

Negotiating Customs and Environmental Cooperation

Bridging the Customs and Environment Gap

Deborah A. Kopsick

Office of Enforcement and Compliance Assurance

U.S. Environmental Protection Agency

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The International Framework

- The shared basis for cooperation is international law - the same legal obligations govern all nations that are Parties to Multilateral Environmental Agreements (MEAs)
- Many MEAs require prior informed national consent (PIC). For these environmental communications, new international channels or links must be created



The National Framework

We assume MEAs ratified and national law enacted

What are challenges faced and lessons learned?

First is that neither “COs” or “EOs” alone can do the job; they must cooperate. Abbreviations here:

- “EO” means Environmental Officer of any non-Customs Ministry having import/transit/export responsibility for environmental reasons
- “CO” means Customs Officer



International Recognition of Need for Enforcement Cooperation

- UNEP Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements (MEA)
- UNEP Green Customs Guide to MEAs
- European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) - Seaport Project Report



UNEP Guidelines on Enforcement of MEAs (2002)

“Coordination ... among various enforcement agencies, environmental authorities, ... customs and other relevant officials, ... may include formal agreements such as

- **memoranda of understanding ...**
- rules of procedure for communication...
- formulation of guidelines....”



UNEP Green Customs Guide (2008)

- “...illegal traffic require[s] the co-operation of all enforcement agencies at the national level.”
- “Customs officers cannot combat illegal traffic alone ... (they) have to rely on the relevant national environmental agencies to provide them with the appropriate legal and technical information”
 - “National environment...and enforcement agencies need the support of the Customs agencies.”




EU's IMPEL Seaport Project Report (2006)

“International Cooperation in Enforcement. . . .”

“Current national enforcement structures are sometimes barriers for effective enforcement, and cooperation with police and customs is in some countries still problematic.


“...national organisations involved should...build a framework for cooperation between inspectorates, customs and police.

“**Cooperation** between those inspectorates could be more formalised by e.g., **Memoranda of Understandings (MoUs)**.”



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Elements of An
Inter-Ministerial Agreement





Inter-ministerial Agreement or Memorandum of Understanding

Common Usages:

- Defines relationships among different government commands where mission success requires their joint or shared effort
- States executive policy and orders/assigns official duties (in the absence of controlling legislation)



Legal Implications

- A formal alternative to oral “gentlemen’s” agreement
- Generally not legally enforceable upon government (creates no outside rights)
- Used within government as basis for performance assessment, reorganization, and budgeting



Stages of Cooperation: Useful Steps

- Identify ministries, key personnel with environmental enforcement responsibilities, establish relations
- Discuss, develop means of cooperation informally
- Negotiate, sign, implement Memorandum of Understanding (MOU) to provide for enforcement cooperation among ministries



Essential Elements of a MOU

IMPLEMENTATION - How will we work together to:

- Conduct inspections & import/export control measures?
- Handle non-compliance?

PLANNING - How will our we work together to:

- Set priorities?
- Develop an enforcement plan?
- Evaluate our joint efforts?
- Ensure that our staff are appropriately trained?

ANNEXES – How will we handle very detailed topics, individualized needs and difficult issues?



Implementation Basics

- Approval of shipments
- Review of declarations
- Physical inspections
- Investigation and legal action





Joint Implementation

Import/Export Controls & Inspections

- Labeling/licensing/shipment approvals
- Targeting, pre-screening, intelligence-gathering & data analysis
- Compliance monitoring using document and physical Inspections & laboratory analysis

Non-Compliance investigation

- Administrative and criminal enforcement
- Case development for prosecutor



Planning Checklist

- Identification of Enforcement Priorities
- Creation of Annual Enforcement Plans
- Annual Evaluation of Collaboration Efforts
- Annual Report of Enforcement Results



Generic Elements of an Inter-Ministerial Agreement

1. Purpose
2. Annexes (introduced and named only)
3. Legal Authorities
4. Identification of primary contacts/Responsible Officials
5. Specific activities and logistics of implementation (administration and operations)
6. Communications and confidentiality
7. Resolution of disputes
8. Effect, modification and termination
9. Signatures and date
10. Annexes (full text)



Annexes and Side Agreements

All Ministries sign framework agreement, with possible:

1. Annexes [for all Ministries] on particular topics
2. Annex [for one Ministry] of Reservations and Special Provisions for particular Ministry
3. Annex [for two Ministries] as “Side Agreement” between them that underlies framework agreement

(Lesser alternative: particular Ministry’s completely separate agreement with Customs)



Topical Annexes – Examples

- “Shipment Inspections Annex”
- “Customs Collection and Delivery of Declarations Annex”
- “Law Enforcement Investigations Annex”
- “Communications Annex”
- “Joint Training Annex”
- “Annex Listing Resolutions of Issues to Improve Cooperation”



Resolution of Disputes or Inconsistencies Within the Agreement

- Every effort to resolve at field level
- Escalated by referral to headquarters level
 - “Responsible Officials” of each Ministry listed in this framework Agreement
 - if necessary, Ministers themselves will resolve the issue.
- The “Responsible Officials” will:
 - express each decision in writing, and
 - list all decisions in “Annex Listing Resolutions of Issues to Improve Cooperation” attached to framework Agreement




Example Agreements

- There is more than one way to develop these agreements
- Agreements should be customized to fit the needs of the participating ministries
- Example template:
- Signed Inter-ministerial Agreement for El Salvador:



Interactive Exercise: Establishing Communications

- Issues, challenges and frustrations
- Things that could go better in your own ministry
- What you expect of the other ministry
- Ideas for reform that will lead to a more effective working relationship between ministries
 - Short, medium and long term actions
 - Resources needed
 - Partnerships needed



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The Negotiation Process



Advance Preparation

- Attendees with
 - Authority to negotiate
 - Expertise in subject
 - Skill in negotiation
- Draft text on hand
- Developed initial and fall-back positions
- Explanations
- Known approval process





Course of MOU Negotiations

- Opening plenary session
- Working groups
- Regrouping in plenary
- Delegation meetings
- More working groups
- More delegation meetings
- Closing plenary
- Celebrations!





Self-Selected Subgroups for Specific Sections or Issues

- Lengthy or detailed text
- Immediate or troublesome issues
- Perhaps of interest only to some, but not all





Some Negotiating Tips

- Share/understand institutional culture and language of others
- Make inter-dependence a factor
- Come prepared with options, and if you can, find out in advance what other side wants





Some Negotiating Tips

- Make unilateral concessions
- Be clear in your own mind and explain your needs
- Don't be confrontational





Always Keep in Mind the Goal Shared by All

- Protection of ports through effective enforcement of environmental regulations, and meeting international commitments
- Reaching practical, written agreement is preferred.





If not now, then maybe later...

If this is not possible now:

- Unwritten, oral understandings among key players are still helpful
- After some experience cooperating, piece-by-piece an agreement may be written over time



The Process Goals – Fairness and Respect

Good process makes good agreement:

- Future operations will be more successful and at lower cost
- Effort in planning now will reduce or save future implementation problems
- less friction and less confusion during joint operations



Cooperation is Key to Success





Contact Information

Deborah Kopsick
U.S. Environmental Protection Agency
kopsick.deborah@epa.gov
202-564-2142