

Illegal traffic under the Basel Convention:

Main outcomes of BC COP-11

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- **ENFORCE**
- **ICC work programme for 2014-2015**
- **Decision BC-11/10: National legislation, notifications, enforcement of the Convention and efforts to combat illegal traffic**
- **Guidance: technical guidelines and legal clarity**
- **Technical assistance**

ENFORCE

- Adoption of the Terms of reference of the Environmental Network for Optimizing Regulatory Compliance on Illegal Traffic (ENFORCE) – Decision BC-11/8, annex I
- **Mission:** to bring together existing resources and enhance and improve cooperation and coordination between relevant entities with a specific mandate to deliver capacity-building activities and tools on preventing and combating illegal traffic.

ENFORCE

•Main activities:

- Sharing and developing training **tools and materials**
- Hosting and organising workshops or electronic **training and information** sessions,
- Facilitating **information exchange** on success stories, techniques and expertise dissemination of good practices,
- Periodic **monitoring** of and reporting on the progress/effectiveness of activities and
- Developing means to ensure **sustainability** in the efforts under ENFORCE.

ICC work programme for 2014-2015

- Basel Convention Implementation and Compliance Committee (ICC) work programme. Decision BC-11/8 Annex II
- Development, including through consultations with the OEWG, of guidance on the **take back provision**, for consideration and possible adoption by COP-12
- Consideration of latest draft during ICC-10 (5-6 December 2013, Paris, France)
- Document UNEP/CHW/CC.10/9 available at <http://www.basel.int/TheConvention/ImplementationComplianceCommittee/Meetings/ICC10/MeetingDocuments/tabid/3396/Default.aspx>

ICC work programme for 2014-2015

•BC Article 9 paragraph 2: In case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as 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.

Decision BC-11/10: National legislation, notifications, enforcement of the Convention and efforts to combat illegal traffic

National legislation:

- Parties to develop stringent legislation including sanctions and penalties for illegal traffic
- Secretariat to collect texts, provide advice on the development of legislation

Notifications:

- Parties to notify national definitions of HW and import/export restrictions/prohibitions
- Secretariat to be proactive in collecting such notifications.

Decision BC-11/10: National legislation, notifications, enforcement of the Convention and efforts to combat illegal traffic

Enforcement - Parties to:

- Improve cooperation and coordination at the national level among entities involved in preventing and combating illegal traffic
- Train enforcement personnel, provide incentives and remove disincentives for enforcement entities
- Participate in activities of enforcement networks and organizations
- Raise the awareness of all relevant stakeholders (private sector)
- Share information , through the Secretariat, on activities undertaken, best practices and cases of illegal traffic

Decision BC-11/10: National legislation, notifications, enforcement of the Convention and efforts to combat illegal traffic

Enforcement - Secretariat to:

- Assist in the identification of cases of illegal traffic
- Collect forms for confirmed cases of illegal traffic
- Cooperate with enforcement networks and organizations: eg. WCO, INTERPOL, BCRCs, networks such as AN, IMPEL, GCI REN, INECE

(see factsheets at

<http://www.basel.int/Implementation/LegalMatters/IllegalTraffic/InternationalCooperation/tabid/3425/Default.aspx>)

- Develop tools and organize enforcement training activities

Forms for confirmed cases of illegal traffic: Germany (2012)

- **States concerned:** Germany (State of import) and Belarus (State of export) .
States of transit: Lithuania and Poland.
- **Wastes concerned:** Annex VIII of the Basel Convention. A 4030: «wastes from production, formulation and uses of biocides... »: DDT (Dichlorodiphenyltrichloroethane) and mercury-contaminated agricultural wastes
- **Detection:** The company SAVA detected the waste at its arrival in 21.02.2012.
- **Acts found to be illegal traffic:** BC Article 9 (1) (d): lack of material conformity with the documents
- **Punishment:** None
- **Remedies:** A request for the exporter to take back the mercury-contaminated wastes was not successful

Forms for confirmed cases of illegal traffic: Brazil (2009)

- **States concerned:** Brazil (State of import) and UK (State of export), State of transit: Spain.
- **Wastes concerned:** « other wastes » from Annex II, Y46 wastes collected from households contained.
 - **Detection:** Containers discovered in the TECON terminal in Port of Rio Grande and in the Customs Office in Caxias do Sul. More containers were discovered in Port of Santos in two different occasions. 89 containers in total in June-July 2009.
 - **Acts found to be illegal traffic:** Article 9 of the BC and Brazil National legislation
- **Punishment:** All companies involved in the illegal import were notified to return the waste to its origin. In Rio Grande do Sul State, the companies were issued a fine of R\$ 215.000 In Sao Paulo State, the companies were issued for R\$81.300 for the first case and R\$ 123.611 for the second case.

Forms for confirmed cases of illegal traffic: Brazil (2011)

- **States concerned:** Spain (State of export) and Brazil (State of import)
- **Wastes concerned:** « other wastes » from Annex II, Y46 wastes collected from households: plastics
- **Detection:** illegal shipment discovered when offloaded in the Port of Itajai-Santa Catarina-Brazil by the Customs Office on 22.08.2011.
- **Acts found to be illegal traffic:** Article 9 BC and Brazil National Legislation:
- **Punishment:** The Brazilian Institute of Environment and Renewable Resources –IBAMA, notified the maritime company ,on 5th October 2011, to return the waste to the state of export (Spain) and fined it R\$2.000.000.

Forms for confirmed cases of illegal traffic: Brazil (2012)

- **States concerned:** Canada (State of export) and Brazil (State of import). State of transit: USA.
- **Wastes concerned:** « other wastes » from Annex II, Y46 wastes collected from households: contaminated plastics
- **Detection:** The case of illegal traffic was discovered at the Port of Itajai-Santa Catarina-Brazil by the Customs Office when the shipment was offloaded in 6.2.2012.
- **Acts found to be illegal traffic:** Article 9 of BC and Brazil National Legislation
- **Punishment:** The Brazilian Institute of Renewable Sources –IBAMA, will notify the importer to proceed the returning of waste to the state of export(Canada). The fine to be applied may vary between R\$500 or R\$10.000.000.

Guidance

Draft technical guidelines on transboundary movements of electronic and electrical waste (e-waste)

- Equipment/used equipment = waste

Eg: equipment not complete, defect that materially affects functionality, physical damage that impairs functionality or safety, insufficient packaging or stacking, appearance particularly worn or damaged...

- Equipment/used equipment = non-waste: not agreed
- Revised draft by 30 November 2013

Guidance

Further legal clarity: Follow up to CLI decision:

- Glossary of key/overarching BC terms with explanations - Further guidance?
- Options for further steps towards the consistent interpretation of terminology
- Intersessional working group (SIWG), revised draft by 15 February 2014 with invitation for comments by 15 April 2014, consideration by OEWG-9 (Sept 2014), and then by COP-12 (Spring 2015).

Technical assistance 2012-2013: highlights

Prosecutors:

Instruction Manual for Prosecutors approved by COP-10

Trainings: Bratislava in June 2012 for prosecutors from Central and Eastern Europe, Caucasus and Central Asia countries; Buenos Aires in August 2013 for prosecutors from Central and South American countries

Lessons learned:

- Importance of having a legislation implementing the BC and complementing such legislation so as to allow enforcement action to take place (eg. Roles and responsibilities, penalties)
- There are various responses to illegal traffic (administrative, civil, criminal, ADR), but opinions vary with respect to respective effectiveness.
- Adequate penalties are essential for a deterrent effect and there is value in harmonizing penalties.
- Cases for illegal traffic require capacity: access to adequate resources, laboratories and technical knowledge.
- Cooperation at the national level is a must.
- A common understanding among Parties regarding: the waste and non-waste issues; how to implement the take back; national legislation specificities is very important.
- Issues of jurisdiction

Technical assistance 2012-2013: highlights

E-learning tools and Manual for law enforcement officers on hazardous chemicals and wastes under the BRS Conventions

In cooperation with WCO, GCI and Interpol

6 Chapters, access to resources and Quiz

- About the Basel, Rotterdam and Stockholm Conventions
- Import and export procedures
- Control
- Identification, classification and safety issues
- Dealing with suspicious or illegal trade/traffic
- Cooperation

Technical assistance 2014-2015

- Needs assessment: to ensure the systematic collection of information and data on issues related to trade, border controls and enforcement under the Basel Convention
- Workshops for Customs and other enforcement officers (tbd)
- Tools: video training
- Webinars for enforcement officers
- Partnerships such as ENFORCE

THANK YOU!