

ICC Illegal traffic - Malaysia

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BCFP_MY

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Language

System language

1. 1. a. Has your country enacted laws, regulations, policies, procedures and other measures that embody the provision set forth in paragraph 3 of Article 9 of the Basel Convention?

No

*** Yes ***

If yes, please provide the name of the relevant piece of legislation, regulation, policy, procedures or other measure

i. Prosedur Tetap Operasi Penguatkuasaan Pengimportan/Pengeksportan Buangan Terjadual Secara Haram

(Translation: Standard Operating Procedures (SOP) Enforcement of Illegal Importation / Exportation of Scheduled Wastes)

ii. Environmental Quality Act, 1974

iii. Environmental Quality (Scheduled Wastes) Regulations 2005

iv. Environmental Quality (Scheduled Wastes Treatment and Disposal Facilities) Regulations 1989

v. Custom Act 1967 (Prohibition of Import) Orders 2012

vi. Custom Act 1967 (Prohibition of Export) Orders 2012

Please also provide a copy of such relevant national provision implementing paragraph 3 of Article 9 (in English) or, alternatively, outline the main elements of the national provision implementing paragraph 3 of Article 9 of the Basel Convention

Written approval of the Director General as stipulated under Section 34B, Environmental Quality Act, 1974.

Section 34B (1) (b) and (c) of EQA 1974 says that:-

(1) No person shall:-

(b) receive or send, or cause or permit to be received or sent any scheduled wastes in or out of Malaysia;

(c) transit or cause or permit the transit of scheduled waste

without any prior written approval of the Director General

If possible attach a copy

No file uploaded

If no, please indicate any reason for the lack of enactment of laws, regulations, policies, procedures and other measures embodying the provision set forth in paragraph 3 of Article 9 of the Basel Convention

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2. 1. b. Has your country enacted laws, regulations, policies, procedures and other measures that embody the provision set forth in paragraph 4 of Article 9 of the Basel Convention?

No

*** Yes ***

If yes, please provide the name of the relevant piece of legislation, regulation, policy, procedures or other measure

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If no, please indicate any reason for the lack of enactment of laws, regulations, policies, procedures and other measures embodying the provision set forth in paragraph 4 of Article 9 of the Basel Convention

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3. 2. a. Does your country have experience dealing with cases where paragraph 3 of Article 9 of the Basel Convention has been applied?

No

*** Yes ***

If yes, provide the number of cases in the last 5 years, and if possible in the last 10 years, and provide details on the more relevant cases that occurred in the last five years.

Data of illegal traffic relevant to Paragraphs 2, 3 and 4 of Article 9 Since Year 2008 - August 2015 : 53 cases

Data of illegal importation according to country:

U.S.A - 8

Japan - 6

Singapore - 6

Republic of Korea - 5

Canada - 4

Hong Kong - 5

Republic of China - 4

Latvia - 3

Indonesia - 2

Australia - 2

New Zealand - 1

India - 1

Taiwan - 1

Pakistan - 1

Sweden - 1
Philippines - 1
France - 1
Lithuania - 1

4. 2. b. Does your country have experience dealing with cases where paragraph 4 of Article 9 of the Basel Convention has been applied?

No

*** Yes ***

If yes, provide the number of cases in the last 5 years, and if possible in the last 10 years, and provide details on the more relevant cases that occurred in the last five years.

Data of illegal traffic relevant to Paragraphs 2, 3 and 4 of Article 9 Since Year 2008 - August 2015 : 53 cases

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India - 1
Taiwan - 1
Pakistan - 1
Sweden - 1
Philippines - 1
France - 1
Lithuania - 1

5. 3. a. Has your country faced any difficulties in implementing the provision in paragraph 3 of Article 9 of the Basel Convention?

No

*** Yes ***

If yes, provide the nature of the difficulty encountered:

6. (i) Domestic difficulties:

Lack of or inappropriate domestic legal or institutional framework to implement and enforce paragraph 3 of Article 9 of the Basel Convention;

*** Lack of access to adequate information about possible cases of transboundary movements of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer; ***

Challenges in identifying that a transboundary movement of hazardous wastes or other wastes may be a case of illegal traffic as defined by paragraph 1 of Article 9 (constitutive elements);

*** Challenges in concluding that the illegal traffic is the result of the conduct on the part of the importer or disposer and/or identification of the relevant importer or disposer; ***

*** Lack of awareness of relevant entities that should be involved in combating illegal traffic; ***

*** Lack of awareness by importers or disposers about the requirements of the Basel Convention; ***

Lack of cooperation by importers or disposers in complying with the requirements set out in paragraph 3 of Article 9 of the Basel Convention;

Lack of coordination/cooperation at the national level among relevant entities involved in combating illegal traffic;

Difficulty to dispose of the waste in an environmentally sound manner;

Other difficulties (Please specify):

The Main challenges are as following:

- i. To define whether the waste concerned is hazardous waste (HW)/non-hazardous waste.
- ii. Lack of awareness by exporter and Competent Authority (CA) of export country to ensure the waste concerned is classified as HW under Article 1, 1(b) in import country.

Please also elaborate on any box you have ticked

- i. Most of the importation cases was conducted by forwarding agent/traders which are not the actual end user.
- ii. Most of the importation cases happened due to false declaration e.g. HS code. Article 9 1(c) & 1(d).

7. (ii) International cooperation difficulties:

*** Difficulties in communicating and cooperating with other States concerned by the case of illegal traffic (State of transit, State of export); ***

*** Lack of shared understanding among States concerned of how to operationalize paragraph 3 of Article 9; ***

*** Lack of guidance on how to operationalize paragraph 3 of Article 9; ***

Other difficulties (Please specify):

Please also elaborate on any box you have ticked

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8. 3. b. Has your country faced any difficulties in implementing the provision in paragraph 4 of Article 9 of the Basel Convention?

No

*** Yes ***

If yes, provide the nature of the difficulty encountered:

9. (i) Domestic difficulties:

Lack of or inappropriate domestic legal or institutional framework to implement and enforce paragraph 4 of Article 9 of the Basel Convention;

*** Lack of access to adequate information about possible cases of transboundary movements of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer; ***

*** Challenges in identifying that a transboundary movement of hazardous wastes or other wastes may be a case of illegal traffic as defined by paragraph 1 of Article 9 (constitutive elements); ***

*** Challenges in concluding that the responsibility for illegal the traffic cannot be assigned either to the exporter or generator or to the importer or disposer; ***

*** Challenges in identifying the States concerned (State of transit, State of export); ***

*** Lack of awareness of relevant entities that should be involved in combating illegal traffic; ***

*** Lack of awareness/cooperation by importers or disposers; ***

*** Lack of coordination/cooperation at the national level among relevant entities involved in combating illegal traffic; ***

*** Difficulty to dispose of the waste in an environmentally sound manner; ***

Other difficulties (Please specify):

- i. A burden to authority to seek financial allocation due to clean up/treatment/disposal of the wastes ESM.

Please also elaborate on any box you have ticked

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10. (ii) International cooperation difficulties:

*** Difficulties in communicating/cooperating with the relevant entities from the States concerned (State of transit, State of export); ***

*** Difficulties in identifying or communicating with exporter or generator; ***

*** Lack of shared understanding of how to operationalize paragraph 4 of Article 9; ***

Lack of guidance on how to operationalize paragraph 4 of Article 9;

*** Differences in the level of "evidence" required that there might be a case of illegal traffic justifying the application of paragraph 4 of Article 9; ***

*** Lack of an adequate mechanism to handle cooperation difficulties between Parties (NB: Existing mechanisms include**

the role of the Secretariat under Article 16 (1) (i), a submission to the Implementation and Compliance committee, the verification procedure under Article 19 and the settlement of disputes under Article 20); *

Other difficulties (Please specify):

- i. Insufficient information related to illegal importation cases under Basel Secretariat database system.
- ii. Lack advisory services on the understanding and executing the Protocol of Liability for damage resulting from TBM HW and their disposal.

Please also elaborate on any box you have ticked

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11. 4. Has your country been able to overcome difficulties stated under sections 3.a. and 3.b. above?

*** No ***

Yes

If yes, explain how

Not answered

12. 5. a. Please indicate consequences your country has faced as a result of difficulties encountered with the implementation of paragraph 3 of Article 9 of the Basel Convention (e.g. leaking of containers causing pollution; containers damaged by accident or storms; costs of storage or disposal borne by your country).

- i. Involved exorbitant cost for storage, clean up, transportation, treatment and disposal of such wastes.
- ii. The liability in handling the residue from the recovery/treatment process that need to be disposed.
- iii. The investigation conducted required special expertise and time consumed that effect the routine operation and enforcement.

13. 5. b. Please indicate consequences your country has faced as a result of difficulties encountered with the implementation of paragraph 4 of Article 9 of the Basel Convention (e.g. leaking of containers causing pollution; containers damaged by accident or storms; costs of storage or disposal borne by your country).

- i. Involved exorbitant cost for storage, clean up, transportation, treatment and disposal of such wastes.
- ii. The liability in handling the residue from the recovery/treatment process that need to be disposed.
- iii. The investigation conducted required special expertise and time consumed that effect the routine operation and enforcement.

14. 6. Please share examples of best practices your country or countries in your region have developed and used to implement and comply with the provisions set forth in paragraphs 3 and 4 of Article 9 of the Basel Convention (eg. existing mechanisms or arrangements in place).

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15. 7. Please share lessons learned (both negative and positive) that the Committee may wish to take into account in the development of guidance on the implementation of paragraphs 3 and 4 of Article 9 of the Basel Convention.

i. Each Party shall take their own measures through legislative and non legislative approach in dealing with Para 3 & 4 of Article 9 of Basel Convention.

16. 8. Please list and, if possible, share guidance documents or training materials developed at the national, regional or global level that you may be aware of that is aimed at assisting Parties implement these provisions.

Some of the difficulties are being overcome through the following actions:

i. Outreach programme for Forwarders Association.

ii. Training among the environment officer and customs officer.

iii. International cooperation need to be strengthened through ICC or regional meeting.

17. 9. Does your country transmit to the Secretariat the “Form for confirmed cases of illegal traffic” (available at <http://archive.basel.int/legalmatters/illegtraff/ilegtrafform.pdf>)?

*** No ***

Yes

18. Please add any additional information or comments pertaining to the implementation of the provisions set forth in paragraphs 3 and 4 of Article 9 of the Basel Convention that is not included in answers to the above questions.

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19. Submitting Party:

Submitting Party:

Malaysia

20. Contact details of the person who completed the questionnaire:

Name:

Norhazni Mat Sari

Title:

Director of Hazardous Substances Division

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