heterogenous and unsorted plastic materials” and required the regulated import of plastics to contain “no traces of toxic materials.” Allowable homogenous plastics could be imported if there is a pre-shipment importation clearance from the EMB.

Nov. 2015 At a press conference for the Asia-Pacific Economic Cooperation (APEC) meeting held in the Philippines, Canadian Prime Minister Justin Trudeau responded to media questions regarding the 103 container vans. Prime Minster Trudeau indicated that Canada was exploring legislative amendments to address “loopholes” and “to ensure that if a situation like this were to arise once again that the Canadian government has more power to actually demand action from the companies responsible.”

Jun. 30, 2016 Judge Tita Bughao Alisuag of the Regional Trial Court of Manila Branch 1 rejected the submissions of the prosecution that the contents of the 50 original container vans should be disposed locally. Instead, the Court ordered that the 50 container vans be sent back to Canada at the expense of the importer in accordance with the *Republic Act 6969*. In its decision, the Court held:

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 allow [sic] the disposal of the wastes from other countries to be locally disposed, we will become the place of disposing other countries [sic] wastes and garbage.

Oct. 2016 Amendments made to the Canada’s *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations* under the *Canadian Environmental Protection Act, 1999* came into effect. Among other things, the amendments:

- expanded the definition of “hazardous waste” under the legislation to include municipal waste if they are classified as hazardous in the importing country, or if the waste falls under the definition of “hazardous waste” or “other waste” under the *Basel Convention* and the importing country is a party to the *Basel Convention*; and,
- required the return of shipments where the importing country has refused acceptance and arrangements for an alternate destination facility cannot be made.

Nov. 2017 In a press conference held during the 31st Association of Southeast Asian Nations (ASEAN) Summit and Related Summits, Canadian Prime Minister Justin Trudeau was questioned about the 103 container vans of waste dumped by Canada to the Philippines.

“Even though it originally came from Canada, we had legal barriers and restrictions that prevented us from being able to take it back. Those regulations and those impediments have now been addressed, so it is now theoretically possible to get it back,” Trudeau said. “But there’s still a number of questions around who would pay for it, where the financial responsibility is. This was, at its origin a commercial transaction. It did not involve government.”

Jan. 30, 2019 Ecological Waste Coalition of the Philippines, a non-profit environmental network of over 140 public interest groups working for a zero waste and toxics-free society, sent a letter to Canadian Prime Minister Justin Trudeau. The letter stated that:

Five years have lapsed and the Canadian garbage is still languishing in our land: 77 containers are sitting at the ports of Manila and Subic (wastes from the other 26 containers are already rotting at a local landfill).

Furthermore, the letter urged the Canadian government to





provide “a clear and definite date by which it will repatriate its garbage.”

- Feb. 11, 2019 Philippine and Canadian environmental, health, and human right groups sent a letter to Canadian Prime Minister Justin Trudeau in support of the letter from the Ecological Waste Coalition of the Philippines dated January 30, 2019. The letter urged Canada to ensure “the expeditious return to Canada of the wastes illegally exported from Canada and dumped in the Philippines, as is required by the *Basel Convention*.” The letter also called upon Canada to support the Basel Convention Ban Amendment.
- Apr. 29 – May 10, 2019 The 14th meeting of the Conference of the Parties to the Basel Convention will be held in Geneva, Switzerland. On the agenda is the Basel Convention Ban Amendment (“Ban Amendment”).

The Ban Amendment, originally adopted at the 2nd Conference of the Parties in 1994, would prohibit the transboundary movement of hazardous wastes, including household wastes, from developed nations to developing countries or countries with economies in transition for final disposal.

The Ban Amendment needs the support of only two more countries to come into effect. Canada has so far refused to support the Ban Amendment.

Sources for Appendix A:

ABS-CBN News, “New garbage shipment from Canada discovered”, *ABS-CBN News* (22 May 2015), online: <<https://news.abs-cbn.com/nation/05/22/15/new-garbage-shipment-canada-discovered>>.

Agence France-Presse, “Controversial Canadian garbage heads to Philippine landfill”, *Rappler* (14 July 2015), online: <<https://www.rappler.com/nation/99346-canadian-garbage-philippine-landfill>>.

Allan Macatuno and Tonette Orejas, “Who’s paying for Canada trash return? DENR asks”, *Philippine Daily Inquirer* (16 November 2017), online: <<https://newsinfo.inquirer.net/945513/whos-paying-for-canada-trash-return-denr-asks>>.

Ayee Macaraig, “Canada PM Trudeau on trash: We’re working on laws for future”, *Rappler* (19 November 2015), online: <<https://www.rappler.com/nation/113406-trudeau-canada-trash-philippines>>.

Buena Bernal and Pia Ranada, “BOC sues firm for dumping Canada’s waste in PH”, *Rappler* (20 February 2014), online: <<https://www.rappler.com/business/governance/51094-boc-complaint-canada-waste-ph>>.

Dona Z. Pazzibugan, “PH gives in to Canada over garbage dispute”, *Philippine Daily Inquirer* (26 April 2015), online: <<https://globalnation.inquirer.net/121534/ph-gives-in-to-canada-over-garbage-dispute>>.

Jodesz Gavilan, “TIMELINE: Canada garbage shipped to the Philippines”, *Rappler* (16 November 2017), online: <<https://www.rappler.com/newsbreak/iq/188654-timeline-canada-garbage-philippines>>.

Letter from Basel Action Network to Basen Convention Executive Secretary, RE: Canadian Non-Compliance with the Basel Convention (27 July 2015).





- Letter from Canadian Environmental Law Association and RightOnCanada.ca to Canadian Prime Minister Justin Trudeau (11 February 2019), online: <<https://globalnation.inquirer.net/files/2019/02/Canadian-and-Intl-NGOs-letter-to-PM-Trudeau.pdf>>.
- Letter from EcoWaste Coalition to Canadian Prime Minister Justin Trudeau, RE: Appeal to Canadian government to Take Action on Canadian Garbage Illegally Exported to the Philippines (30 January 2019), online: <<http://www.ecowastecoalition.org/2019/02/02/appeal-to-canadian-government-to-take-action-on-canadian-garbage-illegally-exported-to-the-philippines%EF%BB%BF/>>.
- Mara Cepeda, “Trudeau says ‘now theoretically possible to get back’ Canada trash in PH”, *Rappler* (14 November 2017), online: <<https://www.rappler.com/nation/188422-justin-trudeau-canada-trash-philippines-possible-to-get-back-asean-2017>>.
- Mia Rabson, “Canada rejects global ban on shipping recyclables as trash rots in Manila”, *National Post* (20 February 2019), online: <<https://nationalpost.com/pmn/news-pmn/canada-news-pmn/canada-still-believes-in-global-recycling-despite-rotting-garbage-sent-to-manila>>.
- Niña P. Calleja and Tina G. Santos, “PH to file diplomatic protest vs Canada over trash”, *Philippine Daily Inquirer* (31 July 2015), online: <<https://globalnation.inquirer.net/126768/ph-to-file-diplomatic-protest-vs-canada-over-trash>>.
- Pia Ranada, “BOC sues Filipino importer of second batch of Canada trash”, *Rappler* (30 July 2015), online: <<https://www.rappler.com/nation/100997-boc-charges-filipino-importer-canada-trash>>.
- Pia Ranada, “Canada wants its illegal garbage ‘processed’ in PH”, *Rappler* (13 October 2014), online: <<https://www.rappler.com/nation/71861-canada-ambassador-illegal-garbage-philippines>>.
- Pia Ranada, “Illegal Canadian garbage not toxic after all – DENR”, *Rappler* (26 March 2015), online: <<https://www.rappler.com/science-nature/environment/88032-denr-canadian-garbage-not-toxic>>.
- Pia Ranada, “Leaking shipment of Canadian garbage poses health risks”, *Rappler* (2 April 2014), online: <<https://www.rappler.com/science-nature/environment/54508-leaking-shipment-canada-garbage-health-risks>>.
- Rappler.com, “Customs looking for alternative landfill for Canada trash”, *Rappler* (26 July 2015), online: <<https://www.rappler.com/nation/100516-customs-alternative-landfill-canada-garbage>>.
- Secretariat of the Basel Convention, *Fourteenth Meeting of the Conference of the Parties to the Basel Convention*, online: <<http://www.basel.int/TheConvention/ConferenceoftheParties/Meetings/COP14/tabid/7520/Default.aspx>>.
- Secretariat of the Basel Convention, *The Basel Convention Ban Amendment*, online: <<http://www.basel.int/Implementation/LegalMatters/BanAmendment/Overview/tabid/1484/Default.aspx>>.
- The Manila Times, “BOC files smuggling raps vs waste importer”, *The Manila Times* (30 July 2015), online: <<https://www.manilatimes.net/boc-files-smuggling-raps-vs-waste-importer/204988/>>.
- Vince Alvic Alexis F. Nonato, “Smuggling case vs Canadian waste importer”, *Business World Online* (31 July 2015), online: <<http://www.bworldonline.com/content.php?section=Nation&title=Smuggling-case-vs-Canadian-waste-importer&id=112605>>.

