

*ENVIRONMENTALLY SAFE DISPOSAL OF
INTELLECTUAL PROPERTY INFRINGING PRODUCTS:
THE EXPERIENCE OF THE ITALIAN CUSTOMS
ADMINISTRATION*



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LEGAL FRAMEWORK

- Customs is competent at the border in relation to IP infringing goods that are linked to a customs regime (importation, exportation, transit).
- The measure taken by customs are governed by different rules. Two cases:
 - **Administrative procedure**
 - **Criminal offence**

CRIMINAL PROCEEDINGS

- According to the Italian Criminal Code, the production, sale or importation to the Italian market of IP infringing goods is considered a crime (Articles 473-474).
- The Code further states that an order is to be made for the confiscation of goods which were used or aimed at perpetrating the crime as well as of those goods which represent the object, product, price or profit of the crime, regardless of their provenance.
- The destruction of IP infringing goods follows proceedings which, in some cases, can take several years to complete.
- There is a mechanism to avoid this problem, allowing for the destruction of goods before the end of the judicial process as long as a range of samples are collected and stored prior to the destruction.

ADMINISTRATIVE VIOLATIONS

- Purchases made by private individuals for personal use are considered administrative violations. Such acts are punishable with a fine ranging from 100 to 7000 euros (a typical case would be buying an IP infringing product from a street seller).
- Judicial restricted guidelines issued by some public prosecutor's offices, clarified that this rule is also applicable to the importation of IP infringing goods (small consignments), transported by express courier and postal service if:
 - 1- the consignee is an individual and non-recurring importer;
 - 2- the maximum number of individual units to be imported for personal use is 15-20.
- The explosion of the e-commerce has increased this type of transactions. It's now much easier to purchase counterfeit goods directly from the producer, thus reducing the risk of customs seizure.

SEIZURE & STORAGE

- In both administrative and criminal cases, customs is closely involved in seizing, storing and destroying IP infringing goods.
- The availability of space in customs warehouses is a crucial element for economic operators. Space occupied by seized goods represents a cost that will depend on the duration of the criminal or administrative proceeding.
- In criminal cases the destruction of IP infringing goods follows proceedings which, in some cases can take several years to complete.

DISPOSAL PROCEDURE

- Once goods are confiscated, either through an administrative proceeding or by a court order, Italian customs is entitled to destroy the IP infringing goods as soon as possible.
- In administrative procedures, once proceedings have been completed, the customs authority is the competent authority to manage the destruction of goods that are subject to a customs procedure. In criminal procedures, the destruction authorization is granted by the Court following the judgment.
- In both cases, the customs authority is involved as administrative authority or judicial police.
- Italian customs is further responsible for ensuring that seized products are disposed of in compliance with environmental legislation. Different procedures are foreseen for different types of waste, and disposal procedures are becoming more technically complex and onerous.

DONATION

- With a view to minimizing environmental impact, trademark counterfeit goods allowing for the removal of the infringing signs may not be destroyed but instead donated to charity.
- While it is theoretically possible to also dispose of goods seized during administrative procedures by way of donations, in practice, donations arise in criminal procedures in relation to infringing clothes or shoes and are ordered in the judgment of the criminal court. The court judgement usually also identifies the receiving charity organization. The indicated organization, under the surveillance of customs, is charged with the task of removing the infringing signs.
- Infringing goods are prevented from re-entering the marketplace, detailed controls are usually arranged with the benefiting charity institution prior to a donation.
- Where the removal of the trademark infringing signs is impossible or impractical, the destruction of the goods must be arranged.

HAZARDOUS AND SPECIAL WASTE

- Waste is hazardous when it is flammable, harmful, toxic, carcinogenic, corrosive, infectious, mutagenic, or acts as an irritant.
- According to the experience of Italian customs, special waste is most prominently represented by lithium batteries and pharmaceuticals.
- Where IP infringing goods represent hazardous or special waste, customs will select a company that has specific capacities and knowledge to adequately destroy the type of waste at hands. Customs will also drive the goods from the border to the company and oversee the destruction procedure.

Recyclable & non recyclable products

- Recycling IP infringing products represents two advantages, namely the creation of employment and the mitigation of costs.
- As part of their role, customs officers face the often difficult challenge of identifying the composition of counterfeit products; this is crucial in order to determine the correct and most advantageous means of disposal.
- Customs officers check that, where possible, all products are properly categorized as recyclable or non-recyclable. Recyclable products are mostly electronics, plastic and metal products. Only non-recyclable products are destined for complete destruction, usually through burning.
- There are no open air incinerators in Italy, all destruction structures are closed devices and equipped with exhaustive fume control.
- In compliance with environmental standards, over the last few years the percentage of burned products has decreased while the share of recycled and donated products has increased.

CONCLUSION

- For Italian customs, the environmentally safe disposal of IP infringing goods does not represent a particular problem.
- However, costs related to the management and disposal of the goods are a key issue.
- Following the conclusion of often lengthy criminal proceedings, it is difficult to charge the costs to the importer because of the significant time period between the moment of identification of the IP infringing goods to the date of their destruction – a period that, in some cases, can take several years.

Thanks for the attention

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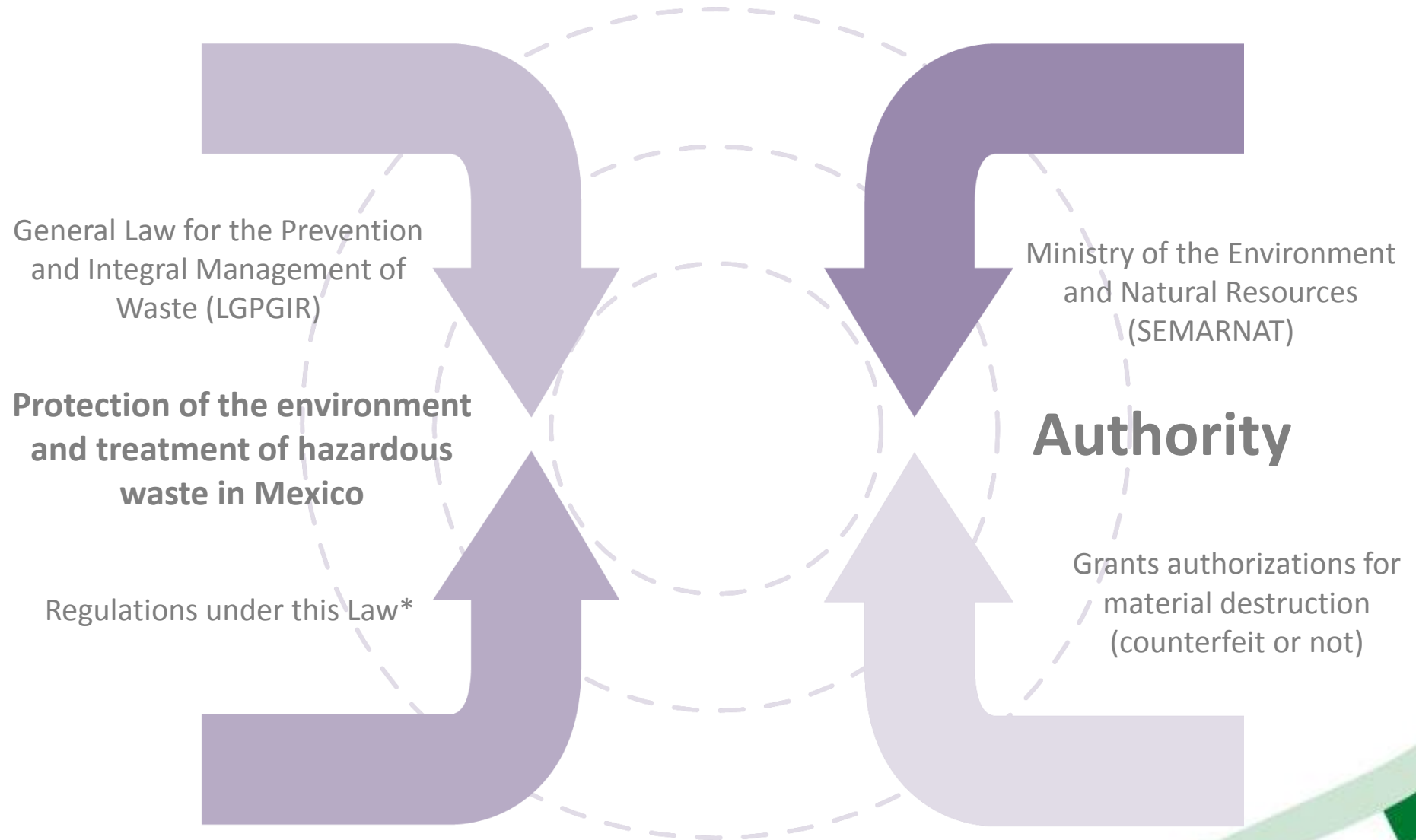
*National Experiences with the Environmentally Safe
Disposal of Intellectual Property Infringing Goods:
Mexican Case*

Miguel Ángel Margáin
September 4-6, 2017

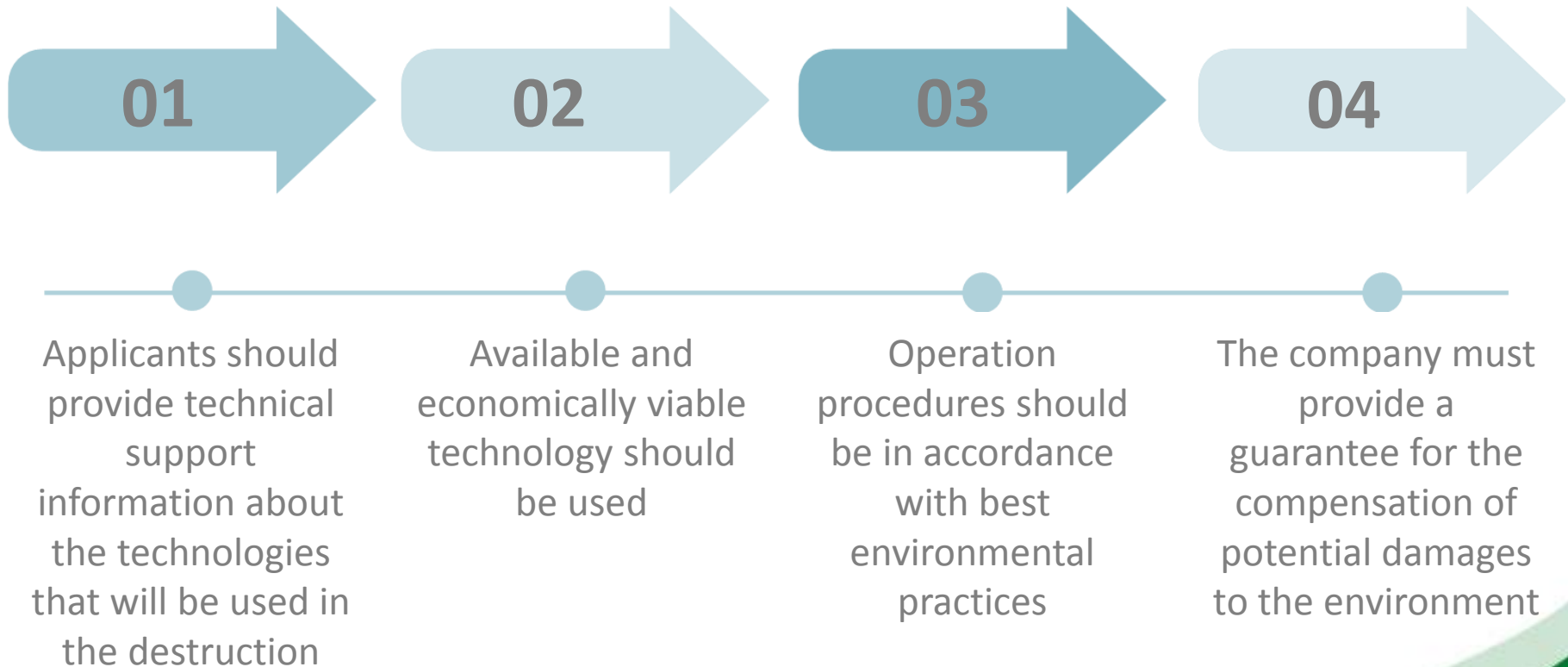
1) Domestic legislation in Mexico on the destruction of infringing merchandise



Mexico's compliance with TRIPS obligations



Procedures



Ministry of
Environment and
Natural Resources



Ministry of
Communications
and Transport

Competence to issue technical regulations (NOMs)

Products of different
nature



E.g. Medicines → General Health Law

2) Good Practices in Mexico



Massive destruction at the Mexican Institute of Industrial Property

- Co-organized by AmCham
- Destruction of 4 million pirated and counterfeited products
- Wastes were used to make broom filaments



Other measures in favor of the environment



Online
Trademark



Online
Inventions



Online
notification