

International Training Course
“Negotiating Customs and Environmental Cooperation –
Effective National Program Design”

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FIRST DRAFT OF FULL TEXT

INTER-MINISTERIAL AGREEMENT OF COOPERATION
BETWEEN THE CUSTOMS AND ENVIRONMENT MINISTRY(IES)
FOR IMPORT/EXPORT/TRANSIT CONTROL

PURPOSE

This is an agreement between the Customs Ministry and the Environment Ministry(ies) of the [Name of Country:_____]. This agreement is entered into to facilitate cooperation between the Customs Officer (CO) and the Environmental Officer (EO) to implement import/export/transit controls upon international trade regulated to protect the environment including natural resources.

The Environment Ministry(ies) recognizes that COs have the large responsibility to monitor all international commerce, of which only a few shipments are subject to import/export/transit controls for environmental reasons. The Customs Ministry recognizes that EOs have expertise in the complex details of regulating the portion of international trade subject to environmental laws, some of which implement the obligations of Multilateral Environmental Agreements (MEAs). Both Ministries share the goals of (1) monitoring international trade with the goal of differentiating suspicious or unlawful cases from the stream of mostly legitimate commerce, (2) expediting legitimate shipments, and (3) interdicting unlawful ones. The Ministries recognize that to increase success requires that COs and EOs (1) have a better understanding of mutual responsibilities, (2) be organized to work more effectively together in a joint effort to apply the nation’s laws, and (3) also cooperate well with counterpart officials of any country that is a trading partner also seeking to implement similar laws or the same MEA.

This Inter-Ministerial Agreement of Cooperation is intended to formalize and systematize coordination efforts. In scope, it is both an agreement as to some details of core and cross-cutting functions and issues, and an over-arching or framework agreement.

ANNEXED SUB-AGREEMENTS

Under the framework and authority of this Inter-Ministerial Agreement, the Ministries may develop as Annexes hereto a number of sub-agreements to address additional or particular functions and issues. Any sub-agreement will refer to this Inter-Ministerial Cooperation Agreement as its authority, and upon approval by both the Environmental Import/Export Official and the Environmental Compliance Customs

Official named herein, will be listed as an Annex to this Agreement. Any Annex will be written and interpreted for application in practice that fits within and is not inconsistent with this framework Agreement.

An Annex may address specific matters particular to a particular Ministry or a particular law, whether implementing a MEA or controlling other, additional trade for purposes that are “environmental” (including but not limited to the protection of human health, wildlife, and natural resources reasons). Annexes may include but not be limited to the following:

- “Annex for Underlying Cooperation Among Two or More Ministries Having Environmental Responsibility and Signing this Inter-Ministerial Cooperation Agreement with Customs”
- “Shipment Inspections Annex”
- “Customs Collection and Delivery of Declarations Annex”
- “Law Enforcement Investigations Annex”
- “Annex Listing Resolutions of Issues to Improve Cooperation”
- “Communications Annex”
- “Joint Training Annex”

LEGAL AUTHORITY

Customs Laws and Regulations: [to be filled in by the particular nation]

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Environment Laws and Regulations: [to be filled in by the particular nation]

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International Treaties including Multilateral Environmental Agreements:

[to be filled in by the particular nation as to all MEAs including the following MEAs if signed or (if ratified) obligating the nation as a Party to full implementation:]

- Basel Convention on the Transboundary Movements of Hazardous Wastes and Their Disposal
- Convention on Endangered Species of Flora and Fauna (“CITES”)
- Montreal Protocol on Substances that Deplete the Ozone Layer
- Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (“PIC Convention”)
- Stockholm Convention on Persistent Organic Pollutants (“POPs Convention”)
- Kyoto Convention on the Simplification and Harmonization of Customs Procedures

THE “ENVIRONMENT MINISTRY(IES)” DEFINED FOR THE PURPOSE OF THIS AGREEMENT

As shown in the following table, for the [Name of Country: _____] as a signatory or Party to each of the above MEAs. The names of the Ministries and the Offices (within each Ministry) that have national executive legal authority to perform the responsibility as the national lead for each MEA, both at the diplomatic or international level of Party’s spokesperson, and also at the working or operational level of assuring shipment-by-shipment compliance:

Basel Conv.	Montreal Protocol	Rotterdam Conv.	Stockholm Conv.	CITES
Party’s “Focal Point”	Party’s international spokesperson	Party’s “Designated National Authority”	Party’s “National Focal Point”	Party’s international spokesperson
Name of Ministry and Office: _____ _____	Name of Ministry and Office: _____ _____	Name of Ministry and Office: _____ _____	Name of Ministry and Office: _____ _____	Name of Ministry and Office: _____ _____
“Competent Authority”	“National Ozone Unit”	Trade compliance unit	Trade compliance unit	“Management Authority”
Name of Ministry and Office: _____ _____	Name of Ministry and Office: _____ _____	Name of Ministry and Office: _____ _____	Name of Ministry and Office: _____ _____	Name of Ministry and Office: _____ _____

As ordered or approved by the national executive, all ministries with environmental responsibility that sign this document agree that:

- the one “environmental” ministry to lead negotiations and cooperation, to serve as the “responsible office,” and to achieve the goals of this Agreement with the Customs Ministry, will be the [Name of Ministry: _____].
- for purposes of this Inter-Ministerial Cooperation Agreement, the term “Environment Ministry(ies)” as it is used herein will include all ministries signing and having environmental responsibility.
- To clarify their duties and activities in support this Agreement, if necessary they (all “environmental” ministries signing this Agreement) will negotiate an “Annex for Underlying Cooperation Among Two or More Ministries Having Environmental Responsibility and Signing this Inter-Ministerial Cooperation Agreement with Customs.”

RESPONSIBLE OFFICES AND OFFICIALS FOR EACH MINISTRY

For the purpose of organizing cooperation with the Customs Ministry, the Environment Ministry named immediately above has the lead and responsibility for

fulfilling the obligations of the nation as a Party to the MEAs listed above that involve the control of imports, exports, and transits subject to MEAs. The Environment Ministry will establish an Environmental Import/Export Control Office that is responsible for communications and data management for shipment notices and approvals, and for all compliance assurance activities to include compliance assistance, monitoring, and enforcement case work by all EOs, working with COs of the Environmental Compliance Office of the Customs Ministry. To head its Environmental Import/Export Control Office, the Environment Ministry will appoint a senior official, the Environmental Import/Export Official, with authority to establish the necessary policies, procedures, and programs.

The Customs Ministry has the responsibility to apply the laws of the nation that control imports, exports, and transits for any purpose, including to fulfill the obligations of the nation as a Party to the MEAs. The Customs Ministry will establish an Environmental Compliance Customs Office that is responsible for monitoring international trade subject to MEAs, to include the review of documentation accompanying shipments, coordination with the Environment Ministry regarding shipment approvals, and inspection and investigation of suspect shipments, working with all EOs of the Import/Export Control Office of the Environment Ministry. To head its Environmental Compliance Office, the Customs Ministry will appoint a senior official, the Environmental Compliance Customs Official, with authority to establish the necessary policies, procedures, and programs.

The Environmental Import/Export Official and the Environmental Compliance Customs Official will meet annually and more often as necessary to maintain and improve cooperation and to approve Annexes to this Agreement. As needed, they will resolve issues of inter-ministerial uncertainty, inconsistency, or dispute, express their decisions in writing, publish and list them in an “Annex Listing Resolutions of Issues to Improve Cooperation.”

LICENSING/APPROVAL OF SHIPMENTS

The Environment Ministry agrees:

- For every MEA that is in effect and to which the nation is a Party, where national law is needed to transpose the MEA’s government-to-government obligations into legal requirements upon covered import, exports, and transits, in cooperation with the Customs Ministry and within the President’s administration to develop and seek to establish such national law.
- Where the nation enjoys or is subject to any “differentiated national responsibility” that may allow a phase-out time and defer the beginning of certain controls on international trade, to act as necessary to control shipments within the limits of the differentiation or deferral. When differentiation of national responsibilities ends, immediately to establish the full regime of controls.
- As required by national law, to establish the policies, programs, and procedures of any advance notice-and-consent or approval regime for covered items or

substances in international trade, and for the documentation that must accompany each shipment. The elements of such a regime should include:

- Preregistration (including notifiers, exporters, importers, carriers, brokers, and transitters);
- Notice document form, content, and process requirements;
- Declaration (movement document or manifest) form, content, and process requirements;
- Data management, and real-time data sharing with COs;
- Maintaining and using lists of applicable codes (unique identifiers) for data elements such as MEA-regulated commodities, substances, and items, and for personal identification of enterprises involved in trade, and using these codes to link EOs' shipment approvals to shipment declarations (accompanying documentation) presented to COs; and
- Requiring use in documentation of codes/identifiers/nomenclature used by the Customs Ministry (*e.g.*, for ports, business entities, and commodities).

INTELLIGENCE, TARGETTING, AND PRE-SCREENING

The Customs Ministry will include in its existing intelligence and targeting database information on shipments of concern to the Environment Ministry(ies), or develop for the Environment Ministry(ies) an intelligence database and selectivity criteria and use it for targeting shipments suspected of non-compliance with MEA or other environmental requirements of national law. The Customs Ministry will:

- receive from all credible sources including EOs any information pertinent to assess shipment risk. Data may include the identity, history, and expectations regarding the exporter, importer, transitter, transporter, country of origin or destination, and commodity, item, or substance declared;
- if possible, do “data mining” or computerized searching, *e.g.*, for trade patterns (such as quantities, sources, and destinations) indicating possible illegality;
- consider information from seizures or violations detected, and identify new trends from this feedback;
- enter relevant data into its targeting system and perform a non-compliance risk assessment by the application of its targeting criteria. (This may be called “profiling” or “prescreening.”) Customs will then red-flag,” or “watch list” in advance suspicious shipments;
- where national law requires that some days or hours prior to shipment arrival (or departure) the carrier (broker, importer, or exporter) shall provide an advance manifest or declaration to the Customs Ministry, the Customs Ministry will perform pre-screening and red flagging sufficiently in advance of the shipment arriving in port; and
- to enable proper scrutiny, immediately and fully share its intelligence and targeting database information as intelligence with - and when appropriate specifically alert - security-cleared EOs and the COs. They will apply special scrutiny in the review of the documentation upon arrival (or departure) of the targeted shipment, and select some or all such shipments for physical inspection.

Similarly, the Environment Ministry(ies), in consultation with MEA secretariats and other sources of information, will collect intelligence, maintain its own risk assessment database, and with Customs immediately and fully share all its information by automated inter-ministerial database linkage if possible.

MUTUAL OBLIGATIONS OF THE MINISTRIES

The Customs and Environmental Ministries mutually agree:

- To establish process and means for communications both with the regulated community and with the other Ministry. Above all, to establish two-way internal communications links, automated if possible, to enable the Customs Ministry at all times to quickly (in real time if possible) confirm the status of a shipment as approved or not by the Environment Ministry(ies), based either on its documentation, or on its physical nature as determined upon inspection. The content of inter-ministerial communications may include:
 - Information feeding intelligence databases and for prescreening and targeting
 - Stopping shipments as to which the Environment Ministry(ies) has objected
 - Allowing shipments with EO consent or approval consistent with:
 - Objection to shipments
 - Consent or approval
 - Explicit approval
 - Tacit consent
 - Duration of consent
 - Quantity approved
 - Exemptions (*e.g.*, small-quantity)
 - Other characteristics approved (*e.g.*, quality, inclusion in mixtures or products)
- To implement requirements or opportunities for:
 - Use in documentation of applicable and standardized codes/identifiers/nomenclature used by the other Ministry and in international practice
 - Use/safety/sound environmental management restrictions or limitations, and for required labeling or additional accompanying documentation giving warnings, both:
 - Domestic, applicable to imports, and
 - Applicable to exports, to assist foreign countries
 - Cooperation with foreign governments and with MEA secretariats
 - Trade measures when invoked by national decision.

REVIEW OF DECLARATIONS FOR SHIPMENTS IN PORT

The Customs Ministry agrees:

- For every MEA that is in effect and to which the nation is a Party, where national law is needed to transpose the MEA's government-to-government obligations into legal requirements upon covered import, exports, and transits, in cooperation with the Environment Ministry(ies) and within the President's administration to develop and seek to establish such national law.
- Where the nation enjoys or is subject to any "differentiated national responsibility" that may allow a phase-out time and defer the beginning of certain controls on international trade, to act as necessary to control shipments within the limits of the differentiation or deferral. When differentiation of national responsibilities ends, to move immediately to establish the full regime of controls.
- As required by national law, to review the documentation that must accompany each shipment, and in all ways to implement any advance notice-and-consent or approval regime established by the Environment Ministry(ies) for the regulated community engaging in MEA-covered international trade.
- Where real-time checking (face-to-face, automated, or telephonic) with the Environment Ministry(ies) is not possible, or where the laws of the Environment Ministry(ies) require, COs will collect copies of all declarations and deliver them to the Environment Ministry(ies) to enable it to perform post-clearance compliance monitoring. As to when this is necessary and the exact means of doing so, the Ministries agree to develop a sub-agreement – a "Customs Collection and Delivery of Declarations Annex" - under the authority of this Inter-Ministerial Cooperation Agreement.

INSPECTION OF SHIPMENTS AND CONSEQUENCES OF INSPECTION

While the inspection of shipments upon import, export, and during transit is primarily a responsibility of the Customs Ministry, the Environment Ministry(ies) recognizes that:

- Items or substances available for inspection will be located at a busy port, where COs have the duty to facilitate legitimate trade;
- Frequent, rapid, and accurate identification of suspect trade can be very difficult;
- Physical inspection is a shared responsibility; and
- The number and success of inspections will be increased when the Environment Ministry is present or available nearby and able to act quickly upon requests for assistance from COs.

Before an inspection occurs, usually the CO has first considered any advance intelligence, examined the documentation accompanying the shipment, and (if possible) communicated with the EO on the question of whether the EO has consented to the shipment. At this point, for any number of reasons, the Customs Ministry recognizes that it may be advisable to physically inspect a shipment to confirm whether the actual substances or items present match those declared in the documentation and are the same as those to which the consent of the Environment Ministry(ies) has been given.

When deciding with limited resources what shipments to physically inspect, the following factors or issues are among the most important faced by the Ministries that may need clarification and advance agreement:

- What facts presented before the CO will indicate the need for an inspection;
- When the presence of a technically qualified EO may be requested by a CO;
- When an inspection may be requested by an EO;
- Proper conduct of inspections, including what EOs and COs must do to assure health and safety for themselves and endangered species during inspection, and responsibilities for assuring accuracy in sampling and laboratory analysis;
- Proper conduct of seizures, storage, and forfeiture of shipments;
- Preservation of all living endangered species, and preservation of sufficient evidence to prove violations;
- Adequate funding and means to assure the environmentally sound disposal of forfeited contraband that is toxic or otherwise hazardous;
- Collaboration in or responsibility for criminal investigations and supporting cases through the conclusion of prosecution; and
- Appropriate training in these and other aspects of or related to the inspection of shipments.

As to the inspection of shipments and as needed to fully address the follow-on issues listed above, the Ministries agree to develop one or more sub-agreements - "Shipment Inspection Annex(es)" - under the authority of this Inter-Ministerial Cooperation Agreement.

LAW ENFORCEMENT INVESTIGATIONS

As to the conduct of administrative, civil-judicial, and criminal investigations, and the preparation of completed cases to be brought to the attention of prosecutors for presentation in the judicial system, the Ministries agree to develop one or more sub-agreements – a "Law Enforcement Investigations Annex" - under the authority of this Inter-Ministerial Cooperation Agreement.

INTERNATIONAL COOPERATION

The Ministries will work together and with other Ministries, including the Foreign Ministry, to bring issues needing international resolution to the appropriate *fora*. They will bring multi-lateral issues to the attention of the World Customs Organization and the international governing bodies of MEAs. They will work bilaterally and regionally with other nations on issues of cooperation, whether involving shared borders or trade with more distant countries.

In particular, the Ministries agree to work with the Foreign Ministry to cause action to address chronic needs, including:

- That the WCO’s Harmonized Tariff System (HTS) codes often do not identify specific commodities, substances, or items covered as MEA shipments, and thus computers cannot be used effectively for compliance monitoring. A solution that the Ministries may seek is that international governing bodies of MEAs will develop and require that all Parties must use chemical or product-specific codes that are both unique and universal as “qualifiers” to supplement and accompany (by hyphenation) the HTS codes.
- The lack of uniformity or standardization – both among countries as to a particular MEA and among all the MEAs themselves - in MEA notification documents and also “declarations” or “movement documents.” A solution that the Ministries may seek is that MEA secretariats be instructed to develop synergized national model document forms, and that after their testing and approval the Parties require the use of internationally standardized documentation forms.
- The reliance by many Parties as governments on antiquated paper processing at a time when much legitimate commercial documentation of trade among private enterprises is paperless. A solution that the Ministries may seek is international action to create an international system of paperless processing for countries wanting to move to electronic approvals and more computerized compliance monitoring, and to upgrade governmental capacity to be able to participate in such a modern system.

COMMUNICATIONS

External communications to the public on matters of joint or cooperative activity will only be by the Public Affairs or Press Offices of both Ministries acting in concert. One Ministry may not release to the public or third parties any information provided by the other Ministry without its consent.

Internal, confidential communications - where one Ministry has information that is business-confidential (*e.g.*, commercially valuable data), enforcement-sensitive, national-security information, or otherwise protected from public disclosure, nevertheless with appropriate safeguards it will be shared with the other Ministry for purposes including:

- Establishing a “preclearance” or “trusted shippers” list for expedited processing;
- “Pre-screening”, “risk assessing,” “profiling,” “red-flagging,” or “watch listing” in advance suspicious shipments;
- To enable the Customs Ministry at all times to quickly (in real time and by automated data linkage if possible) confirm the status of a shipment as approved or not, based either on its documentation or its physical nature as determined upon inspection; and
- Conducting compliance monitoring and law enforcement investigations.

To allow protected or limited information sharing as appropriate with cooperating international secretariats, foreign governments, subnational units of a government, and government contractors, the two Ministries as needed will seek legal changes and establish joint protocols to this end.

At the request of either the Environmental Import/Export Official or the Environmental Compliance Customs Official, the Ministries agree to develop a sub-agreement – a “Communications Annex” - under the authority of this Inter-Ministerial Cooperation Agreement to fully specify what information sharing is allowed, protected, limited, or prohibited.

RESOLUTION OF INCONSISTENCY OR DISPUTE

Where there is an inconsistency or disagreement under this Inter-Ministerial Cooperation Agreement or any annexed sub-agreement, every effort will be made to resolve it at the field level. If necessary it will be escalated by referral to the headquarters level for resolution. The resolving officials are those heading the “Responsible Offices” of each Ministry listed above, who when called upon will resolve any issue of inter-ministerial inconsistency or dispute. If this cannot be achieved, the Responsible Officers will ask the Ministers themselves to resolve the issue. The resolving officials at whatever level will express their decision in writing, and list all decisions in an “Annex Listing Resolutions of Issues to Improve Cooperation” to be attached them to this framework Agreement.

EFFECT, MODIFICATION, AND TERMINATION OF THIS AGREEMENT

The effect of this Agreement is not to create legal rights or remedies or to alter legal authority. This Agreement operates only to establish the necessary policies, programs, and procedures to seek enhanced legal authority that may be needed, and to fully effectuate legal authority that exists. This Agreement will be effective from the date of its signature by the involved Ministries.

This Agreement may be modified at any time by agreement of the involved Ministries. After five years, or whenever agreed, the Ministries together shall review this entire agreement and its Annexes and comprehensively consider possible modifications. This Agreement or any Annex may be terminated in whole or in part as to any signatory by sixty days advance notice of its withdrawal from the whole or portions terminated.

SIGNATURES

For the Customs Ministry:

Ministry

(title of Presidential Appointee)
Appointee)

Dated: _____

For the Ministries with
environmental responsibilities:

Name of Lead Environmental

(title of Presidential

Dated:

Name of Ministry

(title of Presidential Appointee)

Dated: _____

Name of Ministry

(title of Presidential Appointee)

Dated: _____