

In response to the call for information on challenges in the implementation of the prior informed consent procedure and on best practices, possible approaches and initiatives to improve its functioning

30 October 2023

Japan welcomes the decision of the Conference of the Parties at its 16th session to establish a small inter-sessional working group to identify challenges in the implementation of the prior informed consent (PIC) procedure and best practices, possible approaches and initiatives to improve its functioning and to develop recommendations for improving its functioning.

Improvement of the PIC procedure is crucial to ensuring better control over transboundary movements (TBMs) of waste. Japan would like to take this opportunity to share our good practice, practices of the pre-consented recovery facility (PRF) and provide insights on transit country and e-approaches. This submission also includes the summary of the past discussions at the Asian Network Workshops hosted by Japan and BCRC-SEA, where the participants discussed improving the PIC procedures. We hope that our submission will contribute to the work under the SIWG.

Practices of PRF in Japan

A PRF is a unique and facilitative PIC procedure stipulated in the OECD Decision. In the case of notification to a PRF, the competent authorities of the countries of export and transit have seven working days to object to the proposed transboundary movement in accordance with the OECD Decision. Notably, the competent authority of the country of import is not obligated to respond within this seven working day period. This is because, it has already granted general consent to the import of waste, as its pre-consent granted to the recovery facility. Additionally, the general notification for multiple shipments destined for a PRF can cover a maximum of three years.

Japan has incorporated a PRF into its national regulatory framework. As of July 2023, we have certified five PRFs within our jurisdiction. The Ministry of the Environment and the Ministry of Economy, Trade and Industry can grant certification to a recovery facility as a PRF if the facility can conform to the national waste management and relevant environmental standards.

The PRF offers several benefits. Firstly, since the notification to a PRF can cover a period of three years, the number of the PICs is lower compared to a normal notification,

which only allows a one-year shipment period.

Secondly, the PRF also provides benefits in the TBMs with non-OECD members. Our import procedure for notifications destined for the PRFs can be expedited compared to standard notifications because we have previously assessed and granted pre-consented facility status to the PRF.

Moreover, it has the potential to reduce the administrative burden of the exporting country to ensure the ESM in the importing country, as the PRF has been recognized and certified by the waste management system at the destination. The PRFs contribute to achieving ESM while reducing the administrative burden of the PIC.

TBMs involving transit

We have identified that TBM involving multiple transit countries present specific challenges due to various factors. The definition of “transit” varies among countries. In some instances, the importing country has provided consent for a TBM, while transit countries require additional time to conclude their reviews. If the transit does not involve offloading waste, the potential environmental impacts would be minimal. The assessment by the CA in the transit country could be less onerous than the assessment required by the importing country, although the situation may vary for each notification.

Furthermore, the facilitative OECD rule can offer a useful illustration in the context of the PIC procedure in transit countries. While the Basel parties along the transit route are required to respond annually to the exporting country, a transit country in OECD can benefit from the PRF’s special rule of a three-year consent. The transit PIC procedure can be a potential area where the SIWG can make significant progress.

E-approaches

Improving the effectiveness of PIC procedures has synergy with the ongoing work of e-approaches under the Basel Convention. The Parties of the Basel Convention made progress towards the better control of plastic waste and e-waste. As the range of waste subject to the PIC continues to expand and the number of the PICs is growing, the available administrative resources do not align with the workload anticipated by the Basel officers. The advancements in e-approaches are expected to make valuable contributions to the ongoing discussions on improving the function of the PIC.

We would greatly appreciate it if the Secretariat could compile the information submitted by member countries and stakeholders, and formulate possible approaches tailored to the nature of the issues. It is possible that certain issues could be addressed through minor changes in the PIC practices within individual countries.

Annex: Discussion on PIC at the Asian Network Workshop

(1) Background

Ministry of the Environment, Japan (MOEJ) established "the Asian Network for Prevention of Illegal Transboundary Movement of Hazardous Waste¹", an informal information exchange network for the competent authorities (CAs) to the Basel Convention in Asia. This network has organized an annual workshop every year since 2004. Countries that have participated in the workshop so far are Brunei Darussalam, Cambodia, China (mainland and Hong Kong SAR), Indonesia, Japan, Lao PDR, Republic of Korea, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. Basel Convention Regional Centre located in China and Indonesia have also actively contributed to the network activities. In addition, several experts from the BRS Secretariat, the Government of Australia, IMPEL-TFS, WCO, Interpol, UNEP, UNODC, academia, and industry representative (including electrical and electronic equipment manufacturers and waste treatment and recycling companies), have also participated as resource persons. Holding regional network workshops on a regular basis and maintaining face-to-face relationships is a good practice that can be demonstrated to other regions.

(2) Major discussion related to PIC procedures in the past workshops

The Asian Network workshops have discussed different themes each year, and the agenda is crafted taking into account the decisions adopted by the recent Basel COPs, updated TBM trends of hazardous wastes, and/or import/export regulations newly introduced by Asian countries. The challenges in implementing the PIC procedures have often been raised, not only by the Basel officers but also by industry representatives. The workshops have also considered possible measures to address these issues. The major challenges identified by the workshop participants to date are as follows.

- The lack of contact information for competent authorities of countries involved in TBM (especially when these CAs are at the regional governmental level rather than in the national government)
- Delays in response to the notification from importing/exporting country
- The lack of or delay in response to the notification from transit countries involved in TBM
- Too much paperwork due to the lack of digitization of the PIC process
- The lack of information in English in the document provided
- Insufficient information about waste streams and disposal operations in the notification document
- Different definition/interpretation of waste/non-waste among countries
- Different definition/interpretation of hazardous/non-hazardous among countries
- Lack of communication between key domestic actors involved in TBM
- Insufficient information provided to evaluate whether ESM can be ensured in the importing

¹ https://www.env.go.jp/en/recycle/asian_net/index.html

country

(3) Discussion related to the PIC procedures at the Asian Network Workshop 2022

The most recent Asian Network workshop was held in November 2022 in Medan, Indonesia. This workshop (workshop 2022) focused on discussing the improvement of PIC procedures in response to the decision adopted by COP14 of the Basel Convention, which initiated the process for considering the PIC. Prior to the workshop, a preliminary questionnaire survey was conducted in order to obtain basic information associated with the current status and challenges for the implementation of the PIC procedures. The key summary of the questionnaire survey and workshop discussion are summarized below.

It should be noted that the Asian Network is an informal network and the summary shown below does not reflect the official opinions and views of governments in each country. We plan to organize the workshop in December 2023 in Bangkok, Thailand and will continue to discuss this theme extensively. Any additional inputs will be shared with SIWG members as appropriate.

1) Questionnaire survey

A total of 12 countries and regions participated, of which 10 responses were received. The participating countries/regions were asked about the challenges related to the PIC procedures (multiple answers allowed). The following figure summarizes the responses from the countries.

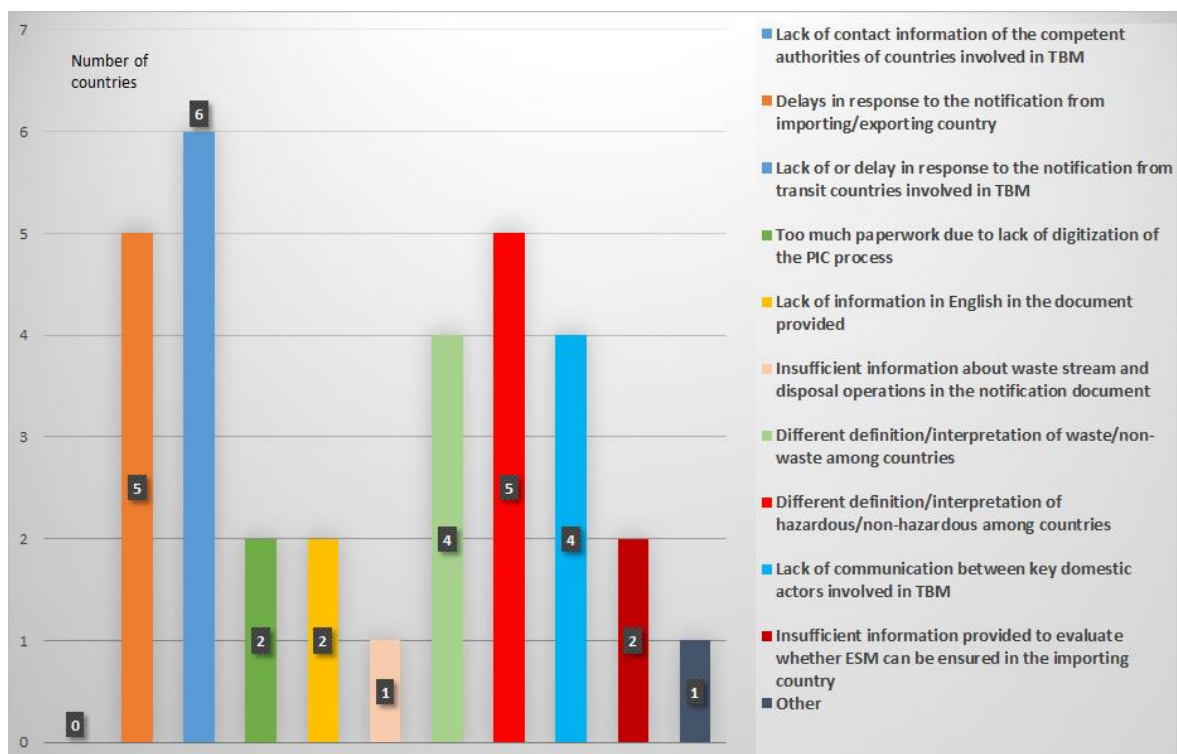


Figure 1: Challenges to implement the PIC procedures (multiple answers allowed)

The participating countries/regions were asked about the possible measures to address the issues for the implementation of the PIC procedures (multiple answers allowed). The following figure summarizes responses from the countries.

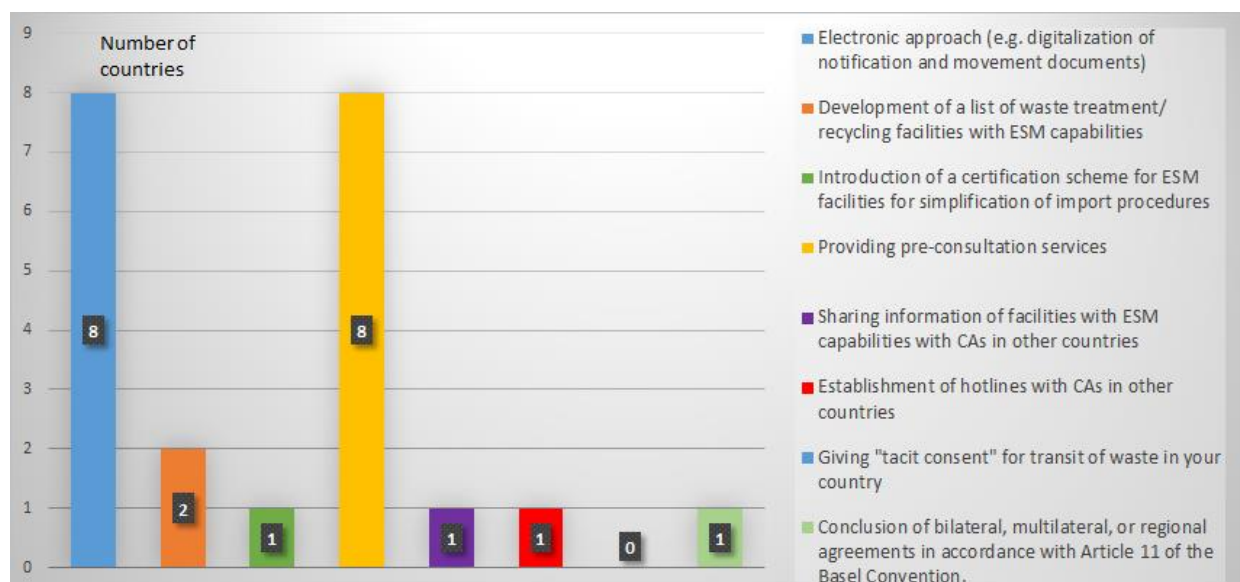


Figure 2: Efforts being made in your country to facilitate the PIC procedures (multiple answers allowed)

2) Discussion at the workshop 2022

Facilitated by the BRS Secretariat, discussions were held on improving the PIC. As a result, the following comments were provided by each country.

Exchange of information on national regulatory information related to TBMs

- Due to differences in legal systems and regulations, the regulated wastes vary across countries. Having this information available in an online database would make it easier to access essential data.
- While there is national reporting under the Basel Convention, the level of detail varies. Some countries report extensively on waste treatment facilities and the types of waste they've received, while others only provide contact information for authorities. This variation doesn't always serve as an effective mechanism for obtaining necessary information for PIC.
- Regardless, it's crucial to liaise with the relevant national authorities. Ensuring a seamless exchange of information among authorities for PIC is vital. The Asian Network serves as an ideal

platform for sharing information on laws and regulations, and it also fosters regional-level exchange and friendly relationship building.

PIC issues and measures for TBMs with transit

- The following comments were made regarding the challenges and measures for PIC as a transit country.
 - Efforts are made to issue transit permits within two weeks, and if an issue arises that requires more time, an informal interim report is informally shared with the authorities of the concerned country.
 - Difference is seen in the definition of “transit”. There is a distinction between "transit" and "transshipment." Transit involves a call to a port and passage through territorial waters, while transshipment entails unloading cargo in the territory.
 - The definition of transit in the Basel Convention text is too simple and unclear. Some countries define transit as the actual unloading of cargo at a port, while others define transit as merely passing through a special economic zone.
 - If transit involves the actual loading and unloading of waste in a territory, rather than just passing through territorial waters, it becomes a more environmentally risky activity and requires a detailed review (as several countries have argued).
 - Some countries prohibit unloading or allow passage on the condition that no waste is unloaded in their territory.
 - Unloading also requires detailed verification of bank guarantees, insurance, and other financial guarantees.
- The following comments were provided regarding challenges and responses to expedite PICs with transit countries from the perspective of the exporting country.
 - Proceeding with a cross-border transfer without a response from the transit country is risky. Repeatedly encouraging responses is safer due to the lack of control over the PIC process in other countries. The issue at hand is the absence of clear guidance in the Basel Convention.
 - All transit countries involved in TBM are notified, but even if one country does not respond, it can cause delays. Therefore, a 60-day deadline for a reply after notification is established, and exports are allowed even without consent (two countries operate this way).
 - A deadline for reply is also established among countries that have separately concluded bilateral and regional agreements based on Article 11.

Digitization of PICs

- Digitalization encompasses various stages, from basic email communication to the development of digital platforms and more.

- In several countries, customs trade systems are digitized, but they aren't integrated with the Basel system. Customs offices in some countries can review documents online and associate HS codes with hazardous waste, requiring permits for imports. However, a notable issue is that the PIC procedure isn't linked to the system.
- In some countries, all export permit applications are conducted electronically, but the documentation necessary for Basel PIC compliance is still done on paper.
- Some countries have fully embraced electronic processes, including the setup of an online platform for bank guarantees, streamlining submissions from major banks to save time.

Other issues

- A capacity challenge exists concerning PIC. It can be difficult for a small number of government officials to thoroughly verify all documents.
- In certain cases, the time required for export and import reviews varies depending on the situation. Some countries have implemented measures to expedite the permitting process when documentation is complete or when imports are destined for approved facilities, among other factors.
- In the context of PICs, bank financial guarantees and insurance are mandatory. However, frequent issues arise where these guarantees and insurance, which were valid when notification documents were submitted, are close to expiration by the time they reach the authorities during the PIC process.