

Alternative 1: [in accordance with rule 40 of the rules of procedure of the Basel Convention]

Alternative 2: [by consensus*]

Alternative 3: [without opposition*]

in order to validly serve as an aid to the interpretation of paragraph 5 of article 17 of the Basel Convention;]

6. [Option 1: *Resolves* that the conditions for the entry into force of an amendment to the Convention, as set out in paragraph 5 of article 17 of the Basel Convention, shall be deemed to have been satisfied upon the ninetieth day after the receipt by the Depositary of the instruments of ratification, approval, formal confirmation or acceptance from:

Alternative 1: [at least three-fourths of the current Parties to the Convention]

Alternative 2: [at least three-fourths of the States and political and/or economic integration organizations that were party to the Convention on the date upon which the amendment was adopted]

Alternative 3: [a number of Parties equivalent to at least three-fourths of the number of States and political and/or economic integration organizations that were party to the Convention on the date upon which the amendment was adopted]]

7. [Option 2: *Agrees* that in the application of paragraph 5 of article 17 of the Basel Convention, three fourth of the Parties shall be calculated on the basis of those States and political and/or economic integration organizations that were party to the Convention on the date upon which the amendments was adopted;]

8. [Option 3: *Agrees* that in the application of paragraph 5 of article 17 of the Basel Convention, three fourths of the Parties shall be calculated on the basis of the number of Parties at the time of deposit of each instrument of ratification, approval, formal confirmation or acceptance of amendments;]

9. ³⁰ ** [*Determines* that the present decision shall constitute a subsequent agreement in the sense used in article 31, paragraph 3 (a), of the Vienna Convention on the Law of Treaties;]

10. [*Resolves* that this subsequent agreement shall enter into force ... [*Parties may wish to consider how and when such a subsequent agreement might enter into force*]]]

IX/26: President's statement on the possible way forward on the Ban Amendment

The Conference of the Parties,

Acknowledging the "President's statement on the possible way forward on the Ban Amendment" set out in the annex to the present decision,

Invites Parties to take into consideration, wherever possible, the proposed way forward set out in the President's statement.

sense used in article 31 paragraph 3(a) of the Vienna Convention on the Law of Treaties, and the same adopted by consensus by the Conference of the Parties would be definitive, binding and authoritative]

* The Parties may wish to consider these alternatives and their definitions further, in the light of the previous discussions and work on this issue, as reflected in the annex.

** The Parties may wish to note that the proposed alternatives contained in the footnotes of paragraphs 4 and 5 are interrelated, with paragraph 9 being deleted due to its proposed integration into paragraph 5.

30 [to delete]

Annex to decision IX/26

President's statement on the possible way forward on the Ban Amendment

1. Thirteen years ago, the Conference of the Parties adopted an amendment to the Convention which was devised to prohibit the transboundary movement of hazardous wastes from the so-called Annex VII countries, namely, "members of OECD, EC, Liechtenstein", to other countries. This prohibition was to apply to shipments of hazardous waste for resource recovery and recycling, as well as for final disposal.
2. At the time of adoption, it was perceived that "transboundary movements of hazardous waste, especially to developing countries, have a high risk of not constituting environmentally sound management of hazardous wastes as required" under the Basel Convention and, thus, that an export prohibition would protect such countries. Furthermore, in 1998, the fourth meeting of the Conference of the Parties took decision IV/8 that the content of Annex VII would not be re-opened until the Ban Amendment had entered into force.
3. The President strongly believes that it is important to have in place a mechanism which will safeguard vulnerable countries and ensure environmentally sound management, taking into account recent global trends, including developments in technologies for resource recovery and recycling.
4. The President notes that there is no consensus among Parties as to the interpretation of the provision regulating the number of ratifications required for entry into force of an amendment under the Convention. The President commends the considerable efforts that have been made, and that continue to be made, by Parties to consider the interpretation of the amendment procedure under the Convention.
5. Given the length of time that has elapsed since the adoption of the Ban Amendment and that some time may still be needed to address the interpretation of the amendments procedure, the President seeks to launch a process, on the august occasion of the ninth meeting of the Conference of the Parties, which will reaffirm the objectives of the Ban Amendment and explore means by which these objectives might be achieved. The President stresses that this initiative should serve to complement, and most certainly should be without prejudice to, the continuing efforts by Parties to ensure the entry into force of the Ban Amendment.
6. To this end, the President calls upon all Parties to the Convention to expedite ratification of the Ban Amendment, so as to facilitate its entry into force, which will allow the achievement of the objectives of the Amendment, namely to protect those vulnerable countries without adequate capacity to manage hazardous wastes in an environmentally sound manner, and to ensure the environmentally sound management of hazardous wastes.
7. The President further calls upon all Parties to create enabling conditions, through, among other measures, country-led initiatives conducive to attainment of the objectives of the Amendment. Examples of such initiatives might include activities to address national enforcement capacity to monitor, detect and control illegal traffic, through such means as establishing criteria for clear characterization of such wastes; in case of doubt as to the hazardousness of certain materials, provisions requiring the application of the prior informed consent procedure and the use of precise custom codes; efforts to address their capacity to monitor and trace shipments of hazardous wastes; and the transposition of the objectives of the Ban Amendment into national legislation. Such country-led initiatives will serve to contribute to gathering momentum to encourage ratification of the Amendment and to expedite its entry into force.
8. The President stresses, however, that in order for the objectives of the Ban Amendment to be achieved worldwide, capacity-building activities and global partnerships are vital.
9. The President invites all Parties to join this initiative, which seeks to launch a process by which Parties are encouraged to work together to bring the Convention closer to achieving the objectives of the Amendment. The President thus invites Parties to exchange experiences and best practices on steps taken to achieve the objectives of the Ban Amendment, and in particular encourages Parties to share information on such progress on the occasion of the next meeting of the Conference of the Parties.