

# Negotiating Customs and Environmental Cooperation



Elements of An  
Inter-Ministerial Agreement

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

# Generic Elements of an Inter-Ministerial Agreement

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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)

# 1. PURPOSE

## I. PURPOSE

- A. Serves as a basis for enhancing a cooperative relationship.
- B. Facilitates the enforcement of U.S. environmental laws, regulations, and international environmental agreements, programs, or control systems; and facilitates the enforcement of U.S. Customs laws and regulations pertaining to the importation and exportation of merchandise affecting such U.S. environmental laws, international agreements, programs, or control systems.
- C. Promotes compliance with U.S. environmental and Customs laws, regulations, international agreements, programs, and control systems pertaining to imported and exported merchandise.
- D. Establishes a framework for consultation, information-sharing, and mutual assistance in civil and criminal enforcement.
- E. Establishes a framework for development of specific agreements between EPA and Customs covering enforcement and compliance with environmental laws and regulations pertaining to imports and exports, or with specific international agreements, programs, and control systems which affect such imports and exports.

# 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?

# Implementation Basics

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

# 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 the prosecutor

# Planning Using the Dutch Model

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

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# 2. ANNEXES

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## 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 and Side Agreements

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All Ministries sign the framework agreement, with possible:

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

(The lesser alternative: A completely separate agreement only with Customs)

# 1. Topical Annexes

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- "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"

## 2. Annex of Reservations

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“Annex of Reservations and Special Provisions for the [insert name of] Ministry”

- ❑ “Reservations” are all provisions of the framework Agreement that do not apply to your Ministry (from which your Ministry excepts or removes itself)
- ❑ “Special Provisions” are stated terms that apply only to your ministry

### 3. Annexed, Underlying “Side Agreement”

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“Annex for Underlying Cooperation Among Two or More Ministries Having Environmental Responsibility and Signing this Inter-Ministerial Cooperation Agreement with Customs”

A side agreement, plus any annexes only for your Ministry, should enable your Ministry to sign the framework agreement

If not, the lesser alternative is your Ministry’s separate agreement with Customs

# Resolution of Disputes or Inconsistencies, cont.

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

# “Responsible Officials”

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By signing the agreement you will negotiate and recommend to them, your Ministers agree (Sec. 5) to select and appoint:

- For the Environment Ministry, an Environmental Import/Export Control Office as the “Responsible Office” lead by senior official, the Environmental Import/Export Official
- For the Customs Ministry, An Environmental Compliance Customs Office as the “Responsible Office” lead by a senior official, the Environmental Compliance Customs Official

# Official Signatures and Date

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**ASSISTANT ADMINISTRATOR**  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

  
\_\_\_\_\_  
Signature

3/5/96  
\_\_\_\_\_  
Date

**COMMISSIONER**  
U.S. Customs Service

  
\_\_\_\_\_  
Signature

3/5/96  
\_\_\_\_\_  
Date