DOMESTICALLY PROHIBITED GOODS

THE SECOND REGIONAL WORKSHOP OF THE UNCTAD PROJECT ON STRENGTHENING RESEARCH AND POLICY-MAKING CAPACITY ON TRADE AND ENVIRONMENT IN DEVELOPING COUNTRIES

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Domestically Prohibited Goods
Hazardous wastes

Introduction:

Hazardous wastes are those that contain substances which are harmful to human health, contaminate other living beings and/or transform themselves into other hazardous substances in contact with the environment over time. Many industrial wastes pose a threat to the population and to the environment because of their toxic, noxious or hazardous characteristics.

In the eighties and nineties, around 500 million tons of wastes were produced all over the world. 90% of these wastes were produced, commercialized, treated and disposed in the industrialized countries, and the remaining 10% were involved in transboundary movements, mainly to developing countries. Agenda 21 states that the effective control of hazardous wastes is extremely important to protect the environment and to implement sustainable development. The growing awareness of the international community on the need to revert this situation lead to the approval, in 1989, of the Basel Convention on the Transboundary Movements of Hazardous Wastes and Their Disposal. The main focus of the Basel Convention, both in Brazil and in other countries, was that an effective control requires not only prevention of the generation of wastes and the rehabilitation of contaminated sites, but also knowledge, technological, technical and scientific capacities and financial resources to carry out actions to manage these wastes in the developing and developed countries.

Complete statistics on the generation of industrial wastes in Brazil are still not available. However, according to an inventory carried out in the State of São Paulo, only for the Greater São Paulo area, the annual waste production in 1992 was more than 200 thousand tons, generated basically by three industrial sectors: metalworks, vehicles/auto parts and chemical. The latter is responsible for generating 50% of all the hazardous solid wastes.

In spite of the lack of data that would permit an accurate knowledge of the waste situation in the country, the Brazilian Government has always been concerned and mindful of the problems related to waste generation and their environmentally sound disposal. This concern was translated, more than fifteen years ago, into the first legal instruments to assist in the solution of this problem, hence, preceding the consolidation of the Basel Convention.

The Brazilian Government took part in all the diplomatic meetings held to draft the Convention text. It also participated in the meetings after its approval in 1989, the so-called Conference of the Parties – COP, as well as in the meetings involving diplomats and technical and legal experts. Brazil's accession to the Basel Convention on the Transboundary Movements of Hazardous Wastes and Their Disposal occurred in July 1993, when the text was published in the Official Gazette. Decree No. 875 included the Convention in the domestic legislation.

National Legislation:

As mentioned above, even before accession, the Brazilian Government, in April 1980, implemented regulatory measures aimed at preventing the entry of hazardous wastes into the national territory for whatever purpose, be they destined for recycling components and reusing materials or for final disposal. In 1990, the Brazilian Institute for Environment and Renewable Resources (IBAMA) enacted Regulatory Directive No 1197, to control the importing of scraps, residues, wastes and ashes, in order to regulate this matter while awaiting ratification the Basel Convention. This legislation remained in force until December 1992, when Brazil ratified the Convention.

The Brazilian Government enacted, in 1988, a domestic regulation that complements some of the Convention's decisions aimed at reducing and preventing waste generation. It also provided governmental decision makers with an overview of the waste generation process in our country. This regulation was conceived as a mechanism to permit the inventory of all the industrial wastes, in

several categories, generated annually by each federative state. Subsequently, most of the relevant states involved in waste generation proceeded to carry out their local inventories. Currently, this regulation is being restructured and the available inventories are being consolidated into a single comprehensive document.

It is also important to mention National Environment Council (CONAMA) Resolution 37, dated December 1994, which created an extensive list of controlled and banned wastes, later updated in 1996, by Resolution 23/96. This resolution incorporates the provisions of Decision II/12 of the Basel Convention, by establishing different levels of restrictions on imports of hazardous wastes destined for recycling and recovery and allows for the possibility of exempting import restrictions of hazardous wastes deemed essential to the national economy.

In 1998, the Government enacted the “Environmental Crimes Law”, which provides for the application of penal and administrative sanctions to those who are proved to be engaged, actively or by omission, in activities that could result in damage to the environment. This law is extremely important to ensure the enforcement of other environmental laws.

The National Environment Council shall soon be drafting special regulations aimed at helping to control the movements of wastes and hazardous wastes between Brazilian states. The project intends to improve the quality of the data available, which will be applied to actions to reduce the movements of hazardous wastes as well as to improve the treatment of these wastes close to their sources.

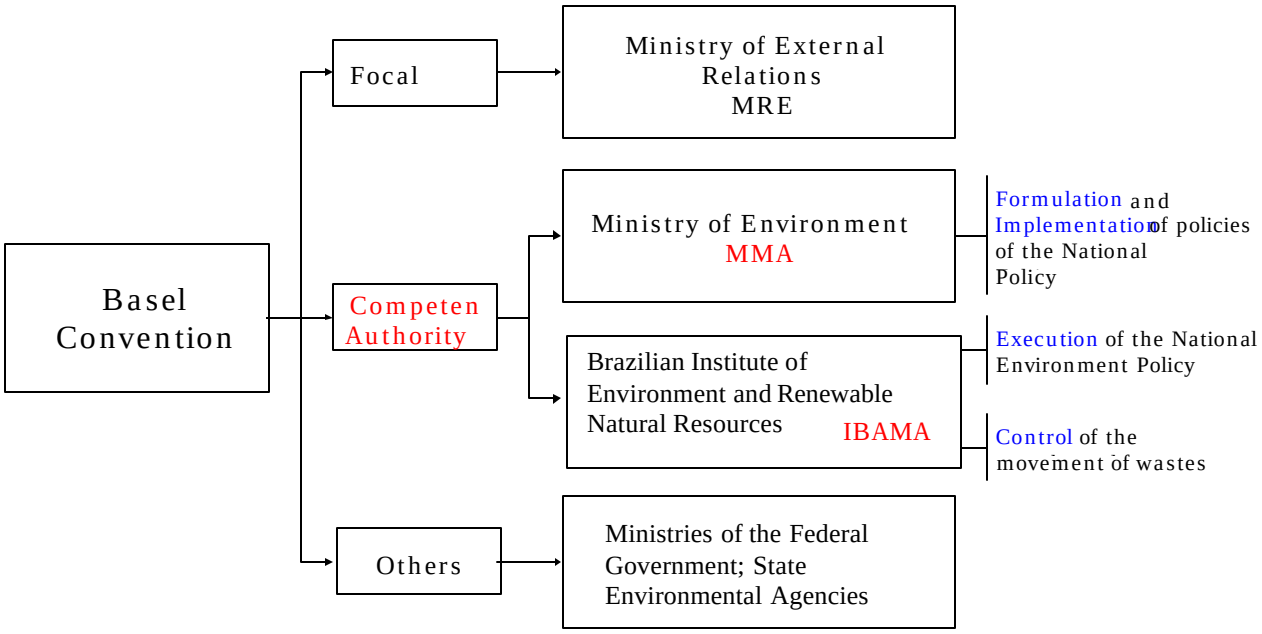
It is important to say that the National Environment Council includes representatives from federal, state and local governments as well as representatives of environmental non-governmental organizations and the industrial sector. The Brazilian position on environment reflects, thus, the consensus reached by society as a whole.

The Basel Convention celebrated its first 10 years last December. Over the first decade of the Basel Convention, the evolution of institutional mechanisms and legislative instruments enabled the implementation of the Convention in the country.

Institutional Structure:

The following federal bodies are involved in the implementation of the Basel Convention:

- Ministry of External Relations (MRE): Focal Point of the Convention;
- Ministry of Environment (MMA): Competent Authority and responsible for the formulation and implementation of national policies related to the environment;
- Brazilian Institute for Environment and Renewable Natural Resources (IBAMA): Competent Authority and in charge of executing environmental policies and monitoring their implementation;
- Ministries of the Federal Government;
- State Environmental Agencies.



Institutional Structure of the Basel Convention in Brazil

Legal Structure:

Brazil has three basic legal instruments to control the transboundary movement of wastes:

- Decree No. 875, dated 19 July 1993 – Promulgates the text of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.
- CONAMA Resolution No. 23, dated 12 December 1996 – Deals with the classification and procedures for importing wastes, replacing CONAMA Resolution No. 37/94.
- CONAMA Resolution No. 235, dated 7 January 1998 – Alters Annex 10 of CONAMA Resolution No. 23, dated 12 December 1996, restructuring the list of wastes for which importing is controlled or banned.

Exporting of wastes is unrestricted in Brazil if the procedures required by the importing country under the Convention are met.

Operational Structure:

In Brazil, control of waste imports makes use of the Integrated Foreign Trade System (SISCOMEX), a national on-line system which allows integration of importers, exporters, official banks and control agencies. Although SISCOMEX was not created with the specific aim of aiding the environmental area, it is being used to control and optimize foreign trade operation procedures, thereby reducing the response time for imports. This system is coordinated by the Foreign Trade Office of the Ministry of Production and Development and by the Internal Revenue Service of the Ministry of Finance. It is run by the Internal Revenue Service and the Brazilian Telecommunications Company – EMBRATEL. The chart below shows the procedures related to waste imports and SISCOMEX.

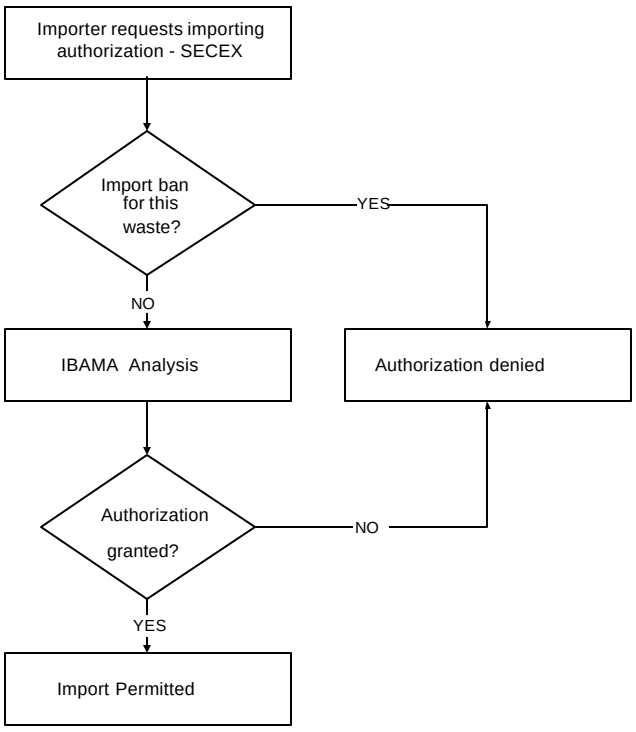


Chart with SISCOMEX Procedure

Using SISCOMEX brings many benefits:

- generation of data to provide input for decision making;
- effective control of imports of wastes harmful to the environment;
- optimization of the internal controls of the evaluating agency, in this case IBAMA;
- rationalization of inspections;
- control and generation of data for meeting requirements of international conventions and programs;

Although the concern on wastes in Brazil existed prior to the Basel Convention, the promulgation of the Convention created a legal framework for the development of the activities needed for the sound environmental management of hazardous wastes. Thus, the Brazilian Government has developed actions and procedures for managing wastes, particularly with respect to promoting policies to minimize generation, fostering technologies for the treatment and environmentally sound management of those hazardous wastes.

Notwithstanding the development of the existing mechanisms for implementation, there are still gaps that need filling, both from an operational and a legal perspective.

A National Solid Wastes Policy, to be approved soon, will constitute an instrument capable of including the various concepts, objectives and guidelines needed to generate a change of models for a sound environmental waste management. Concurrently to these discussions, sectoral regulations are being drafted on important issues such as used tires, batteries (CONAMA resolution in annex) and cells and the co-processing of wastes in clinker ovens.

From an operational point of view, it is necessary to expand the centers that disseminate and develop clean technologies and minimize waste generation, as well as to expand the Brazilian Waste Environmental Management Network (REBRAMAR). In this regard, the National Center on Clean Technologies, located in the state of Rio Grande do Sul, is establishing regional centers around the country to disseminate and enhance the development of clean technologies, particularly regarding small and medium enterprises. Such program aims at promoting the efficiency and competitiviness of these enterprises, which are responsible for the bulk of the management of hazardous wastes, specially in developing countries. In this context, it is relevant to recall that the last Conference of the Parties to the Basel Convention agreed upon a Ministerial Declaration that focus the activities of the Convention in the coming decade on the need to reduce the generation of wastes, particularly through the development of clean technologies.

In the international domain, Brazil considers the maintenance of permanent flows of technology transfer paramount for enabling the local development of sound technologies for management of hazardous wastes.