Session IV IMPORT OF HAZARDOUS SUBSTANCES AND WASTES

The issue of overlapping authorities and conflicting policies was highlighted in the theme presentation of Mr. Ganguli who analytically described the various authorities regulating imports. The presentation underscored the difference of competencies between regulating imports for economic and environmental reasons.

Import Regulation to prevent tax evasion was very different from control to bar the entry of hazardous substances and wastes. Application for licences and clearances from custom authorities would in no way control the entry of hazardous wastes into the country. The ease of entry from this route would explain why importers do not utilise the licensing procedures constructed by the environment authorities. The classification of hazardous wastes under the Basel Convention and the Hazardous Waste Rules and the need to introduce congruity between international and municipal law was the other major point of deliberation in the Session.

The rationale for allowing the import of hazardous wastes and the global politics, which makes for the availability of such imports, was also discussed.

Remarks of the Chairperson Justice M. N. Rao

The topic for this session's discussion is import of hazardous substances and waste, the issues that come up for discussion are: norms for import and handling of hazardous substances; authority regulating import; norms for import of hazardous waste and management of hazardous waste. In the year 1947, there was legislation regulating exports and imports. In the year 1992, as a result of the economic liberalism sweeping across most of the developing countries, a new legislation was enacted called the Imports and Exports Control Act. The policies laid down by the Government of India attained statutory form in the year 1992. The basic difference between the two statutes is that the latter Act was aimed at giving impetus to exports. The problem is when there are no definite rules regarding how to handle hazardous substances on importation, there appears to be some controversy whether the rules made under the EPA should be made applicable in the absence of any other rules.

Theme Presentation: Mr. A. K. Ganguli: Statutes on Imports: a historical profile

The chairperson has already provided an introductory background on the state of the law before 1992. In fact the 1948 Act was envisaged as a temporary statute. It was intended to have a very short life. It having continued on the statute book for many years, in 1971 Parliament thought it was no longer correct to call the 1947 Act a temporary statute. Consequently a permanent character was sought to be given to that Act by deleting certain portions from the long title of the Act. It became a kind of a common statute by merely dropping the reference to temporary statute. It was in this manner that the 47 Act functioned.

With the flux of time and the economic liberalization policies that our government adopted in the 90s, it was realised that the 47 Act had outlived its utility. A new look had to be given to the entire strategy of imports and exports. The country had opened up. Any number of new strategies for trade were adopted. New trading concepts developed new concepts of industrial investments developed. People from abroad were invited to make investments in this country. With the result, a total change occurred in the entire scenario, on economic and commercial prospects. A new law became an urgent need of the day. It was in these circumstances that Parliament enacted the **Foreign Trade Development and Regulation Act of 1992.**

In evaluating the new statute, it is important to observe the change in the language of the Act, which was also demonstrated by the title to the Act. The statute is now dealing with development and regulation of foreign trade. The emphasis has shifted from the control regime of the 1947 Act, which merely permitted and restricted the imports and exports. A new concept, a new dimension was added by the new statute. Foremost of the changes that the 1992 Act brought about was in the classification of import and export policies. They were earlier issued as mere executive orders. Being executive orders, the government could change then at any time, they didn't have any statutory backing. No one could contend that because the government had given out a particular policy, it was bound by it. It could not alter the policy because one is acting upon it. The issue has given rise to some court cases, a famous decision being, Indo-Afghan Agencies, a 1968 Supreme Court decision. It was argued in this case, that where the government's import policy holds out a promise to the citizens with regard to the import of certain items given in the policy, if some body has acted on the basis of that policy, then it cannot be changed midway, say by making a readily importable or non-restricted item, restrictive, or by placing it on the canalisation list.

The new Act has ushered a change by according statutory recognition to policies under Section 5. An office called, the Chief Controller of Imports and Exports with a massive organisation under him was being maintained under the old act. The primary function of that office was to seek implementation of various policies that the government laid down from time to time. Basically implementation and that too not in all spheres, but only in

certain restricted spheres. This is because wherever goods were importable, or freely exportable, that office had practically no function, to perform.

The office of the ***Chief Controller of Imports and Exports*** has been replaced by a new office called the ***Director General of Imports and Exports***. The change is not of nomenclature alone. There is a change of status and the person designated to fill the office has been statutorily assigned the role of an advisor to the government with regard to the formulation of import and export policies. The statute also holds the Director General responsible for the implementation of all these statutory policies. The Director General thus holds a statutory office, has a statutory duty to advise the government and also has a statutory duty to ensure due compliance with the policies that the government make from time to time in exercise of their powers.

Apart from these changes there is one other important change which I would like to mention. The new Act contemplates assignment of a number, called the ***Importer Exporter Code Number.*** A code number is assigned to an individual. Imports could be made only by an importer having a code number, not otherwise. If there is a violation such code number could be suspended. It could upon certain other violations even be cancelled.

The kinds of violations contemplated under the Act when a Code number could be suspended or cancelled need close examination. Two provisions need to be specially focussed upon. One clause states *"where any person has contravened any law relating to Central Excise or Customs or Foreign Exchange, or has committed any economic offence under any other law for the time being in force as may be specified by the Central Government by notification in the official gazette"*. The other clause is *"the Director General has a reason to believe that any person has made an export or import in a manner gravely prejudicial to the trade relations of India with any foreign country, or to the interests of other persons engaged in imports or exports, or has brought disrepute to the credit or the goods of the country"*. A marked absence being that violation of the Environment Protection Act, or of the rules made thereunder is not a ground for canceling a code or even its suspension. **Even after infringing the EPA a person can continue to import. Suspension can occur only if you violate a law relating to economic offences.** And the Environment Protection Act does not contemplate any economic offence. The lacuna of this provision needs to be looked into.

Imports Regulation and Environment Protection Act

There are two types of materials items, which have been controlled by the two rules, which have been framed under the Environment Protection Act. One, relating to hazardous chemicals, and the other relating to hazardous wastes.

My comment is with regard to the import of hazardous chemicals, governed by Rule 18 of the Manufacture Storage and Import of Hazardous Chemicals Rules 1989.

Rule 18 in the **Manufacture, Storage and Import of Hazardous Chemicals Rules 1989**	Rule 18 in the Manufacture, Storage and Import of Hazardous Chemicals **(Amendment)** Rules 1994
(1) This rule shall apply to a chemical, which satisfies any of the criteria laid down in Part I of Schedule 1 and is listed in Column 2 of Part II of this Schedule.	(1) This rule shall apply to a chemical which satisfies any of the Criteria laid down in Part I of Schedule 1 and is listed in Column 2 of Part II of this Schedule.
(2) Any person responsible for importing hazardous chemicals in India shall provide at the time of import or within thirty days from the date of import to the concerned authorities as identified in Column 2 of Schedule 5 the information pertaining to--	(2) Any person responsible for importing hazardous chemicals in India **shall provide before 30 days or as reasonably possible but not later than from the date of import** to the concerned authorities as identified in column 2 of Schedule 5 the information pertaining to-
(i) the name and address of the person receiving the consignment in India;	(i) the name and address of the person receiving the consignment in India;
(ii) the port of entry in India;	(ii) the port of entry in India;
(iii) mode of transport from the exporting country to India;	(iii) mode of transport from the exporting country to India;
(iv) the quantity of chemical(s) being imported; and	(iv) the quantity of chemical(s) being imported; and
(v) complete product safety information.	(v) complete product safety information.
(3) If the concerned authority at the State is satisfied that the chemical being imported is likely to cause major accident, it may direct the importer to take such steps including stoppage of such imports as the concerned authority at the State may deem it appropriate.	(3) **If the concerned authority of the State is satisfied that the Chemical being imported is likely to cause major accidents, It may direct the importer to take such safety measures as the concerned Authority of the State may deem appropriate.**
	(3A) **In case the concerned Authority of the State is of the opinion that the chemical should not be imported on safety or on environmental considerations, such Authority may direct stoppage of such import.**
(4) The concerned authority at the State shall simultaneously inform the concerned Port Authority to take appropriate steps regarding safe handling and storage of hazardous chemicals while off-loading the consignment within the port premises.	(4) The concerned authority at the State shall simultaneously Inform the concerned Port Authority to take appropriate Steps regarding safe handling and storage of hazardous chemicals while off-loading the consignment within the port premises.
(5) Any person importing hazardous chemicals shall maintain the records of the hazardous chemicals imported as specified in Schedule 10 and the records to maintained shall be open for inspection by the concerned authority at the State or Ministry of Environment and Forests or any officer appointed by them in this behalf.	(5) Any person importing hazardous chemicals shall maintain The records of the hazardous chemicals imported as specified in Schedule 10 and the records so maintained shall be open for inspection by the concerned authority at the State or the Ministry of Environment and Forests or any officer appointed by them in this behalf.
(6) The importer of the hazardous chemical or a person working on his behalf shall ensure that transport of hazardous chemicals from port of entry to the ultimate destination is in accordance with the Central Motor Vehicles Rules, 1989 framed under the provisions of the Motor Vehicles Act, 1988.	(6) The importer of the hazardous chemical or a person working On his behalf shall ensure that transport of hazardous chemicals from port of entry to the ultimate destination is in accordance with the Central Motor Vehicles Rules, 1989 framed under the provisions of the Motor Vehicles Act, 1988.

Now Rule 18 as originally framed had provided that before 30 days of the actual import, and not later than the date of import one could, inform the concerned authorities of the item that one is importing. Certain informations are required to be furnished in the application form. The particulars required relate to the names and addresses of the persons receiving the consignment in India, port of entry in India, mode of transport in the exporting country to India, from the exporting country to India, quantity of chemicals being imported, complete product safety information. Information on these aspects is required to be given.

Rule 18 has been amended in 1994 and a change on the period within which the application can be made introduced. The substituted provision allows the application to be made before thirty days or within a reasonable time but not later than the import. This

formulation of "within a reasonable time not later than import" does not in my view suffice because if on the date of the import information is provided where is the question of any action being taken on the information that is being given? This is apart from the fact that an application for licensing approval for certain commodities has to be obtained. Even this amendment in my view does not really remedy the entire situation.

The other amendment is to sub-rule 3 of rule 18. Sub-rule 3 has been substituted by a new provision and a new rule in the form of rule 3A has been inserted. These changes in my view are no more than a cosmetic change better legal drafting of the old sub-rule 3. Two concepts have been segregated into two parts of the rule. No new concept has been brought in by this amendment.

As far as the Import of Hazardous Wastes Rules is concerned, there has been some amendment to the policy with effect from 11th of July 1996. Many items have now become freely importable times. I do not wish to specify all those details, which can be perused from the notification. Only wish to point out that a few items have now been brought under the category of licensing and these are lay drops and other waste scraps and the battery waste, treating as freely importable items.

I would like you to consider the dichotomy between the imports under the Foreign Trade Regulation Act and those under the rules and regulations framed under the Environment Protection Act. Unless these two legal regulations are matched together and operated in such a manner as to bring about unison between the various authorities responsible for administering these statutes, it will be very difficult to ensure or achieve what you want to really achieve.

Import of Hazardous Substances and the Customs Officer

Customs Officers have to grant import clearance. The Customs Act does not provide for a separate declaration alongwith the bill of entry, which is prescribed under Section 46. Clearance is provided in Section 47 of the Customs Act. The Bill of Entry does not require certain specified declarations under the Customs Act. With the result that all your other controlling ministries, for example, the Environment Ministry may know or the authorities under the two Environment Rules would know what kind of material was being imported. The customs officer would not know. All that he has to do is look at the license, check whether the goods correspond tot he license or not, what has been imported and allow clearance. This is all he can do and nothing else and once he does so his duty is over. Further he has to achieve a target of revenue collection at the end of each financial year.

Transportation of Hazardous Substances

Transportation is to be governed by the Motor Vehicles Act 1988 and Central Motor Vehicles Rules 1989. **The batch of rules from 129 to 137** under the Central Motor Vehicles Rules only provide what kind of labels you should put, **what kind of colours, paintings designs and things like that.**

- There is hardly any scope to find out. What kind of vehicles you are going to use? Which are the pathways of the roads that you are going to take these goods through. Are they motorable because you may have all kinds of safety devices adopted. But if you drive the vehicle through a road that generates so much of heat and pressure, you may create totally different consequences.
- This transportation would have to be on a defined route. You can't allow this transportation passing through the cities and townships and habitations.
- You have to build roads, you have to have motorways through which you can carry these kinds of substances. Now what is the condition of the carriage is not prescribed, there is no statutory prescription.
- What the containers should contain, you don't have a standard prescribed under any statutory law. There is no statutory regulation at all.

I believe the Government of India has now set up a committee to go into this question as to what kind of standards should be laid down.

It is **no good importing standards even those given by a UN organisation. This is because standards vary from country to country, from condition to conditions.** We can't import the standards prevailing in Japan, or Germany or any part of Europe or USA, because the conditions prevailing here are not the same. We have to evolve our own strategy and parameters with regard to the setting up of industry and its designing. There is an absence right now of a uniform system of working. It is necessary to bring together all these statuary implementing authorities.

Co-chairperson: I would now like to invite Dr. Lakshmi Raghupathy to present her views on the subject. It would be useful if the presentation could focus on the obligation placed on the importer as well as the government as a signatory to the Basel convention in addition to obligations under the law for import of hazardous waste.

On the Government Effort

Dr. Lakshmi Raghupathy: We are trying to align the import regulations under foreign trade with the environment regulations especially for the imports of hazardous waste.

Import Related Notifications

A quick scan of the July 11th notification gives the impression that many things have been liberalised, when the fact is that the restrictions on a substantial amount of material continues. The import policy, which came into force April 1995, was amended on March 1996. The fact that even recyclable scrap was on the restricted list was one of the issues which evoked a lot of controversy. A substantial number of recycling industries were suffering because their consignment had to undergo the Rule 11 procedures of the Hazardous Waste Management and Handling Rules. The specific notification aimed to address those recyclable scraps which were safe for recycling and from which restrictions could be lifted. Otherwise the restrictions on every thing else imposed under the earlier notification continue. The later notification has to be read in conjunction with the earlier notification such reading would make it clear that many things are still under the restriction which were introduced in March 1995.

Efforts Required from Director General Foreign Trade

The DGFT should also introduce such restrictions as would bring their import policy in line with the requirements of the hazardous waste management and handling rules. This entails not only listing the wastes in our regulations but also listing the wastes, which are under the Basel convention. This is necessary because we did not have a one to one tally with the Basel Convention in the way of presenting the eighteen categories of the waste.

Hazardous Wastes

The eighteen categories of waste, which we have restricted and listed in the hazardous waste management and handling rules, are broader in the sense that we have clubbed many of the categories listed in the Basel convention. **The Convention contains about nine classes of waste which are hazardous due to properties such as reactivity, toxicity, corrosively so on and so forth.** Wastes are categorised in terms of the processes from which they are generated. The categories list some of the wastes such as lead compounds mercury, which you know by the name they get, are toxic or hazardous in nature. Since a number of categories have been clubbed, it looks like a shorter specification of categories. We have a very broad list especially one of the categories which has been on and off addressed, from the export and import point of view, is category seventeen, which we have listed as off-specification and discarded products. Many things are covered in that broad category. We are now trying to align these because in accordance with the requirements of the Supreme Court we have to bring it in line with the Basel Convention.

Basel Convention

The court is trying to adopt the Basel Convention categories therefore it is appropriate to inform that the situation with regard to the Basel Convention is dynamic. In the last conference of the parties in September 1995 it was proposed to control the transboundary movement of hazardous wastes and ban, or rather prohibit the transboundary movement of hazardous wastes from OECD, EC to the Non-OECD countries. That is in the entire channel of routing from the OECDS, to the non-OECD and vice versa. **If there is only one channel that is from the OECD to the non-OECD countries were invariably turned into dumping grounds.**

In order to avoid dumping of wastes, the waste lists which are listed in the OECD lists as well as the Basel list are being considered by the technical working group of the Basel Convention. This group is meeting once in every three months. In the interregnum there are some informal sessions also where the discussion is taking place on specific categories of waste to place them in two broad lists, A and B.

List A would be the roll base, which are recyclable, and the recyclable scrap that have been picked up. In list 'A' no contamination levels are being prescribed because per se 98 to 99 per cent of the material is recoverable which is even better than the concentrates that are available. In the 'A' list are the wastes, which are going to be restricted under the Basel convention, or are going to be banned under the proposed amendment to the Convention.

In the 'B' lists are those wastes, which are going to be free for imports even out of the Basel. Only wastes from the 'B' list have been incorporated for the non-restricted list.

We are further considering some of the other wastes, which are recyclable which, have not been put here like the zinc draws. All this was decided in the technical working group meeting in Manchester, in September. We are trying to make provision for free import of waste which fulfil two criteria either the contamination or the levels of recoverable are very high, beyond 95 per cent.

No Import for Dumping and Disposal

As far as the requirement for the Customs and the Port authorities are concerned, the basic connotation of rule 11 of Hazardous Waste is that no hazardous waste is allowed for imports if it is for the purpose of dumping and disposal and which has actually just been adopted in the amendment to the Basel convention. Basel convention did not have that provision whereas we had it in 1989 itself.

Import for Recycling

For recycling purposes also we are going to close one channel because a substantial amount of waste brought in the guise of recycling gets in only for dumping purposes. **That is recyclable and dumping wastes are always clubbed together**.

For example, if they say lead waste it can include lead batteries which would be totally drained or lead plates or it could be crushed batteries or it could be pure lead plates cleaned which would come under the category of lead scrap and it may be just lead scrap which is just a mechanical process by which the waste is generated or it could be in the form of lead ash or draws. Similar is the condition with zinc and the other metallic wastes, which are substantially imported. It is in order to define which is the waste which can be imported and recycled in a safe manner.

Advantages of Recycling

Recycling has its own advantage because when we recycle scrap and other material we save on energy, we conserve natural resources as there is a substantial short cut in the process. Instead of taking a sulfide ore and making it into an oxide and processing it, we just straight away get oxides. We need to do a substantial amount of recycling but we have to see what is recyclable? And what is available within the country for recycling? We are trying to confine ourselves to those industries and facilities where the recycling is done in an environmentally sound manner and there is substantial use of internally available raw material. We should not allow the recycled material the waste being brought in and recycled and then the virgin material goes out. That is a export oriented unit concentrating on bringing in waste reprocessing.

Negotiation between Environmental and other Authorities

This is the perspective with which we are looking at the issue we are on the job at many fronts. One, is the negotiation with the DGFT, another with the Port and Customs authority. Recently we had a meeting with the port authority specially to sort out certain issues, which are getting aggravated because materials are getting stuck in the port due to the requirement of customs analysis. In order to streamline the disparities occurring a technical expert group was established in the Ministry under the Chairmanship, DG, and CSIR, Dr. Mashelkar. Technical experts from very well known institutions provide the technical inputs across the country. It is such a group, which decides on the technical aspects of the matter.

Procedure for Prohibiting Wastes

It was on the recommendation of this committee that we had issued a draft notification on 27th September to ban the imports of arsenic cyanide and mercury containing contaminated wastes. The sixty days time given in this draft notification to elicit the views of the people has now expired. These views shall now be placed before the group for the final notification.

We are further considering some of the other ways of deciding on wastes, which should be prohibited.

The first categories of wastes on our list would be those wastes, which are not going to affect on the economic grounds.

Then we would go into those wastes, which are not being processed in an environmentally sound manner after making an assessment of those industries, which are doing this reprocessing.

Reprocessing is being considered because in the past three years there is an extensive proliferation of reprocessing activity due to the availability of wastes in external markets.

No Import after High Court Order

We had a committee in the Ministry, which examined cases of imports. After the April 10th order of the Delhi High Court, the Ministry has not allowed any imports of hazardous waste because the order given to the Government of India is that we should not permit the import of any wastes even though we have a law which can allows wastes to be imported for recycling and reprocessing after examining each case on merit. Such import is legislatively permissible but we have not allowed it because of the High Court Order.

As things stands the government is not only trying to sort out the issue of the consignments which are stuck in the Customs but also making arrangements for those consignments that have already arrived or are likely to arrive in a very short time. And there too the Court has held that if the Bill of Lading is before April 10th, only then can be consignments be cleared.

The NGO Perspective: Dr. Ravi Agarwal

The perspective of an NGO, need not necessarily be a completely legal perspective. Our point of view is guided by what we see happening out there. In that sense we are arms and extensions of ears of what is really happening.

The Economics of Import

Hazardous waste has become such a major issue right now is due to it not being a product. It is a negative good. It is some thing, which is meant to come here because some body else does not want it. That is the basic fact. It is a process which if carried out in another country, many be too expensive. It is the economic benefit you get here. Indian importers are able to pay 30 per cent higher prices for the waste which is available in European markets because the cost of handling that safe and the cost of land filling that waste is so high. We don't extract such a cost when we get a waste here and we have no land filling cost, and that is what results in profits.

Unauthorised Import of Wastes

As an NGO we have brought to the Ministry's notice time and again that the amount of waste coming into the country is far more than what the record of the Ministry states has been coming in. The Ministry as a nodal agency, under section 11 of the Hazardous Waste Rules authorised seven people in the country to import this waste. Unfortunately we have found from research that more than 150 were importing through the customs authorities and that brings me to the very valid point Mr. Ganguli made about the customs requirements.

Role of Customs in unauthorised entry

The customs were clearing these goods because they had no knowledge, that these goods should not be cleared. Rule 1 laid specific responsibility on the exporter or the exporting country to inform the Central Ministry of the consent of the waste so that the Ministry can then consent to the import of this kind of waste. This has not been happening regularly. **We clearly saw a break down of the regulatory mechanism because in sheer economic terms, the market for space is very high.**

It is so difficult for a small group of well meaning individuals to regulate, until there is:

- A well knit system of training Customs people,
- Of having very strong laws,
- Of putting obligations on exporting countries on the kind of documentation that should accompany such wastes so when these wastes arrive the customs persons that know this is authorised waste.

Unauthorised Transshipments

The second problem, which bothers us, is that a lot of waste is coming in and though transshipments not authorised. The Basel Ban stops waste from OECD to non-OECD countries. This means they came from non-OECD countries but essentially originated from OECD countries. And this is a big route because even if you have the Basel Ban in place and even if you have laws which are confirmed under the Basel Ban if you are not able too sport this illegal channelising of waste in India then we are back to square one

because there is a big pressure to move this waste out. There is a big pressure to move the wastes here.

Beyond Basel Rules

We are looking for rules, which essentially not only place obligations on the exporting countries but also, place obligation on India. Our Rules should be strong enough to enable discernment at our ports irrespective of source. If we find some thing is not required environmentally it is not a product for our economy, then we should not allow it irrespective of its origin. And the Basel Convention does not address itself to this particular issue.

Use of Wastes in the Unorganised Sector

The last point I wish to make is that most of the wastes, which come in move into what are, called backyard-smelting operations. They do not go into the organised sector. They go into the backyard smelting operation because there is a demand for that waste. Once you allow to come inside from the port you lose track of it. It can go anywhere in the country. The Ministry has itself admitted in the Supreme Court that of the over thousand units which are recycling waste only seven are allowed to import waste. It is due to the illegal imports that come across ports, that all these thousand units and more are able to use the waste which traders are getting in.

Build Capacity in Main Recycling Sector

We need to build capacity in our main recycling sector of authorised good processes, which can take care of the country's requirement of zinc lead etc. We are going for heavy expansion in the automobile sector, we need a down stream expansion in the battery sector. If we don't have a simultaneous expansion of the battery sector we are going to – actually be encouraging this kind of use. The question of regulation has to be legally tackled, and capacity building will help in an indirect way to route the waste to the right channels the required channels. Economic development is promoted by the use of these wastes provided the use is undertaken in a proper manner.

Ms. Bhutani: Some Questions on Industrialisation

I have been noting with some concern the discussions since morning, whose basic premise is that industrialisation and the setting up more industries was necessary and fine. I am not against industrialisation but I question the nature of the industrialisation which talks of people running industries on the strength of some body else's waste which we would like to term as hazardous. This is a comment on what liberalisation has brought in by making it easier for multinationals and transnational corporations to function within the country.

How does this have a bearing on the hazardous waste issues? I will explain:

Suppose we have a ban, and are able to implement it. That is we are able to totally plug the import of hazardous waste into the country. Thus whatever has been coming from outside stops. And yet we allow a multinational from outside to come and function here. An escape route from all the rigours of the Basel Ban is thus provided. The **liberalisation policy could not have been more ill timed.**

Hazardous Wastes Outside PLIA

I would also like to point out that in the Public Liability Insurance Act (PLIA), any kind of physical injury resulting due to hazardous waste poisoning is not even within consideration for compensation. In the sense that if there is time limit of five years within which you have to put in a claim under the Public Liability Insurance Act, 1991 if you want to claim damages against a company dealing with hazardous substances and processes. You cannot do so under the Public Liabilities Insurance Act.

Basel Convention

Another observation I wish to make is that the Basel Convention allows any country, which is a party to the convention to make or incorporate their own national definitions of hazardous waste over and above those enlisted within the convention. It is not that we have to keep looking to other countries on what they are banning or what they refuse to deal with. We have to set our own standards by taking our implementation agencies, into account. I will finally state the three questions I would like the house to deliberate on:

- One would be laying unambiguous criteria for what you would like to term as safe recycling because it is on that pretext that you are going to allow if at all certain wastes to come in.
- Secondly, to work out for how to orient the customs authorities at the entry point. How are we going to undertake even simple things like identification of wastes if they come in the garb of something else and plug illegal trade in the larger context of our liberal economic policies.
- The last point relates to post litigation strategies – what happens after the court cases are over? Is the mini try going to set a time target to deal with the problems?

Petition before Supreme Court

In the case before the Supreme Court my organisation has pleaded for:

- The Union of India to ban imports of hazardous and toxic wastes.
- Amend the Hazardous wastes to bring the rules in conformity with the Basel Convention and article 21, 47 and 48 of the Constitution.

- The petition further seeks a declaration that without adequate protection to the workers and public and without any provision of sound environment management in the disposal of hazardous toxic waste in, the Hazardous Waste Management and handling Rules 1989 was violative of the fundamental right to life and therefore unconstitutional.

Import of Hazardous Waste : Judicial Regulation the 1997 Supreme Court Orders

The quantity of hazardous waste generated in the country is about 2000 tonnes. In view thereof the Supreme Court in *Research Foundation for Science* v. *Union of India.* Writ Petition (Civil) No. 657/95 and another issued orders on **5.5.1997** asking

1. State Governments and the State Pollution Control Boards to file their reply within four weeks of the receipt of the notice of the action taken by them in this behalf, particularly with reference to the identification/notification and availability of safe disposal sites; the steps taken to ensure safe disposal of hazardous waste in their State, particularly while granting any authorisation/permission. They were also asked to indicate the action plan, if any, made by them for tackling the problem relating to hazardous waste.

2. With effect from authorisation/permission could be given by any authority for the import which Have already been banned by the Central Government or by any order made by any Court or any other authority.

3. With effect from 5.5.1997 no import would be made or permitted by any authority or any person of any hazardous waste which is already banned under the Basel Convention or to be banned hereafter with effect from the date specified therein.

On **19.8.1997** the court constituted a committee to ensure that the needful is done and to arrest further growth of this problem.

On **13.10.1997** the Court was informed that the Government of India had taken a decision to constitute a High Power Committee with Prof. M. G. K. Menon, former Minister for Science and Technology, Government of India as its Chairman to examine in depth all matters relating to hazardous wastes and to give their report/recommendations at an early date. The Committee so constituted has been requested to submit its first report to the Court within a period of two months of its constitution.

DISCUSSION

Lack of Information causing non-enforcement

Mr. Ganguli and Dr. Agarwal have mentioned how Customs Authorities have overlooked certain statutory requirements with regard to certain imports. From my experience in a related field, I presume this could happen because of lack of cross-reference of the requirements of one set of rules in another. In all probability in the Customs Act and Rules there is no reference of this hazardous chemical import rules. By reason of this

lacunae seventeen authorised importers could become 117 in actual practice. It is therefore necessary that some where some body or a committee has to sit and examine all these related laws and statutory rules and correct the situation.

Disguised Imports

Things coming in the garb of some thing else. Now for quite some time, Indian importers have been brining in rags, certain cloths then even retreated tyres. Now the question is if the importer is free to label his goods and the customs authorities do not have the knowledge or information about the real nature of goods, the country can be flooded with hazardous wastes, which are not required or should not be brought it.

The Basel Convention: Some Questions and Answers

Questions: Has it been universally acceded to by all the countries.
How far has it been accepted or signed.
Is there any monitoring authority, monitoring the conduct of the acceding countries?
And is there any requirement that export or import should only take place between the signatory countries?

I do think that if the signatory countries are under an obligation to report to the monitoring authority as to how much and where they are exporting. And the importing country is required to report to the same authority, how much and from whom they are importing, then this malpractice can perhaps end.

Answers: As of today it is about 102 countries that have been party to the Basel Convention. 160 countries have signed but they have not ratified the convention and this includes the United States of America, USA has not ratified the convention eventhough it is one of the major exporters and importers, of hazardous waste.

As far as monitoring is concerned, there is a legal and technical working body, which looks into the technicalities of the issues.

There is a legal working group, which looks into the liability and compensation and also the legal framework requirements. It is this group which has recommended that international bodies be identified which could be regional supervising bodies to prevent this sort of illegal traffic.

The imports and exports of hazardous waste are allowed only between the parties to the Convention. If non-party is involved, the transaction can only take place if there is a multilateral regional or the bilateral agreement between the countries. There has either to be an agreement under article 11 of the Basel convention or they have to be parties. The exchange can take place only between the parties. Any other transaction could come within the definition of illegal traffic under the Basel Convention. This definition also covers transactions between non-parties and parties without a bilateral or multilateral

agreement or transactions, which have been, with falsified information or incorrect information or on the strength of documents not in line with the contents of the material imported.

A uniform movement document is has been accepted and ratified by the third Convention of Parties. This uniform movement document which is going to be adopted by all parties would designate what is waste material. There is an instruction attached, which informs as to how the movement document is to be filled. But things take a little time to actually come into practice. And we are in that phase of time. That is why when the technical working group meets we can see how far the movement document is accepted.

Further Questions

- Thus of today there is no monitoring?
  Yes, as of today monitoring is not there. Both import and export of hazardous waste can be only made of the signatories to Basel convention.

- Are we exporting anything?

We have just had a few cases of export of hazardous waste. Some metallic waste was exported to Japan way back in 1991-92. After that we did not get any information on exports basically because under rule 11 the exporter and the importer are under an obligation to contact the pollution control Board and the Central Government. Rule 11 also states that the exporter or the exporting country is the competent authority to write to the Ministry of Environment, Government of India. Whereas the importer has to apply to the Pollution Control Board. We don't have a specific export clause in our rules. The exporting clause does not exist though Japan insisted that the Ministry give permission for export of the metallic waste. In our laws there was no exporting clause. Basel has now made it obligatory.