BY ANDREW McELWAINE

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Strict new controls on the international export and import of all "wastes," possibly including scrap, seem imminent in the ratification of the Basel Convention on the Control of Transboundary Movement of Hazardous and Other Wastes. Negotiated under the auspices of the United Nations Environmental Program in March 1989, the convention was prompted by a concern about harmful substances being dumped by developed nations onto less-developed countries. It calls for tight control over the movement of "hazardous and other wastes" among nations that sign the agreement and specifies that nations that have ratified the Basel Convention may not trade in "waste" materials with those that have not ratified it.

In theory, this should have little effect on the recycling of scrap metal, paper, plastics, glass, and textiles. In practice, however, in-
International trade in these essentials is directly threatened by the broad terms and vague definitions of the convention.

"Wastes" that are capable of leaching lead, cadmium, beryllium, mercury, and other designated elements are considered "hazardous wastes" under Basel. The convention says these materials may not be shipped across international frontiers unless there is an agreement between the importing and exporting nations governing the movement of the material, both nations agree to the shipment, and the material will be managed in the most environmentally sound method.

There is no specific control program for "other wastes," defined by the convention as household discsards. Nevertheless, there is a call for control of these materials, so some believe the convention may amount to a total ban on the international movement of household discsards.

The convention will become effective when 20 nations have ratified it. So far, while more than 50 countries have signed the accord, only 6 have ratified it. That number could soon jump. The European Community (EC), representing 12 nations, may soon ratify as a bloc, and several Latin American nations may follow suit. In sum, Basel could become effective in less than a year.

Many nations, including Japan, Korea, and the other industrialized states of the Pacific Rim, have not even signed the convention. If the United States ratifies the Basel Convention soon, it will have to obey the convention's prohibition on "waste" shipments to nonparticipating nations—and possibly end trade in scrap with those nations. If the United States fails to ratify Basel until long after the EC and other nations do so, U.S. firms could lose their ability to ship scrap to nations that have ratified it. It appears that the European nations are prepared to strictly enforce this provision of Basel.

**U.S. Ratification Process**

Although President Bush has signed Basel, the convention is a long way from U.S. ratification. Before the accord can be ratified, the president must forward the convention to the Senate, which must approve it by a two-thirds vote. Then, both houses of Congress must approve legislation to implement the provisions of the convention. Finally, the Environmental Protection Agency (EPA) must administer a rulemaking process to establish regulations implementing the legislation. This time-consuming process could proceed well into 1993 or later.

The ratification process will resolve how the convention's broad provisions are interpreted in the United States, and, thus, how scrap will be affected. When the president sends the convention to the Senate, he will include a number of "understandings" and possibly one or two "reservations," which should determine how the United States will apply the convention to exports and imports. The Senate will be asked to consent to the convention and to the administration's understandings, but could add its own understandings as well.

The issues will get particularly difficult once legislation to implement the convention is approved. Many in Congress apparently feel that the convention's controls are too weak and plan to introduce bills with more stringent constraints. Reps. Mike Synar (D-Okl.) and Howard Wolpe (D-Mich.), for instance, have proposed legislation that would ban the export of any "solid waste"—with no exemption for nonhazardous metals, paper, glass, or plastics destined for recycling—from the United States unless the receiving facility is found by the EPA to meet or exceed U.S. environmental standards.

At least one environmental group—Greenpeace—found even this proposal unacceptable, and wrote a letter to Wolpe's constituents alleging that the congressmen was in favor of dumping hazardous wastes on the Third World. Some affected industries appear willing to support Greenpeace's position, which, cynical observers point out, would freeze out all foreign competitors for materials. Others, however, will be lobbying hard to ensure the continued international trade in secondary materials.

The implementing legislation will probably move in tandem with the reauthorization of the Resource Conservation and Recovery Act (RCRA), the nation's primary recycling and waste disposal statute. In the last congressional session, now-retired Rep. Thomas A. Luken (D-Ohio) embraced the Synar-Wolpe proposal, introducing it at the same time as his measure to reauthorize RCRA. Sen. Max Baucus (D-Mont.) went further, including in his RCRA reauthorization bill a ban on the export of "solid waste" for any purpose except the recycling of nonhazardous metals, paper, glass, and plastics. Baucus is expected to reintroduce his proposals during 1991. Rep. Al Swift (D-Wash.), who replaced Luken as chairman of the House Energy and Commerce Subcommittee on
Transportation and Hazardous Materials, is expected to hold hearings on the matter before introducing legislation.

After the implementing legislation is passed and signed, the EPA will have to publish a notice of proposed rulemaking, take comments, and publish a final rule to govern waste exports. This process alone could take a year or more to complete.

**Canadian Implementation of Basel**

The Canadian system for ratification of the convention works the opposite of the U.S. system. First, the implementing regulations will be drafted by Environment Canada (that nation’s environmental regulatory agency), and then they must be approved by Parliament. Thereafter, the convention is ratified. Environment Canada has been drafting regulations for months, with early proposals apparently closing the Canadian-U.S. border to unprocessed iron and steel scrap and some nonferrous scrap. This draft is undergoing an economic impact analysis; many scrap processors and recyclers in Canada have been contacted as part of the study.

A key question for Canadian policymakers is how to interpret U.S. actions. The Senate may approve the convention sometime this year. While this is the first step in the U.S. ratification process, it is the last step in the Canadian process. U.S. ratification could stampede Canada into rapid promulgation of regulations regardless of the economic impact.

**European Implementation**

The European situation is quite different from either of the North American examples in that all 12 EC member nations will ratify Basel as one (and are expected to do so this year or in early 1992). The EC has already developed proposed regulations, which have been forwarded to the European Parliament. Once this body has finished the document (the European Parliament does not have the kind of broad lawmaking powers of the U.S. Congress; it votes aye or nay), the regulations will go before the Council of Ministers for final approval.

The European regulations, most observers believe, will set three levels—or lists—of control for “wastes.” Materials on the “white list” would be uncontrolled; “gray list” materials would fall under some controls, possibly including manifests and preshipment approvals; and a “black list” would be made up of banned materials.

Where scrap will fall in this scheme has not yet been determined. Personnel at the U.S. State Department, however, have warned industry that some nonferrous metals could fall under the EC’s controls. If movement of these materials is allowed to continue within the EC but is controlled for import and export, it could be interpreted as violation of the General Agreement on Tariffs and Trade (GATT). GATT, the mainstay of international trade, may not be available to protect scrap ex-
What may develop is a definition of those recycling operations that should be allowed to function in international trade and the controls to place on them.

ports and imports, however. Not only does the recent breakdown in the Uruguay Round of negotiations pose difficulties for GATT, but some have even proposed eliminating scrap from the agreement’s jurisdiction. Late last year, the GATT Work Group on Domestically Prohibited Goods proposed to eliminate the agreement’s jurisdiction over any materials covered by the Basel Convention. While the group’s recommendation is not now part of the Uruguay Round, it could be taken up by GATT in the future. So far, only the U.S. representative has made concerns about this proposal known.

Help From the OECD

The outlook for international scrap trade is not all doom and gloom. The Organization for Economic Cooperation and Development (OECD), a group of nearly two dozen industrialized nations, may hold the best hope for continued movement of recyclables at this time. On Jan. 31, the OECD’s environment committee approved a workplan that could lead to multinational definitions of “waste” and “recycling” and development of appropriate measures to control international recycling, if it’s decided they’re necessary.

This is not to say that the OECD might define recycling and waste management as two separate functions. The organization has clearly decided not to, especially since the European nations, the largest group in the OECD, have defined scrap as waste. What may develop, however, is a definition of those recycling operations that should be allowed to function in international trade and the controls to place on them.

Still, because of the large number of European nations present in the group, the final agreement may look something like the proposed EC regulations on “wastes.” This is troubling to some free-traders, who note that in the Lome IV Convention, the EC won the agreement of 64 less-developed nations to ship no “wastes for recycling” to nations outside of the EC. The OECD environment committee will work with the OECD trade committee to develop a draft proposal over the course of 1991.

All of these options in the way the Basel Convention may be implemented pose numerous questions. What is clear is that the accord will change the way in which international scrap markets operate and how scrap is shipped. A watchful eye on the decisions made this year in Washington, Brussels, Paris, and Ottawa will tell the extent of these changes.

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May/June 1991  SCRAP PROCESSING AND RECYCLING