

# Negotiating Customs and Environmental Cooperation

## Elements of An Inter-Ministerial Agreement



# International Recognition of Need for Enforcement Cooperation

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- 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)

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“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)

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“...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 (2004)

“Illegal Waste Shipments to Developing Countries....”

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“There are huge differences in the way relevant enforcement authorities cooperate with other authorities (like police and customs services)

“[Environmental] enforcement organizations on national level...should take the lead in... making **formal agreements on cooperation and information exchange (MoU's)** with customs and police....”

# EU's IMPEL Seaport Project Report (2006)

“International Cooperation in Enforcement...”

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“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)**.”

# Stages of Cooperation:

## Useful Steps

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- ❑ 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

# Memorandum of Agreement

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

# Essential Elements of a MOU

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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?

# Joint Implementation

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## **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

# Annexes and Side Agreements

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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)

# Resolution of Disputes or Inconsistencies Within the Agreement

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- 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

# Exercise 1

## Establishing Communications

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- ❑ 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