



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03.12.1996
COM(96) 624 final

96/0296 (ACC)

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement
on customs cooperation and mutual
assistance in customs matters
between the European Community
and the United States of America

(presented by the Commission)

Explanatory memorandum

By its decision of 5 April 1993, the Council authorized the Commission to negotiate customs cooperation agreements with some of the Community's main trading partners, in particular the United States of America, and adopted the necessary negotiating directives.

There have been a number of meetings with the American authorities, in Brussels and Washington. Following these negotiations, the text of the Agreement was initialled on 7 November 1996.

The Agreement is now being put to the Council to be signed and concluded.

The Commission considers that the initialled text is in accordance with the negotiating directives adopted by the Council on 5 April 1993.

In order to enable the Agreement on customs cooperation and mutual assistance in customs matters to be signed at the Summit on 16 December 1996, the Commission proposes that the Council approve the attached proposal for a decision on the signing and conclusion of the Agreement.

Proposal for a Council decision

**on the conclusion of the Agreement
on customs cooperation and mutual
assistance in customs matters
between the European Community
and the United States of America**

(presented by the Commission to the Council)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof, together with the first sentence of Article 228(2) and the first subparagraph of Article 228(3),

Having regard to the proposal from the Commission,

Whereas on 5 April 1993 the Council authorized the Commission to negotiate, on behalf of the Community, customs cooperation agreements with some of the Community's main trading partners;

Whereas the Agreement between the European Community and the United States of America on customs cooperation and mutual assistance in customs matters should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the United States of America on customs cooperation and mutual assistance in customs matters is hereby approved on behalf of the European Community.

The text of the Agreement is attached to this Decision.

Article 2

The Commission, assisted by representatives of the Member States, shall represent the European Community on the Joint Customs Cooperation Committee set up under Article 22 of the Agreement.

Article 3

The President of the Council is hereby authorized to designate the persons empowered to sign the Agreement.

Article 4

The President of the Council shall effect the notification provided for in Article 23 of the Agreement on behalf of the European Community.¹

Article 5

This Decision shall be published in the Official Journal of the European Communities.

Done at Brussels, ...

For the Council
The President

X

¹ The date of entry into force of the Agreement will be published in the *Official Journal of the European Communities* by the General Secretariat of the Council.

**AGREEMENT
BETWEEN
THE EUROPEAN COMMUNITY
AND THE UNITED STATES OF AMERICA
ON CUSTOMS COOPERATION
AND MUTUAL ASSISTANCE IN CUSTOMS MATTERS**

THE EUROPEAN COMMUNITY and the UNITED STATES OF AMERICA,
hereinafter referred to as the "Contracting Parties",

TAKING ACCOUNT of the joint EU-US action plan, signed in Madrid on
3 December 1995;

CONSIDERING the importance of the commercial links between the European
Community and the United States of America and desirous of contributing, to the benefit
of both Parties, to the harmonious development of those links;

BELIEVING that, in order to attain this objective, there should be an undertaking to
develop customs cooperation of the widest possible scope;

CONSIDERING that operations in breach of customs legislation are prejudicial to the
economic, fiscal and commercial interests of both Contracting Parties, and recognizing
the importance of ensuring the accurate assessment of customs duties and other taxes;

CONVINCED that action against such operations can be made more effective by
cooperation between their customs authorities;

TAKING ACCOUNT of the respective competencies of the European Community and
the Member States of the European Community, and desiring to conclude an agreement
on those matters falling under the competencies of the European Community;

CONSIDERING the existing agreements on customs cooperation and mutual assistance
which have been concluded between individual Member States of the European
Community and the United States of America and other international agreements and
conventions already accepted by the Contracting Parties;

HAVE AGREED as follows:

TITLE I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this agreement,

- a. "customs legislation" shall mean provisions adopted by the European Community and the United States of America governing the import, export, transit of goods and their placing under any customs procedure, including measures of prohibition, restriction and control;
- b. "customs authorities" shall mean, in United States of America, the U.S. Customs Service, Department of the Treasury, and in the European Community, the competent services of the Commission of the European Communities and the customs authorities of the Member States of the European Community;
- c. "applicant authority", shall mean the competent customs authority which has been appointed by a Contracting Party for this purpose and which makes a request for assistance in customs matters;
- d. "requested authority", shall mean a competent customs authority which has been appointed by a Contracting Party for this purpose and which receives a request for assistance in customs matters;
- e. "personal data" shall mean all information relating to an identified or identifiable individual;
- f. "breach of customs legislation" shall mean any violation of the customs legislation as well as any attempted violation of such legislation.

Article 2

Territorial application

This agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other, to the territory of the United States of America.

Article 3

Future developments

The Contracting Parties may by mutual consent expand this agreement with a view to increasing the levels of customs cooperation and supplementing them, in accordance with their respective customs legislation, by means of agreements on specific sectors or matters.

TITLE II

SCOPE OF AGREEMENT

Article 4

Performance of cooperation and assistance

All cooperation and assistance under the present agreement shall be performed by the Contracting Parties in accordance with their relevant laws, rules, and other legal instruments. In addition, all cooperation and assistance under the present agreement by any Contracting Party shall be performed within the competence and available resources of its customs authority.

Article 5

Obligations imposed under other agreements

1. Taking into account the respective competencies of the European Community and the Member States, the provisions of this agreement shall:
 - not affect the obligations of the Contracting Parties under any other international agreement or convention;
 - be deemed complementary with agreements on customs cooperation and mutual assistance which have been or may be concluded between individual Member States of the European Union and the United States of America; and
 - not affect the provisions governing the communication between the competent services of the Commission and the customs authorities of the Member States of any information obtained under this agreement which could be of interest to the Community.
2. Notwithstanding the provisions of paragraph 1, the provisions of this agreement shall take precedence over the provisions of the bilateral agreements on customs cooperation and mutual assistance which have been or may be concluded between individual Member States of the European Union and the United States of America insofar as the provisions of the latter are incompatible with those of this agreement.
3. In respect of questions relating to the applicability of this agreement, the Contracting Parties shall consult each other to resolve the matter in the framework of the Joint Committee set up under Article 22.

TITLE III

CUSTOMS COOPERATION

Article 6

Scope of the cooperation

1. The customs authorities undertake to develop customs cooperation of the widest possible scope. In particular, the Contracting Parties shall seek to cooperate in:
 - a. establishing and maintaining channels of communication between their customs authorities to facilitate the secure and rapid exchange of information;
 - b. facilitating effective coordination between their customs authorities;
 - c. any other administrative matters related to this agreement that may from time to time require their joint action.
2. Under this agreement, customs cooperation shall cover all matters relating to the application of customs legislation.

Article 7

Cooperation in customs procedures

The Contracting Parties affirm their commitment to the facilitation of the legitimate movement of goods and will exchange information and expertise on measures to improve customs techniques and procedures, and computerized systems with a view toward achieving that objective in accordance with the provisions of this agreement.

Article 8

Exchange of staff

The customs authorities may exchange personnel when mutually beneficial, for the purpose of advancing their understanding of each others customs techniques and procedures, and computerized systems.

Article 9

Coordination in international organizations

The customs authorities will seek to develop and strengthen their cooperation on topics of common interest in order to seek a coordinated position when those topics are discussed in the framework of international organizations, such as the Customs Cooperation Council.

Article 10

Technical assistance to third countries

The Contracting Parties where appropriate may exchange information on actions undertaken or to be undertaken with third countries in relation to technical assistance in the customs field, with the aim of improving on the provision of such assistance.

TITLE IV

MUTUAL ASSISTANCE

Article 11

Scope of the mutual assistance

1. The Contracting Parties shall assist each other, in the areas within their competence in the manner and under the conditions laid down in this agreement, in ensuring compliance with customs legislation.
2. Consistent with the terms of this agreement, each Contracting Party shall on its own initiative or upon request, furnish the other Contracting Party appropriate information regarding the activities that may result in operations in breach of customs legislation within the territory of one Contracting Party.
3. Assistance provided pursuant to this agreement shall include in particular:
 - a. information which might be useful to combat operations in breach of customs legislation and, in particular, special means of combating such operations;

- b. information concerning new methods used in committing operations in breach of customs legislation or relevant to patterns of illegal activity; and
 - c. information concerning observations and findings resulting from the successful application of new enforcement aids and techniques.
4. This agreement is solely between the Contracting Parties; the provisions of this agreement shall not give rise to a right on the part of any private person to obtain information or to impede in the execution of a request.
 5. Nothing in this agreement shall prejudice the relevant laws, rules, and other legal instruments governing criminal matters or judicial proceedings, including mutual legal assistance.

Article 12

Assistance on request

1. Contracting Parties shall assist each other, upon request, by providing appropriate information to the applicant authority, to enable it to ensure compliance with customs legislation, including information regarding operations noted or planned which are or might be in breach of such legislation.
2. At the request of the applicant authority, the requested authority shall inform it
 - a) whether goods exported from the territory of one of the Contracting Parties have been properly imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods;
 - b) whether goods imported into the territory of one of the Contracting Parties have been properly exported from the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods.
3. The Customs authorities of one Contracting Party, upon request of the Customs authority of the other Contracting Party, shall, to the extent of their ability, and within the limits of their available resources, exercise special surveillance of:

- a. persons known to the applicant authority to have committed a breach of customs legislation or suspected of doing so;
 - b. goods either in transport or in storage notified by the applicant authority as giving rise to suspected illicit traffic; and,
 - c. means of transport suspected of being used in breaches of customs legislation.
4. The customs authorities of the Contracting Parties shall, upon request, provide relevant documentation relating to transportation and shipment of goods

Article 13

Spontaneous assistance

1. On their own initiative, the Contracting Parties shall assist each other by providing appropriate information if they consider that information to be necessary to ensure compliance with customs legislation, particularly when they obtain information pertaining to:
 - a. operations which are or appear to be in breach of such legislation and which may be of interest to the other Contracting Party;
 - b. new means or methods employed in carrying out such operations;
 - c. goods known to be the subject of breaches of customs legislation.
2. In serious cases that could involve substantial damage to the economy, public health, public security, or any other essential interest of the other Contracting Party, the Customs authorities shall wherever possible supply such information on their own initiative.

Article 14

Form and substance of requests for assistance

1. Requests pursuant to this agreement shall be made in writing. Documents necessary for the execution of such requests shall accompany the request. When required because of the urgency of the situation, oral requests may be accepted, but must be confirmed in writing immediately.

2. Requests made pursuant to paragraph 1 shall include the following information:
 - a. the authority making the request;
 - b. the nature of the requested proceedings;
 - c. the subject of and the reason for the request;
 - d. the names and addresses of the parties concerned in the proceedings, if known;
 - e. a brief description of the matter under consideration and the legal elements involved; and
 - f. a summary of the investigation to date and any relevant facts.
3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to that authority.
4. In the event that a request fails to meet requirements as set forth in this article, the applicant authority may be asked to revise or supplement it. Where appropriate, precautionary measures may be taken.

Article 15

Execution of requests

1. In order to comply with a request for assistance, the requested authority shall, within the limits of its competence and available resources, take all reasonable measures to execute the request.
2. Where the requested authority is not the appropriate agency to comply with the request for assistance, it shall promptly transmit the request to the appropriate agency and so advise the applicant authority.
3. Duly authorized officials of a Contracting Party may, with the agreement of the other Contracting Party and within the conditions laid down by the latter, obtain from the offices of the requested authority, the relevant books, registers, and other documents or data media held in those offices, make copies thereof, or extract any information or particulars relating to operations in breach of customs legislation which the applicant authority needs for the purposes of this Agreement.
4. Officials of a Contracting party may, with the agreement of the other Contracting Party and subject to the conditions laid down by the latter, be present at inquiries carried out in the latter's territory and assist in the formulation of the official report.

5. A request by a Contracting party that a certain procedure be followed shall be complied with, subject to the legislation of the requested Party.
6. The applicant authority shall, if it so requests, be advised of the time and place of the action to be taken in response to the request so that such action may be coordinated.

Article 16

Form in which information is to be communicated

1. The requested authority shall communicate appropriate information to the applicant authority in the form of documents, certified copies of documents, reports and the like.
2. Original of files, documents and other materials shall be requested only in cases where copies would be insufficient. Upon specific request, copies of such files, documents and other materials shall be appropriately authenticated.
3. Original of files, documents and other materials that have been transmitted shall be returned at the earliest opportunity; rights of the Contracting Parties or of third parties relating thereto shall remain unaffected.
4. In lieu of documents stipulated in this Agreement, computer-based information may be transmitted in any form for the same purpose. All relevant information for interpreting or utilizing that information shall be supplied at the same time.

Article 17

Exchange of information and confidentiality

1. Any information communicated in whatsoever form pursuant to this agreement shall be of a confidential or restricted nature, depending on the laws, rules, and other legal instruments applicable in each of the Contracting Parties. It shall enjoy the protection extended to like information under the relevant laws, rules, and legal instruments of the Contracting Party which received it.

2. Personal data may be provided only where the Contracting Party which will receive the data undertakes to protect such data in a way which is at least equivalent to the one applicable to that particular case in the Contracting Party which may supply the data.
3. Information obtained shall be used solely for the purposes of this agreement. Where one of the Contracting Parties requests the use of such information for other purposes, it shall obtain the prior written consent of the administrative authority which furnished the information. Such use shall then be subject to any conditions established by that authority.
4. Paragraph 3 shall not impede the use of information in any judicial or administrative proceedings subsequently instituted for failure to comply with customs legislation. The Contracting Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Agreement. The competent authority which supplied that information shall be notified of such use.
5. This article shall not preclude the use or disclosure of information to the extent that there is an obligation to do so under the laws, rules and other legal instruments of the Contracting Party which receives the information. This Party shall give advance notice of any such proposed disclosure to the Contracting Party which provided the information.

Article 18

Experts and witnesses

An official of a requested authority may be authorized to appear, within the limitations of the authorization granted, as expert or witness in judicial or administrative proceedings regarding the matters covered by this agreement in the territory of the other Contracting Party, and to produce such objects, documents or authenticated copies thereof, as may be needed for the proceedings. The request for an appearance must indicate specifically on what matters and by virtue of what title or qualification the official will be questioned.

Article 19

Exceptions to the obligation to provide assistance

1. Assistance may be refused or withheld or may be subject to the satisfaction of certain conditions or requirements, in cases where a Party is of the opinion that assistance under this agreement would be likely to prejudice the sovereignty of the United States of America or of a Member State of the Community, or would be likely to prejudice public policy, security, or other essential interest (such as that referred to in Article 17.2), or would be contrary to the legal system of the requested Contracting Party, including, where appropriate, the legal system of the Member States of the Community liable to provide assistance.
2. If the applicant authority would be unable to comply if a similar request were made by the requested authority, it shall draw attention to that fact in its request. Compliance with such a request shall be at the discretion of the requested authority.
3. Assistance may be postponed by the requested authority on the ground that it will interfere with an ongoing investigation, prosecution, or proceeding. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.
4. In the event that a request cannot be complied with, the applicant authority shall be promptly notified of that fact, and provided a statement of the reasons for postponement or denial of the request. Circumstances that might be of importance for the further pursuit of the matter shall also be provided to the applicant authority.

Article 20

Assistance expenses

1. The Contracting Parties shall waive all claims for reimbursement of costs incurred in the execution of this Agreement, except for expenses and allowances paid to experts and to witnesses as well as costs of interpreters other than Government and public service employees.

2. If expenses of a substantial and extraordinary nature are or will be required to execute the request, the Contracting Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

TITLE V

FINAL PROVISIONS

Article 21

Management

1. The management of this agreement shall be entrusted to the Customs Service (Department of Treasury) of the United States of America on the one hand and the competent departments of the Commission of the European Communities and, where appropriate, the customs authorities of the Member States on the other. They shall decide on all practical measures and arrangements necessary for its application.
2. The Contracting Parties shall consult each other and subsequently keep each other informed of:
 - any detailed rules which arise out of the implementation of this Agreement;
 - the evolution of their respective competencies which affect the scope of the agreement.

Article 22

Joint Customs Cooperation Committee

1. A Joint Customs Cooperation Committee is hereby established, consisting of representatives of the customs authorities of the Contracting Parties. The Joint Customs Cooperation Committee shall meet at a place and on a date with an agenda fixed by mutual consent.

2. The Joint Customs Cooperation Committee shall, inter alia,
 - a. see to the proper functioning of the agreement;
 - b. examine all issues arising from its application;
 - c. take measures necessary for customs cooperation in accordance with the objectives of this agreement;
 - d. exchange views on any points of common interest regarding customs cooperation, including future measures and the resources for them;
 - e. recommend solutions aimed at attaining the objectives of this agreement.
3. The Joint Customs Cooperation Committee shall adopt its rules of procedure.

Article 23

Entry into force and termination

1. This Agreement shall enter into force on the first day of the month following the date on which the Contracting Parties have notified each other of the completion of the procedures necessary for this purpose.
2. Either Contracting Party may terminate this Agreement at any time by notification through diplomatic channels. The termination shall take effect three months from the date of notification to the other Contracting Party. Ongoing proceedings at the time of termination shall nonetheless be completed in accordance with the provisions of this agreement.

In witness whereof the undersigned have signed this Agreement on Customs Cooperation and Mutual Assistance in customs matters.

Done at ... on the ...day of ...199..., in two copies in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic.

For the European Community:

M ...

Minister for...

President-in-Office of the Council of the European Union;

M ...

Member of the Commission of the European Communities;

For the Government of the United States of America:

M ...

Minister for ...;

ISSN 0254-1475

COM(96) 624 final

DOCUMENTS

EN

11 02 09

Catalogue number : CB-CO-96-622-EN-C

ISBN 92-78-12525-3

Office for Official Publications of the European Communities

L-2985 Luxembourg