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## **EXPORT/IMPORT OF ILLEGAL SHIPMENTS OF HAZARDOUS WASTE, TOXIC CHEMICALS, OR CONTAMINATED PRODUCTS**

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### **GOALS**

The sessions addressed the following questions:

- How are nations ensuring they know of shipments with potential environmental hazards?
- How well understood are procedures and other requirements?
- How are illegal activities identified?
- What responses have been taken and why, and how effective have they been?
- What types of international cooperation have been useful?

### **1 INTRODUCTION**

More than 35 participants from more than 20 countries met in three separate sessions to discuss their experiences and thoughts on methods for limiting, detecting, and enforcing regulations on the illegal import and export of hazardous wastes, toxic chemicals, or contaminated products.

In addition, participants presented their views on the most important aspects for countries to consider in designing a program to limit and respond to illegal shipments of hazardous waste. The discussion ranged from views on the institutional frameworks needed within governments for effective compliance promotion and enforcement to the need for international access to high quality information on illegal waste shipment activity. Representatives from countries with a long history of successes and failures in responding to illegal hazardous waste shipment issues as well as those who have just begun to grapple with these problems provided a range of alternatives for approaching the problem suited to the specifics of their country's needs and existing institutions.

The importance of a program for compliance promotion and enforcement of requirements on trans-boundary waste shipments has been driven home to many countries as a result of specific instances of illegal activity with potentially serious consequences, such as the dumping of waste by an Italian firm in Nigeria. In other cases, such as in Latvia and China, policy activity in this area has been increasing in conjunction with a number of other developments in environmental legislation and institutional development. In addition, countries that have existing requirements on trans-boundary shipments, such as those in North America and Europe, are faced with changes in border controls as a result of regional trade agreements that may affect waste shipments as well. Finally, all those present were interested in increasing international cooperation and information flows on this issue.

Many of the participants were signatory members of the Basel Convention on trans-boundary shipments of hazardous wastes. As a prelude to the discussion, participants of signatory nations summarized the results of the second Basel convention. At this meeting, participating members agreed to accept a ban on the export of hazardous waste for final disposal from OECD countries to non-OECD countries, effective in March of 1994. This ban would continue to allow the trans-boundary shipment of wastes intended for reuse or recycling. In 1997, however, the ban would be extended to cover all exports of waste for any use from OECD to non-OECD countries, except where agreed to in negotiations between individual countries. Some participants who are not signatories to the agreement stated that the provisions for bilateral agreements was one of the major factors in their decision not to join the convention.

## 2 PAPERS

Papers dealing with the subject can be found in Volume I of the proceedings under headings as follows:

- Enforcement in the Netherlands of the European Regulation on Transfrontier Shipment of Hazardous Waste, W. Klein, pp. 375 - 381. A concise paper giving quantities of transported wastes to and from the Netherlands and shortly mentioning all of the items stated above.
- The United States' Enforcement Approach to the Export and Import of Hazardous Waste, S.E. Bromm, pp. 383 - 397. This paper roughly deals with the same matters for the USA, but in more detail and depth.
- The Enforcement Project on Transboundary Movements of Hazardous Waste Within Europe, R. de Krom and H. Kesselaar, pp. 365 - 371. A paper describing a project to improve exchange of ideas and cooperation between partner countries in the enforcement of the European regulation.

On page 373 of Volume I are listed another 13 papers from other International Workshop and Conference Proceedings on the same subjects.

## 3 OPEN DISCUSSION

### 3.1 Methods of detection for shipments of waste with potential environmental hazards

Participants acknowledged the difficulties in detecting fully all shipments of hazardous waste crossing their borders. Both shipments where none of the required paperwork was prepared and shipments where the contents were misrepresented in accompanying documentation provide challenges to governments. Although many present felt that the sophisticated techniques used by those involved in illegal activity make it difficult to ensure complete detection of illegal shipments, a number of techniques have proven effective in limiting this illegal activity. Detection methods included the following:

#### 3.1.1 Environmental inspectorate

- Environmental inspectors. Some participants stressed the need for a cadre of government employees trained in the technical and administrative details of hazardous waste. These officials provide an independent inspection and investigatory body that can follow-up on information gathered from other sources or can lead detection efforts separate from those carried out through normal customs channels.
- Proactive investigation. A number of participants suggested developing "waste profiles" to aid in the detection efforts outlined above. These include industry analyses to identify common hazardous wastes generated in the production of goods, to criminal histories of individuals and companies. These information databases can provide information on trends and criminal backgrounds to help focus inspection and investigation efforts. International sharing of this type of information was encouraged.
- "Paper Trails." The importance of documentation at each stage of the shipment process, from cradle to grave, was emphasized. This trail of paper makes illegal activity more cumbersome, as documentation must be falsified at many stages in the process and makes detection easier. For example, a Canadian participant

noted that illegal waste shipments are often detected by examining records at the disposal facility.

### 3.1.2 Other government institutions

- Customs inspections at international borders and ports. Although the role played by customs officials differs from country to country, most participants emphasized the critical detection role played by a customs officials trained to detect oddities in shipment documentation and to identify illegal substances.
- Police Inspectors and Criminal Intelligence. In addition to customs officials and inspectors focussing on illegal waste shipments, a good deal of illegal transboundary shipments are detected through the broader activities of police departments and the intelligence community. Indeed, hazardous waste shipments may be only one part of the illegal activity carried out by individuals or organizations. Therefore, coordination, training, and information sharing among those governmental bodies likely to uncover illegal waste import/export activity is essential.
- Other governments. While many participants stressed that Basel Convention signatory nations are required to provide "Prior Informed Consent" for transboundary waste shipments, others noted that this did not always occur and did not require those nations that have not signed the convention to comply. Nevertheless, it was noted that a good deal of information on hazardous waste shipments flows from originating countries as well as countries that are intermediate transit points to the country of destination.

### 3.1.3 Other organizations

- Non-governmental Organizations (NGOs). For many countries, international NGOs, such as Greenpeace, as well as local organizations are critical sources of information on illegal waste shipment activity. In Indonesia, for example, these organizations played a principle role in detecting illegal shipments prior to recent capacity-building efforts in the country.
- The media and the public. Private citizens and journalists have played an important role in detecting and publicizing illegal waste shipments in many countries. Frameworks for encouraging this type of public participation, such as "hotlines" for citizen reporting were mentioned as effective tools.

## 3.2 Clarity of understanding of hazardous waste import/export procedures and requirements

Participants recognized that understanding of hazardous waste import/export requirements is poor, both within a single country and between nations. A critical problem is the definition of "hazardous substance." Many countries and international organizations have adopted different definitions and alternative lists of substances considered dangerous. For example, the European Commission, the OECD, and the Basel Convention have all adopted varying standards. In addition, interpretation of these standards differs between countries. A critical point of dispute is the definition of recyclable materials as opposed to hazardous waste. A number of governments have been accused of exporting hazardous wastes that they define as materials for recycling or reuse. Although participants realized that this issue was quite difficult to resolve, they felt a greater reliance on technical/science based definitions of hazardous substances was needed.

In addition to definitional problems, transporters, importers, and exporters, as well as government officials and the public are often ignorant, or plead ignorance of regulations on import

and export. It was felt that there was not sufficient effort being placed on compliance promotion activities such as educational programs and letters to the regulated community. It was pointed out that this compliance promotion activity can also strengthen enforcement efforts since evidence that entities had received specific information on requirements limits an illegal transporters ability to plan ignorance of laws.

In addition, both legal training and technical training is critical for government officials that will be required to carry out the laws. Training for customs officials on methods for identifying hazardous waste is important, although experience in the United States has been that custom's officials prefer to focus on more traditional smuggling activity.

### 3.3 Responses to violations

Participants focussed on responses to violations that are somewhat unique to illegal shipments of hazardous waste. In general, participants believe that a firm response to violations is necessary to deter future violations. In addition, since detection is difficult in many cases, penalties must be costly to provide strong disincentives to other potential violators. Participants offered the following suggestions for responses that have proven effective or that seem appropriate to hazardous waste import/export violations:

- Require transporting companies or *countries* to take back waste and clean-up problems in the destinating country. While there was some difference of opinion on the responsibility of the originating country as opposed to the company, the majority of participants felt that the country of export must take responsibility for actions of companies operating within its borders. Some participants pointed to examples in the Netherlands and elsewhere where waste was sent out of the importing country but was not accepted by the country of export.
- Hold-up transport. Participants noted that there was an implicit economic penalty associated with impoundment of vessels transporting waste illegally. Although this measure appeared most appropriate for ship-borne waste, it has proven effective in Nigeria and elsewhere.
- Criminal penalties. The Basel Convention promotes the use of criminal law to penalize violators. This is consistent with policies in many countries that rely on fines, and jail terms for violators.
- Negative publicity. NGOs and the public can play an important role in pressuring exporters to abide by accepted practices for hazardous waste shipments. In some instances, public reaction has cause transporters to modify their waste disposal plans, even for shipments that met existing regulations.

### 3.4 International cooperation

There are many international efforts underway to improve compliance and enforcement of existing legislation on hazardous waste import and export as well as encourage the development of sound policies in countries where they do not currently exist. In addition to the Basel Convention, a number of regional agreements have been created, including ASIAN, EC, and Africa (through the Bamako convention). Some participants were not yet satisfied with existing agreements, in particular some participants were uncomfortable with current provisions for bilateral agreements for hazardous waste exports to developing countries. They felt that economic pressures would force these nations to accept shipments of waste with serious health impacts.

International cooperation on enforcement activity is also increasing, primarily through initiatives of INTERPOL and other international investigative bodies. Of particular interest to participants are the creation of databases of criminal activity that will aid nations to identify exporters with a history of hazardous waste violations and other related illegal activity.

### 3.5 Recommendations for country policies and programs on illegal import/export of hazardous waste

Many countries are in the process of formulating new policies or modifying existing policies in response to changes in national priorities or the removal of barriers to free trade. Participants were asked to provide assistance to these nations by offering a single recommendation they felt was critical to the development of an effective program for managing the illegal import and export of hazardous waste. These recommendations are summarized are below.

#### 3.5.1 Planning and preparation

- Involve all concerned parties across government, the private sector, community groups and non-governmental organizations in discussions prior to formulation of policy. These conversations will ensure that major concerns are addressed in program design and future cooperation for compliance promotion and enforcement will be encouraged.
- Learn as much as possible about programs in other countries so as to understand the definitions of hazardous waste in use by exporting nations. This information-gathering phase will also allow countries to learn from the mistakes made by other nations and allow a country to design a policy from models currently available that is most suited to its needs and existing institutions.
- Ensure technical expertise exists or is developed within the agency responsible for inspections and investigations. Training should also be available for customs officials and others who will be asked to support inspection and detection efforts.
- Start with achievable objectives given the capacity of the country. Expand efforts over time as experience and institutional capacity is built through training, information exchange, and experience.

#### 3.5.2 Program and policy formulation

- Ensure that definitions of hazardous waste are clear and are based on sound scientific analysis.
- Build on these definitions with requirements for sufficient documentation, including required manifests of shipment contents and formal notices of agreement between exporting and importing nations. Records should provide a detailed paper trail of waste shipments from departure to final disposal to bolster enforcement efforts and make illegal activity more difficult. Include provisions for stiff enforcement actions, including criminal penalties, that target individuals responsible for shipments as well as companies. Require that reporting cover both hazardous wastes and materials that could conceivably be classified as recyclable. Although countries may choose to accept these recyclable materials, it is still important to track their entry into the country in order to reassess their potential for harm over time.
- Make responsibilities clear among levels of government (national, local) and among government departments for various types of waste. For example, many countries place authority for household hazardous waste issues with local government authorities, while issues of industrial hazardous waste and waste imports are governed at the national level.
- Design an effective information system for tracking waste shipments that can provide up-to-date information to inspectors and customs officials. Incorporate information available from international sources. The importance of information was stressed repeatedly. Canada, has found that, although extensive information on

hazardous waste shipments within the country is collected, this information is not readily available in some provinces, hampering compliance and promotion efforts.

### 3.5.3 International cooperation

- Informal networks and more formal international arrangements can provide important support for new programs governing import/export of hazardous waste. Participation in international treaties such as the Basel Convention, the Bamako agreement, and other multinational or regional arrangements can provide a formal demonstration of commitment to responsible action on control of hazardous waste shipments.
- Cooperation and support from countries responsible for large-scale waste production is often critical to a well-functioning program. The export of pesticides from countries where their use is banned were cited as examples of issues that need to be resolved through additional negotiation between hazardous substance exporting and importing countries.

## **4 CONCLUSIONS**

It is striking that problems with transboundary shipments of hazardous waste, enforcement practice and the need for international networking are so uniform throughout the world.

Key factors for successful enforcement of regulations on this subject are:

- clear and uniform definitions
- clear responsibilities and organization
- linking of information
- international networks of enforcement agencies

A general feeling exists that international networks like they are emerging in Europe, in North America, in South East Asia and in the Méxican Gulf area could be nuclei of broader international cooperation and that these networks could also initiate improvements in the fields of definitions, organization, and information.