



OPCW

Executive Council

Eighty-Second Session
12 – 15 July 2016

EC-82/DG.15

14 June 2016

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NOTE BY THE DIRECTOR-GENERAL

**MEMORANDUM OF UNDERSTANDING
ON COOPERATION BETWEEN
THE ORGANISATION FOR THE PROHIBITION OF CHEMICAL WEAPONS
AND THE WORLD CUSTOMS ORGANIZATION**

1. Subparagraph 34(a) of Article VIII of the Chemical Weapons Convention (hereinafter the “Convention”) provides that the Executive Council (hereinafter the “Council”) shall conclude agreements or arrangements with States and international organisations on behalf of the Organisation, subject to prior approval by the Conference of the States Parties (hereinafter “the Conference”).
2. The Conference at its Sixth Session decided to give its approval for the Council to consider and conclude the negotiated texts of cooperation agreements between the OPCW and other international organisations (C-VI/DEC.15, dated 17 May 2001).
3. One such agreement is the Memorandum of Understanding (MoU) on cooperation between the OPCW and the World Customs Organization (WCO) (Annex to EC-82/DEC/CRP.2, dated 14 June 2016).

Background

4. In September 2000, the Technical Secretariat (hereinafter the “Secretariat”) initiated negotiations with the WCO Secretariat with a view to concluding an MoU on cooperation between the OPCW and the WCO.
5. Following the conclusion of negotiations, the agreed text of the MoU was submitted to the Council at its Twenty-Sixth Session for its consideration and approval (EC-XXVI/DEC/CRP.5, dated 30 August 2001), along with a Note by the Director-General on the same subject (EC-XXVI/DG.5, dated 3 September 2001). The Council decided to further consider the matter during the following intersessional period and to return to it at its subsequent session (paragraph 12 of EC-XXVI/4, dated 28 September 2001).
6. The Council at its Twenty-Seventh Session decided to further consider, at its Twenty-Eighth Session, the draft decision on the MoU in the context of the Note by the Director-General on the same subject (paragraph 16 of EC-XXVII/3, dated 7 December 2001).



7. At its Twenty-Eighth Session, the Council received a Note by the Legal Adviser containing a legal opinion on the draft MoU between the OPCW and the WCO (EC-28/S/7, dated 21 March 2002). At the same session, the Council decided that the draft MoU needed “further study on the part of the customs experts in the WCO, in particular Articles 2 and 4 of the draft memorandum, and possibly in the field of training” (paragraph 18.2 of EC-28/3, dated 22 March 2002). The Council further requested the Secretariat to “forward the draft memorandum to the WCO as soon as possible, for study and advice by a technical group, and to provide an assessment of the legal basis provided by the Convention for the exchange of data with other international organisations” (paragraph 18.3 of EC-28/3). The Council decided to “return to this issue at its next session, preferably before the Seventh Session of the Conference, on the basis of the responses that would have been received to its requests” (paragraph 18.4 of EC-28/3).
8. As requested by the Council, the Secretariat referred to the WCO the issues it had raised, including the question put forward by delegations during the intersessional period on how the cooperation between the WCO and the International Atomic Energy Agency (IAEA) worked in practice. In its response of 24 May 2002, the WCO informed the Secretariat that the basic objective of its MoU with the IAEA was to improve WCO members’ capacity to effectively combat illicit cross-border trafficking of nuclear and other radioactive materials. The WCO also informed the Secretariat that its MoU with the IAEA had been implemented effectively. The WCO further indicated that, with respect to the draft MoU with the OPCW, the scope of the exchange of information and documents (Article 2) and the joint technical meetings and missions (Article 4) would certainly be based on the two parties’ human and financial resources, and subject to any legal or administrative restrictions.
9. In 2011, a report by the Council Chairperson on the status of outstanding issues on the agenda of the Council recommended that the Council request the Secretariat to inquire with the WCO whether it was still interested in concluding an MoU with the OPCW and, if so, to request the Secretariat to resubmit a proposal on such a memorandum to the Council (paragraph 10 of EC-64/2/Rev.1, dated 27 April 2011). The Council noted the report and approved the recommendations contained therein (paragraph 16 of EC-64/6, dated 6 May 2011).
10. Pursuant to the Council’s request, the Secretariat inquired with the WCO about its interest in resuming discussions on the MoU. The WCO welcomed the initiative, and discussions on a draft text took place, ultimately resulting in an agreed text for the MoU (Annex to EC-82/DEC/CRP.2).

Importance of the memorandum of understanding

11. The importance of the proposed MoU derives from the following:
 - (a) because of their location at national borders as governmental cross-border control agencies, customs services around the world have a significant role to play in detecting, interdicting, and preventing the illicit trade of chemicals relevant to the Convention; and

- (b) customs services are often the custodians of comprehensive import/export data that could be used to monitor the international movements of chemicals relevant to the Convention.
- 12. Improved cooperation between the Secretariats of the OPCW and the WCO will undoubtedly open up new avenues for customs organisations, the OPCW, and States Parties' National Authorities to coordinate and strengthen national and international responses to the illicit trade in chemicals relevant to the Convention. Such cooperation will also assist States Parties in meeting their declaration obligations under the Convention.
- 13. The Director-General hereby recommends that the Council consider and approve the draft decision incorporating the agreed text of the MoU between the OPCW and the WCO (Annex to EC-82/DEC/CRP.2).

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