

Negotiating Customs and Environmental Cooperation



How Multilateral
Environmental Agreements
Should Apply in Ports

ODSs Endanger All Life

- In humans ultraviolet radiation causes
 - cataracts
 - skin cancer
 - weakened immune system
- In nature ODS damages
 - terrestrial plants and animals
 - aquatic eco-systems
 - the climate; a cause of global warming
- Degrades man-made materials and coatings

Traded ODS Include

- ❑ Refrigerants
- ❑ Fire extinguishers
- ❑ Fumigants
- ❑ Pesticides
- ❑ Foam blowing agents
- ❑ Cleaning solvents
- ❑ Aerosol propellants

Reasons for ODS Smuggling

- Legitimate use of ODS very expensive
 - High cost of changing to more expensive ODS substitutes
 - Long lifetime of equipment containing ODS
 - Harsh business competition among customers of criminals
- Existing gangs of international narco-traffickers and other black marketers
- Lack of effective enforcement of trade restrictions

Linkages to Traditional Smuggling

- High profits with low risks attract organized crime
 - Globally, annual profits about \$30 Billion
- Traffickers experienced in drugs, persons, and weapons
 - Smuggling most substances and items newly controlled by MEAs – including ODS
 - Use the same routes, methods, and organizations

ODS Smuggling Tricks

- ❑ Mislabeled as non-ODS or as exempt recovered (recycled, reclaimed) ODS
- ❑ Hiding ODS behind legal merchandise in shipping containers
- ❑ Concealing in cars or boats
- ❑ Apparently lawful tanks - with false compartments
- ❑ False tank pressure (using nitrogen) to imitate pressure of a lawful gas
- ❑ Diverts shipment into domestic commerce during transit

Acute Dangers from ODS:

- Are highly toxic to inspectors
 - *e.g.*, carbon tetrachloride
 - may also be odorless, *e.g.*, methyl bromide
- If inhaled can cause:
 - confusion
 - drowsiness
 - unconsciousness
 - in some instances, fatal injury
- Can pose a risk of fire and explosion

Other Toxic Chemical Products

- ❑ International trade in other extremely toxic, man-made chemical products are controlled by two new global MEA's:
 - The Rotterdam Convention
 - The Stockholm Convention
- ❑ Many are pesticides too dangerous to use
- ❑ These poisonous chemicals are called Persistent Organic Pollutants ("POPs")

Surprising Dangers from Some POPs:

- ❑ are “persistent” - do not degrade in the environment - even planned, proper disposal is difficult and expensive
- ❑ easily are spread globally in “long-range transport” by natural wind & water currents
- ❑ settle in almost any living tissue
- ❑ “bio-accumulate” up through the food chain becoming most concentrated and thus toxic to higher life forms including humans
- ❑ damage nervous, immune, and reproductive systems, cause developmental disorders, cancer

Toxic Waste

- ❑ Toxic wastes are not products or “goods” but “bads” - the residues of industrial and commercial processes
- ❑ Shipments have *negative, reversed* value
 - “Sellers” pay to make waste disappear
 - “Buyers” are paid to take it away
- ❑ Criminals ship out wastes into other countries – usually developing ones
- ❑ Dumped to save money, chemical wastes are poisons

Reasons for Smuggling

- Companies do not want to pay for proper storage or disposal
 - “Sound environmental management” of toxic waste is very expensive anywhere
 - Dumping close to home can cause problems
 - Shipping out waste for foreign disposal with “No Questions Asked”, can make the waste cheaply “disappear” somewhere else
- Lack of enforcement of trade restrictions

Endangered Animals and Plants

- ❑ Extinction is forever
- ❑ Species decrease because of:
 - Habitat destruction and degradation
 - Introduced invasive species
 - Poaching (illegal hunting/fishing)
for food and commerce
 - **Unsustainable trade**
 - Pesticides, pollution and disease
 - Global climate change
- ❑ In this course we can only address trade

Reasons for Smuggling

- Economic incentives – high price for:
 - Trophies like ivory tusks
 - Rare species like orchids
 - “Folk” medicines from tiger and rhino parts
 - Food delicacies like caviar



Species are Many and Look Alike

Enforcers are Few and Differ

In many countries, there is not effective enforcement of:

- domestic taking
- international trade

Even the best officials can find it difficult to define and identify whether specimens:

- can be traded freely
- need protection by trade limitations
- cannot be traded because extinction is near

Linkages to Traditional Smuggling

- High profits/low risks attract organized crime
 - Global annual profits of smuggling environmental goods estimated at \$30 Billion
- Established traffickers
 - in drugs, persons, and weapons – now smuggle items controlled by MEA's
 - use the same routes, methods, and organizations

Common Smuggling Techniques

- Fraudulent paperwork
 - Incorrect label
 - False declaration of use
- Concealment, hidden
 - in luggage or vehicles
 - inside containers
 - in crates containing other animals
 - that are legal, yet disguise protected animals
 - that also are dangerous, to discourage inspection

Border Control is Dangerous

Risky to inspectors:

- ❑ animals bite, sting, spit, scratch and claw
- ❑ plants may be poisonous

Live specimens easily die in custody:

- ❑ lack of water and care during shipment, Customs seizure and storage, and
- ❑ lack of available proper rescue facilities

The Great Diversity of People, from Almost Every Culture, Do Agree

The problem:

- Some trade threatens many life forms
- The cause is us -
 - People in general
 - Smugglers in particular

The solution: the U.N. and most national governments have acted by creating MEAs

Our challenge: to effectively apply MEAs at ports to save lives of people and wildlife

“MEA” Defined

Multilateral Environmental Agreement

Treaties, conventions, and protocols addressing problematic:

- Chemicals
 - Wastes
 - Natural resources
 - Endangered Species
- Nations signing, then ratifying, MEAs are “Parties” obligated to each other

The Five MEA's Included in This Course

- Chemicals Conventions:
 - Montreal Protocol
 - protecting stratospheric ozone layer
 - Basel Convention
 - safely managing hazardous waste
 - Rotterdam and Stockholm Conventions
 - controlling the most toxic chemicals
- Endangered Species:
 - Convention on International Trade in Endangered Species (CITES)
 - Protecting wild life, flora, and fauna

These MEAs all are global and focus on trade

A Few Overview

Observations About MEAs

Depending on what country is trading what substance or item,

- a “trade banning” MEA may impose only a restriction
- a “trade limiting” MEA may in effect impose a ban at least for some countries

Evolving over time, controls are tending to become

- broader (to cover more traded substances or items) as more dangers become known
- bans as limitations/restrictions/exceptions prove inadequate or by design are time-limited

Responsibilities of Importers and Exporters (shippers)

- In general, shippers must:
 - Provide advance notice to the Environment Ministry
 - Only ship with official consent/approval/permit
 - or at least without objection/disapproval after giving notification to the government
 - Supply valid documentation to accompany the shipment for presentation to Customs
- More specific details will be provided in the lecture on each MEA during this course

Trade Controls:

Consider Human Passports

A passport is a license or permit for a person to export (and reimport) himself from his country

Importing countries:

- ❑ require the exporting country's permit (passport)
- ❑ also may require a visa (pasted into the passport), an additional permit that the importing country may issue. A visa is an instrument of "prior informed consent" or PIC to import.

Without a visa (without PIC), the import is banned:

- ❑ usually only for some countries for some persons
- ❑ globally for very dangerous persons

Role of Ministries

to Assure National Compliance

1. Environmental - How does a shipment receive:
 - Consent/license/permit from the Environment Authority or Ministry
 - Consent subject to conditions or limitations
 - Disapproval (denial of consent/license/permit)
2. Customs – How to monitor movements:
 - Check all accompanying documentation of consent
 - validity
 - completeness
 - accuracy
 - Inspect cargo
 - clear legitimate shipments, or
 - detect and investigate
 - seize, store, and dispose of contraband

Licenses/Permits Don't Catch Smugglers!

So Why Bother?

The permit application process educates shippers, helps them to comply, increases the overall compliance rate, and reduces the investigative burden on customs officers

The required presentation of the permit at the border assists compliance monitoring as:

- ❑ permitted shippers declare themselves legitimate
- ❑ any shipper making a false declaration exposes himself to heavy enforcement
- ❑ any unpermitted shipper is more easily separated out and automatically suspected

MEAs Rely on National Laws to License International Trade

- The five MEA's covered in this course all:
 - do not directly apply to private business enterprises or "shippers" engaging in trade
 - instead, obligate national governments of the "Parties" to enact licensing and other laws and apply them to traders
- If the MEA is specific, in this course the words, "National law...must require" mean that a Party is obligated by MEA text to enact a particular legal measure

National Laws Often May Well Go Beyond MEA Obligations

Often a MEA does not mandate essential legal measures. In this course the words “National law...should require” mean that:

- ▣ the MEA text is silent, unclear, or merely recommends a legal measure
- ▣ to effectively implement the MEA, experience shows us that Parties will need to create and apply a particular legal measure as an enforceable requirement
- ▣ this measure may exceed the MEA text

Environmental Officers Should Know the Details

Environment Authorities should be able to answer any Customs' questions on MEA's such as:

- ❑ what legal exceptions may allow some "banned" trade if for essential uses until substitutes can be developed
- ❑ whether implementation may be:
 - delayed during years of phase-in or exemption
 - differentiated in some places (developing countries)
- ❑ when PIC is required and if a shipment has PIC.

But the bottom line for Customs is simply whether the shipment is approved as documented and may be cleared.

Customs Officers Know What to Do – and What They Need!

Customs Officers already apply the U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and laws on human trafficking. MEAs address chemicals and living species at the borders in the same ways.

Customs Officers should expect the Environment Authority:

- ❑ to integrate its programs to present one face to customs
- ❑ to establish routine and quick communications

But Be Aware that MEA's Usually Apply Also to Non-Parties

MEA's do typically reach beyond Parties to reduce the trade disadvantage to becoming a Party. So this course will cover also:

- trade with non-Parties, whether:
 - import, export, or
 - transit/transshipment/free-trade zone
- transits (without import or export) and
 - transshipments within the same port
 - movements involving free-trade zones

Be Most Wary of Foreign Transit from/to a Non-Party

Beyond shipments incoming for transit across, or to a free-trade zone inside, *your* nation (perhaps for diversion to domestic commerce), watch for:

- ❑ Imports that arrive from a foreign transit or free-trade zone, especially of/in a non-Party nation – possibly altered.
- ❑ Exports that are going first to a foreign transit or free-trade zone, especially of/in a non-Party nation – perhaps there to be altered.

Conclusion

- ❑ Each MEA presents a pattern of similar, repeating issues that should become familiar and simplified for Customs Officers who already know how to monitor trade at national borders! But for MEAs, they cannot do it alone.

National managers – you all here today – should be asking of yourselves, what

- ❑ do you know about and expect from each other?
- ❑ have been the issues, and possible reforms?
- ❑ are the working conditions for successful inter-ministerial cooperation?