

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460**

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MEMORANDUM

SUBJECT: Draft Bilateral Agreement Governing Transboundary Movements of Hazardous Wastes from Costa Rica to the United States

FROM: Elizabeth Cotsworth, Acting Director
Office of Solid Waste

TO: Timothy Fields, Jr
Acting Assistant Administrator

Purpose

The purpose of this memorandum is two-fold. First, it is intended to transmit for your concurrence the draft text of a bilateral agreement covering imports of hazardous waste from Costa Rica to the United States. In addition, this agreement is intended to serve as a framework for future U.S. import bilateral agreements. Therefore, the second purpose of this memorandum is to seek your concurrence on the general approach.

Background

Earlier this year, Intel Corporation approached EPA to pursue a bilateral agreement with Costa Rica for the purpose of allowing imports into the United States of certain hazardous wastes they expect to generate at a future Intel facility in Costa Rica. Because Costa Rica is a party to the Basel Convention while the U.S. is not, a bilateral agreement covering this trade would be necessary for Costa Rica to uphold its Basel obligations.

The Costa Rican Minister of Health, in a letter to the Administrator dated April 24, 1997, formally invited the U.S. to enter into a bilateral "arrangement" on behalf of Intel. While the Minister suggested that we negotiate an "arrangement" under the terms of Article 11 of Basel which would only cover Intel's eight hazardous waste streams, OSW preferred a broader agreement which would cover any and all hazardous waste shipments from Costa Rica to the U.S. The reason we rejected the narrower "arrangement" is two-fold. First, we believe there may be other generators in Costa Rica interested in exporting hazardous waste to the U.S., given there may be few or no hazardous waste management facilities in Costa Rica at the present time and second, Costa Rica expressed an interest in a broad agreement in its letter to the Administrator, but expected this would be a longer-term option. OSW preferred to avoid two rounds of

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negotiations with Costa Rica, and opted to pursue the broad agreement now. The State Department agreed with OSW on both points.

Our March 1995 Malaysia import agreement was intended to serve as the framework for future import agreements, however, OSW and State felt that the Malaysia agreement could be significantly streamlined, lending clarity and brevity to future agreements without sacrificing our legal and international obligations. Later in 1995, OSW and State negotiated a one-shipment-only "arrangement" with Australia which was shorter and less elaborate than the Malaysia agreement, in particular, it included far fewer Basel Convention provisions. We postulated that a streamlined agreement, eliminating where possible all Basel Convention language, might be easier to negotiate. The basis for this assumption is that any country with whom we enter into bilateral import agreements would be a party to the Basel Convention and would presumably already be complying with Basel. We therefore believe that our bilateral agreements need not redundantly contain specific Basel Convention language. Finally, by streamlining and standardizing the Costa Rica agreement, we hope future agreements will require fewer resources in terms of both language drafting and negotiations. Therefore, our hope is that the final Costa Rica agreement, rather than the Malaysia agreement, could serve as the template for future U S import agreements.

Waste imports have generally been non-controversial with a few exceptions. Earlier this decade, Congressman LaFalce of New York became very concerned about imports of municipal solid waste from Canada into his and other districts. He considered proposing legislative fixes to address these imports, but nothing ever came of it. Another case involved the somewhat controversial re-import of an illegal shipment of K061 (electric arc furnace dust) to Bangladesh in 1990 for use as fertilizer. This incident, which resulted in the criminal prosecution of the exporters, involved returning the remaining K061 that had not yet been land spread. Horsehead Resource Development's Chicago facility agreed to accept the K061. The facility is located in an area where Environmental Justice concerns have been raised, and some local residents became concerned upon learning of the import. Imports have also been raised in the context of interstate waste legislation and flow control, with some states having attempted to (and possibly succeeded in) banning foreign-generated waste imports into their state boundaries. I would note that in this particular case, Intel plans to import all of its waste from Costa Rica to one facility in Chandler, Arizona (Romic Environmental Technologies, Southwest). I am not aware of any controversy surrounding imported wastes at that facility.

Greenpeace, the only U.S. environmental group involved in the issue of international trade in hazardous waste, is not expected to oppose U.S. import bilateral agreements. They generally agree that developed countries are in a better position to manage hazardous wastes in an environmentally sound manner. Despite the Basel Convention's "proximity principle" that encourages waste management as close as

possible to the point of generation, Greenpeace did not oppose the September 1995 Basel "ban amendment" which expressly allows exports from developing to developed countries. They might oppose imports going to US facilities located in areas where Environmental Justice concerns have been raised. However, assuming a receiving facility is permitted to accept specific waste streams generated domestically, imports of the same wastes from foreign sources should present no new problems. It is even reasonable to argue that exports of hazardous wastes from developing countries to the U.S. are consistent with global environmental justice. There is no provision in this agreement for public notice.

We have also been approached by the Government of Argentina for an import bilateral agreement. and expect a formal inquiry from the Government of Hungary in the near future (Hungary is a member of the OECD, however, the imports in question would be for treatment and disposal rather than for recycling, which the OECD agreement covers). Argentina has been routinely checking with the State Department on the status of their request. Their vigilance is, in part, driving the urgency for conclusion of the Costa Rica agreement because a similar one will be proposed to Argentina. I would also note that we have been engaged in negotiations with Singapore and the Philippines on bilateral agreements similar to the Malaysia agreement for several years, but in each case the negotiations appear to be dead due to decisions in those governments to not pursue the agreements.

Details of Import Agreement

The draft agreement tracks the basic Basel Convention notice and consent system. The Competent Authority of Costa Rica, the Secretaria Technica Nacional Ambiental (SETENA), informs EPA (OECA) in writing of an export EPA responds in writing within 30 days (if possible) SETENA must not allow a shipment to leave Costa Rica until it has received written consent. In addition, the agreement stipulates that EPA will not object to imports of non-RCRA-hazardous wastes and that the agreement serves as EPA's written non-objection. The agreement allows for EPA's withdrawal of consent for good cause (e.g. fraudulent or inaccurate information). Illegal traffic is to be addressed according to the Basel Convention. Once within U.S. jurisdiction, all waste imports are subject to applicable U.S. laws and regulations.

Given that Costa Rica originally envisioned an arrangement applying to only eight hazardous waste streams, the draft agreement recognizes Costa Rica's right to narrow the scope of coverage at its convenience. Because the U.S. generally does not object to imports of any waste (unless required to do so by law: e.g., PCB wastes), the agreement does-not require that the U.S. agree to, nor be consulted about, such limitations imposed by Costa Rica. The idea is to minimize the burden on EPA and the State Department in the implementation of this and future agreements.

Finally, this draft agreement is consistent with the Administration Principles for

Basel Convention legislation. While the Principles are more concerned with exports, they do address imports in a few ways. For example, imports would be prohibited without the prior written consent of the U.S. The U.S. would also prohibit imports to facilities which we have reason to believe would not manage them in an environmentally sound manner. In addition, the Principles require bilateral agreements with countries that are not parties to the Basel Convention, and recognize the right of the U.S. government to return illegally imported or mismanaged wastes to the country of origin. The draft agreement is consistent with each of these provisions, to the extent possible under domestic law.

Conclusion

If you concur with the draft agreement and our proposed approach for future agreements, OSW will advise the State Department to open formal negotiations with Costa Rica and Argentina.

Attachment

cc Mike Shapiro
Lynda Wynn