

ISWA Position Paper on Waste Trafficking

Introduction

The International Solid Waste Association (ISWA) promotes sustainable waste management practices for the protection of human health and the environment through scientific, economic and social instruments. The globalisation of waste is a major concern for ISWA since it is one of the major challenges for the long-term sustainability of waste management.

Some time ago most products were produced more or less next to where they were consumed and wastes were managed near their source of production. Nowadays, massive numbers of popular consumer products are transported worldwide in order to be sold and used. Waste management is linked more and more to resource management and so it has evolved into an extensive global network of raw materials and recyclables flows affecting various aspects of the environment and the life of the citizens and therefore raising questions on practices that need to be deeply explored and managed in a sustainable way. The volume and the diversity of waste streams are rising and in this framework many countries are facing serious degradation of their natural and urban environments, especially in the developing world.

Developed countries have the means, more or less, to deal with their waste but lack of knowledge or environmental consciousness as well as cost competition might lead export of waste to countries where environmental laws, occupational safety and health regulations, governance and monitoring are looser. On the other hand, this “merchandise” is a valuable commodity for the poor, as its management brings in resources which can provide income. However, poor safety and hygienic conditions during its management endangers their life, health and the safety of their environment.

Waste trafficking is the illegal export of waste and this paper elaborates on ISWA’s view on the effects of and challenges presented by waste trafficking. Furthermore the paper expresses ISWA’s view on preventative actions and ISWA’s commitment to fight against waste trafficking.

Waste trafficking has consequences

Waste trafficking and the improper handling waste often cause serious harm to the environment, human health as well as to society and the economy.

As a prime example, the majority of electrical and electronic waste (ee-waste) exported to China is processed and treated in backyards or small, primitive workshops. Processing often includes methods such as manual disassembly and uncontrolled open burning for the purpose of extracting the valuable metals from the ee-waste. Any remains of this waste that has no value are usually dumped. This handling results in serious pollution, since the substances in question are, for example: polycyclic aromatic hydrocarbons (PAHs), polyhydrochlorinated biphenyls (PCBs), polybrominated diphenyl ethers (PBDEs) as well as heavy metals (such as mercury, lead and zinc). Similar handling of ee-waste has also been reported to take place in other Asian countries such as India and Pakistan as well as in West African countries such as Nigeria.

Hazardous waste being dumped or fly-tipped, as in the Ivory Coast Trafigura case, endangers the health of waste pickers and residents living near to the dumpsites. Furthermore, the improper handling of hazardous waste also causes harm to humans living further away from the dumpsites and the environment through contamination of soil, water and ecosystems.

End-of-life vehicles are often being dumped or stripped of easy accessible spare parts and valuable materials in an approach similar to what is seen for ee-waste. Thereafter, the vehicles are left to degrade in the open air, leading to the leakage of hazardous substance such as motor oils, brake and transmission fluids and also asbestos and heavy metals into the environment.

In addition to the imminent threats to the environment and human health noted above, poor management of waste, especially the use of ineffective methods for recycling and recovery means poor resource management and loss of valuable resources that undoubtedly will contribute to the depletion of our planet's natural resources.

Furthermore, exporting waste for unsound and unacceptable treatment abroad instead of complying with the regulations creates an uneven playing field that impairs sound market mechanisms. This gives irresponsible waste producers and dubious waste processors an unfair economic advantage over soundly based and environmentally conscientious waste producers and waste managers. The skewed market mechanisms are very likely to delay or hinder the establishment of facilities and infrastructure needed for proper solid waste management throughout the world. Finally, improper handling of waste will, without doubt, effect the reputation and credibility of the waste management sector negatively.

Legislation and Criminal Actions

In order to prevent the unwanted effects to the environment, human health and society as described above, legislation has been implemented at an international as well as on regional and national levels. On an international level, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and the OECD Council Decision on the Control of Transfrontier Movements of Waste Destined for Recovery Operations regulate transboundary movements of waste. Export of waste from the European Union is regulated by the Regulation on the Supervision and Control of Shipments of Waste within, into and out of the European Community, often referred to as the "European Waste Shipments Regulation" and in the United States, regulations regarding import and export of hazardous waste can be found in the Resource Conservation and Recovery Act.

Despite the regulations in place, reports suggest that large amounts of waste are exported from the European Union to transition and developing countries, such as China, other Asian and West African countries. A significant amount of the waste exported to non-OECD countries is suspected to be illegal. Studies from IMPEL (the European Union Network for the Implementation and Enforcement of Environmental Law) suggest that as much as 85% of the non-hazardous waste exported from the European Union is shipped illegally or in non-compliance with regulations. Irregularities include among others: the use of incorrect classification, false classification of waste products or unchecked items as re-usable products and other kinds of fraudulent shipment declarations. Naturally, there are cases where waste producers or waste transporters break the law unintentionally, for example by producing incorrect transport documents or misinterpreting existing law. Some of these misunderstandings and errors can be explained by the complexity of the present laws and regulations but even so a large fraction of the illegal exports of waste is suspected to be the result of consciously and continuously committed illegal action.

Actions and challenges

Ideally, in the long term, the most profound way of reducing the risks related to waste trafficking is to reduce the probability of improper handling of the wastes in the receiving countries. To achieve this, the environmental regulations as well as the enforcement capacities in the receiving countries have to be strengthened. Furthermore, additional investments in and development of waste management infrastructure, mainly in the form of appropriate treatment facilities, and domestic waste management know-how have to be undertaken. However, such capacity building is time consuming and as long as the infrastructure, the legislation and the enforcement capabilities in the receiving countries have not reached a level that provides the means necessary for securing sound handling and treatment, the responsibility for securing sound and environmentally friendly waste handling and for preventing waste trafficking must be laid upon the exporting countries in co-operation with the relevant international bodies. The successful approach to achieving this task is to simultaneously pursue two parallel lines of activities believed to reduce the occurrence as well as the effects of waste trafficking activities; making it easier to do right and, at the same time making it harder to do wrong.

A vast majority of all waste producers are believed to act in good faith but they face complexity in determining what should be the most appropriate means of meeting their obligations. Therefore, criminals and criminal organizations are able to take advantage of this complexity and producers' lack of knowledge or lack of care. In addition, the complexity of the present legislation and regulations, as well as complicated administrative environmental and customs procedures, might lead to unintentional illegal waste handling and export of waste.

Finally, for a waste producer it can be hard to distinguish between a serious waste handler or broker and a dubious one involved in illegal activities. Knowledgeable and vigilant waste producers, with a good understanding of the legislation and administrative procedures in place, demanding a proper handling of their waste and able to distinguish easily between serious and dubious waste handlers are less likely to put their waste in the hands of criminal organizations than producers less aware and knowledgeable. Therefore, enabling waste producers by making it easier to do right is an important step in reducing the amount of waste illegally exported. Initiatives supporting this strategy are:

- Awareness raising, information and communication about the problems related to waste trafficking and improper handling in the receiving countries as well as information about the criminal structures involved in and criminal methods used for waste trafficking
- Making information and counselling on the rules and regulations related to proper waste handling in general and trans-boundary shipments of waste in particular easily accessible to waste producers
- Making the regulations of transboundary waste shipments more clear, understandable and co-ordinated
- Providing means for waste producers to more easily able to identify and get in contact with serious, law-abiding waste brokers and handlers, for example through a waste brokers' certification or accreditation system.

Despite the fact that almost all waste producers are acting in good faith, there are still criminals and criminal organizations intentionally involved in and profiting from waste trafficking and waste trafficking related activities. The organization of enforcement of trans-frontier shipments of waste varies widely from country to country. The differences can to a large extent be explained by different administrative structures in different states and thereby different competences and

jurisdictions for the organizations involved. However, in general three types of organizations or authorities involved in the enforcement of trans-frontier shipments of waste can be identified. These are:

- Environmental Inspectorates – mostly organized within a Ministry of Environment
- Police Departments – mostly organized within a Ministry of Internal Affairs
- Customs – mostly organized within a Ministry of Finance

The division of responsibilities and competences between these three types of organization differs from country to country. The main responsibility for enforcement can be placed in any one of the organizational categories and in practice there are different arrangements in different countries. The degree of division of responsibility between competent authorities differs from country to country. In some countries, full responsibility for enforcement is given to one single authority or organization. In other countries, several organizations are involved. The degree of an organization's involvement in a certain case depends on the kind of controls and inspections about to take place. The degree of centralization also varies. Some countries and types of authority are very centralized, while others show a large degree of decentralization with considerable independence and decision-making powers delegated to regional and local authorities. In most countries co-operation between the organizations involved takes place on a voluntarily basis, either on a case-by-case basis or through more formal agreements such as memoranda of understanding. Several barriers for effective enforcement of the regulations can be identified.

Today the majority of enforcement actions are reactive in nature and rely on the cooperation between environmental agencies, customs and police networks in a number of countries, which still seems to be partly restrained by lack of priority, interest or capacity within some of the organizations. Furthermore, effective collection, use and exchange of information and intelligence are found to be essential for better and more effective enforcement. Delivering the intelligence material needed constitutes a considerable challenge since it demands transnational and cross-organizational co-operation. In addition to the organizational challenges described above, inspectors, in order to conduct a successful inspection and being able to conclude whether a certain shipment is illegal or not, have to be able to establish whether:

- The material shipped is to be classified as a waste or as a product, a classification that is especially hard to do when it comes to distinguishing between end-of-life products (i.e. waste) and near-end-of-life products (still products)
- The waste is to be regarded as hazardous or not
- The waste is bound for an OECD or a non-OECD country
- The waste is being exported for the purpose of recycling or any other kind of waste treatment

Basically, making it harder to do wrong is the same as making it easier for the enforcement agencies to carry out their job. Therefore, initiatives supporting this strategy are:

- Introducing means securing better traceability of exported waste, partly by imposing exporters to produce completion certificates to be returned to the waste producers
- Providing the resources needed for training and education for inspectors at the relevant authorities as well as providing the resources needed for efficient and effective enforcement of the legislation
- Establishing better coordination, on national as well as on regional and international levels, between the authorities enforcing the relevant legislation and fighting waste trafficking related crimes

- Using intelligence-based methods to establish the criminal motivation as well as the organization and the methods used and to use the gathered intelligence as a tool for turning the enforcement activities from being reactive to becoming proactive
- Establishing a formal international body for the co-ordination of enforcement and intelligence initiatives related to fighting waste trafficking (for example organized under the auspices of Interpol or UNEP/the Basel Secretariat)
- Changing the regulations in a way that makes it harder for exporters to claim end-of-life products as products instead of wastes and at the same time makes it easier for the inspectors to classify a shipment as consisting of products or wastes

ISWA commits itself to the fight against waste trafficking

ISWA is an international non-profit association working in the public interest with the main objective to promote and develop professional waste management worldwide for a sustainable society. The organization does not have any legislative or law-enforcing authorities and its members enroll in order to contribute to the organization on a voluntarily basis. ISWA regards waste trafficking as a truly international criminal action that causes harm to human health and the environment as well as to society, both by the effects related directly to improper handling of waste, but also by impairing sound market mechanisms hindering the establishment of the infrastructure needed for sound waste management. In addition, waste trafficking is seriously damaging the reputation and credibility of the waste management sector and hampering the development of a global resource management network. Therefore, ISWA regards the fight against waste trafficking as a necessary and fully integrated part in the establishment of a sound, global system for resource management and solid waste management. Therefore, ISWA commits itself to:

- Regard waste trafficking as an integral part of any consideration regarding globalization of solid waste management and as a part of the ISWA project on globalisation and waste management prepare a report focusing on waste trafficking
- Take every opportunity to inform and raise the awareness, within as well as outside of the solid waste management sector, about the problems related to waste trafficking and the criminal mechanisms in play
- Provide and assist, with other partners, in the running of training courses for solid waste management professionals on waste trafficking and global waste management
- Being actively involved in processes aimed towards strengthening the environmental regulations, enforcement capabilities, waste management infrastructure and other waste management capacities in the receiving countries
- Involve ISWA's Regional Development Networks, and prompt National Members as well as other members and partners of ISWA to promote the legal transportation of waste and assist in ISWA's work against waste trafficking
- Actively cooperate with the European Commission and the U.S. Government as well as with international organizations, such as UNEP, UNIDO, the Basel Secretariat, IMPEL, Interpol, the World Customs Organisation and the WTO to maintain and reinforce the fight against waste trafficking
- Promote the ideals of producer responsibility to ensure that second-hand items exported from First World countries are either repatriated for waste treatment back to the exporting countries or that those companies exporting such goods set up treatment facilities in the receiving countries.