ILLEGAL WASTE SHIPMENT: AN OVERVIEW

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Example of a shipbreaking beach taken in 2014 in Bangladesh ©NGO Shipbreaking Platform 2014.

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There have been fundamental shifts in the shipment of waste around the world over the last two decades. This article describes these, their causes, and the recent acceleration in the shift in illegal shipments to countries least able to deal with them. It also discusses enforcement gaps and how they might be addressed.

INTRODUCTION

The extent of illegal waste exports is difficult to assess. Since 2011 until 2020 approximately 19-22% of shipments inspected within Europe violated the Waste Shipment Regulation (according to IMPEL's Enforcement Action Project series[1]). The violation rates do not just reflect the level of illegal activity but also the ability of competent authorities, who police this trade, to identify problematic waste shipments and intervene accordingly. Waste electrical and electronic goods, metals and plastic and paper from household sources made up 34% of all violations. The main destination regions of European waste, outside Europe, are Africa and Asia.

1 SWEAP inspection results 2018 – 2020. https://www.sweap.eu/wp-content/uploads/2020/07/SWEAP-inspection-results-2018-2020-updated.pdf

BACKGROUND

Waste shipments are a double-edged sword. If properly carried out – in an environmentally sound manner – they can deliver resources to industries that need them. However, inadequate treatment of waste can cause severe damage to the environment and human health. This has been well-documented over several decades. The World Health Organization has stated that "available scientific evidence on the waste-related health effects is not conclusive, but suggests the possible occurrence of serious adverse effects, including mortality, cancer, reproductive health, and milder effects affecting well-being."[2] Health risks from the improper processing of waste can also be indirect, if harmful toxins accumulate in ecosystems, agricultural crops, livestock and eventually humans.[3] The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1992) was established following a number of the high-profile cases, which had devastating impact on the populations and environments that received hazardous wastes.

THE RISE OF WASTE SHIPMENTS TO DEVELOPING COUNTRIES

Increasingly demanding governmental waste recycling targets, landfill bans, rising landfill taxes in developed countries, and containerisation have led to the rapid rise of global waste shipments, mostly to developing countries. This is mostly due to the lower labour costs and environmental standards in receiving countries. Nowhere is this more visible than on the shipbreaking beaches of the Indian subcontinent.

The informal waste management sector in developing countries can be vast. In 2015, there were approximately 857 recycling companies authorised by Chinese authorities to carry out recycling of imported plastic waste. In comparison, there were literally thousands of informal and therefore unregulated recycling sites.[4] These are labour-intensive operations using basic equipment and often operating under poor safety standards. Recycling residues are usually dumped or openly burned, thereby releasing harmful compounds such as furans, dioxins and carbon monoxide into the atmosphere, and contaminating wastewater.

When looking at plastic waste for instance, its low value, the lack of industries in most developed countries that produce plastic goods and the avoidance costs of adequate treatment, mean that it is appealing to the less conscientious waste broker to exported it illegally. Highly contaminated waste is often shipped fraudulently through falsification of customs forms, or fraud through over- or under invoicing costs and mis-declaring income. The waste itself may even be concealed behind good quality material when being loaded into containers, and it is also common that the ultimate final destination is not revealed to authorities.

China has been implementing increasingly rigid waste import policies since 2010 in an effort to increase its national collection and recycling infrastructure, but also to push back on the poor wastes it was receiving from many European countries and the US. In 2017, China announced a new import policy that would permanently ban the import of many recyclates.[5] Since 2017, the number of illegal shipments of European waste destined directly for China has been decreasing. Household wastes were the most common problem wastes at that point, whereas metals and plastics have now become the waste streams most frequently stopped by European competent authorities heading for China.[2] Since the introduction of China's new import restrictions in 2018, neighbouring countries have inevitably been targeted by waste criminals. This is a familiar pattern with waste crime.

ENFORCEMENT ISSUES

All countries have competing pressures for executive and parliamentary time. The legislation to implement the provisions of the Basel Convention and provide powers to their national regulators can slip down the priority list. Where implementation has been relatively swift, for instance in the European Union, regulatory agencies may still lack the powers they need to prevent illegal shipments. Even where there is adequate enforcing legislation, most authorities lack the resources they need to control waste shipments. European Regulation (EC) No 1013/2006 on shipments of waste requires Member States to establish appropriate penalties and fines. Trying to convince a Prosecutor to take an environmental case can be very difficult though. There are very few countries with dedicated Prosecutors for environmental crime; England, The Netherlands, Sweden and soon France, are rare exceptions. Therefore, the number of infringements relating to waste shipment legislation brought before courts is low.[6] The levels of the actual penalties can also vary greatly.[7]

Since 2011 until 2020 approximately 19-22% of shipments inspected within Europe violated the Waste Shipment Regulation

2 2016, World Health Organization, Waste and human health: Evidence and needs. WHO Meeting Report 5–6 November 2015, Bonn, Germany

3 2012, ILO. The global impact of e-waste : Addressing the challenge. International Labour Office. Accessed 11 December 2020. http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_196105.pdf

4 2017, GRID-Adrenal. The Trade in Plastic Waste. Accessed 18 December 2020: https://www.grida.no/publications/333

5 2017, Chinese Ministry of Environmental Protection, "Announcement of releasing the Catalogues of Imported Wastes Management," (Announcement no. 39, 2017); www.mep.gov.cn/gkml/hbb/bgg/201708/t20170817_419811.htm?COLLCC=3069001657&.

6 2018, Gillan, L & Olley, K. IMPEL-TFS Enforcement Actions, Project Report 2016 –2017 Enforcement of the European Waste Shipment Regulation

7 2015, Geeraerts, K., Illes, A. and Schweizer. Illegal shipment of e-waste from the EU: A case study on illegal e-waste export from the EU to China. A study compiled as part of the EFFACE project. London: IEEP

Shipments of Waste Enforcement Actions Project (SWEAP) inspection data from 2018 to 2020.

Regulation of waste activities can be split across various national bodies, with one regulating waste shipments and another waste management licensing. These silos make it difficult to monitor waste shipments from cradle-to-grave, especially when the responsible parties may be 'waste tourists', locating themselves in an exporting country for sometimes only a few months, or a 'few shipments worth' at a time, shipping waste to their home country. This is typical for the waste electrical and electronic equipment trade, with west African countries being a major destination for over fifteen years.

Waste shipment inspectors may also be responsible for regulating other regimes, such as chemicals and producer responsibility legislation. It may seem easy to tell what is legal and what is illegal, but this is not always the case with legislative loopholes and 'grey areas', i.e. when officers have incomplete documentation in front of them, for example when inspecting a container with used electronic equipment, which seems to be too old to realistically be put back on the market. Organisations' priorities change depending on resources, political will and undeniably media pressure. The latter brought about the massive change to the controls surrounding shipments of plastics that will come into force on 1 January 2021.

The global trade in household recyclates involves many different players, such as recycling companies, waste traders, dealers and hauliers, making traceability and control of the waste difficult for investigating officers.

Violation data from 2018 to 2020 (SWEAP)

Curtain-siders move easily from western to eastern Europe, using a network of transport operators. Co-operation with other authorities regulating at national frontiers can also be lacking. Within the EU, co-operation with Customs authorities is relatively high, with 81% of environmental competent authorities having formal or informal working arrangements with Customs.[5] However, this still leaves a significant proportion of European authorities lacking the support of their national Customs. Anecdotally, the situation is much worse outside Europe. This makes the illegal waste trade a low risk business for criminals, enticing them to move high volumes to maximise profit.

Despite, 'intelligence-led' operations being the flavour of the day, and rightly vaunted by Police networks, many environmental authorities lack intelligence capacity. In a survey conducted by IMPEL (Network for the Implementation and Enforcement of European Environmental Law), only 44% of European agencies had access to intelligence systems.[5]

The nature of waste shipments crime is of course that they are transnational. Environmental regulators tend to be a collaborative and enthusiastic group. However, they work across different time zones, meaning it can be difficult to communicate easily. Coupled with this, authorities in developing countries may use personal email addresses because their own organisations cannot provide them with accounts. Although a seemingly minor issue, this can mean the exchange of information is immensely difficult or forbidden.

And then there is the issue of 'port hopping'; the practice whereby illegal waste shippers avoid frequently inspected transport hubs and move their waste through less well-regulated ports or roads. Like water, waste crime always finds the lowest level.

THE FUTURE OF ENFORCEMENT

So how is this situation to be improved? In the EU, the 2014 amendments to the Waste Shipment Regulation (WSR) addressed some fundamental issues for European regulators; namely, reversing the burden of proof on to shippers of waste and requiring each country to have an inspection plan. Enforcement can only be as strong as the weakest points in the regulatory chain however. The WSR is undergoing its next five-year review, with issues on reporting against inspection plans being addressed.

Further work is needed to improve the consistency of reporting inspection results. The Basel Convention Secretariat struggles annually to compile reliable statistics. Ways to streamline reporting have been invented but countries with numerous regulators involved in waste shipment controls will always find this difficult. The IMPEL Shipments of Waste Enforcement Actions Project[8], which runs from 2018 until 2023, will enable officers to report the same detailed data during inspections as their counterparts in other European countries. It will also 'flag' illegal shipments and vulnerable routes to authorities using real-time data. It's to be hoped that this initiative makes a crucial difference to the effectiveness of officers' time. The data will also be more robust and the high-level data (non-nominal) readily available to policy makers. Europol will have access to the nominal data and be able to assist authorities in joint operations, and possibly fill the gaps for environmental regulators without access to their own intelligence systems.

There are plenty of regulatory tools being developed by other European and UN-funded projects. For example, the WasteForce Project seeks to provide Prosecutors with training and guidance. The problem is embedding these ways of working and maintaining co-operation. It is recommended that environmental regulators co-operate more with customs, police and other regulatory authorities, and that formal service-level agreements be considered. Awareness-raising that waste crime is an important threat to security, people and the environment amongst enforcement communities needs to continue apace. Sharing cases on the involvement of other types of crimes, such as major tax fraud and tax avoidance may assist.

The involvement of existing international bodies such as the United Nations Office on Drugs and Crime (UNODC) and the World Customs Organization (WCO) is very welcomed and should continue. The WCO is ramping up its efforts to assist in enforcing the provisions of the Basel Convention, having recently joined the Basel Convention's ENFORCE network and running its Operation Demeters which have a joint focus on transboundary movement of hazardous waste.

Collaboration between different regions of the world tends to work well whilst key and enthusiastic officers are in place. Verification of sites of destination is a 'must' for exporting countries, and the channels of communication need to be as effective as possible. It is often the case that receiving countries are either unaware or unsure about invoking the 'repatriation requirement' whereby an illegal shipment should be taken back to the country of origin. If this was to become regular practice, it would surely act as a deterrent to parties involved in illegal exports and ensure those responsible for waste meet their 'duty of care' by checking downstream treatment operations. Strengthening regional and sub-regional enforcement approaches needs to be considered by reinstating networks such as the successful Regional Enforcement Network for Chemicals and Waste in the Asia and Pacific region, which share best practice.

Mapping of the scale, routes and hazardous nature of the waste involved can only help mount political pressure. This in particular has led to the recent focus on the illegal trade in waste plastics. Perhaps this can address the main issue at the base of all this illegal activity: the need to strengthen national legislative frameworks and regulatory agencies. All in all, there is a long way to go on the enforcement of waste shipments.

8 https://sweap.eu The Shipments of Waste Enforcement Actions Project (SWEAP) is co-funded by the European Commission LIFE fund and co-ordinated by the IMPEL Network. The overall purpose of the project is to support the circular economy by disrupting the illegal waste trade at the EU level.