

Improving cooperation between customs and environmental agencies to prevent illegal transboundary shipments of hazardous waste

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Abstract

Lucrative and dangerous, the illegal traffic of hazardous waste through seaports poses grave risks to human health and the environment. Despite the challenges of detection and detention, customs and environmental agencies tasked with protecting global seaports typically work in isolation, missing out on critical opportunities to enhance their effectiveness through collaboration. This research examines the causes of such administrative segregation and, through surveys of successful collaborative programs in Belgium, Japan, Kenya, and the Netherlands and a review of previously published literature on Nigeria, develops a spectrum of inter-agency cooperation. Identifying three distinct cooperative frameworks, ranging from formalistic to *ad hoc*, this research proposes that environmental and customs officials in various political, cultural, and legal environments can pursue vastly differing yet effective paths to cooperation in environmental enforcement at seaports.

1. Background

Many hazardous waste shipments enter countries, both legally and illegally, through seaports. Unless these shipments are properly identified and handled, serious consequences to human health and the environment may occur. It is important that illegal shipments be detected and detained, with the ultimate goal being disruption of the illegal waste trade. Cooperation between environmental and customs agencies can enhance enforcement activities at seaports and this is one of the primary goals of the International Network of Environmental Compliance and Enforcement's Seaport Environmental Security Network (Seaport Network). There are multiple forms of institutional interaction and inter-agency cooperation can take numerous forms. Through surveys of environmental officials participating in the Seaport Network from Belgium, Japan, Kenya, and the Netherlands and a review of previously published literature on Nigeria, three distinct cooperative frameworks are identified. These mechanisms range from less formal approaches, based on personal relationships, to legally mandated processes and include the use of collaborative networks, Memoranda of Understanding and legal requirements. This research does not imply that these are the only possible ways to approach inter-agency relationships but that there are numerous ways to successfully increase the effectiveness of environmental enforcement at seaports through cooperation.

2. Introduction to the issue

In 2006, 10 people were killed, 30,000 injured, and 100,000 sought medical attention in Cote d'Ivoire when an illegal shipment of waste containing hydrogen sulfide was imported through the port of Abidjan

and deposited in several areas throughout the city (Voice of America 2009). In today's global economy, the illegal transit of hazardous waste from developed to lesser developed countries is big business. It costs waste disposal companies less money to illegally export hazardous waste than to properly dispose of such waste within their own national borders. Sadly, as the Cote d'Ivoire episode illustrates, the illegal waste imports can have dire health effects in the recipient country. Many of these shipments enter through seaports where environmental enforcement and customs officials provide the first line of defence against entry of unwanted hazardous substances.

In some countries, environmental and customs officials are cordial strangers operating separately to satisfy their responsibilities. Yet in an age of shrinking enforcement budgets, international observers agree improving inter-agency collaboration between environmental and customs agencies is not merely an aspirational goal but a vital aspect of effective border management. The United Nations Environment Program (UNEP) has warned that neither customs nor environmental agencies can combat illegal trade alone, they need to rely on and coordinate effectively with each other (UNEP 2006). In the European Union (EU), the Network for the Implementation and Enforcement of Environmental Law – Transfrontier Shipments has warned that in many countries cooperation is poor and relies on personal contacts which may be temporal in nature (IMPEL-TFS 2004). Communication, cooperation and coordination were specifically identified as needs during surveys of environmental enforcement officials in West Africa and South Asia (Kopsick 2011).

Border functions – such as customs, immigration, agriculture, and police – and the number of agencies that are responsible for their management vary according to national priorities, geography, and resources (Polner 2011). There is a 'need for public agencies to adopt shared solutions across organisational boundaries [with] successful innovation in problem solving occurring at the intersection of distinct ways of thinking' (Quirk 2011, p. 45).

When multiple agencies need to work together to accomplish a goal, cooperation is in their best interests. Ostrom (1990), who was awarded the Nobel Prize for Economics in 2009 for her research in collective action, determined through field studies of communities that share common resources that self-organised, self-imposed solutions can be more effective than a government imposed regulatory approach. Communication, trust and a sense of a shared common future are key factors to developing a self-organised cooperative relationship (Ostrom 1990).

A number of factors including differing agency cultures, conservation of agency resources, and gaps in regulations can impede inter-agency cooperation. One of the chief impediments to strong coordination between customs and environmental agencies is the difference in agency mission (Heiss 2011). Customs agencies are responsible for the collection of tariffs and fees at ports of entry, the protection of intellectual property through the interdiction of counterfeit goods, the prevention of dangerous goods from entering the country, and the prevention of illegal immigration. Border security and the identification and mitigation of terrorist threats are also major responsibilities of Customs. Environmental agencies, on the other hand, are responsible for protection of human health and the environment, accomplished through the enforcement of environmental laws.

There are two forms of institutional interaction. Vertical relationships occur between levels of an agency whereas horizontal interactions occur between the same levels in various agencies. It is these horizontal interactions, where inter-agency cooperation and communication occur, that are the focus of this paper. Inter-agency cooperation can take many forms, including *ad hoc* personal contacts, coordinated efforts driven by memoranda of understanding² or legislation, or regional networks. The value of personal relationships can be critical to the success of cooperative activities. In countries that do not have formal institutionalisation of cooperation processes, it is often personal relationships, built over time and developed on trust, that enable successful interaction between agencies. While periodic personnel turnover makes relationship-based cooperation tenuous, cooperation may evolve, starting out as informal personal relationships and developing into formalised, sustainable agreements. The opposite may also

be true, where the cooperation starts out as the result of a formal requirement and develops into a way of doing business among environmental professionals with the original document no longer a key driver of the process.

Cooperative relationships among environmental enforcement officers in different agencies are explored in a number of contexts to better understand the options that exist for the development and sustainment of these relationships. This paper presents the results of independent research while also examining existing scholarly research. During July-August 2012, we conducted detailed surveys of the government environmental ministry officials in four countries working in different manners to improve cooperation between its environmental and customs agencies. A fifth country, Nigeria was also included because their approach to inter-agency cooperation incorporates a distinct mechanism to facilitate cooperation among numerous government entities and may serve as a useful model for other countries. Information on Nigeria's approach was obtained from published literature.

The surveyed nations were selected to represent a variety of cultures, levels of development, and political organisation. As best practices in cooperation are most easily adopted by countries with similar institutional structure and competencies, readers who are policymakers or agency managers can examine strategies presented to discover techniques applicable to their own unique climate.

From the viewpoint of environmental ministry officials, an analysis of the information presented in this paper indicated a spectrum of ways to approach interagency cooperation, ranging from informal to formal, legally-mandated interactions. Polner (2011) looks at inter-agency cooperation from the viewpoint of customs agencies and identifies a similar approach that may apply to interactions among customs and other border agencies. Using a continuum developed to examine interagency cooperation in New Zealand (Institute of Policy Studies 2008), informal interaction is equated to co-existence, where agencies have little or no communication, followed by communication (shared information), cooperation (shared resources), coordination (shared work) and ultimately, collaboration (shared responsibility). These phases do not progress along a straight path but are implemented on a situational as-needed basis. For example, it may not be necessary to collaborate on all activities; in some situations, the exchange of data may be sufficient. The cooperation models presented in this paper focus on the level of institutionalisation of cooperation, whether it is in documents, agreements or in law. Also, the models presented focus on horizontal-level cooperation among agencies which lies mid-spectrum in the New Zealand model, and imply that lines of communication have been already established. Achieving a collaborative working relationship requires innovation and a change in thinking, and is the most difficult level of engagement to achieve (Institute of Policy Studies 2008).

There is no "one size fits all" approach to controlling transboundary shipments of hazardous waste, nor to any challenging mandate requiring inter-agency cooperation. Thus, while the paper focuses on strategies in hazardous waste management at ports of entry, the cooperative techniques implemented have wide application.

3. Case studies

3.1 Kenya: Informal collaborative networks

Country background and collaborative framework

Strategically situated between Tanzania, Uganda, South Sudan, Ethiopia and Somalia, and along the Indian Ocean, Kenya is East Africa's logistical hub. The nation's principal seaport, Mombasa, is the second largest port in Sub-Saharan Africa as measured by tonnage and containers handled. A republic, the country was a one-party state between 1969 and 1991. Now a multi-party state, the country's stability was severely tested in 2007 when violence spawned by a contested presidential election left over a thousand dead.

Kenya's inter-agency collaboration is linked to the country's role as the host of the East African Network for Environmental Compliance and Enforcement (EANECE), a cooperative network formed in 2010. Consisting of five East African nations, Burundi, Kenya, Rwanda, Tanzania and Uganda, and a product of the capacity building efforts of the International Network for Environmental Compliance and Enforcement (INECE), the primary aims of EANECE are to improve the environmental compliance and enforcement capacities of the member nations' environmental management agencies, establish itself as a strong and vibrant regional network, and raise awareness of the importance of environmental compliance and enforcement. EANECE Coordinator Gerry Opondo reports that, '[d]uring the initial stages of the network, it was very difficult to get participants from government agencies to understand the concept of "informal networking" in the context of environmental compliance and enforcement. That formal government agencies as well as government officials could cooperate, interact, and operate with their peers directly without a formal agreement, treaty, or international institution was a new concept which required greater understanding'.

There are four principal agencies involved in Kenya's coordinated seaport inspection process: the National Environmental Management Authority (NEMA), the Customs Service Department (a branch of the Kenyan Revenue Authority), the Ports Authority, and the Police. The Kenya Customs Service Department is the primary import inspection agency but relies on NEMA's technical expertise regarding environmental violations. In the past, the Customs Service Department called in environmental experts from NEMA only when violations were suspected. Today, as a product of the enhanced cooperation encouraged by EANECE, two senior NEMA environmental inspectors have been posted to the Port of Mombasa and work together daily with customs officials, port authority staff and port police. The entire ten-person NEMA Environmental Police unit, however, remains located in Nairobi, several hundred miles from Mombasa, and only becomes involved when a violation is detected.

Ground-level officers directly contact their counterparts at other agencies. These officials cannot commit resources to the enforcement action without following existing agency procedures and receiving approval from agency management. The type of support provided by each agency depends on the potential violations and can include personnel, expertise, financing and equipment.

Institutional challenges

Local officials cite five principal challenges:

1. A lack of secure means to share intelligence compromises investigations and jeopardises the safety of personnel.
2. With no model for risk analysis, success relies on the subjective judgment of officers.
3. Overlapping and conflicting agency mandates are a significant obstacle. Products of the country's political system, they impede the development of targeting criteria, cause greater competition for government resources, and lead to conflicts over the attribution of successes.
4. Seized goods are often stockpiled as they frequently require special disposal facilities not found in Kenya.
5. Budget concerns limit the program from reaching its full potential.

Lessons for those seeking to implement this model

Collaboration does not necessarily need to start at the managerial level. Allowing ground-level personnel to communicate among themselves across agencies, Kenya has gone from *ad hoc* inter-agency cooperation to daily collaboration among environmental inspectors, customs agents, police, and port authority personnel at Mombasa in just two years.

Improved regional networks can “pull up” a member’s national efforts. Prior to the development of EANECE, there were few, if any, regular channels of communication between environmental, police, port, and customs officials among the various East African nations. As EANECE developed, environmental, customs, police, and other relevant national agency leaders began working together with peer agencies in other countries. This regional cooperation then led to collaboration between agencies within the country. In Kenya, the added pressure of hosting the EANECE Secretariat has perhaps aided intra-country collaborative efforts. With the eyes of its neighbours upon it, there may have been greater pressure to improve collaboration within its borders to better coax its neighbours into following suit.

Improved collaboration does not have to cost agency sovereignty. Some managers may be hesitant to cede authority to a formal cooperative agreement as they perceive such commitments to compromise their ability to satisfy higher priority missions. For example, if a customs agency believes that greater collaboration with environmental counterparts will siphon resources away from the primary mission of tariff collection, it may resist a collaborative agreement completely. In the informal Kenyan model, however, communication occurs at ground level, between customs agents and environmental inspectors. Upon receiving a request for cooperation, either side reports the mission and resources requested to agency managers. Agency managers therefore retain ultimate control over whether to accept the request for collaboration and have no obligation to order subordinates to direct resources to missions deemed less essential. Of similar importance, managers are able to assess the need for their agency’s resources through direct reports from their own personnel agency rather than rely on the assessments of outside agencies. These elements may lead to greater management support – a key component to the longevity of the collaboration.

Figure 1: Summary of Kenya’s cooperation model for environmental agencies

Kenya

- National agencies involved: Customs Service Department (Lead agency), National Environmental Management Authority, Ports Authority, and Police.
- Ground-level officers directly contact their counterparts at other agencies.
- Officers must receive approval from agency management to commit resources to a joint enforcement action.
- Increase in inter-agency collaboration spurred on by role as host of the East African Network for Environmental Compliance and Enforcement, a five-nation cooperative network formed in 2010.



3.2 Nigeria: Dump watch network

Country background and institutional framework

Nigeria has a federal republic system of government, headed by a president, and includes a Federal Capital Territory and 36 states. The most populated country in Africa, with over 250 ethnic groups, Nigeria is diverse in culture and rich in natural resources (Benebo 2011). The country's southwestern city of Lagos is among the most important ports in West and Central Africa in terms of size and level of activity. Over 30 million tons of merchandise pass through the Port of Lagos each year. West and Central Africa is a region that a 2007 World Bank report highlighted as needing security and environmental protection in maritime transport (Palsson, Harding & Raballand 2007). Nigeria is strengthening its environmental enforcement capabilities through the development of regulatory and legal frameworks and an inter-agency communications platform (Toxic Waste Dump Watch Program).

Concern for environmental pollution issues became a national priority in 1987 as the result of an increase in public awareness caused by the illegal import of a transboundary shipment of hazardous waste (Desai 1998) and prompted the creation of the Nigerian Federal Environmental Protection Agency (FEPA), the first national institution in Africa whose primary mission was to manage and protect the environment. In a 1999 agency consolidation, FEPA became the Federal Ministry of the Environment, responsible for developing environmental policy and the laws, regulations and guidelines to implement it. In 2007 the National Environmental Standards and Regulations Enforcement Agency (NESREA) was formed to maintain environmental standards, enforce laws and regulations, create an awareness of environmental issues and develop partnerships to meet these goals (Benebo 2011).

Nigeria employs a National Toxic Dump Watch Program which promotes cooperation among agencies with environmental responsibilities. Coordinated by NESREA, this program is a partnership of nine federal Nigerian agencies with responsibilities relating to illegal importation and dumping of hazardous waste, particularly e-waste (Benebo 2011). Participating agencies include NESREA, Nigeria Customs Service, Nigeria Ports Authority, Nigeria Police, Nigeria Maritime Administration and Safety Agency, Nigerian Navy, State Security Service, National Intelligence Agency, and the Defence Intelligence Agency.

In a federal system of government, enforcement of environmental laws is more effective if there is cooperation between the state and the federal governments. A continuing Federal-State Regulatory Dialogue provides a platform in Nigeria for agencies from each respective level to exchange experiences, discuss enforcement challenges and formulate best practices for the implementation of environmental laws. This platform also allows for multi-agency discussions on current and proposed regulations, strengthening federal-state cooperation (Benebo 2011).

Institutional challenges

International observers and local officials cite continuing challenges (NESREA 2012):

1. Contamination of various environmental media (for example, air, water, soil)
2. Inadequate human and institutional capacity
3. Lack of environmental data
4. Lack of interaction between the regulated community and NESREA
5. Lack of public awareness of environmental problems.

Lesson for those seeking to implement this model

State and federal cooperation is necessary for success. One of the initial activities of the Director General of NESREA was to reach out to state governmental agencies to raise awareness of the mission of the agency and to begin the process of building the cooperative relationships that will lead to more effective environmental enforcement. Relationships with other federal agencies also needed to be built.

The reinvigoration of the Dump Watch Committee brought nine of these federal agencies together to discuss issues and challenges to enforcement, leading to familiarity with each other and a growing awareness that cooperation would be necessary to achieve their shared goals.

Figure 2: Summary of Nigeria's cooperation model for environmental agencies

Nigeria

- Agencies involved: National Environmental Standards and Regulations Enforcement Agency, Nigeria Customs Service, Nigeria Ports Authority, Nigeria Police, Nigeria Maritime Administration and Safety Agency, Nigerian Navy, State Security Service, National Intelligence Agency, and the Defence Intelligence Agency.
- Continuing Federal-State Regulatory Dialogue provides a platform for agencies to exchange experiences and enforcement challenges, formulate best practices, and discuss current and proposed regulations.
- National Toxic Dump Watch Program promotes cooperation among agencies with environmental responsibilities.



3.3 The Netherlands: MOU-based collaboration

Country background and institutional framework

Historically tied to shipping and commerce, the Netherlands is a hub of European maritime trade. Home to Rotterdam, the busiest port in Europe, five million ship containers pass through the country's seaports each year. Long perceived to be a leader in innovative environmental policy, the Netherlands' MOU approach uses agency-drafted agreements as the framework for cooperative efforts, finding a middle ground between the formal legislative and informal *ad hoc* collaborative models.

The Ministry of Infrastructure and the Environment is tasked with supervising the rules for hazardous materials, radioactive materials, and waste, while the Customs Administration (a part of the Directorate-General of the Tax Administration of the Ministry of Finance) supervises cross-border goods traffic based on tax regulations. The current MOU between the Ministry of Infrastructure and the Environment and the Tax Administration was signed in March 2009. Under the MOU, the Ministry of Infrastructure and the Environment sets enforcement priorities for the following year which both parties then review together to determine the annual plan objectives. During the implementation year, the Tax Administration periodically reports its progress towards the objectives, while the Ministry of Infrastructure and the Environment is responsible for apprising the Tax Administration of any changes in the relevant governing regulations. Each agency is responsible for its own costs and either can cancel the MOU with one month's written notice, explaining the reason for cancellation.

Under this framework, the Netherlands have sought to reduce the burden on the business community while concentrating supervisory resources on the least compliant companies. Launched in 2010, the

Customs Control Centre (CCC) in Rotterdam is the central collector of information needed by the Netherlands authorities and the joint command centre of cargo inspection. Based out of the CCC, a critical component of the Netherlands collaborative approach is the “Rainbow Team”. The Rainbow Team is led by Customs and consists of the six other supervisory agencies in the Port of Rotterdam:

- Ministry of Infrastructure and the Environment, Transport and Water Management Inspectorate which conducts safety and environmental supervision of shipping vessels, crews, shipping companies, and the transport of hazardous waste
- New Food and Consumer Product Safety Authority which supervises the import of food products, consumer products, and animal feed and inspects passenger ship kitchen hygiene
- Seaport Police Rotterdam-Rijnmond which is responsible for border control, port security and crime, nautical issues, environment, and traffic
- National Police Agency Water Police Division which is responsible for port security and criminality, nautical affairs, environment and transport outside of Rotterdam
- Labour Inspectorate which monitors worker health and safety in ports.

The team meets monthly to share information and regularly conduct joint inspections, streamlining the inspection process for transporters. The country is also currently expanding its memorandum of agreement initiative in which select companies with sufficient internal controls and clean compliance histories can enter covenants with the government resulting in fewer inspections. This shift of selected Netherlands-flagged vessels from “object-oriented supervision” to “system supervision” benefits shippers by reducing administrative costs and inspection delays, and proponents contend that it results in a more efficient use of the nation’s enforcement resources.

Figure 3: Summary of The Netherlands' cooperation model for environmental agencies

The Netherlands

- Agencies involved: Customs Transport and Water Management Inspectorate, New Food and Consumer Product Safety Authority, Seaport Policy Rotterdam-Rijnmond, National Policy Agency – Water Police Division, Labour Inspectorate, and the Ministry of Housing, Spatial Planning and the Environment.
- Customs Control Centre is the central collector of information needed by Dutch authorities and the joint cargo inspection command centre.
- A team comprised of members from each agency meets monthly to share information and regularly conducts joint inspections.
- The underlying framework for the collaborative arrangement comes from Memoranda of Understanding – written agreements signed by the ministers of the participating agencies, representing the agencies’ intentions.



Institutional challenges

1. The need for accurate targeting analysis and information sharing. Ultimately, the evaluative process to determine which shipments are to be inspected is only as good as the information it is based upon.
2. A natural reluctance to share information among agencies.
3. While the MOU framework can produce complex and close collaboration, it is fully retractable by either side with limited notice. The model relies on the time and energy invested by each party to lock both sides into the agreement, yet as an MOU is entered into freely by agency heads and not prescribed by statute, its collapse is always conceivably only a change in leadership away.

Lesson for those seeking to implement this model

Build upon a foundation of trust. The Netherlands model is based on trust among agencies. Each agency must be able to trust its partners to support its mission, continue the collaborative agreement, and share data. Similarly, transporters rely on the guidance provided by coordinated central command to be accurate for all of the agencies involved so that they do not need to independently check with each agency. Such trust does not emerge overnight but must be carefully cultivated. Expectations must be clear and when the agreement brings success, the accolades must be shared to encourage all sides into further cooperation.

3.4 Belgium/Flemish region: Memoranda of Understanding in a federal environment

Country background and institutional framework

A federal state, political power in Belgium is complexly divided among the federal government, multiple language groups (Flemish, French and German) and various regions (Flemish, Walloon and Brussels-Capital). The Flemish Region, site of the country's seaports, is consolidated with the Flemish Community and the resultant Flemish Parliament and Government autonomously controls many governmental functions. Federal Customs, federal Maritime Police, and regional and federal environmental agencies can all stop and inspect suspicious waste transports. Customs remains the domain of the federal government but regional governments are largely responsible for environmental protection. While regional environmental organisations monitor the import and export of waste, the federal government currently maintains control over waste transit. In 2014, however, it is expected that the regional environmental agencies will assume waste transit regulation as well.

There is an MOU between Belgian regional environmental authorities and federal environmental inspection, police, and customs agencies which addresses the inspection of transboundary waste shipments. An active inter-agency committee discusses all problems every three months. Following the 2010 implementation of "paperless" customs, federal environmental officials now work continuously with Customs, collectively reviewing electronically submitted export documents to select shipments for inspection. Customs officials at port terminals serve as eyes, reporting suspicious waste transports to trained environmental inspectors who then follow up on these tips. Regular joint sections are conducted twice monthly when federal officials join with their regional counterparts and port police. The benefits of this periodic exercise are twofold: not only does the joint effort provide for enhanced detection on the date of inspection, it also reinforces ties among agencies and helps develop relationships that enable subsequent *ad hoc* cooperation. Supervisors also meet regularly to participate in working groups or international network gatherings. These managerial contacts are valuable means to solve structural problems such as preventing containers without export declarations from being placed on ships, integrating export declarations from neighbouring countries, and determining the schedule at which operators should be notified about their selection for inspection.

Institutional challenge

Accurate targeting. The initial selection determinations and data analyses are performed by customs personnel who may not be trained in the identification and handling of hazardous waste, as are environmental officials. To address this problem, federal and regional environmental inspectorates meet with Customs to review targeting criteria and select the most important waste streams.

Lessons for those seeking to implement this model

The mutual value of collaboration. In an age of global austerity where the mantra is “do more with less”, manpower and budgetary shortages are frequently cited as the biggest challenges facing customs and environmental inspectors. Belgium officials herald the collaboration saying that, “together, we’re stronger”.

Specialisation and mutual investment. In a sense, the Belgian model imitates the country’s political system. Forced together by the exigencies of stopping the flood of hazardous waste, the overlapping agency responsibilities and powers result not in the duplication of efforts but in an effective “federation.” Waterway Police, Customs, and federal and regional environmental agencies can all stop and detain hazardous waste shipments. Yet each agency primarily focuses on its own expertise – Customs collects data, makes targeting decisions and performs initial inspections; the environmental agencies provide technical expertise and perform focused inspections; the Waterway Police assist in enforcement. The overlaps in mandate therefore serve to invest each agency in the success of the others, as a failure by one can be attributable to all.

Figure 4: Summary of Belgium’s cooperation model for environmental agencies

Belgium

- Agencies involved: Federal: Customs, Maritime Police, Department of the Environment; Regional: Flemish Environment Agency.
- Memorandum of Understanding between the federal and regional agencies.
- All agencies can stop and inspect suspicious transports.
- Environmental inspectors use information and alerts from customs scanning and selection teams to make targeting decisions.
- Twice monthly, federal and regional environmental officials and Maritime Police conduct joint inspections.



3.5 Japan: Legally Mandated Formal Cooperation

Country background and institutional framework

The most formal of the institutional frameworks included in this research is that presented by Japan. Home to five of the 50 highest volume container ports in the world, seaport management is critically important on the Japanese archipelago. With firmly entrenched institutional cooperation prescribed by statute, the Japanese model involves four primary government actors: the police, the Ministry of Environment (MOE), the Ministry of Economy, Trade, and Industry (METI), and the Customs and Tariff Bureau (Customs).

METI is responsible for issuing a permit approving the export or import of hazardous waste; however, approval cannot be given until MOE has confirmed the decision. Japanese law states that the consent of the importing country is not sufficient grounds for the issuance of an export permit. Before the permit can be issued, MOE must review the case and verify to METI that the exporter has taken sufficient measures to prevent environmental harm. Similarly, when an importer requests to transport hazardous waste into Japan, MOE issues the Prior Informed Consent document required by the Basel Convention,³ but METI issues the formal permit. Therefore, no shipment of hazardous waste can be imported into or exported out of Japan without the approval of both agencies.

In addition to collaboration during permitting, METI and MOE work together to improve compliance by educating stakeholders about their obligations and the potential penalties. In accordance with the Japanese business practice of prior consultation (*nemawashi*), waste importers and exporters can consult with METI or MOE in advance to receive a verbal determination of the requirements for each shipment. METI handles enquiries regarding waste subject to the Basel Convention, while MOE is responsible for enquiries regarding “non-valuable waste” – substances not subject to the Basel Convention but deemed waste by the Japanese Waste Management and Public Cleansing Law and subject to export controls. METI and MOE, in collaboration with the Japanese Coast Guard, also present yearly seminars on the Basel Convention to stakeholders such as customs officials, exporters, importers, citizens, municipal officials, and waste generators.

Information from the prior consultations is provided daily to customs officials to assist with inspections at the port. Customs has the final decision on whether a shipment is legal and is the sole agency with the official right to conduct inspections. When Customs spots undeclared cargo that it believes is potentially subject to Japanese waste regulations, it consults officials at METI and MOE. The agencies provide technical advice regarding the Basel Convention. If there is a need, after review by each agency’s headquarters, METI and MOE officials can observe a second inspection by Customs. Therefore, inter-agency cooperation occurs through the entire inspection.

Institutional challenge

Episodic personnel shifts require the need for continual training to increase the ability of inspectors to spot undeclared cargo subject to waste regulations. Like many customs agencies, Japanese Customs regularly rotates agents between ports, typically every two to three years. As the first (and often only) inspection at the port is conducted solely by customs officials MOE and METI must continually educate new agents.

Lesson for those seeking to implement this model

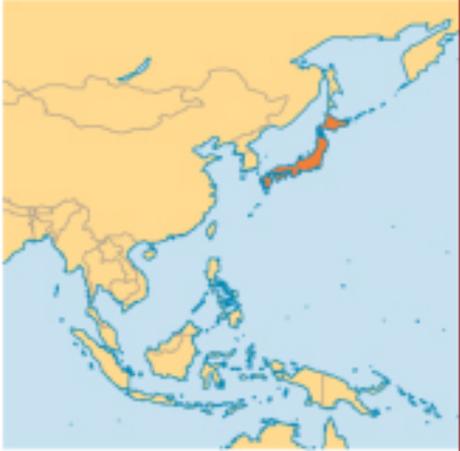
The spillover environmental benefits of a free and democratic society. Pressure created by democratic accountability can prompt innovation and strengthen collaboration. In 1999 the Japanese government faced intense public pressure following an episode involving Nisso Co. Ltd, a Japanese waste disposal company. Customs officials in the Philippines discovered that a shipment from Nisso that was supposed to contain only recyclable waste paper and plastic actually included hazardous medical waste. After Nisso failed to comply with remediation orders issued in the ensuing diplomatic tumult, the Japanese

government spent USD3.8 million to repatriate and incinerate the waste. The Nisso incident captured public attention and prompted the Japanese government to strengthen penalties and implement twenty new measures – including the consultation program and yearly collaborative seminars – to reduce the likelihood of similar incidents.

Figure 5: Summary of Japan's cooperation model for environmental agencies

Japan

- Agencies involved: Policy, Ministry of Environment (MOE), Ministry of Economy, Trade and Industry (METI), and the Customs and Tariff Bureau.
- Collaboration is prescribed in legislation. METI is responsible for issuing a permit approving the export or import of hazardous waste but before the permit can be issued, MOE must review the case and verify to METI that the exporter has taken sufficient measures to prevent environmental harm.
- In accordance with the Japanese business practice of prior consultation (*nemawashi*), waste importers and exporters can receive a verbal determination of the requirements for each shipment in advance. METI handles enquiries regarding Basel Convention waste, while MOE is responsible for enquiries regarding substances not covered by the Basel Convention but subject to national export controls.

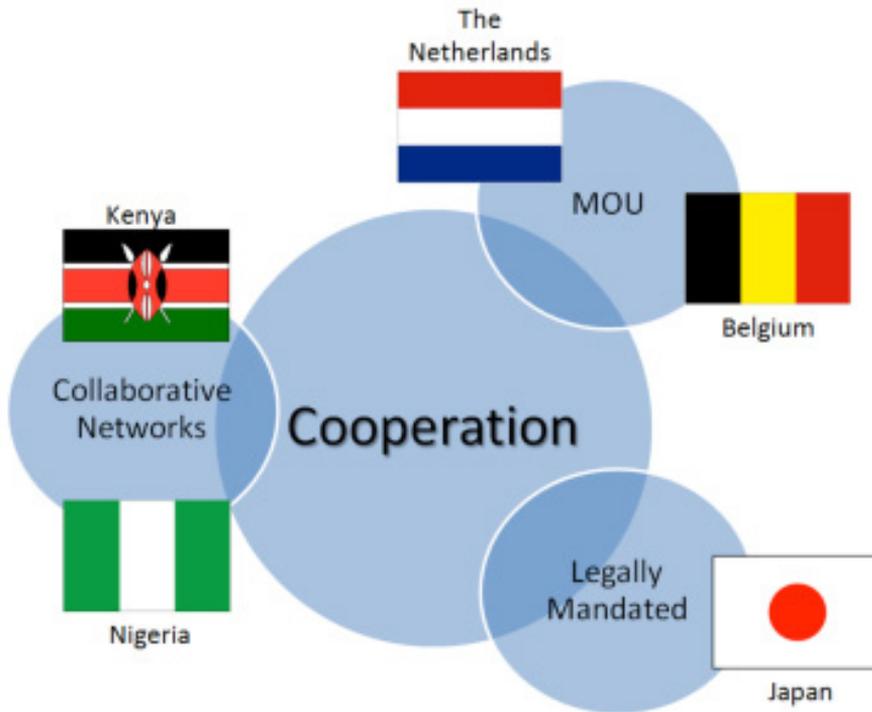


4. Conclusions

The five case studies presented illustrate a variety of mechanisms that countries can use to achieve inter-agency cooperation. In 2006, UNEP articulated the need for coordination among various enforcement authorities to successfully implement multilateral environmental agreements (MEAs), such as the Basel, Stockholm and Rotterdam Conventions (UNEP 2006a). IMPEL noted that ‘there are huge differences in the way relevant enforcement authorities cooperate with other authorities (like police and customs services) within the participating countries’ (IMPEL-TFS 2004, p. 15) and suggested a more formal cooperation agreement be considered.

Each of the five countries examined approached inter-agency cooperation in a different manner. The various mechanisms reported range from a less formal approach based on personal relationships to a more formal, legally mandated process. The less formal approaches may evolve into a more formal arrangement, or a country may start the process at any point along the continuum. That is why it is necessary to explore various approaches and to understand the range of what can be accomplished. The authors do not imply that all possible approaches have been identified, as future research may show that there are many other possibilities to be considered.

Figure 6: Options for inter-agency cooperation at seaports



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Notes

- 1 The views and opinions expressed in this article are those of the authors and do not reflect the official policy or position of the U.S. Environmental Protection Agency, Nelson Mullins Riley & Scarborough or any government agency.
- 2 Memoranda of Understanding (MOU), also known as Inter-ministerial Agreements (IMA), are aspirational written agreements representing the intentions of the ministers of the participating agencies, which may be informal or formal and are generally not legally enforceable. As these documents specify the requirements of each agency, MOUs can be used for the development of organisational cooperative frameworks and the assessment of performance. Typically, the framework for an MOU states the core principles of cooperation, with specific incidents being addressed in annexes. For example, to increase the effectiveness of environmental security at seaports, an MOU might lay out the responsibilities of each participating organisation, how communication, information sharing, and joint inspections will be conducted, and how cases of non-compliance will be handled. Identifying a mechanism for conflict resolution is important so, when disagreements arise, a process for resolution is already in place.
- 3 UNEP 1989.

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