

Toxic containers in Manila



Containers at a Yard.

THE SITUATION

It has been an unwelcome part of the Containerisation of Shipping that the unscrupulous have exploited this (otherwise very positive) development to ship all manner of contraband, and even smuggle people.

Recent events in Manila, the Philippines, have thrown a spot light on the problem of mis-declaration of container contents as a way of dumping waste in developing nations.

It was reported that in January this year, a shipment of 50 containers was intercepted at the Port of Manila after being allegedly found to contain waste materials instead of the described "scrap plastic materials for recycling".

The shipment originated from Canada and as both Canada and the Philippines are signatories to the Basel Convention, this allegedly toxic shipment was illegal.

The Association would like to remind Members of the risks in the Container Trade with respect to the (possibly unknowing) transport of waste and hazardous materials.



Container shore side operation



The Philippine Bureau of Customs investigating a container of imported waste materials

Philippine Bureau of Customs

Source: National Post, 'Mountain of Vancouver garbage that ended up in Manila has Philippines demanding Canada repatriate its junk', published October 15, 2014

THE BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTE AND THEIR DISPOSAL

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (commonly known as The Basel Convention) was adopted on 22 March 1989 in response to increasing environmental awareness and following concern over the importation of toxic containers to Africa and other parts of the developing world.

It was thus designed to reduce the risks arising from the transboundary movements of hazardous and other wastes from developed to less developed countries. These risks include those arising from the transportation, handling, disposal and recycling of waste. The Convention allows each country, and particularly less developed countries, to protect their local environment and regulate transboundary movements of hazardous wastes.

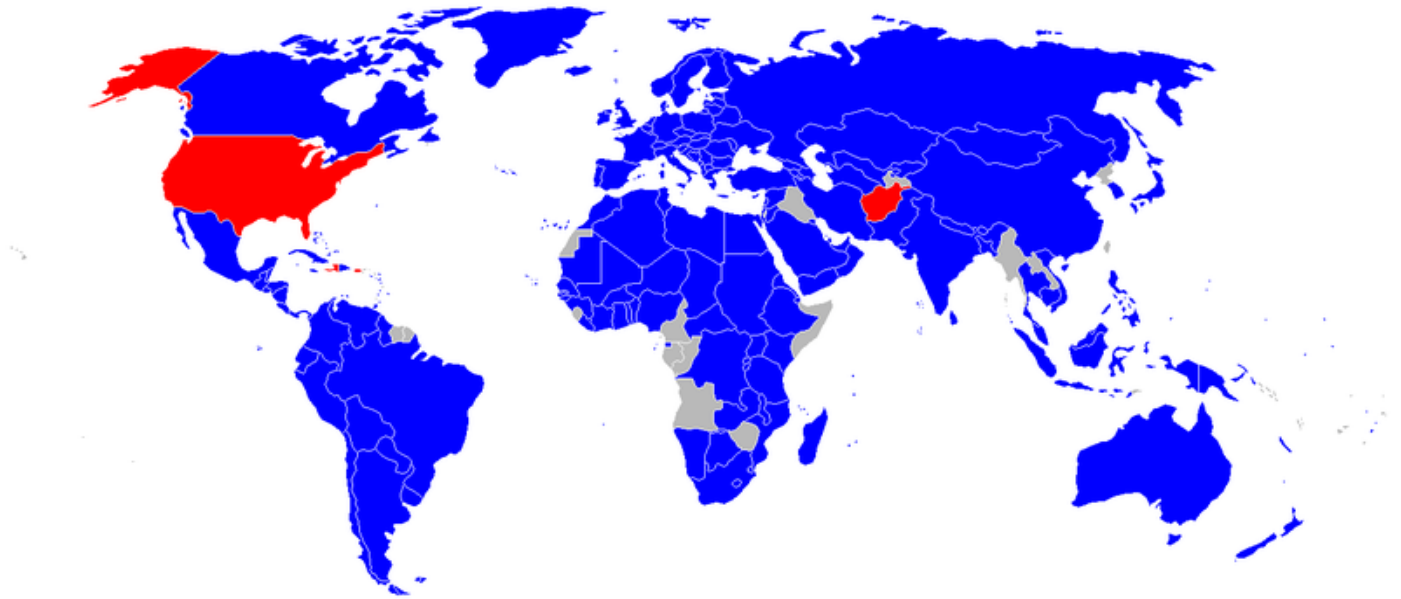
Under the Convention, there are strict requirements for notice, consent and tracking of waste materials across countries. The exporting country is obliged to get a written approval from the importing country before a movement of hazardous waste can be legal. However, each party has the right to ban any import or export of hazardous or other wastes.

If a transboundary movement of hazardous wastes have been carried out illegally (in contravention of articles 6 and 7 of the Convention), the Convention imposes a duty upon one or more of the States involved to safely dispose the waste by either re-importing it into the country of origin or by other means (as per article 8 and 9 of the Convention).

In such a situation, the exporting country, and in particular the Carrier (in the first instance), is likely to bear the responsibility to ship back the waste materials if the receiving party refuses to accept or dispose of them. However, with some countries not having domestic laws that compel the shipper to return the containers of waste to the country of origin, it may be a problem that needs to be solved at the higher levels of Government.

The Convention also states that the illegal movement of hazardous waste is criminal but fails to incorporate any enforcement provisions.

As of February 2014, 180 states and the European Union are parties to the Convention. The United States has signed the convention but not ratified it.



Parties to the Basel Convention

Blue – signed

Red – signed but not ratified

Grey – not a signatory

LIABILITY FOR MIS-DECRIBED CARGO

The mis-description of cargo is a potential risk, especially when dealing with container vessels.

There are several reasons why cargo may be misdescribed – to secure a lower freight rate, to comply with terms and conditions of a contract of sale or to evade restrictions imposed by Customs or national authorities, including smuggling attempts. A shipper may also at times unintentionally misdescribe a cargo.

According to Art. 3 Rule 5 of the Hague Visby Rules and Article 17 Rule 1 of the Hamburg Rules, the shipper is deemed to guarantee the accuracy of the information provided by him.

When cargo is mis-decribed, the legal responsibility thus falls on the shipper. The Hague and Hague Visby Rules (Art 4 Rule 5(h)) provide that the carrier or ship is not responsible for any loss or damage for goods if they have been misstated by the shipper in the bill of lading.

However, despite the carrier having a right of reimbursement for any losses from the shipper or charterer, in reality the shipper or charterer may not have the financial resources to reimburse the carrier or may be half the world away and not easily pursued.

Furthermore, even if there is a right of recourse against the Shipper, this does not necessarily protect the Carrier from being held primarily responsible by the authorities in the country where the container is discharged, or arrived at.



A laden box ship at berth

LOSS PREVENTION ADVICE

If Members are offered cargo for shipment which may consist of chemicals and / or waste materials, it will be important to verify that these are being legitimately exported from the load port and legitimately imported in to the discharge port country. Legitimate shipments, subject to ensuring the cargo is carried safely, are unlikely to present much of a practical problem.

It is usually the carriage of deliberately mis-declared / unlawful shipments which place Carriers in to a difficult position.

The Association would recommend that Members always make immediate contact should any allegation be made with respect to a Box containing any contraband, mis-declared or otherwise illegitimate contents.

CREDITS

By Nikita Lulla

Claims Assistant, Skuld Hong Kong

The Association is grateful to Pandiman Philippines for assisting with this Bulletin.

For further information, Members are asked to contact the Association : lossprevention@skuld.com

Christian Ott

Vice President Head of Claims, Skuld Singapore Branch

Loss Prevention and Recurring Claims Team Leader