

# Basel, Rotterdam and Stockholm Conventions

The Basel, Rotterdam and Stockholm (BRS) Conventions, also known as the “Chemicals and Wastes Conventions”, aim at addressing the harmful effects of hazardous chemicals and wastes, essentially through regulating their production, use, international trade and disposal. Although being in essence multilateral environmental agreements (MEAs), this chapter shows how they are interlinked to the multilateral trading system, through international trade-related aspects explicitly embodied in their respective provisions – in particular on export control systems.<sup>1</sup>

## Background

The BRS Conventions<sup>2</sup> comprise the following three international legal instruments:

- The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);
- The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention);
- The Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention).

Nearly all members of the United Nations are parties to the Basel and Stockholm Conventions; and most parties to the BRS Conventions are also WTO members. The former has 190 parties, the latter 186; and there are 165 parties to the Rotterdam Convention.

Although the BRS Conventions were adopted in different years, they share the common objectives of protecting human health and the environment from the harmful effects of hazardous chemicals and wastes:

- (i) Concerning wastes: the Basel Convention was adopted on 22 March 1989, and entered into force on 5 May 1992.
- (ii) Concerning chemicals: the Rotterdam Convention was adopted on 10 September 1998 and entered into force on 24 February 2004; the Stockholm Convention was adopted on 22 May 2001 and entered into force on 17 May 2004. Both conventions explicitly recognize that trade and environmental measures should be “mutually supportive” with a view to achieving sustainable development.

## Primary purposes of the BRS Conventions

The overall rationale and primary purposes of the BRS Conventions were to set a level playing field between developing and developed countries by establishing a common understanding through an internationally applicable framework on the management of hazardous chemicals and wastes. At the same time, the BRS Conventions did not prevent countries that wished to do so from going further in the protection of human health and the environment.

### *Basel Convention on hazardous and other wastes*

More specifically, the Basel Convention was designed to address serious concerns on and prevent dumping of hazardous wastes and other wastes (e.g. household waste) from developed countries to developing countries, based on three pillars:

- ensuring their environmentally sound management (ESM);
- regulating their transboundary movements (TBM);
- realizing the minimization of their generation, whether quantitatively or qualitatively (degree of hazards), and thus favouring their disposal closer to their source of generation.

## ***Rotterdam and Stockholm Conventions on hazardous chemicals***

For the hazardous chemicals and pesticides listed under the Rotterdam Convention, the provisions were originally crafted in order to promote shared responsibility and cooperative efforts between countries and to allow better informed decisions as to their imports and exports, through establishing an information exchange platform with respect to the substances banned or restricted within the jurisdictions of parties.<sup>3</sup>

For persistent organic pollutants (POPs), which are chemicals that are long lasting, long range, bio-accumulating and highly toxic to humans and wildlife, the Stockholm Convention responds to the need by prohibiting, restricting or phasing out their production, use, trade, release and storage.

Only a small percentage of chemicals that could be considered harmful to the environment and human health actually fall under the respective scopes of the Rotterdam and Stockholm Conventions.

In their decisions, the respective Conferences of the Parties (CoPs) to the BRS Conventions – the conventions' governing bodies – may however consider and decide e. g. to list additional hazardous chemicals and wastes to their annexes. Thus, the BRS Conventions can evolve to adapt, modifying their scope as needed, notably to enhance their effectiveness and to meet new challenges that may arise.

## **Trade-related measures and export control systems under the BRS Conventions**

Trade-related measures<sup>4</sup> – in particular those on export controls – may play a key role for the ESM of hazardous chemicals and wastes. With regard to export controls and licensing, some very specific procedures are pivotal under the Basel and the Rotterdam Conventions, as they lie at the heart of their respective regulatory import and export control systems: the prior informed consent (PIC) procedures, which are the core export control systems under these two MEAs.

Under the Stockholm Convention, there are other types of measures enshrined in its provisions that may affect trade to a certain extent, and participate in export control. However, there is neither an established PIC procedure nor any similar export control mechanism.

The Ban Amendment, under the Basel Convention, which entered into force in December 2019, can be considered a unique export control instrument in itself. Adopted in 1995, some parties considered that the Basel Convention was too limited in terms of its scope and therefore believed that a total ban on the shipment of all hazardous wastes to developing countries was needed.

### *The prior informed consent procedure under the Basel Convention*

The PIC procedure is set out in detail in Article 6 of the Basel Convention, to control the transboundary movements of hazardous wastes and other wastes, by means of:

- notifying, by an exporting party to an importing party, that the former intends to export to the latter a shipment of hazardous wastes or other wastes – exporters must provide accurate information about hazards relating to the wastes;
- consenting, by an importing party, in writing, after being properly informed, to a proposed shipment of those hazardous wastes and other wastes.

For the purpose of the PIC procedure, the Basel Convention provisions require the shipments of hazardous wastes and other wastes to be properly packaged, labelled and transported, with adequate international shipment or notification/movement documents<sup>5</sup> from their point of origin to their point of disposal or recycling. Parties, within the jurisdictions of which the wastes are merely in transit, may also refuse the transit, as the PIC procedure may also apply to them – even if they are not parties to the Basel Convention (see Article 7 of the Basel Convention).

There is a “duty to re-import” (i.e. to take back) on the exporter if the wastes in question cannot be disposed of in an environmentally sound manner (see Article 8 of the Basel Convention).

As a consequence, according to Article 9(1) of the Basel Convention, any transboundary movement of hazardous wastes or other wastes is deemed to be “illegal traffic” in the following cases:

- “(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.”

More specifically, as per Article 9(2), when the illegal traffic is:

“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.”

Therefore, each party to the Basel Convention has to adopt appropriate implementing legislation to comply with its obligations under the Convention on preventing and punishing illegal traffic, making it an environmental crime. Parties are to cooperate with each other to implement the provisions on illegal traffic and to improve the ESM of hazardous wastes.

### ***The prior informed consent procedure under the Rotterdam Convention***

Under the Rotterdam Convention, there is no ban or prohibition. Rather, a platform is established to exchange information and to allow more environmentally sound international trade of certain hazardous chemicals and pesticides. Along with the exchange of information, the PIC procedure is one of the key pillars of the Rotterdam Convention, applying to all hazardous industrial chemicals and pesticides listed under its Annex III, and is a formal mechanism for: (i) notifying whether the parties wish to receive imports of the chemicals and pesticides; and (ii) ensuring compliance with these decisions by exporting parties.

The mechanism enables the dissemination of decisions by importing parties on whether they accept the receipt of future shipments of hazardous industrial chemicals and pesticides listed under Annex III – to which exporting parties have to abide.

The provisions require that each party informs the Secretariat of the Rotterdam Convention<sup>6</sup> when taking a national regulatory action to ban or severely restrict a chemical or pesticide within its jurisdictions.

For chemicals and pesticides subject to the PIC procedure:

- Parties intending to export a hazardous chemical or pesticide must first verify that the importing party consents to the import.
- Parties intending to export a hazardous chemical or pesticide that is not listed under the Rotterdam Convention, yet that is nevertheless subject to bans or severe restrictions within its own territory, must notify the importing party of the proposed export and its own national restrictions.

Articles 5 to 7 as well as Article 9 of the Rotterdam Convention set out the procedures (i) for the inclusion of relevant chemicals to list in Annex III that are subject to the PIC procedure, and (ii) for the removal of chemicals from Annex III.

Essential documents for the PIC procedure include:

- decision guidance documents (see Article 7 of the Rotterdam Convention) to help

parties to assess risks when making informed decisions about the future import and use of the chemicals and pesticides in question;

- PIC circulars, published by the Secretariat every six months, on the import responses by parties (i.e. decisions on future imports of chemicals listed in Annex III) (see Article 10 of the Rotterdam Convention).

In addition, Articles 11 to 13 of the Rotterdam Convention set out obligations that have an impact on the control of imports and exports of both the chemicals listed in Annex III, which are subject to the PIC procedure, and the chemicals that are banned or severely restricted but are not listed in Annex III.

In terms of export control, Article 11 sets out specific obligations related to the export of chemicals listed in Annex III, according to which exporting parties are required to ensure that exports of hazardous chemicals and pesticides subject to the PIC procedure do not occur contrary to the decisions by importing parties. Article 11(1)(b), states that each exporting party shall:

“Take appropriate legislative or administrative measures to ensure that exporters within its jurisdiction comply with decisions in each response no later than six months after the date on which the Secretariat first informs the Parties of such response in accordance with paragraph 10 of Article 10”.

Article 11(2), in addition, states that:

“Each Party shall ensure that a chemical listed in Annex III is not exported from its territory to any importing Party that, in exceptional circumstances, has failed to transmit a response or has transmitted an interim response that does not contain an interim decision ...”

Article 12 on export notifications is more relevant for chemicals not listed in Annex III and indeed provides that:

“1. Where a chemical that is banned or severely restricted by a Party is exported from its territory, that Party shall provide an export notification to the importing Party. The export notification shall include the information set out in Annex V.”

However, the obligations of a party set out in the above referred Article 12, paragraph 1, ceases when the chemical has been listed in Annex III (see Article 12(5)(a)).

Article 13 sets out various requirements applying to Annex III-listed and non-listed hazardous chemicals and pesticides:

“1. The Conference of the Parties shall encourage the World Customs Organization to assign specific Harmonized System customs codes to the individual chemicals or groups of chemicals listed in Annex III, as appropriate. Each Party shall require that, whenever a code has been assigned to such a chemical, the shipping document for

that chemical bears the code when exported.

“2. Without prejudice to any requirements of the importing Party, each Party shall require that both chemicals listed in Annex III and chemicals banned or severely restricted in its territory are, when exported, subject to labelling requirements that ensure adequate availability of information with regard to risks and/or hazards to human health or the environment, taking into account relevant international standards.

“3. Without prejudice to any requirements of the importing Party, each Party may require that chemicals subject to environmental or health labelling requirements in its territory are, when exported, subject to labelling requirements that ensure adequate availability of information with regard to risks and/or hazards to human health or the environment, taking into account relevant international standards.

“4. With respect to the chemicals referred to in paragraph 2 that are to be used for occupational purposes, each exporting Party shall require that a safety data sheet that follows an internationally recognized format, setting out the most up-to-date information available, is sent to each importer.

“5. The information on the label and on the safety data sheet should, as far as practicable, be given in one or more of the official languages of the importing Party.”

### ***The Stockholm Convention Article 3 on measures to reduce or eliminate releases from intentional production and use of persistent organic pollutants***

The provisions embodied under Article 3 of the Stockholm Convention are among the most relevant in terms of trade-related measures and export control because they directly affect the control and licensing of exports of the listed POPs. They set out requirements on both exporting (e.g. certification) and importing parties (e.g. ESM) for the international trade of POPs listed as prohibited (in Annex A) or restricted (in Annex B). Yet, they take into account applicable registered “specific exemptions” or “acceptable purposes”.

Article 3(1) more specifically states in this respect that each party shall prohibit and/or take the legal and administrative measures necessary to eliminate its import and export of the chemicals listed in Annex A in accordance with the provisions of Article 3(2), as follows:

“2. Each Party shall take measures to ensure:

(a) That a chemical listed in Annex A or Annex B is imported only:

- (i) For the purpose of environmentally sound disposal as set forth in paragraph 1 (d) of Article 6; or
- (ii) For a use or purpose which is permitted for that Party under Annex A or Annex B;

(b) That a chemical listed in Annex A for which any production or use specific exemption is in effect or a chemical listed in Annex B for which any production or use specific exemption or acceptable purpose is in effect, taking into account any relevant provisions in existing international prior informed consent instruments, is exported only:

(i) For the purpose of environmentally sound disposal as set forth in paragraph 1 (d) of Article 6;

(ii) To a Party which is permitted to use that chemical under Annex A or Annex B; or

(iii) To a State not Party to this Convention which has provided an annual certification to the exporting Party. Such certification shall specify the intended use of the chemical and include a statement that, with respect to that chemical, the importing State is committed to:

a. Protect human health and the environment by taking the necessary measures to minimize or prevent releases;

b. Comply with the provisions of paragraph 1 of Article 6; and

c. Comply, where appropriate, with the provisions of paragraph 2 of Part II of Annex B.

The certification shall also include any appropriate supporting documentation, such as legislation, regulatory instruments, or administrative or policy guidelines. The exporting Party shall transmit the certification to the Secretariat within sixty days of receipt.

(c) That a chemical listed in Annex A, for which production and use specific exemptions are no longer in effect for any Party, is not exported from it except for the purpose of environmentally sound disposal as set forth in paragraph 1 (d) of Article 6;

(d) For the purposes of this paragraph, the term 'State not Party to this Convention' shall include, with respect to a particular chemical, a State or regional economic integration organization that has not agreed to be bound by the Convention with respect to that chemical."

### ***A unique export control measure under the Basel Convention Ban Amendment***

In terms of export control, the Ban Amendment under the Basel Convention is also noteworthy. It requires that each party listed in Annex VII to the Basel Convention (i.e. members of the Organisation for Economic Co-operation and Development, the European Union, Liechtenstein") shall: (i) prohibit all transboundary movements of hazardous wastes destined for final disposal to states not listed in Annex VII; and (ii) prohibit all transboundary movements of hazardous wastes destined for reuse, recycling or recovery operations to states not listed in Annex VII.



## Case studies

As mentioned above, one of the primary purposes of the BRS Conventions is to establish a level playing field between developing and developed economies, without preventing economies that wish to do so to go further in the protection of human health and the environment. When examining the implementation of the BRS Conventions, it is imperative to recognize that such national experiences may also vary not only due to economic and social considerations but also depending on the type of legal system and how international law and treaties are integrated with national law.

### *European Union: the REACH Regulation and other EU legislation impacting the export of hazardous chemicals and wastes*

The Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation sets out the EU regulatory framework applicable to, in principle, all chemicals, and was adopted to improve the protection of human health and the environment.<sup>7</sup> In force in all EU Members since 1 June 2007, it also applies to three members of the European Free Trade Association (Iceland, Lichtenstein, Norway).

To comply with the REACH Regulation, companies must identify and manage the risks linked to the substances they produce or market. The burden of proof is placed on them and therefore, they have to demonstrate to the European Chemicals Agency (ECHA) how the substance can be safely used; also, they must communicate the risk management measures to the users.<sup>8</sup> Authorities can ban hazardous substances if their risks are considered unmanageable or may decide to restrict a use or make it subject to a prior authorization.

ECHA provides guidance documents<sup>9</sup> and answers to frequently asked questions<sup>10</sup> to assist companies, including manufacturers or exporters established outside the European Union, in complying with the REACH Regulation. National help desks can also be reached directly.<sup>11</sup>

Additional EU legislation handled by ECHA contributes to regulating chemicals and wastes ESM<sup>12</sup>, notably by controlling exports through, for example:

- The PIC Regulation, in force since 1 March 2014, relating to the import and export of certain hazardous chemicals, with obligations on companies exporting to countries outside the European Union;<sup>13</sup>
- The POPs Regulation of 20 June 2019, as amended in 2022, to ban or severely restrict the production and use of POPs in the European Union;<sup>14</sup>
- The Waste Framework Directive, in force since July 2018, with measures addressing the adverse impacts of the generation and management of waste on the environment and human health, and for improving efficient use of resources considered crucial for the transition to a circular economy.<sup>15</sup>

### ***Côte d'Ivoire: measures implementing the BRS Conventions***

In August 2006, toxic waste originating from the *Probo Koala*, a vessel chartered by a private trading company, was dumped at several sites in Abidjan, Côte d'Ivoire, reportedly causing deaths and prompting tens of thousands of residents to seek medical attention.<sup>16</sup> This triggered essentially:

- (i) The adoption of a specific decision by the Basel Convention Conference of the Parties condemning the dumping of wastes in Abidjan and calling for specific actions.
- (ii) The implementation of the emergency plan developed by the Government of Côte d'Ivoire.
- (iii) The implementation of a programme of action, which involved several international organizations cooperating altogether with national and local actors, notably in the delivery of technical assistance and capacity building activities to better equip relevant local as well as governmental authorities to fulfil two key objectives:
  - to strengthen the capacity of Abidjan and its port to manage hazardous wastes, including waste generated at sea, in an environmentally sound manner;
  - to strengthen the capacity of Côte d'Ivoire and other countries in the region to monitor and control the transboundary movements of chemicals and hazardous wastes and ensure their ESM.

In principle, national jurisdictions within Côte d'Ivoire may refer to and directly rely on the BRS Conventions, giving them full effect in court decisions, since these MEAs are considered as self-executing treaties under this country's constitutional legal system: that is, international law prevails over national law and as a result, direct effect and primacy is granted to international treaties, which become judicially enforceable upon ratification, without in principle having to wait for implementing legislation. Among the actions to prevent such an incident from happening again, the national regulatory framework applicable to chemicals and wastes had also had to be improved, with the adoption of several measures in order to more adequately implement the specific requirements under the BRS Conventions. These have led eventually to better prepared authorities, with more adapted mechanisms and procedures in place – in particular, concerning export control.<sup>17</sup>

### ***Costa Rica: coordinating the management of chemical substances***

In 2006, a mechanism was established to coordinate the management of chemical substances – through the *Secretaría Técnica de Coordinación para la Gestión de Sustancias Químicas*<sup>18</sup> – to support national competent authorities and act as a focal point of, among other MEAs, the BRS Conventions. Its objective is to provide effective and efficient guidance on national chemicals management, involving institutions representing the government (e.g. customs authorities), academia, civil society, agricultural and industry. Some elements of its work plan are risk assessment and reduction and capacity building, and activities on the following topics:

- pesticide management plans
- used oils or sludge
- mercury
- chemical safety, including chemical emergencies
- sustainable purchases
- illegal traffic
- Globally Harmonized System of Classification and Labelling of Chemicals (GHS).

Other initiatives include the harmonized customs classification codes and the close coordination with customs authorities for all chemicals covered by not only the BRS Conventions but also the Chemical Weapons Convention to allow better import and export control of regulated substances or to prevent illegal traffic.

## Multilateral trade and the BRS Conventions

The extent to which the multilateral trading system and the BRS Conventions relate and are “mutually supportive” is explicitly referred to in the preambles to the Stockholm and Rotterdam Conventions. Under the Basel Convention, such a relationship was not originally reflected in its provisions, being adopted in 1989 (i.e. before the 1994 Marrakesh Agreement Establishing the World Trade Organization), but it was discussed later through its governing body and by means of several CoP decisions.

The Stockholm Convention states that the parties recognize “that this Convention and other international agreements in the field of trade and the environment are mutually supportive”. The Rotterdam Convention expands the statement by specifying that the parties are aware of the “harmful impact on human health and the environment from certain hazardous chemicals and pesticides in international trade”, and recognizes that “trade and environmental policies should be mutually supportive with a view to achieving sustainable development”. The preamble concludes by expressing the determination to “protect human health, including the health of consumers and workers, and the environment against potentially harmful impacts from certain hazardous chemicals and pesticides in international trade”.

The BRS Conventions, through their processes, mechanisms and procedures in place, notably the trade-related measures, are thus well placed to address the challenges caused by the production, the use, the international trade, and the disposal of hazardous chemicals and wastes, contributing to control, in a more environmental and sustainable fashion, their imports and exports.

They are at the heart of key global tools tackling climate change, pollution and biodiversity loss. In 2019, amendments to annexes to the Basel Convention – known as the Plastic Waste Amendments – were adopted, making the Basel Convention the only legally binding international instrument to respond to this type of pollution.

Among the options for future considerations is a need to further expand technical discussions on improving the export control systems and licensing of the BRS Conventions, including

on the PIC procedures themselves, whether generally (e.g. at discussions on environmental goods) or more specifically and thematically (e-waste, plastics, labelling, customs) at the level of both the WTO – at the Committee on Trade and Environment – and under other instances relating to market access or technical barriers to trade. Similarly, at the BRS Conventions CoPs, the adoption of more specific intertwined decisions so as to enhance the dialogue and consistencies can assist in overcoming possible silos between, on one hand, the trade community and forums and the WTO membership, and on the other hand, the environmental community and forums and the parties to MEAs, leading eventually to more sustainable trade, development and better protection of the planet.

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## Endnotes

- 1 For more information on how the BRS Conventions function and on how they may be considered mutually supportive with the WTO agreements, see the forthcoming online course “The BRS Conventions and the WTO: Enhancing International Cooperation for Sustainable Development”, available on the WTO e-learning platform at <https://www.learning.wto.org>.
- 2 See <http://www.brsmeas.org>.
- 3 The Rotterdam Convention does not set out a ban but instead establishes an information exchange platform to allow more sustainable trade.
- 4 For more information on trade-related measures present in the BRS Conventions and other MEAs, see [https://www.wto.org/english/tratop\\_e/envir\\_e/envir\\_matrix\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/envir_matrix_e.htm).
- 5 For more information on these notification and movement documents, please see at <http://www.basel.int/Procedures/NotificationMovementDocuments/tabid/1327/Default.aspx>
- 6 The Food and Agriculture Organization of the United Nations (FAO) and the United Nations Environment Programme (UNEP) jointly perform the secretariat functions for the Rotterdam Convention.
- 7 Regulation (EC) No. 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No. 793/93 and Commission Regulation (EC) No. 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC.
- 8 See <https://echa.europa.eu/regulations/reach/understanding-reach>.
- 9 See <https://echa.europa.eu/support/guidance>.
- 10 See <https://echa.europa.eu/support/qas>.
- 11 See <https://echa.europa.eu/support/helpdesks>.
- 12 See <https://echa.europa.eu/legislation>.
- 13 Regulation (EU) No. 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals (recast).
- 14 Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (recast).
- 15 Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste.
- 16 See <https://www.ohchr.org/en/press-releases/2009/10/toxic-waste-un-expert-releases-report-probo-koala-incident> and [https://www.unep.org/news-and-stories/press-release/un-environment-releases-independent-audit-sites-affected-toxic-waste?\\_ga=2.171237792.1444052210.1679301497-1501661496.1679301497](https://www.unep.org/news-and-stories/press-release/un-environment-releases-independent-audit-sites-affected-toxic-waste?_ga=2.171237792.1444052210.1679301497-1501661496.1679301497).
- 17 See the Government's online portal on export procedures of dangerous products, available at <https://pwic.gouv.ci/procedures-exportations/dechets-dangereux>.
- 18 See <http://secretariasq.digeca.go.cr>.