

ILLICIT TRAFFICING OF WASTE – The Swedish approach

Doctor of Laws **Ari-Matti Nuutila**, Skanör (Sweden)
arimatti.nuutila@gmail.com, Tel. +46 70 877 75 51
<https://sites.google.com/site/arimattinuutila/introduction>

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1. Exports of hazardous waste and used products from EU

- ▶ Waste exports from Europe's six largest ports
 - 20 % in 2003–2004 and...
 - ...51 % in 2006 should be classified as illegal
- ▶ E-waste
 - Annually 8,7 million tons from the EU...
 - ...Of which 25 % is recovered, recycled or destructed legally
- ▶ Official export statistics from EU to Ghana, Nigeria and Egypt
 - Annually 15 000 tons of televisions exported
 - Only worth 8 % of the value of new machines

2. Exports of hazardous waste and used products from Sweden

▶ Typical waste

- Refrigerators
- Televisions, computers and other E-waste
- End of Life Vehicles (ELV) and car batteries
- Plastic

▶ Typical routes

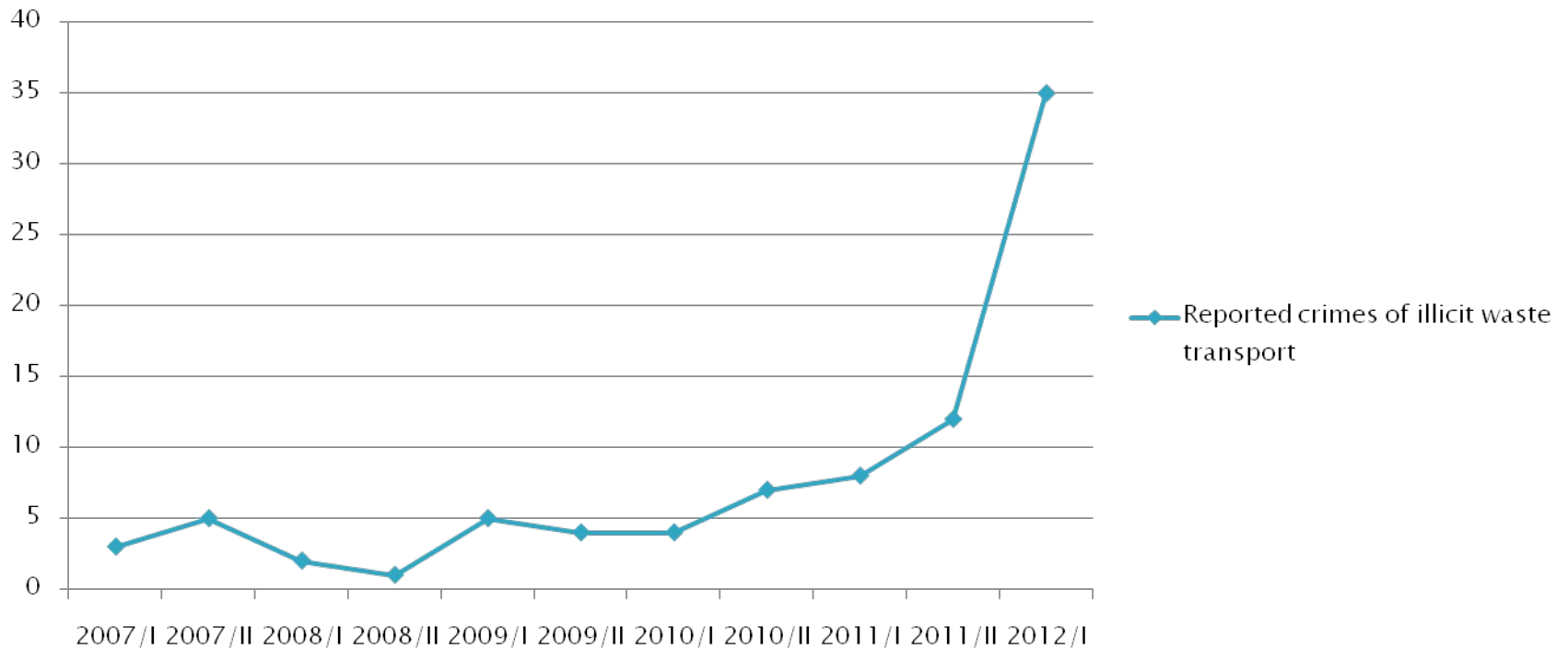
- Sea transports Gothenburg and Malmoe harbors → Rotterdam, Antwerpen and Le Havre harbors → Western Africa, esp. Ghana (Aggra), Nigeria (Lagos) and Ivory Coast
- “Computer Villages” and market places in Africa
- Road transports Sweden → Finland → Russia and Sweden → Denmark/Germany → Poland → East
- Not Asia according to statistics

3. More effective Swedish environmental action (2010)

- ▶ On 22 June 2010 the Government Bill concerning More Effective Environmental Action was considered by the *Riksdag* (the Swedish Parliament). According to it:
- ▶ *“Environmental efforts in this country need to take account of Sweden’s environmental impacts in other countries.”*
- ▶ *“Policy instruments and measures must be designed in such a way that Sweden does not export environmental problems, and this should be made clear in environmental policy.”*

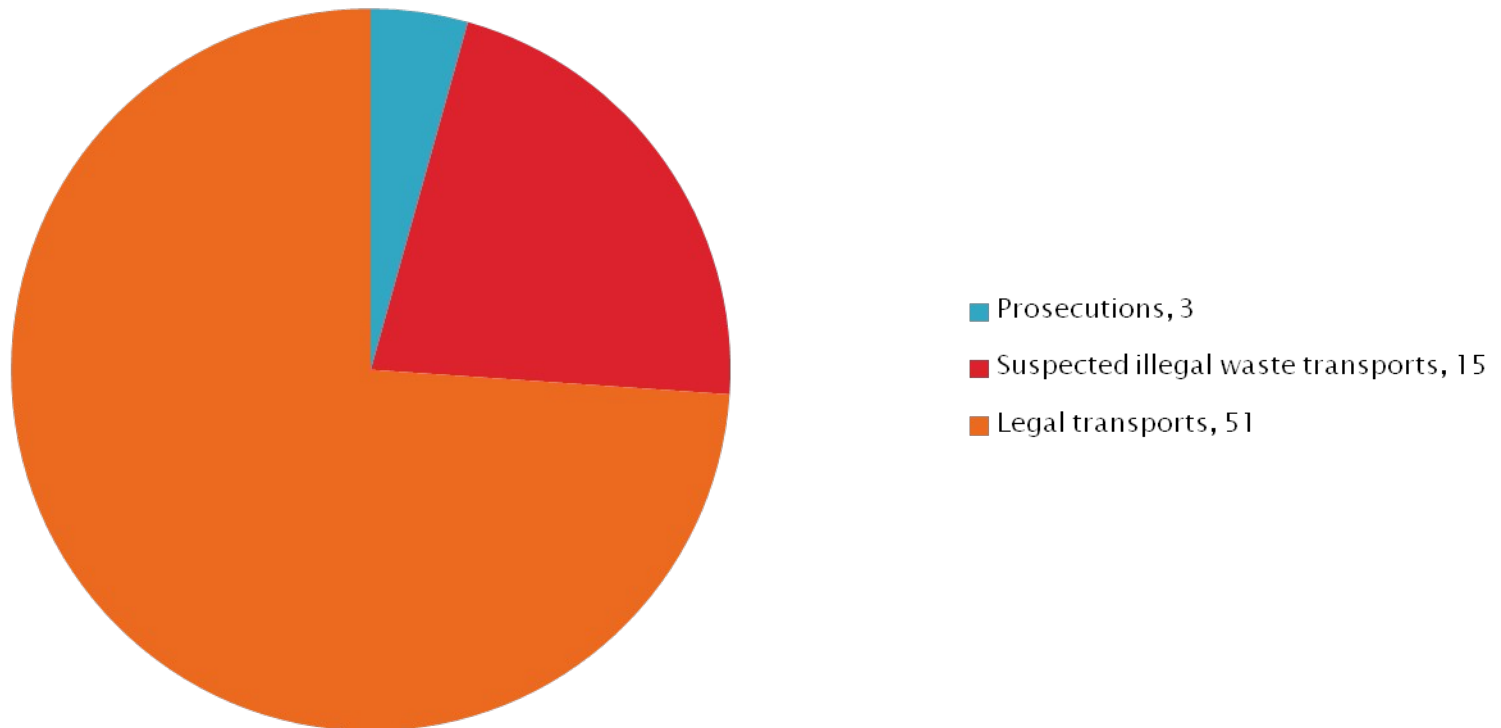
4. Police reported crimes in 2007–2012

Environmental Code Ch. 29 Art. 4a (2010:210)



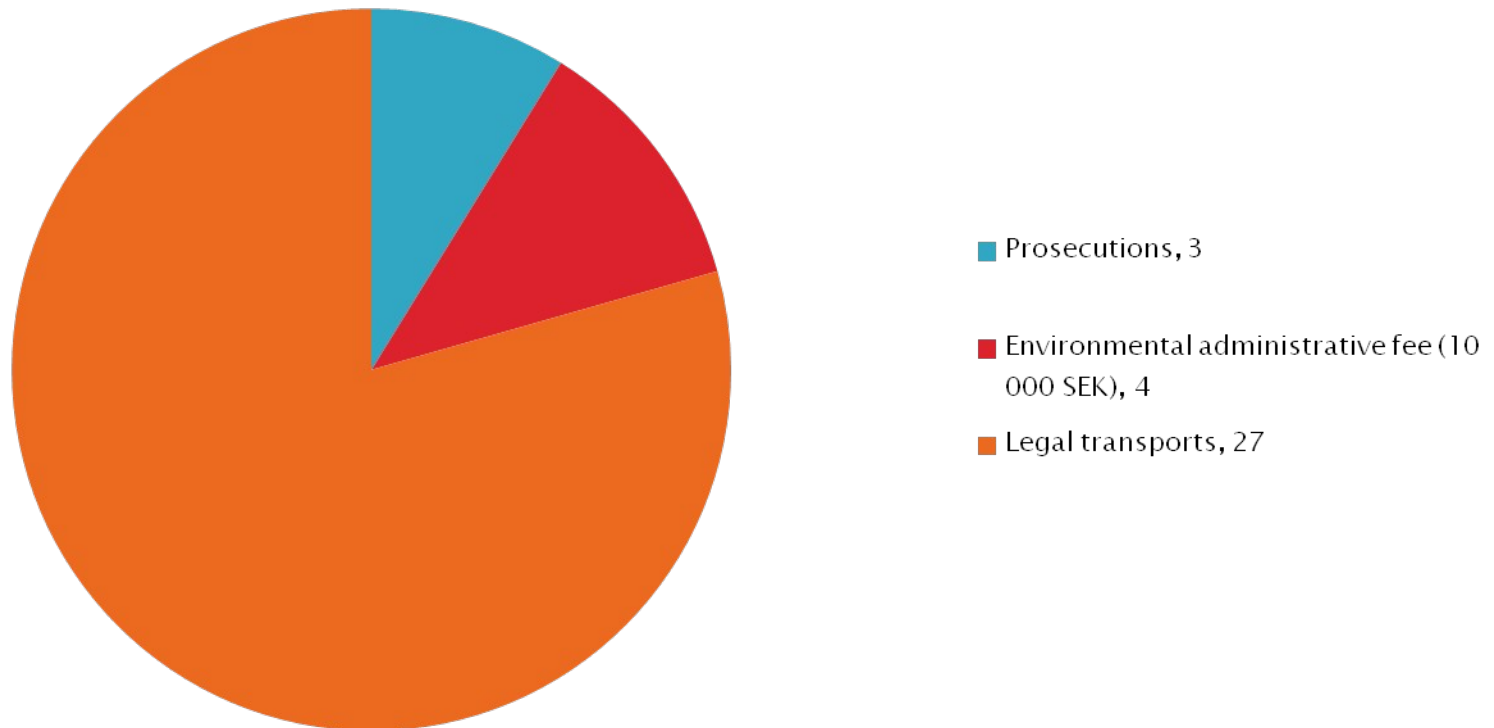
5. Customs controls in 2011

Swedish Customs controls 2011
(total 71 waste transports)



6. Police Action Week in 2010

Swedish Police AUGIA action week 2010
(total 34 waste transports)



7. International instruments

- ▶ The Basel Convention
 - ▶ Control of Transboundary Movements of Hazardous Wastes and their Disposal (22 March 1989, in force since 1992)
- ▶ The OECD Convention 1992
- ▶ Regulation (EC) No 1013/2006 on shipments of waste to OECD Member States, Article 50(1)
 - ▶ The European Parliament and the Council of 14 June 2006
 - ▶ *“Member States shall lay down the rules on penalties applicable for infringement of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. “*
 - ▶ *“The penalties provided for must be effective, proportionate and dissuasive. ”*

7. International instruments

- ▶ Regulation (EC) No 1418/2007 on shipments of waste to Non-Member States of the OECD
 - ▶ Amendments 740/2008, 967/2009, 837/2010, 661/2011 and 672/2012
- ▶ WEEE Directive 2012/19/EU
 - ▶ The European Parliament and the Council of 4 July 2012 on waste electrical and electronic equipment

8. National criminal legislation

- ▶ Before 2010 Environmental Code Ch 29 Art 8 Par 13
 - ▶ Generalized penal provision covering lots of violations of EU legislation
 - ▶ Did not cover attempt
 - ▶ Did not separate between minor and aggravated crimes
 - ▶ Corporate criminal liability of illicit waste export was unclear
 - ▶ Ban on business activities was possible but never applied
 - ▶ Negligence was sufficient, but Court interpretations varied
 - ▶ The authorities' responsibility of the hazardous waste was unclear
 - ▶ The Police provided some evidence of organized criminality generally speaking, but it did not appear in Court practices in individual cases

8. National criminal legislation

- ▶ Environmental Code Ch 29 Art 4 a (2010:210)
 - ▶ Any person who **intentionally or through negligence**:
 - ▶ [15 subparagraphs defining different illicit trafficking of waste inside and outside EU]
 - ▶ ... shall be liable to a fine or a term of imprisonment not exceeding two years for *illicit transport of waste*.
 - ▶ **Attempt to commit** act in subparagraphs 1–9 [**illicit export of waste**] is punishable according to Ch 23 of the Criminal Code.

9. Example of conviction

- ▶ Gothenburg District Court 16 February 2012 (Mål nr B 9170–11)
 - ▶ Charges against three accused for attempted smuggling or attempted illicit transport of waste
 - ▶ The Customs found in export controls in Gothenburg harbor a container on the way to Ivory Coast containing 10 compressors of refrigerators (with CFC), 102 refrigerators, TV-sets, stoves etc.
 - ▶ The accused denied knowledge of CFC components and of the waste export regulations as the refrigerators and compressors were used products on the way to be sold in Ivory Coast
 - ▶ They also claimed that attempt to a negligent crime is not possible

9. Example of conviction

- ▶ Gothenburg District Court 16 February 2012 (Mål nr B 9170–11)
 - ▶ Concluded that the Ozone Regulation (EU 1005/2009) had been violated and also otherwise the objects were waste
 - ▶ Noted that the as the accused had not tried to find out actively what is illegal and had not received false official information, the mistake of law was irrelevant and they therefore acted at least negligently
 - ▶ Concluded that two of the accused committed the crime within their business activities and their (small) companies were fined 25 000 SEK (2 900 EUR) each, but the third acted as a private person in favor of his brother in Ivory Coast
 - ▶ Main accused was convicted to conditional imprisonment and considerable fines
 - ▶ The two other ones were convicted to considerable fines

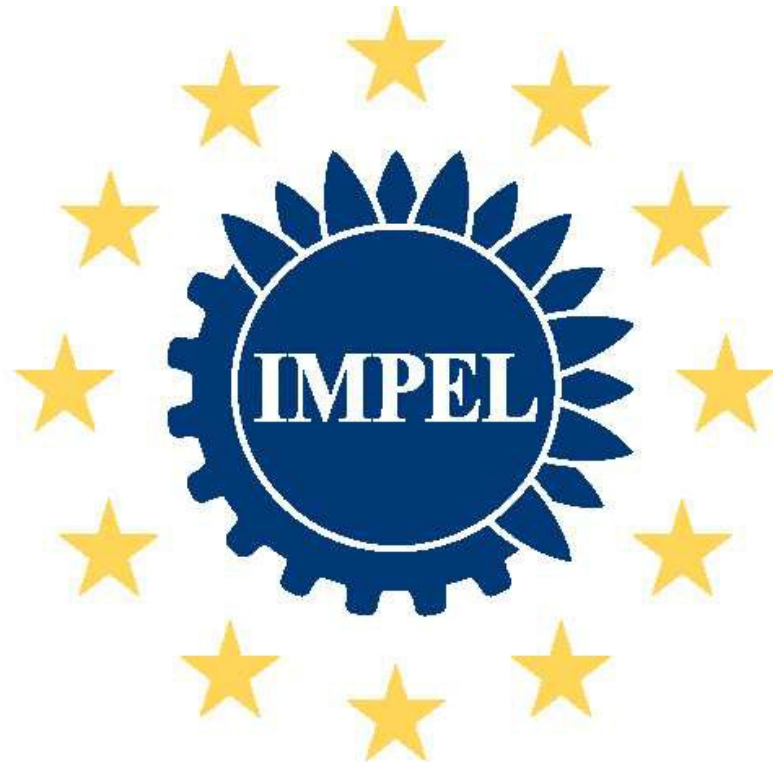
10. Example of acquittal

- ▶ Helsingborg District Court 28 May 2012 (Mål nr B 1579–12)
 - ▶ Charges against the accused for attempted illicit transport of waste
 - ▶ The Customs in Rotterdam harbor, the Netherlands, stopped one container on the way from Helsingborg harbor to Ghana
 - ▶ The overfilled container had 80 TV-sets, one motorcar (with prohibition to use in road traffic) and car tires
 - ▶ The accused denied that the goods were waste but insisted that they were used products to be sold further in Ghana
 - ▶ The Court dismissed the charges against the accused and the claim for corporate criminal liability, because

10. Example of acquittal

- ▶ Helsingborg District Court 28 May 2012 (Mål nr B 1579-12)
 - ▶ “as in the cases of smuggling and tax fraud, the regulations behind the criminal provision must be covered with intentionality or negligence”;
 - ▶ “according to the accused this was his first shipment and he was not accustomed to goods exports”;
 - ▶ “he has himself paid for the transport of the goods from Rotterdam back to Helsingborg”; and
 - ▶ “his export declaration had been correct”.
 - ▶ Therefore although he had not tried to find out the applicable regulations of export, he did not show intentionality nor negligence in a blameworthy way.
 - ▶ Both individual and corporate criminal liability were dismissed

11. Cooperation in the EU



European Union Network for
the Implementation and Enforcement
of Environmental Law

12. Examples with Swedish participation

- ▶ IMPEL TFS Conference 2010 (2010/11)
- ▶ Transfrontier shipment of e-waste (2010/18)
- ▶ Using the IMPEL Practicability and Enforceability Checklist to assess the Waste Shipment Regulation (2011/15)
- ▶ European Waste Enforcement Actions/Joint inspections of waste shipments, phase 2 (2011/18)
- ▶ Enforcement Actions Interim Project (2011/25)
- ▶ IMPEL-TFS Prosecutor Project (2012/12)
- ▶ IMPEL TFS Conference 2012 (2012/13)
- ▶ Cooperation and Awareness Raising to Prevent Illegal Traffic in Waste to non-OECD countries in Asia (2012/16)

13. The Swedish Environmental Protection Agency

- ▶ The responsibility of *Natursvårdsverket*
 - ▶ The application of EC Regulation 1013/2006
 - ▶ Contact body for EU Commission
 - ▶ Provides information for companies and individuals
 - ▶ Coordinates environmental policy and protection
 - ▶ Provides support for the Government in matters relating to EU environmental policy
 - ▶ Has also administrative control concerning transport documentation and administrative fees

14. The operational agencies

- ▶ The operational supervision and control
 - ▶ 21 County Administrative Boards take primary care of waste exports
 - ▶ 290 Municipalities take care of handling of waste
 - ▶ The Police has a few “environmental police officers”
 - ▶ The Highway Patrol has become more active with, e.g., AUGIA cooperation
 - ▶ The Customs control alongside with its other functions
 - ▶ The Boarder Control
 - ▶ Swedish Economic Crime Authority (*Ekobrottsmyndigheten*)
 - ▶ Support from *Naturvårdsverket* (GRÖT training and instigation of cooperative groups)

15. Operational needs

- ▶ Educational needs
 - ▶ What is waste?
 - ▶ When can the authorities react?
 - ▶ How do the Customs, the Police and the County Administrative Boards interact better?
- ▶ Instigation of cooperative groups
 - ▶ Customs and the Police grant access to premises
 - ▶ County Administrative officials inspect
- ▶ Responsibility of the waste frozen and confiscated
 - ▶ Still case-by-case solutions

16. The judiciary

- ▶ The prosecution
 - ▶ The Swedish Prosecution Authority (*Åklagarmyndigheten*) has a national unit for environment and work environment issues and is involved already in the pre-trial investigation in an active way
- ▶ The Courts of Law
 - ▶ There are no special criminal courts in Sweden

Thank you very much
Grazie mille
Tack så mycket

