Understanding Green Customs

An Indian Perspective

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AUTHORS’ NOTE

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Also the figures and the case studies have been taken from the magazines WCO News and EIA EcoCrime Magazine, for greater understanding and having a clear picture of the implementation aspects of the conventions and the same would not be used for any monetary benefits.
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<td>CBEC</td>
<td>Central Board of Excise and Customs</td>
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<td>CBP/CPB</td>
<td>Cartagena Biosafety Protocol/Cartagena Protocol on Biosafety</td>
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<td>CFC</td>
<td>Chlorofluorocarbon</td>
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<td>CITGES</td>
<td>Convention on International Trade in Endangered Species of Wild Fauna and Flora</td>
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<td>CoO</td>
<td>Country of Origin</td>
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<td>DGFT</td>
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<td>Directorate of Revenue Intelligence</td>
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<td>ITC (HS)</td>
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<td>International Union for Conservation of Nature</td>
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<td>LMO</td>
<td>Living Modified Organism</td>
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<td>NIMBY</td>
<td>Not in my Backyard</td>
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Prepared by IRS (Probationers) - 65th Batch
Chapter 1: What is Green Customs

The Green Customs as an initiative is a series of collaborative activities carried out by UNEP and its partner organizations and aimed at raising the awareness of Customs and border control officers on several trade-related MEAs.

Today Customs officers are becoming aware that their traditional role as guardians of the trading system is evolving into a more nuanced one encompassing different dimensions of sustainable development related to the well-being and protection of society. Now we are required to be at the frontline not only of trade, but also of environmental protection, and to contribute to the greening of trade.

Customs officers and border protection officers ensure that any goods entering or leaving their country comply with national laws. If their country is a party to one or more multilateral environmental agreements (MEAs), then these agreements are likely to be included in the national laws and regulations. Today, many environmental problems are trans-boundary in nature and have a global impact. They can be effectively addressed only through international co-operation and shared responsibility, made possible through MEAs.

Several MEAs regulate the cross-border movement of items, substances and products, mainly in the form of imports, exports and re-exports. Thus the front-line Customs and border protection officers responsible for controlling trade play a very important role in protecting the national and global environment.

Of particular importance to our work as Customs and border control officers are with the treaties with trade-related provisions, such as the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, the Cartagena Protocol on Biosafety, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Montreal Protocol on Substances that Deplete the Ozone Layer, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on
Persistent Organic Pollutants. MEAs regulate the trans-boundary movement of a wide variety of items that Customs or border control officers might encounter in their work. Verifying shipments and their documentation is altogether a complex task and a large responsibility, as is verifying compliance with national laws and taking action when violations occur. It is crucial to be well informed at this front, so as to be efficient and effective officers.

Hence through this report, we have attempted to provide a framework, highlighting the features of International Conventions related to Green Customs, their presence in Indian Legal and regulatory system, and most importantly, what provisions we enforce, and the procedural guidelines for the same. The multiplicity of rules, guidelines, circulars, notifications and orders strewn across the plethora of websites off various Ministries have been selectively compiled, to provide all of us the one stop destination for Green Customs issues that we have to deal with in the course of our professional endeavours. This report will aid us in identifying with our roles and responsibility in mitigating, countering and preventing environmental crimes.
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Figure 1: Position of customs authority while implementing the protocol
Chapter 2: Major Conventions

2A: Basel Convention

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was adopted on 22 March 1989 by the Conference of Plenipotentiaries in Basel, Switzerland, in response to a public outcry following the discovery, in the 1980s, in Africa and other parts of the developing world of deposits of toxic wastes imported from abroad. Awakening environmental awareness and corresponding tightening of environmental regulations in the industrialized world in the 1970s and 1980s had led to increasing public resistance to the disposal of hazardous wastes known as the NIMBY (Not In My Back Yard) syndrome – and to an escalation of disposal costs. This in turn led some operators to seek cheap disposal options for hazardous wastes in Eastern Europe and the developing world, where environmental awareness was much less developed and regulations and enforcement mechanisms were lacking. Basel Convention’s thrust at the time of its adoption was to combat the “toxic trade. The Convention entered into force in 1992.

Objective

The overarching objective of the Basel Convention is to protect human health and the environment against the adverse effects of hazardous wastes. Its scope of application covers a wide range of wastes defined as “hazardous wastes” based on their origin and/or composition and their characteristics, as well as two types of wastes defined as “other wastes” - household waste and incinerator ash.

Aims and provisions

- reduction of hazardous waste generation and the promotion of environmentally sound management of hazardous wastes, wherever the place of disposal;
- restriction of trans-boundary movements of hazardous wastes except where it is perceived to be in accordance with the principles of environmentally sound management; and
- regulatory system applying to cases where trans-boundary movements are permissible.

Under the Basel Convention, illegal traffic is defined as a trans-boundary movement of hazardous wastes:

- without notification pursuant to the provisions of the Convention to all States concerned;
- without the consent of a State concerned;
through consent obtained by falsification, misrepresentation or fraud; that does not conform in a material way with the documents; or that results in deliberate disposal (eg. dumping) of hazardous wastes in contravention of the Convention and of general principles of international law.

Common methods of illegal traffic include making false declarations, the concealment, mixture or double layering of the materials in a shipment and the mislabelling of individual containers. Such methods seek to misrepresent the actual contents of a said shipment and, because of this, the meticulous and thorough scrutiny of national enforcement officers is required to detect cases of illegal traffic.

Figure 2: Emerging problem of e-waste under scanner
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2B: Stockholm Convention

Objective:

The Stockholm Convention on Persistent Organic Pollutants (POPs). Adopted in 2001, the Stockholm Convention bans or severely restricts production, trade, and use of twelve POPs known as the "dirty dozen." Most of these chemicals are no longer manufactured or used in industrialized countries; however, the nature of POPs means that people can be seriously impacted by releases of POPs that occur hundreds or even thousands of miles away. The Stockholm Convention contains provisions for the disposal and treatment of POPs wastes and stockpiles. It also establishes procedures for listing additional POPs that may be banned or severely restricted.

2C: Rotterdam Convention

Objective:

The main objectives of Rotterdam Convention are as under:

- to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm;
- to contribute to the environmentally sound use of those hazardous chemicals, by facilitating information exchange about their characteristics, by providing for a national decision-making process on their import and export and by disseminating these decisions to Parties.

The Convention creates legally binding obligations for the implementation of the Prior Informed Consent (PIC) procedure. It built on the voluntary PIC procedure, initiated by UNEP and FAO in 1989 and ceased on 24 February 2006.

The Convention promotes the exchange of information on a very broad range of chemicals. It does so through:

- the requirement for a Party to inform other Parties of each national ban or severe restriction of a chemical;
- the possibility for a Party which is a developing country or a country in transition to inform other Parties that it is experiencing problems caused by a severely hazardous pesticide formulation under conditions of use in its territory;
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- the requirement for a Party that plans to export a chemical that is banned or severely restricted for use within its territory, to inform the importing Party that such export will take place, before the first shipment and annually thereafter;
- the requirement for an exporting Party, when exporting chemicals that are to be used for occupational purposes, to ensure that an up-to-date safety data sheet is sent to the importer; and labelling requirements for exports of chemicals included in the PIC procedure, as well as for other chemicals that are banned or severely restricted in the exporting country.

2D: Montreal Protocol

Objective:

It is an international treaty designed to protect the ozone layer by phasing out the production of numerous substances that are responsible for ozone depletion. The treaty is structured around several groups of halogenated hydrocarbons that have been shown to play a role in ozone depletion. All of these ozone depleting substances contain either chlorine or bromine (substances containing only fluorine do not harm the ozone layer).

2E: Cartagena Biosafety Protocol

Objective:

The precautionary principal mentioned in the Rio declaration on the Environment and development mandates taking all practical precautions to safeguard the environment from human intervention. The Cartagena Biosafety Protocol tries to fulfil this objective by ensuring an adequate level of protection in the field of safe transfer, handling and use of living modified organisms (LMOs) resulting from modern biotechnology (Genetically Modified Organisms) that may have adverse effects on the conservation and sustainable use of biodiversity, taking also into account risks to human health, and specifically focussing on trans-boundary movements.

2F: Convention on International trade of Endangered Species (CITES)

Objective:

It is a multilateral treaty to protect endangered plants and animals. It was drafted as a result of a resolution adopted in 1963 at a meeting of members of the International Union for Conservation of Nature (IUCN).
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Figure 3: Problem of illicit wildlife trade

Buzz: Latest news on illegal wildlife trade in India

Two arrested with Leopard skin in Odisha; 26 June 2014: Two persons were arrested for killing a Leopard in Ganjam district. For more information, please visit http://www.wwfindia.org/about_wwf/enablers/traffic/news_from Trafficking trade/.

Rise in slaughter of Whale Sharks in India; 23 June 2014: In a short span of 13 months that is from February 2013, as many as 15 Whale Sharks Rhincodon typus have been slaughtered in the Godavari region. The figure is quite alarming. For more information, please visit http://www.thehindu.com/news/national/andhra-pradesh/slaughter-of-whale-sharks-on-the-rise/article139439.ece

More forces arrayed to save wildlife from poaching in Kaziranga; 23 June, 2014: With the monsoon setting in, Assam Forest Department is planning to send about 150 additional men of the Assam Forest Protection Force (AFPF) to the Kaziranga National Park to secure the wildlife, particularly the one-horned rhinos in the park, from the poachers. For more information, please click: http://www.dailypioneer.com/nation/more-forces-to-protect-wildlife-from-poachers-in-kaziranga.html

Two hundred fifty Asiatic Lions killed in Gujarat over past five years; 21 June, 2014: Is the world’s only abode of Asiatic lions in Gujarat under threat? The Gir wildlife sanctuary and its periphery have witnessed no less than 250 deaths of lions in the last five years. This has raised
Chapter 3: Conventions & Position of India

India is the signatory of these conventions and by consequence; we have responsibility of enforcing the border control measures on the enlisted items.

3A: Basel Convention

India is a signatory to the Basel Convention, which requires countries to ensure that hazardous wastes and hazardous recyclable materials are managed in an environmentally sound manner. The Ministry participates in various meetings of the Basel Convention regularly. India is also actively involved in the work relating to preparation of technical guidelines for environmentally sound management of ship-breaking along with Norway and the Netherlands under this convention. As a signatory India is liable for creating a national law enforcement system and legal liability mechanism (for private sectors). Especially Basel Convention has clause for responsibility of the member country to report each transboundary shipment of Basel controlled wastes, disposal methods, countries of import and transit, accidents, efforts to reduce transboundary movement of hazardous wastes. Infact it proclaims such illegal traffic as crime, hence enhances the role of customs as a regulatory body. India in response has banned imports of certain categories of hazardous wastes to be Basel compliant.

3B: Stockholm Convention

India has signed the Stockholm Convention on POPs in May 2002. The Convention seeks to eliminate production, use, import & export of 12 identified POPs namely Adrin, Endrin, Dieldrin, Chlordane, DDT, Heptachlor, Toxaphene, Mirex, Hexachlorobenzene, Polychlorinated Biphenyls, Dioxins and Furans. A Preliminary Enabling Activity Project to prepare National Implementation Plan (NIP) for POPs has been assigned to ITRC in association with UNIDO under GEF assistance.

3C: Rotterdam Convention

3D: Montreal Protocol

India acceded to the Montreal Protocol on 17.9.92. India’s per capita consumption of Ozone Depleting Substances is at present less than 3 grams and did not cross 20 gms between 1995-97 as against 300 gms permitted under the Protocol. The Government of India has entrusted the work relating to ozone layer protection and implementation of the Montreal Protocol to the Ministry of Environment and Forests (MOEF) which is the coordinating Ministry in India for all matters relating to the Montreal Protocol. The MOEF has set up an Ozone Cell as a national unit to look after and to render necessary services to implement the Protocol and its ODS phase-out programme in India.

Emerging challenges of smuggling of HCFCs

‘..... the protocol has rid the world of some 98% of ozone destroying chemicals compared to levels in the 1980s, and that it has become the first international environmental accord to achieve universal ratification, .......

‘.... Under this treaty, developing and industrialized countries have equal but differentiated responsibilities, but more importantly, both groups have binding, consequence of these differentiated responsibilities – the staggered phase-out schedules with developing countries having an additional 10 year phase out period is the illegal trade in ODS, which initially flourished as smugglers exploited the fact that consumption and production controls were in force in some countries while production for the same ODS continued unabated in others. .......

‘.... The parties to the Montreal Protocol responded to this threat and in 1997 established a licensing system to monitor the ODS trade in order to prevent smuggling. .......

‘There is, however, another and potentially bigger challenge on the horizon for the enforcement community. In 2007, the Parties decided to accelerate the phase out of HCFCs, chemicals which were adopted as transitional replacement gases to CFCs to enable those gases to be quickly phased out. ....’ ‘.... There is a real concern that as the phase out of HCFCs progresses, there will be a sharp increase in HCFC smuggling which could threaten compliance with the Montreal Protocol. .....’ ‘.... To actively combat ODS smuggling it is important for Customs officers to be well informed, to collaborate closely with officials responsible for national implementation of the Protocol, and, more crucially, to cooperate with their counterparts at the regional and international levels too. .....’

Shamila Nair- Bedouelle, Head, UNEP, Division of Technology, Industry and Economics, Ozonation Branch, (as mentioned in World Customs Organisation Journal, WCO news)

Figure 4: Emerging Challenges of ODS smuggling
3E: Cartagena Biosafety Protocol

India ratified the Cartagena Protocol on Biosafety on January 23, 2003. As on 5.3.2009, 153 countries are Parties to the Protocol. In accordance with the above requirement, the Ministry of Environment and Forests has been designated as the competent national authority. The National Focal Point for the CBP is Joint Secretary, MoEF and the BCH Focal Point is Director, MoEF.

3F: Convention on International trade of Endangered Species (CITES)

India ratified CITES in 1976. The implementation of the Convention has been entrusted to the Wildlife Crime Control Bureau, Botanical Survey of India, Zoological Survey of India, Central Marine Fisheries Research Institute, Wildlife Institute of India, and Institute of Forest Genetics and Tree Breeding (Indian Council of Forestry Research and Education) which are the scientific and management authorities related to this Convention.
Chapter 4: International Convention and Defined Role of Customs

4A: Basel Convention

The Basel Convention states that:

**Article 8 Duty to reimport:** When a transboundary movement of hazardous wastes or other wastes to which the consent of the States concerned has been given, subject to the provisions of this Convention, cannot be completed in accordance with the terms of the contract, the State of export shall ensure that the wastes in question are taken back into the State of export, by the exporter, if alternative arrangements cannot be made for their disposal in an environmentally sound manner, within 90 days from the time that the importing State informed the State of export and the Secretariat, or such other period of time as the States concerned agree. To this end, the State of export and any Party of transit shall not oppose, hinder or prevent the return of those wastes to the State of export." There is a duty to re-import if waste cannot be disposed of in an environmentally sound manner.

Article 9 Illegal Traffic: Illegal wastes shall be disposed in environmentally sound manner by State of Import within 30 days from the time the State of export has been informed about the illegal traffic or such other period of time as States concerned may agree. "5. Each Party shall introduce appropriate national/domestic legislation to prevent and punish illegal traffic.

4B: Stockholm Convention

The Stockholm Convention states: Article 3: "1. Each Party shall:

(a) Prohibit and/or take the legal and administrative measures necessary to eliminate:

(i) Its production and use of the chemicals listed in Annex A subject to the provisions of that Annex; and

(ii) Its import and export of the chemicals listed in Annex A in accordance with the provisions of paragraph 2; and

(b) Restrict its production and use of the chemicals listed in Annex B in accordance with the provisions of that Annex".

4C: Rotterdam Convention

The Rotterdam Convention mentions the following:

Article 10 Obligations in relation to Import of chemicals: "1. Each Party shall implement appropriate legislative or administrative measures to ensure timely decisions with respect to the import of chemicals listed in Annex III."
"9. A Party that, pursuant to paragraphs 2 and 4 above and paragraph 2 of Article 11, takes a decision not to consent to import of a chemical or to consent to its import only under specified conditions shall, if it has not already done so, simultaneously prohibit or make subject to the same conditions:
(a) Import of the chemical from any source; and
(b) Domestic production of the chemical for domestic use.

Article 11 Obligations in relation of export of chemicals in Annex III: “2. Each Party shall ensure that a chemical listed in Annex III is not exported from its territory to any importing Party that, in exceptional circumstances, has failed to transmit a response or has transmitted an interim response that does not contain an interim decision, unless:
(a) It is a chemical that, at the time of import, is registered as a chemical in the importing Party; or
(b) It is a chemical for which evidence exists that it has previously been used in, or imported into, the importing Party and in relation to which no regulatory action to prohibit its use has been taken; or
(c) Explicit consent to the import has been sought and received by the exporter through a designated national authority of the importing Party. The importing Party shall respond to such a request within sixty days and shall promptly notify the Secretariat of its decision. “

Article 12 Export Notification: "1. Where a chemical that is banned or severely restricted by a Party is exported from its territory, that Party shall provide an export notification to the importing Party.

Also Article 13 & 14 deals with the HS Code and import export requirements like labelling requirements and safe data sheet of internationally acclaimed procedures.
4D: Montreal Protocol

The international trade of Ozone Depleting Substances is governed by the regulations of Montreal Protocol. The provisions of the Montreal Protocol which govern the international trade of Ozone Depleting Substances are below.

The Montreal Protocol classifies the Ozone Depleting Substances in Annex A, B, C and E. These annex are further classified into different groups. The chemicals in the different groups are scheduled to be phased out at different cut-off dates. The Ozone Depleting Substances mentioned in Annex-A & B have been phased out before January.01.1996. But, an extension for the phase out period, till January.01.2010, has been allowed for the developing countries. The Ozone Depleting Substances which are mainly allowed to be traded as of today are those listed in Group I of Annex C, namely Hydrochlorofluorocarbons. Article 5 recognises the special situation of developing countries and allows them to, conditionally, further extend their cut off dates viz-a-vis developed countries. Article 4B of the Montreal Protocol mandates the signatories to institutionalise a licensing mechanism to regulate the production of the ODS.

Under Article 4 of the Montreal Protocol, any product containing controlled substances mentioned in Annex A, B &C, shall not be imported by any party from a country, which is not a signatory to the Montreal Protocol.
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4E: Cartagena Biosafety Protocol

Article 19 of the Cartagena Biosafety Protocol mandates each party to designate a Competent National Authority which shall be responsible for performing the administrative functions required by this protocol.

Biosafety Clearing House established under Article 20, facilitates the exchange of scientific, environmental, technical and legal information and assisting the parties in implementing the protocol.

The protocol also requires the party to designate a National Focal Point which would liaison with the Protocol Secretariat on its behalf. The Articles 8, 9, 10 & 12 of the protocol establishes “Advance Informed Agreement Procedure” to regulate the transboundary movement of LMOs supposed to be intentionally introduced into the environment. Under this procedure, the exporter or the party of exporter should notify in writing to the Competent National Authority (established under Article 19) of the party of import of the proposed transboundary movement of the LMOs. The party of import should give the acknowledgement of the receipt of notification within 90 days to the notifier and convey its decision simultaneously to the notifier and the Biosafety Clearing House within 270 days. Article 12 provides for the review of the decision in light of change in facts or new scientific evidence.

Importing country must through its Biosafety Clearing House inform the other parties about its intension to use LMOs for Direct Use as Food or Feed, Or For Processing within 15 days. The importing party makes its decision based on the national framework of laws, processes or procedures, the copies of which needs to be shared with the exporting parties. The party can ask for certain technical or financial assistance in this import.

4F: Convention on International trade of Endangered Species (CITES)

Convention on International Trade in Endangered Species of Wild Fauna and Flora categorises the species in three appendices, viz, Appendix I, II & III.

Appendix I: It deals with the species which are endangered and threatened by their active trade.
Appendix II: It deals with the species which are not endangered or threatened but may become so if their trade is unregulated.
Appendix III: It includes those species which any contracting party wants to regulate within its jurisdiction.
Article III: Regulation of trade (export, import, re-export and introduction through sea) for species mentioned in Appendix I.

Article IV: Regulation of trade (export, import, re-export and introduction through sea) for species mentioned in Appendix II.

Article V: Regulation of trade (export, import, re-export and introduction through sea) for species mentioned in Appendix III.

Article IX: Envisages the creation of Management Authority and Scientific Authority for granting permits and providing scientific inputs respectively. The Management Authorities designated in India are Additional Director General of Forests (Wildlife), Director (Wildlife Preservation) and Wildlife Crime Control Bureau. The Scientific Authorities designated in India are: Botanical Survey of India, Zoological Survey of India, Central Marine Fisheries Research Institute, Wildlife Institute of India, and Institute of Forest Genetics and Tree Breeding (Indian Council of Forestry Research and Education).

4G: Foreign Trade (Development & Regulation) Act-1992

Provisions under Foreign Trade (Development & Regulation) Act-1992:

Section 3:: Powers to make provision relating to imports and exports.
(1) The Central Government may by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.

(2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods.

(3) All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 and all the provisions of that Act shall have effect accordingly.

Section 5: The Central Government may, from time to time, formulate and announce by notification in the Official Gazette, the export and import policy and may also, in the like manner, amend that policy.
Section 11: (1) No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the export and import policy for the time being in force.

(2) Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy, he shall be liable to a penalty not exceeding one thousand rupees or five times the value of the goods in respect of which any contravention is made or attempted to be made, whichever is more.

(3) Where any person, on a notice to him by the Adjudicating Authority, admits any contravention, the Adjudicating Authority may, in such class or classes of cases and in such manner as may be prescribed, determine, by way of settlement, an amount to be paid by that person.

(4) A penalty imposed under this Act may, if it is not paid, be recovered as an arrear of land revenue and the Importer-exporter Code Number of the person concerned, may, on failure to pay the penalty by him, be suspended by the Adjudicating Authority till the penalty is paid.
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- Treaty signed on an issue of international importance
- Ratification of treaty by India
- Passage of legislation by the Parliament of India and Policy formulation by the relevant department
- Policy on the issue incorporated in the ITC (HS) Import and Export Policies by the Director General of Foreign Trade (DGFT) under the Foreign Trade (Development & Regulation) Act-1992
- Under Sec-3(2) and other provisions of the FTDR Act-1992
- Under Section 3(3) of the FTDR Act-1992, all the prohibitions & restrictions as mentioned under the notification shall apply, as for a notification under Section 11 of the Customs Act-1962
- Provisions of Customs Act-1962 applicable on the goods
- Authority to Customs officials for carrying out agency functions

Figure 6: Authority of Custom Officials
(5) Where any contravention of any provision of this Act or any rules or orders made there under or the export and import policy has been, is being or is attempted to be made, the goods together with any package, covering or receptacle and any conveyances shall, subject to such requirements and conditions as may be prescribed, be liable to confiscation by the Adjudicating Authority.

(6) The goods or the conveyance confiscated under sub-section may be released by the Adjudicating Authority, in such manner and subject to such conditions as may be prescribed, on payment by the person concerned of the redemption charges equivalent to the market value of the goods or conveyance, as the case may be.

Section 13. Adjudicating Authority: Any penalty may be imposed or any confiscation may be adjudged under this Act by the Director General or, subject to such limits as may be specified, by such other officer as the Central Government may by notification in the Official Gazette, authorise in this behalf.
Chapter 5: Legal Provisions in India & Role of Indian Customs

5A HAZARDOUS WASTES AND CHEMICALS

The Hazardous Substances Management Division (HSMD) is the nodal point within the Ministry of Environment and forests for management of chemical emergencies and hazardous substances. The main objective of the Division is to promote safe management and use of hazardous substances including hazardous chemicals and hazardous wastes, in order to avoid damage to health and environment. The Division is also the nodal point for the following three International Conventions i.e. Basel, Stockholm, Rotterdam Conventions. The conventions on Hazardous materials are largely enforced through:

- **Hazardous wastes (Management, Handling and Transboundary Movement) Rules-2008**
- Batteries(Management & Handling) Rules, 2001

Also Ministry of agriculture has issued following:

- Notification banning the pesticides. (see Annexure)
- Insecticide Act 1968 on import restrictions
  - Sec 9 Importer to apply to Registration Committee
  - Sec 17 prohibition to import misbranded or non registered insecticides.
- **Manufacture, Storage and Import of Hazardous Chemical Rules-1989**

**Registration of Insecticides Under Insecticides Act, 1968**

Any person desiring to import or manufacture any insecticide may apply to the Registration Committee for the registration of such insecticide and there shall be separate application for each such insecticide.

Provided that any person engaged in the business of import or manufacture of any insecticide immediately before the commencement of this section shall make an application to the Registration Committee within a period of [seventeen months] from the date of such commencement for the registration of any insecticide which he has been importing or manufacturing before that date.

**Figure 7: Registration of Insecticides Under Insecticides Act, 1968**

**DGFT Notification No. 09 (RE–2013)/2009-2014** dated 22nd April, 2013 on restricted & free items under Ozone Depleting Substances (Regulation & Control) Rules-2000
Ministry of Commerce has also issued:

- Circular allowing import of second hand computer for charity
- CBEC CIRCULARS:
  - On Import OF Metal Scrap

**NOTE:** Circulars available in [CBEC Customs Manual-2014 on Page 61-62](#).

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<td>v. Take action against exporter/importer for violations under the Indian Ports Act, 1908/Customs Act, 1962</td>
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**Figure 8: Procedural aspect for Hazardous Wastes Rules**

[DGFT Notification No. 35 (RE-2003)/2002-2007](#) dated 16th February, 2004 on the import of hazardous waste
On Disposal of Hazardous Waste

The disposal of hazardous waste is to be carried out in accordance with the directions dated 14-10-2003 of the Hon’ble Supreme Court in WP No. 657/95. Basically, the Apex Court has directed that such waste are to be categorized as either those that are banned or those that are regulated. The waste in the banned category should be either re-exported, if permissible, or destroyed at the risk, cost and the consequence of the importer. The waste in the regulated category are permitted for recycling and reprocessing within the permissible parameters by specified authorized persons having the requisite facilities under the rules. However, before allowing clearance for recycling and domestic use, clearances should be obtained from the Monitoring Committee on Hazardous Waste Management. Further, where the importer of any of the categories is not traceable, the waste shall be dealt with at the risk, cost and consequences of the importer. The disposal/auction shall be carried out under the supervision of the Monitoring Committee on Hazardous Waste Management.

Refer Circular No.31/2004-Cus dated 26-4-2004

Figure 9: Rules in India for regulating hazardous substances
5A(i): Hazardous wastes (Management, Handling and Transboundary Movement) Rules, 2008

Rule 12: Ministry of Environment & Forests as Nodal Ministry

Rule 13: Import and export of hazardous wastes.
(1) No import of the hazardous wastes from any country to India for disposal shall be permitted.
(2) The import of Hazardous Waste from any country shall be permitted only for the recycling or recovery or reuse.
(3) The export of hazardous wastes from India may be allowed to an actual user of the wastes or operator of a disposal facility with the Prior Informed Consent of the importing country to ensure environmentally sound management of the hazardous waste in question.

Rule 14: Import or export of Hazardous Waste for recycling, recovery and reuses.
I) Part A of Schedule I & II need both PIC and DGFT license for export and import.
II) Part B of Schedule III need none for import
III) Part A & B of Schedule III need PIC only for Export import.

Rule 15 & 16: Procedure for Export and Import
i) Importer applies to Central govt. through Form 7 & 8 along with PIC from importing country in 30 days: copy SPCB; Exporter applies with insurance for NOC and Permission by MoEF in 60 days,
ii) Port and Custom authorities shall ensure that the shipping document is accompanied with movement document Form 9 and the test report from an accredited laboratory of analysis of the hazardous waste shipped
iii) Custom authority retains 3 test samples before clearance for pd of 2yrs. Importer/Exporter to maintain record as per form 10
iv) Rule 17: Provision for Illegal Import time limit 90 days as per Basel.

Also, Clearance of waste oil/sludge derived from the normal course of a ship’s operation and covered by the MARPOL Protocol will be allowed without a license only to persons registered with the Ministry of Environment and Forests or the Central Pollution Control Board, as the case may be, for re-processing waste. Such waste oil/sludge will conform to the definition in Schedule 3 of the Hazardous Waste (Management and Handling) Amendment Rules-1989.

Further, Import of Hazardous Chemicals permitted is permitted in accordance with the provisions of the Manufacture, Storage and Import of Hazardous Chemicals Rules 1989 (made under the Environment (Protection) Act, 1986). Besides other conditions mentioned in the Rules, the importer shall, before 30 days but not later than the date of import, furnish the details specified in Rule 18 to the Authority specified in Schedule 5 of the said Rules (CBEC Customs Manual 2014).

Click for *Hazardous Wastes (Management, Handling and Transboundary Movement) Rules-2008*.

**Rule 13**
- No import of the hazardous wastes from any country to India for disposal shall be permitted.
- Import of Hazardous Waste from any country shall be permitted only for the recycling or recovery or reuse.
- Export allowed on actual user condition.

**Rule 14**
- Exim of Part A Schedule I/II need PIC and DGFT license.
- Part B Schedule III no PIC or license needed.

**Rule 17**
- Illegal import and 90 days limit under Basel.

Figure 10: Provisions of the Manufacture, Storage and Import of Hazardous Chemicals Rules 1989

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Procedure
For
Import
Rule 16

Importer applies to Central govt. through Form 7 & 8 along with PIC from importing country in 30 days; copy SPCB; Exporter applies with insurance for NOC
Permission by MoEF in 60 days,

Port and Custom authorities shall ensure that the shipping document is accompanied with movement document Form 9 and the test report from an accredited laboratory of analysis of the hazardous waste shipped

Custom authority retains 3 test samples before clearance for pd of 2yrs. Importer/Exporter to maintain record as per form 10

Procedure
for
Export in
Rule 15

Figure 11: Procedure for custom authorities for regulating trade in hazardous substances

SCHEDULE 5: Competent Authority & their duties
Chief Inspector of Dock Safety appointed under the Dock Workers (Safety, Health and Welfare) Act, 1986. Enforcement of directions and procedures in respect of industrial installations and isolated storages dealing with hazardous chemicals and pipelines inside a port regarding,-
(i) Notification of major accidents as per Rules 5(1) and 5(2).
(ii) Notification of sites as per Rules 7 to 9.
(iii) Safety reports as per Rules 10 to 12.
(iv) Preparation of on-site emergency plans as per Rule 13.
(v) Preparation of off-site emergency plans in consultation with District Collector or District Emergency Authority as per Sr. No. 9 of this schedule.

Figure 12: MANUFACTURE, STORAGE AND IMPORT OF HAZARDOUS CHEMICAL RULES, 1989

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5A(ii): Batteries (Management & Handling) Rules, 2001

These provide for a list of importers approved by MoEF which should be cross checked by customs (Website: envfor.nic.in/divisions/hsm/ndlablist-new.htm) and of units registered as recyclers/reprocessors having environmentally sound management facilities for reprocessing used oil, used lead acid batteries & other non-ferrous metal wastes at Central Pollution Control Board website.

5A(iii): ITC (HS) Classification

As per Chapter 1A of General Notes regarding Import Policy (ITC-HS) Classification of Export and Import Items, Schedule I, import of textile and textile articles is permitted subject to the condition that they shall not contain any of the hazardous dyes whose handling, production, carriage or use is prohibited by the Government of India under the provisions of Section 6(d)(2) of the Environment (Protection) Act, 1986 read with the relevant rule(s) framed thereunder. For this purpose, the import consignments shall be accompanied by a Pre-Shipment Certificate from a textile testing laboratory accredited to the National Accreditation Agency of the Country of Origin. In cases where such certificates are not available, the consignment will be cleared after getting a sample of the imported consignment tested and certified from any of the agencies indicated in Public Notice No. 12 (RE-2001)/1997-2002.
A huge quantity of electronic waste (e-waste) being imported and dumped into the country is posing a serious threat to our environment. Referring to this, the Central Board of Excise and Customs (CBEC) recently issued a circular asking senior customs authorities across the country to avoid clearing such material, if not accompanied by permission from the Ministry of Environment and Forests (MoEF).

The circular also specifies that the import of used computers too would require prior permission from the environment ministry.

Though the circular does not mention the quantity of e-waste imported in the country, customs officials said that on average, it is estimated to be more than 50,000 metric tonnes per annum.

Figure 13: Initiative on curbing e-waste import

The sampling will be based on the following parameters:

(i) At least 25% of samples are drawn for testing.
(ii) While drawing the samples, Customs will ensure that majority samples are drawn from consignments originating from countries where there is no legal prohibition on the use of harmful hazardous dyes.
(iii) The test report will be valid for a period of 6 months in cases where the textile/ textile articles of the same specification/quality are imported and the importer, supplier and the country of origin are the same. (Source: CBEC Manual 2014)

5B: Ozone Depleting Substances (Regulation & Control) Rules-2000


The rules consists of 14 basic rules and 12 schedules which mention different provisions related to the phase out dates, consumption, importation, export of Ozone Depleting Substances, licencing of agencies, use of these substances in different products, and other provisions. The various schedules give the following details:

**Schedule-I : List of Ozone Depleting Substances**
This schedule classifies the ODS in 8 groups on the basis of the Ozone Depleting potential and phase out dates, in accordance with the provisions of the Montreal Protocol.

**Schedule-II : Regulation on production and consumption of group of ozone depleting substances.**

**Schedule-III : Regulation on production and consumption of Group I & Group III ozone depleting substances Specified in column (4) of Schedule I.**

**Schedule-IV : Regulation on consumption of ozone depleting substances on end use basis.**
This schedule defines the phase out dates for different groups of Ozone Depleting Substances. All the ODS in groups except VI & VII have been phased out by 2010. The phase out date for Group-VII (Hydrobromofluorocarbons) is January.01.2015 and for Group-VI (Hydrochlorofluorocarbons) is January.01.2040.

**Schedule-V : List of authorities, their functions and last date for registration.**

**Schedule-VI : List of countries which are party to the 1987 Montreal Protocol.**

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Figure 14: Vigilance of DRI pays off for seizing ODS

DGFT Policy Circular No. 2 (RE-06)/2004-2009 dated 10th April, 2006 Import of Compressors without Ozone Depleting Substances
Understanding Green Customs

**Schedule-VII : Regulation on import and export products containing ozone depleting substances.**

The various products that are made out of Ozone Depleting Substances are:

- Automobile and truck air-conditioning units (whether incorporated in vehicle or not),
- Domestic and commercial refrigeration and air-conditioning/heat pump equipment like refrigerators, dehumidifiers, freezers, water coolers, ice machines, air conditioning and heat pump units, compressors.
- Aerosol products (except medical aerosols)
- Portable fire extinguishers
- Insulation boards, panels and pipe covers
- Pre-polymers

According to Note 2 of Schedule VII, all products mentioned above are excluded from the purview of this Schedule when transported in consignments of personal or household effects or in similar non-commercial situations normally exempted from customs attention.

**Schedule-VIII : Exemption.**

**Schedule-IX : Procedure for Registration.**

**Schedule-X : Records to be maintained and Reports to be submitted.**

**Schedule-XI : Report on production of ozone depleting substances:**

*Form 2* of this schedule records data on *imports* of ozone depleting substances. It is supposed to be files on a quarterly basis.

*Form 3* of this schedule records data on *exports* of ozone depleting substances. It is supposed to be files on a quarterly basis.

**Schedule-XII : End-use declaration.**

The enabling provisions for Customs officials under these rules are:

*Rule 4. Prohibition on export to or import from countries not specified in Schedule VI.*

*No person shall import or cause to import from or export or cause to export to any country not specified in Schedule VI any ozone depleting substance after the commencement of these rules.*

Rule 5. **Ozone depleting substances are to be exported to or imported from countries specified in Schedule VI under a licence** - (1) No person shall import or cause to import from or export or cause to export to, any country specified in Schedule VI, any ozone depleting substance unless he obtains a licence issued by the authority.

(The aforesaid licence has to be obtained from the Director General of Foreign Trade.)

Rule 6. **Regulation of the sale of ozone depleting substances** -
(1) No person shall either himself or by any other person on his behalf or enterprise sell, stock or exhibit for sale or distribute any ozone depleting substance after the date specified in column (5) of Schedule V unless he is registered with the authority specified in column (4) of that Schedule.

(The authority shall be an officer not below the rank of Deputy Secretary in the Ministry of Environment and Forests.)

Rule 10. **Regulation of import, export and sale of products made with or containing ozone depleting substances** -
(1) No person shall import or cause to import any product specified in column (2) of Schedule VII which are made with or contain ozone depleting substances specified in column (3) after the date specified in column (4) of that Schedule unless he obtains a license issued by the authority:
Provided that such products which do not contain such ozone depleting substances shall carry a label to that effect before its import is allowed after the date specified in Column 4 of Schedule VII.

(2) No person or enterprise shall export or cause to export any product specified in column (2) of Schedule VII unless such product carries a label specifying whether or not the product has been made with or contains, as the case may be, ozone depleting substances specified in column (3) of that Schedule, after the date specified in column (5) of that Schedule.

As of date, all of these products can be imported only under a licence issued by the DGFT.

**DGFT Notification No. 47 (R-2013)/2009-2014 dated 24th October, 2013 on increasing the quantity of export of Red Sanders Wood**
The ODS substances are liable to be imported/exported from a country not a party to the Montreal Protocol under Schedule VI with a licence under Rule V and having a label under Rule 10. The custom officer are required to check the country of origin certificate of the importing products with a label along with a licence issued by the DGFT.

The implementation of the provisions of the Ozone Depleting Substances (Regulation & Control) Rules-2000 can be done by the customs authorities by referring to the ITC (HS) Import Policy-2012 and ITC (HS) Export Policy-2012 issued by DGFT.

(A subsequent modification was made to the ITC (HS) Import Policy-2012 under the DGFT Notification No. 09 (RE-2013) 2009-2014)
Understanding Green Customs

Figure 16: Implementing procedure for ODS Rules

- Trade in ODS
  - Permission to import/export
  - Quota to import a particular chemical
    - License by DGFT
    - MoEF Ozone Cell
  - Import of ODS chemical/products
    - Customs
      - Checking the possession of valid license
        - ODS Chemicals
          - Whether import within specified Quota
        - ODS Products
          - Whether products confirm to labelling requirements
5C: Manufacture, Use, Import, Export and Storage of Hazardous Micro-Organisms Genetically Engineered Organisms or Cells Rules-1989

**Cartagena Biosafety Protocol** is implemented as **Manufacture, Use, Import, Export and Storage of Hazardous Micro-Organisms Genetically Engineered Organisms or Cells Rules-1989**.

**Rule 2:** Applicable to the manufacture import and storage of genetically engineered organisms micro-organisms and cells and correspondingly to any substance s and products and food stuffs, etc. of which such cells, organism s or tissues here of form part. It also applies to

a. sale, offers for sale, storage for the purpose of sale, offers and any kind of handling over with or without a consideration;

b. exportation and importation of genetically engineered cells or organism s;

c. production, manufacturing, processing, storage, import, drawing off, packing and re-packing of the Genetically Engineered Products;

Production, manufacture etc of drugs and pharmaceuticals and food stuffs distilleries and tanneries, etc. which make use of micro-organism s genetically engineered micro-organism s one way or the other.

**Rule 7(a):** No person shall import, export, transport, manufacture, process, use or sell any hazardous microorganisms of genetically engineered organism s / substance s or cells except with the approval of the Genetic Engineering Approved Committee, which is responsible for approval of proposals relating to release of genetically engineered organism s and products into the environment including experimental field trials.

**Rule 7(d):** Any person operating or using genetically engineered organism s / microorganisms mentioned in the schedule for scale up or pilot operations shall have to obtain licence issued by the Genetic Engineering Approval Committee for any such activity. The possessor shall have to apply for licence in prescribed pro-forma.

**Rule 11:** Food stuffs, ingredients in food stuffs and additives including processing and containing or consisting of genetically engineered organism s or cells, shall not be produced, sold, imported or used except with the approval of the Genetic Engineering Approval Committee.

--

DGFT Notification No. 02 (RE-2006)/2004-2009 dated 7th April, 2006 on the Procedure related to imports of Sandalwood and Genetically Modified Organisms

Prepared by IRS (Probationers) -65th Batch
In India, Ministry of Environment & forests has been designated as the Competent National Authority and an officer of the rank of Additional Secretary in the Ministry of Environment & Forests has the role of National Focal Point.

**Role of Customs**

If the exporter has to export certain genetically modified organisms, it needs to get approval from a Genetic Engineering Approval Committee, which issues the licence. In case of India, the mandate of GEAC is given to Additional Secretary Ministry of Environment & Forests. This licence needs to be checked when consignment has GMOs. In case of import, the license according to its end-use needs to be verified, that is summarised in the figure as under.

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**Figure 17: Obtaining License through GEAC**

- Genetic Engineering Approval Committee
- Add. Sec (Min of Env & forests)
- License for business in GMOs
Figure 18: Import Procedure for Genetically Modified Products

Rule 17: Export or import to be made in accordance with Export and Import Policy: No person shall export from, or import into, India a Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention except in accordance with the provisions of the Export and Import Policy determined by the Central Government from time to time under the Foreign Trade (Development and Regulation) Act, 1992 and the Orders issued there under.

Chapter IV deals with the registration of persons in case they are engaged or desires to be engaged in production, processing, acquisition, consumption, transfer, import, export or use of any Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention.

Chapter V which deals with the inspection, search, seizures and forfeiture of chemical products.

Rule 19: Power of Inspector to inspect any person or place

(1) An Inspector may inspect –
   (a) any person who is engaged in -
      (i) the production, processing, acquisition, consumption, transfer, import, export or use of any Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention; or
      (ii) the production of any Discrete Organic Chemical including those Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine;
   (b) any place where any Chemical Weapon, Old Chemical Weapon or Abandoned Chemical Weapon is located or Chemical Weapon Production Facility exists, for the purposes specified in the Verification Annex to the Convention.

Rule 26: Power to stop and search conveyance: Any subordinate officer authorised under section 23 may, if he has reason to suspect that any conveyance is, or is likely to be, used for the transport of any goods in respect of which he suspects that any provision of this Act has been, or is being, or is likely to be, contravened at any time, stop such conveyance, or in the case of an aircraft compel it to land and –
   (a) rummage and search the conveyance or part thereof;
   (b) examine and search any goods in the conveyance;
   (c) if it becomes necessary to stop the conveyance, he may use all lawful means for stopping it.

The National Authority for Chemical Weapons Convention is the authority instituted under the act which registers the production, processing, acquisition, consumption, transfer, import, export or use of any Toxic Chemical or Precursor and also ensures protection of environment, health and safety of the people during transportation, sampling, storage or destruction of Chemical Weapons, Chemical Weapons Production Facilities, Old Chemical Weapons or Abandoned Chemical Weapons. The Custom Officials are to check for the registration certificate in case Toxic Chemicals mentioned under the Schedule 1 to 3 are encountered on the borders.

The implementation of the convention is done by the Customs officials can be done by referring to the Appendix-II of the ITC (HS) Import Policy-2012 issued by DGFT.
 Convention on International trade of Endangered Species (CITES) is implemented as Wildlife Protection Act-1972.

Section 12: Grant of permit for special purposes - Notwithstanding anything contained elsewhere in this Act, it shall be lawful for the Chief Wildlife Warden, to grant a permit, by an order in writing stating the reasons thereof, to any person, on payment of such fee as may be prescribed, which shall entitle the holder of such permit to hunt, subject to such conditions as may be specified therein, any wild animal specified in such permit, for the purpose of,

(a) education;
(b) scientific research;
(bb) scientific management;
(c) Collection of specimens
(i) for recognised zoos subject to the permission under section 38-1 or
(ii) for museums and similar institutions;
(d) derivation, collection or preparation of snake-venom for the manufacture of life saving drugs.]

Provided that no such permit shall be granted:
(a) in respect of any wild animal specified in Sch. L except with the previous permission of the Central Government, and
Chapter IIIA in the Wildlife Protection Act deals with the possession of permit from the Chief Wildlife Warden by the party dealing with transport, business or acquiring of the products mentioned under the Wildlife Protection Act, 1972.

Section 17B: Grant of permit for special purpose: The Chief Wild Life Warden may with the previous permission of the State Government, grant to any person a permit to pick, uproot, acquire or collect from a forest land or the area specified under section 17A or transport, subject to such conditions as may be specified therein, any specified plant for the purpose of:
(a) education;
(b) scientific research,
(c) collection, preservation and display in a herbarium of any scientific institutions; or
(d) propagation by a person or an institution approved by the Central Government in this regard.

Section 43: Regulation of transfer of animal etc. (1) Subject to the provisions of sub-section (2), (3) and (4), a person (other than a dealer) who does not possess a certificate of ownership shall not:
(a) sell or offer for sale or transfer whether by way of sale, gift or otherwise, any wild animal specified in Schedule I or Part II of Schedule II or any captive animal belonging to that category or any animal article, trophy, uncured trophy or meat derived therefrom;
(b) make animal articles containing part or whole of such animal;
(c) put under a process of taxidermy an uncured trophy of such animal; except with the previous permission in writing of the Chief Wildlife Warden or the authorised officer.

Section 43(3): No person who does not possess a certificate of ownership shall transfer or transport from one State to another state or acquire by transfer from outside the State any such animal, animal article, trophy or uncured trophy as is referred to in sub-section (1) except with the previous permission in writing of the Chief Wildlife Warden or the authorised officer within whose jurisdiction the transfer is to be effected.


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**Section 51: Penalties:** When any person is convicted of an offence against this Act, the Court trying the offence may order that any captive animal, wild animal, animal article, trophy, [uncured trophy, meat, ivory imported into India or an article made from such ivory, any specified plant or part or derivative thereof] in respect of which the offence has been committed, any trap, tool, vehicle, vessel, or weapon used in the commission of the said offence be forfeited to the State Government and that any licence or permit, held by such person under the provisions of this Act, be cancelled.

The exporter needs to apply for a permit for exporting the item under any of the schedule under the CITES after getting an import permit from the management authority of the importing country. It is applied to the management authority (Wildlife Crime Control Bureau) instituted under the CITES. This agency coordinates with the scientific authorities like Zoological Survey of India, Botanical Survey of India or Wildlife Institute of India for granting permission for the required trade. This is forwarded to the state agency under Chief Wildlife Warden, who transmits it to the exporter. The custom official checks this permit in case of trade in endangered species. In case the species are not covered under the Wildlife Protection Act-1972, the same can be looked into in the Biodiversity Act-2002.

As Customs officers, lookout should be of flora and fauna, both live or other restricted or prohibited items of CITES, that have been incorporated into *ITC (HS) Import Policy-2012* & *ITC (HS) Export Policy-2012* issued by DGFT.

**Procedure to be followed after Interception of goods in contravention to Green Customs**

Customs authority keeps a watch on such suspect consignment.

(i) Once an Import shipment containing suspect goods is intercepted, the Customs would suspend clearance thereof and intimate the relevant agency, which would be required to request for hundred percent examination and submit to formally join the proceedings within the prescribed timelines.

(ii) The Customs would then notify the Importer as well as Customs House Agent to be present to facilitate examination of goods. The agency has the option to request for withdrawal of samples and getting the same examined,
tested and analyzed on his own in order to determine whether the goods violate the provisions of Green Customs.

(iii) Once a determination has been made that the suspected goods violate the said provisions, then Customs authority would seize the infringing goods under section 110 of the Customs Act, 1962.

(iv) Later, giving the opportunity of personal hearing to the importer and right holder, the adjudication authority would pass an appealable order in original -ordering for absolute confiscation of goods under Section 111 (d) of the Customs Act, 1962 read with relevant circulars as discussed in report, and imposing penalty on the importer under section 112 of the Customs Act, 1962.

(v) The goods absolutely confiscated are to be removed or destroyed as per the case, on finalization of legal proceeding.
It is seven years since the United Nations General Assembly declared the illicit trade in flora and fauna a form of serious transnational organised crime. Yet many countries affected by wildlife crime have been slow to invest in an appropriate enforcement response to identify and apprehend the key individuals who control the trade.61

Typically, wildlife crime is seen as a low priority for the professional enforcement community. However, the high profit - low risk (of being detected, apprehended and convicted), nature of wildlife crime makes it attractive and the proceeds of wildlife crime may even be used to finance other forms of serious crime. This alone should stimulate agencies that are concerned with socio-economic stability, security, law and order to be more engaged in stopping wildlife crime.

Aside from the loss of the endangered species that are targeted for their body parts, the communities that live around them are also robbed of a potential source of income through wildlife tourism. Wildlife crime therefore undermines global efforts to alleviate poverty and achieve the Millennium Development Goals.

The international illegal trade in Asian big cat skins (tiger, leopard, snow leopard) is largely driven by the markets of China, where skins are used for home decor, clothing, and prestigious gifts or non-financial bribes. Traders report that visitors to China also purchase skins and smuggle them out in their luggage with some claiming to have used domestic and international post to transport skins beyond the primary trade hubs.62,63

According to traders, most of the tiger and leopard skins for sale across the Tibetan plateau and western China have been sourced from India and Nepal. This is corroborated by information from

Figure 21: Case study on wildlife crime
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seizures in India and Nepal. Skins are trafficked across Himalayan borders in trucks, by pack animals and by individuals. Many of the trails used are ancient trade routes, some in well-known black-market areas along the Indo-Nepal border. Traders also report the complicity of government officials at border areas as well as at the retail end. One tiger skin trader in China stated that his sources in the local Forestry Bureau alert him in advance of any market inspections or raids.

Given the diffuse markets, the porous borders and the existence of generally lawless areas, it is an immense task to police the trade in a traditional sense. However, the intelligence that could be drawn from skin seizure incidents in India, Nepal and China would be sufficient to support targeted enforcement efforts focusing on the most influential members of the trade chain. Sources of intelligence includes signatures on the back of skins, information from the diaries and phones of those arrested at the scene, hotel and vehicle registration information, and analysis of historical data.

Collating, analysing and disseminating intelligence is essential. Despite existing mechanisms like Interpol, CITES and WCO, the data that is shared nationally and internationally is all too often a basic report of an isolated seizure incident. Rarely are joint enforcement initiatives launched or actionable intelligence exchanged.

The illustration on the following two pages depicts a transnational criminal network engaged in tiger and leopard skin trade over a minimum of eight years." Some of the suspects have been arrested and have gone on to commit further offences on bail, whilst others are wanted in association with cases but have avoided detection. None of the pending case court proceedings have been completed and some of the individuals have absconded.

At the time of the seizures, the cases were treated in isolation (except the Ghaziabad-Khaga cases), but retrospective analysis of associations between the individuals reveals a different story. Had further investigations been conducted following the Ghaziabad and Khaga cases with profiles of suspects and associates compiled, perhaps swifter progress would have been made in disrupting a network that is known to be responsible for the significant trafficking of tiger and leopard products.
The i2 chart below illustrates a fraction of the links that connect these individuals to big cat seizures spanning 16 years.

**Figure 22:** Figure showing criminal network and Seizure
Chapter 6: Problem Areas & Solution

PROBLEMS:

India has to face a lot of problems in the process of implementing these conventions, viz:

• The criteria for ESM needs management expertise, which due to institutional capacity constraint, we lack.
• Restrictions often promote illegal trade and customs officials are often incapable of detecting unauthorised goods, both due to lack of technical expertise and ingenious ways adopted by the traders.
• Basel ban on recyclable hazardous goods encourages informal sector recycling and can lead to dangerous situations as in Bhushan Steels and scrap case.
• India itself is the major producer and exporter of pesticides, hence Rotterdam and Stockholm conventions create a trade barrier.
• The provision for yearly reporting to Secretariats of Conventions require specific training and guidance.
• Ban on scrap and recyclables will lead to increased imports of virgin ores and would in turn increase waste generation, which again is environmentally unsound.

Despite these constraints India has adopted a well established legal framework to enforce these conventions. India has no ratified Basel Ban on Import of recyclables but has indirectly implemented it through regulatory procedures and import restrictions. Also there are:

• No specifications on E-Waste anywhere in international conventions.
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- Lack of technical expertise in Customs Officers
- Ingenuity of violators
- Lack of funds and new scientific detection equipments
- Lack of Information Technology Infrastructure
- Increasing volume of trade makes detection difficult

SOLUTIONS

- Specific regulations on new fronts like e-waste needed to suit requirements of Custom officials.
- Frequent training programs for inservice officers
- Better coordination with international intelligence agencies
- Mechanised and Modernised scanning of goods
- Better information network within India among all custom exit / entry points
- Utilization of satellite services to track illegal trade
- Efficient reward and stringent punishment system for custom authorities

Figure 23: Recommendations for enforcing Green Custom
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List of Annexures

- Relevant International Conventions/Treaties
- Foreign Trade (Development & Regulation) Act-1992
- Wildlife Protection Act-1972
- Manufacture, Storage and Import of Hazardous Chemical Rules-1989
- Ministry of Agriculture-Banned Pesticides
- Hazardous Waste (Management, Handling and Transboundary Movement) Rules-2008
- Ozone Depleting Substances (Regulation & Control) Rules-2000
- Manufacture, Use, Import, Export and Storage of Hazardous Micro-Organisms, Genetically Engineered Organisms or Cells Rules-1989
- ITC (HS) Export Policy-2012 on CITES
- ITC (HS) Export Policy-2012 on Montreal Protocol
- ITC (HS) Import Policy-2012 on CITES
- ITC (HS) Import Policy-2012 on Chemical Weapons Convention
- ITC (HS) Import Policy-2012 on Montreal Protocol
- Relevant DGFT Notifications
- Relevant CBEC Circulars
- Relevant DGFT Circulars

**NOTE:** The above mentioned websites, bibliography and sources have been used for purpose of instruction only and for non-commercial basis. The excerpts from them have been included in the report for better understanding.