

Workshop 2016 of the Asian Network for Prevention of Illegal Transboundary Movement of Hazardous Wastes in Semarang, Indonesia

Chair's Summary

1. The 2016 Workshop of the Asian Network for the Prevention of Illegal Transboundary Movement of Hazardous Wastes was held in Semarang, Indonesia from 6 to 8 September, 2016. The workshop was co-organized by the Ministry of Environment and Forestry, Indonesia (MOEF), the Ministry of the Environment, Japan (MOEJ), and the Basel Convention Regional Centre for South-East Asia (BCRC-SEA). There were 54 participants including delegates from 12 countries and one special administrative region in the Asia-Pacific region, the Basel Convention Regional Centre for Asia and the Pacific (BCRC China) and the BCRC-SEA. It was the first time for the Myanmar delegates to participate in this workshop. Participants also included resource persons and experts from international organizations, enforcement networks, and research institutes.
2. In the opening session, Mr. Ridwan Tamin, Director of BCRC-SEA welcomed participants to Indonesia, and stated the network as a unique platform that enables participating countries to discuss the emerging issues in the region. Dr. Hirofumi Aizawa, Deputy Director, Industrial Waste Management Division, Waste Management and Recycling Department, MOEJ introduced the history of the network, and emphasized the importance of information exchange and continuous cooperation among the CAs in the region considering the recent rapid increase of transboundary movements (TBM) of hazardous waste, especially in Asia. On behalf of Mme Tuti Hendrawati Mintarsih, Director General of Solid Waste, Hazardous Wastes and Hazardous Substances, MOEF, Mr. Sayid Muhadhar, the Director for Verification of Hazardous and Non-Hazardous Waste Management delivered and shared the concerns and situations of Indonesia, and stressed the need to respect the national policy of each country and enhance regional cooperation in order to combat illegal traffic.
3. Following the opening remarks, there was a round-table for the introduction of participants. Ms. Upik Sitti Aslia Kamil, Deputy Director for Determination and Notification on Hazardous and Non-Hazardous Waste, MOEF, as the chair of the workshop, invited Dr. Shunsuke Kudo, Deputy Director, Office for Waste Disposal Management of MOEJ, who reviewed the history of the Asian Network activities and introduced its accomplishments, since its establishment in 2003, and outlined the overall objectives of the 2016 Workshop.
4. Session 1 (*Updates of National Regulation, Implementation Status and Import/Export Statistics*) was co-facilitated by Ms. Fang Liu of BCRC China and Mr. Ridwan Tamin of BCRC-SEA. At the beginning of the session, the Secretariat of the Asian Network reported the outcomes of the questionnaire which was sent to each country prior to the workshop. In this session, there were updates from the representatives of each country/region on their national policies, regulations and activities relating to the enforcement of the Basel Convention, as well as the recent import/export statistics of hazardous waste. Some participants also shared information on their recent activities and challenges regarding the implementation of the E-waste Guidelines¹ that was adopted in the 12th Meeting of the Conference of the Parties to the Basel Convention (COP12) on an interim basis.
5. Through the presentations and discussions, the participants shared their experiences and views in implementing rules and regulations on the control of UEEE and E-waste. The participants came to a common understanding that cooperation among relevant authorities at both domestic and international

¹ "Technical guidelines on transboundary movements of electrical and electronic waste and used electrical and electronic equipment, in particular regarding the distinction between waste and non-waste under the Basel Convention"

level is essential. Participants also discussed the criteria for distinguishing UEEE from E-waste: in particular, they exchanged views on the residual lifetime of UEEE. Concerning the introduction of a few countries' drafted framework or actual cases on the implementation of the EPR system for household E-waste, participants shared their knowledge and perspectives, particularly on its operationalization and financial mechanisms.

6. Country reporting were followed by presentations by Mr. Kazushige Saito and Mr. Jin Ho Choi from World Customs Organization, Regional Intelligence Liaison Office for Asia and the Pacific (WCO RILO/AP), who provided information on cases of seizure reported through the customs network, under "Project sky-hole patching" The speaker from BCRC China introduced their research on hazardous waste and E-waste, as well as its progress and expected outcomes, and there was a discussion on the types of waste that can be managed in cement-kiln co-processing. BCRC-SEA introduced the study on E-waste management in ASEAN countries. Some participants provided inputs and advices on the presented research.
7. Session 2 (*Possible actions to address difficulties for the implementation of takeback procedures in Asia*) was facilitated by Mr. Geri Sanz from the Environmental Management Bureau, Department of Environment and Natural Resources of the Philippines. At the beginning of the session, the Secretariat of the Asian Network presented a summary of the questionnaire outcomes. This included specific takeback cases that the participating countries experienced, and the measures taken by the countries to overcome difficulties in implementing takeback procedures. Mr. Sanz, the Vice chair of Implementation and Compliance Committee (ICC), nominated by the Asia and Pacific region, then introduced the "*Guidance on the implementation of the Basel Convention provisions dealing with the consequences of illegal traffic (paragraphs 2, 3, and 4 of Article 9)*" (hereafter referred to as the ICC guidance) which is now being developed by ICC, and also explained how this would be beneficial to the Asian countries who face difficulties in implementing takeback procedures. Moreover, five countries/regions presented both successful and unsuccessful cases of takeback implementation, as well as government measures to overcome the difficulties. Following these presentations from Asian countries, Ms. Marina de Gier from IMPEL-TFS also shared cases in the EU, and practices and procedures for takeback implementation.
8. Dr. Juliette Natacha Voinov Kohler, Secretariat of the Basel, Rotterdam and Stockholm Convention (BRS Secretariat), who also was the chair for the "*small group brainstorming meeting on the implementation of takeback procedures in Asia*" held on 5th September on a voluntary basis prior to this workshop, reported on the discussion outcomes, which included identifying common difficulties and good practices for the implementation of the take back procedures, and possible future activities under the Network (See attached for the summary of the said group discussion).
9. It was suggested to standardize the information to be notified to the State of Origin, for efficient implementation of the takeback procedures, and also as information would be compatible thus easier to handle illegal cases. Responding to this proposal, the BRS Secretariat introduced Appendix I of the draft ICC guidance: a form requesting takeback of wastes deemed to be illegal traffic in accordance with paragraph 2 of Article 9 of the Basel Convention. Mr. Sanz, the session facilitator, encouraged participants to provide comments on the draft guidance document prior to COP13, and to use the Appendix I form of the guidance when encountering illegal traffic in their nation/region. Through the discussion, it appeared that participants shared a common appreciation of the Network as a valuable platform to share challenges and good practices to foster cooperation for overcoming the challenges on the implementation of takeback procedures, and agreed to discuss these issues in future workshops. There was also an agreement that the next workshop will discuss countries' experiences on using the

draft guidance developed by the ICC, exchange views on the region-specific challenges not covered by the guidance, and to identify areas where further guidance is necessary.

10. Dr. Kohler of the BRS Secretariat facilitated Session 3 (*Outcomes of the 10th Meeting of the Open-ended Working Group of the Basel Convention (OEWG10)) and Inter-Sessional Work toward COP13*), and shared the outcomes of OEWG10, held from 30th May to 2nd June 2016, and the ongoing inter-sessional activities for COP13. There was a reminder to the participants on the deadline on the submission of comments on the ICC guidance: 10th September, 2016. Subsequently, Mr. Michikazu Kojima, Institute of Developing Economies, Japan External Trade Organization (IDE-JETRO), a member of the Expert Working Group (EWG) on ESM, reported on the outcomes of the 5th EWG meeting, and provided an update of the activities of EWG, such as the development of practical manuals aimed for the promotion of ESM, fact-sheets on specific waste streams, and the pilot projects for implementing ESM. Moreover, Ms. Kamil of MOEF, as a representative member of the Asian Network in the Environmental Network for Optimizing Regulatory Compliance on Illegal Traffic (ENFORCE: a partnership under the Basel Convention), reported on behalf of the organization of its progress and the planned activities. Ms. Kamil further reported on the discussion held during the IMPEL-TFS workshop in Slovenia, which she attended on behalf of the Asian Network, and stated that the discussion was on inter-national/regional cooperation regarding takeback procedures between the two regions: EU and Asia.
11. In the closing session, Mr. Shuji Tamura, Director for Transboundary Movement of Hazardous Wastes and their Disposal, Environmental Protection Guidance Office, Ministry of Economy, Trade and Industry (METI), Japan, acknowledged the workshop as a useful step towards the implementation of the Basel Convention, followed by BCRC-SEA who gave appreciation to everyone on board, particularly the MOEF for hosting the workshop. Finally, Ms. Kamil of MOEF, as the host country, thanked MOEF with great appreciation for the funding, and the Secretariat for organizing the workshop. She stated that hopefully in the future there will be a stronger framework of the Asian Network, and greater cooperation amongst each and every country.

Small Group Brainstorming Meeting on the Implementation of the Take-back Procedure in Asia

Summary

1. Background information

The importance of implementing the take-back procedure pursuant to paragraph 2 of Article 9 of the Basel Convention has been recognized and repeatedly discussed in past workshops. Workshop 2015, held in Singapore, included intensive discussions regarding the common difficulties of implementing take-back procedures that countries in the region had experienced. The Asian Network agreed to continue this discussion in the subsequent Asian Network Workshop, with the aim of developing a framework under the Network to harmonize procedures for taking back illegal shipments of hazardous wastes, as described in the Co-chairs' summary of Workshop 2015. The summary noted that inputs and advice on good practices, and examples of successful prosecutions provided by relevant experts and resource persons would be useful in the process of developing this framework.

2. Objectives of the small group brainstorming meeting

Considering the discussions in the past Asian Network workshops and the information collected through questionnaire surveys conducted in 2015 and 2016, the small group meeting was held with the following objectives:

- To share a clear understanding of the common difficulties with the implementation of the take-back procedure in Asia
- To learn good practices from actual cases of take-back
- To identify key elements necessary for the successful implementation of the take-back procedure
- To exchange views on necessary measures to address take-back issues
- To develop a draft road map (or a work plan) for the development of a framework under the Asian Network to harmonize the take-back procedure.

3. Outline of the meeting

Date	September 5 th , 2016 (Mon) 14:00-18:00
Venue	Meeting Room 1, Level 7, Crowne Plaza Semarang, Indonesia
Participants	(1) Representatives of countries/region (Hong Kong SAR/China, Indonesia, Japan, Malaysia, Philippines, Singapore, Thailand, Vietnam) (2) Resource Persons (BRS Secretariat, IDE-JETRO, BCRC-SEA, EX Research Institute (the Secretariat of the Asian Network))
Facilitator	Dr. Juliette Natacha Voinov Kohler, Legal Officer, Conventions Operation Branch, Secretariat of the Basel, Stockholm and Rotterdam Convention, UNEP

4. Major discussion points of the small group meeting

- What are the common difficulties for the implementation of take-back procedure?
- What are the elements necessary for successful implementation of take-back procedure?
- What could the Secretariat of the Asian Network do until the next workshop?

5. Outcomes of the meeting

- (1) Underlying assumptions

- ✓ Although discussions tend to focus on the implementation of the take-back procedure, it must be noted that **the ultimate aim of the Basel Convention is to ensure the environmentally sound management (ESM) of hazardous and other wastes, including through the control of their transboundary movement.**
- ✓ However, **illegal traffic occurs too frequently at present in Asia, due to the various difficulties in its prevention** in spite of efforts made by countries.

(2) Common difficulties with the implementation of the take-back procedure

- ✓ **Inadequate legal framework at the national level for the implementation of the take-back procedure (lack of framework, or fragmented and possibly conflicting provisions):** stronger measures and adequate legal frameworks at the national level are necessary to meet not only the minimal requirements of the Basel Convention but additional elements that will help operationalize the implementation of the take-back procedure (e.g. clarifying responsibilities for all the costs resulting from a take-back).
- ✓ **Lack of communication and cooperation at both the international** (e.g. unresponsive Competent Authorities, lack of awareness of respective legal frameworks) **and national levels** (e.g. between Customs and Competent Authorities)
- ✓ **Legal uncertainties with respect to some aspects of the implementation of the take-back procedure** (e.g. in instances where the illegally trafficked wastes would be exported to a third Party with ESM capacity, or instances where the State responsible for the illegal traffic is a non-Party)
- ✓ Too often it seems that successful cases of take-back are due to luck.

(3) Elements necessary for the successful implementation of the take-back procedure

- ✓ There are various good practices in Asia at both national and international levels to clarify the legal uncertainties and facilitate the take back of illegally trafficked wastes among the parties involved. Some elements necessary for the successful implementation of the take-back procedure were identified as follows:
 - **Any take-back must be guided by the objectives of the Basel Convention:** ensuring ESM, and punishing conduct in contravention to the Basel Convention
 - **Develop clear and complete institutional and legal frameworks:** review and adjust framework as necessary, clarify the respective roles of the entities involved, clarify the procedures that must be followed, clarify the instances in which a take back would be ‘impracticable’ (as this is when alternative arrangements for ESM need to be made), and clarify the responsibility for costs.
 - **Promote a common understanding of each party’s institutional and legal frameworks**
 - **Establish stronger international cooperation at the working level:** through communication amongst Competent Authorities, intelligence sharing, and using information exchange platforms such as the Asian Network to foster cooperation
 - **Use available avenues when encountering communication difficulties or disagreements** (e.g. the BRS Secretariat, diplomatic channels, making a submission to the Implementation and Compliance Committee)
 - **Foster cooperation at the national level** (e.g. through the development of interagency task teams)
 - **Early detection and reaction** of illegal traffic
 - **Promote investigation and prosecution** of illegal traffic by all parties concerned
 - **Take a balanced approach to ensure both speedy and robust actions:** through encouraging communication between Competent Authorities concerned/involved, and collecting evidence of illegal traffic

- **Monitor the take-back of the wastes until there is confirmation of ESM disposal**

(4) Possible future activities under the Asian Network

- ✓ **Make more use of the Asian Network as an information exchange platform**, and as a platform to foster cooperation amongst the partner nations/regions
- ✓ **Take into account the specificities of each country, but also link their domestic activities in the Asian Network to activities at a global level**
- ✓ **Test and complement as necessary the draft guidance on the implementation of paragraphs 2, 3 and 4 of Article 9 of the Basel Convention developed by the Implementation and Compliance Committee** (to be considered for adoption by the thirteenth meeting of the Conference of the Parties to the Basel Convention in May 2017) for effective use under the Asian Network