

Negotiating Customs and Environmental Cooperation



Effective National
Program Design

Customs Officers Already Know How to Handle Illegal Trade

Environmental Officers (EO's) can expect Customs Officers (CO's) to apply methods for MEAs like they do for the U.N. Convention for narcotic drugs.

The smugglers:

- often are the same gangs trafficking in wildlife, drugs, and chemicals
- may combine shipments, *e.g.*, garbage or waste may hide illegal drugs or ODS

Components of an Enforceable MEA Import/Export Program

The Environment Ministry should know that Customs is very busy:

- ❑ with all traditionally illegal trade
- ❑ focusing on goods generating tariff revenue
- ❑ often having terrorism as a high priority, and
- ❑ handicapped when the WCO's HS codes do not identify specific substances/items covered by a MEA.

Prerequisites to Expectations

The Environment Ministry cannot expect too much from Customs counterparts before the Environment Ministry creates:

1. Clear national legal requirements
2. An Environmental Import/Export Compliance Office (“EIECO”) to approve shipments and actively assist Customs to monitor compliance, and
3. EO assistance to COs that is both automated and face-to-face.

1. Clear Legal Requirements

The Environmental Ministry should seek Customs consultation and collaboration to obtain national laws with:

- affirmative requirements that:
 - implement obligations of MEA text,
 - apply more broadly the best features of some MEAs,
 - have more precise, specific legal requirements as experience has shown will be needed
- prohibitions and penalties for violators
- criminal treatment of intentional and serious violators

Customs Needs Identifiers Required

Customs will appreciate national laws requiring unique file identifiers and specific substance/item codes that must be used in:

- ❑ Preregistration of known shippers,
- ❑ Notifications/applications to ship, and
- ❑ Accompanying movement documents.

Standard Movement Documents

EO's can expect CO's to be more effective and efficient when the Environment Ministry by national law:

- ❑ informs and assists shipper that would comply
- ❑ prescribes and requires use of a recognizable and uniform Movement Document with all needed data elements
- ❑ *officially* issues these (instead of allowing shippers to prepare their own declarations)

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

Environmental Result of Strong Permitting = Targeted Enforcement

Customs will expect the Environment Ministry to clearly define and mark legitimate shipments, so that Customs will:

- ❑ enjoy routinely clearing a larger number of compliant shipments
- ❑ face fewer uncertain and perhaps suspect shipments
- ❑ probably find more violations no more Customs effort - with fewer wasted calls for expensive inspections and investigations

2. Customs Will Want Identifiable Environmental Colleagues

The Environmental Ministry can expect Customs to want one point of contact with an Environmental Import/Export Compliance Office that:

- ❑ is operational making cases (not a diplomatic or international policy unit),
- ❑ permits/approves shipments, and
- ❑ actively assists Customs to monitor compliance and deal with violators.

Customs Cannot Enforce Without Communications Links

CO's will want the creation of routine, working linkages to EO's:

- ❑ communications real-time and 24/7 -- Customs cannot slow commerce while waiting for EO's to help
- ❑ to verify permits, automated for instant data exchange, or at least telephonic to start
- ❑ intelligence to "red-flag" suspect shipments
- ❑ full-scope expertise covering all 5 MEAs

Confirming Compliance with the Environmental Permit or Consent

Then CO's faced with required movement documents (uniform and officially issued), seeing specific codes, and in quick contact with the Environmental Import/Export Compliance Office, can be expected to:

- ❑ identify declared items or substances regulated by a MEA
- ❑ verify by instantly accessing the corresponding files in the Environment Ministry's databank of consents/approvals
- ❑ quickly clear most trade as legitimate

Detecting Violators at the Borders

Then CO's can also be expected to screen for and detect illegal traffic including:

- ❑ Consent or Movement Document obtained through fraud (falsity, significant omission or misrepresentation)
- ❑ Transboundary movement without (or not in conformity with)
 - notification and consent of the Environment Ministry,
 - a Movement Document that is complete and accurate

3. Customs Will Want EO's Present

Environmental Officers can expect from Customs Officers effective cooperation when the Environment Ministry gives to Customs:

- ❑ face-to-face presence when environmental expertise is needed in a port
- ❑ on-hand technical expertise to safely and accurately inspect, sample, do lab analysis
- ❑ help to move and store seized shipments
- ❑ collaboration in investigations, and
- ❑ expertise and funding to dispose of contraband

Improved Collaboration Will be International Too

More routine bilateral (Party-to-Party) communications will be needed to confirm that a shipment is legitimate or suspect.

Available multilateral, really global, vehicles include:

- ❑ The Customs Enforcement Network (CEN) of the WTO,
- ❑ Interpol's National Central Bureaus and use of "ECO-Messages", and
- ❑ MEA Secretariats that may collect intelligence and connect nations with shared problems.

Recapitulation

To plan for the shared management of these challenges, Environmental Officers should:

- ❑ not expect Customs to take the lead for MEAs, but
- ❑ if the Environment Ministry does its share, then expect full cooperation from Customs.

Neither Ministry can succeed alone to meet the Nation's obligations to apply MEA's at the borders

An Inter-Ministerial Cooperation Agreement

Effective MEA controls will come to ports:

- ❑ only if Customs and all MEA-implementing Ministries can find resources and agreement in the many operational details, and
- ❑ if there is national political will at the top

Next, in the final, fifth practical exercise in this course, you will negotiate an inter-ministerial cooperation agreement.