



COMMISSION OF THE EUROPEAN COMMUNITIES

**Brussels, 06.05.1997
COM(97) 206 final**

97/ 0133 (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 Canada**

(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 Canada, and adopted the necessary negotiating directives.

There have been a number of meetings with the Canadian authorities, in Brussels and Ottawa. Following these negotiations, the text of the Agreement was initialled on 28 February 1997.

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 as soon as possible, 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 Canada**

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 Canada 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 Canada 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 20 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 24 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 CANADA
ON CUSTOMS COOPERATION
AND MUTUAL ASSISTANCE IN CUSTOMS MATTERS

The Government of Canada and the European Community, hereafter referred to as the Contracting Parties,

BUILDING on the privileged relationship established by the Framework Agreement for commercial and economic cooperation between the European Communities and Canada, signed at Ottawa on 6 July 1976;

TAKING ACCOUNT of the declaration of 22 November 1990 on EC-Canada relations;

RECOGNISING the Joint Declaration on Canada-European Union relations signed at Ottawa on 17 December 1996;

CONSIDERING that breaches of customs legislation are prejudicial to their economic, fiscal, social, cultural and commercial interests;

BELIEVING that there should be an undertaking to develop customs cooperation of the widest possible scope in matters including, but not limited to, simplification and harmonisation of customs procedures;

CONSIDERING the importance of accurate assessment of customs duties and taxes collected at importation or exportation and of ensuring proper enforcement of measures of prohibition, restriction and control;

RECOGNISING the need for international cooperation in matters related to the application and enforcement of their customs laws;

CONVINCED that action against breaches of customs legislation can be made more effective by close cooperation between their customs administrations;

HAVING REGARD TO the relevant instruments of the Customs Cooperation Council, in particular the Recommendation on mutual administrative assistance of 5 December 1953;

HAVING REGARD ALSO TO international conventions containing prohibitions, restrictions and special measures of control in respect of specific goods;

HAVE AGREED as follows:

TITLE I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Agreement,

1. the term “customs authority” means: in Canada: the competent services of the Department of National Revenue; 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;
2. the term “customs legislation” means: for Canada the statutory and regulatory provisions concerning the importation, exportation, transit of goods, and their placing under any customs procedure, including measures of prohibition, restriction and control, the administration and enforcement of which are specifically charged to the customs authority, and any regulations made by the customs authority under its statutory powers; and for the European Community: provisions adopted by the European Community and governing the import, export, transit of goods and their placing under any customs procedure, including measures of prohibition, restriction and control;
3. the term “breach of customs legislation” means: any violation or attempted violation of customs legislation;
4. the term “information” means: any data, documents, reports, certified or authenticated copies thereof or other communications, including data which has been processed or analysed to provide an indication relevant to a breach of customs legislation;

5. the term "person" means: either a physical human being or a legal entity;
6. the term "personal data" means: all information relating to an identified or identifiable individual;
7. the term "requested authority" means: the competent customs authority from which assistance is requested;
8. the term "requesting authority" means: the competent customs authority which requests assistance.

TITLE II

CUSTOMS COOPERATION

Article 2

Scope of the cooperation

1. The Contracting Parties undertake to develop customs cooperation of the widest possible scope.
2. Under this Agreement, customs cooperation shall cover all matters relating to the application of customs legislation.

Article 3

Technical assistance to third countries

The Contracting Parties shall, where appropriate, inform each other on actions undertaken or to be undertaken with third countries in relation to technical assistance in the customs field, with the aim of improving these actions.

Article 4

Simplification and harmonisation

The Contracting Parties agree to strive for simplification and harmonisation of their customs procedures, taking into account the work done in this connection by international organisations. They also agree to examine ways and means to solve any customs-related difficulties that might arise between them.

Article 5

Exchange of staff

The customs authorities may exchange personnel when mutually beneficial, for the purpose of advancing their understanding of each other's customs techniques and procedures, and computerised systems.

Article 6

Computerisation

The Contracting Parties shall cooperate in the computerisation of customs procedures and formalities, with the aim of facilitating trade between them.

TITLE III

MUTUAL ASSISTANCE

Article 7

Scope of assistance

1. The customs authorities shall assist each other, either on request or on their own initiative, by providing appropriate information which helps to ensure proper application of customs legislation and the prevention, investigation and combating of any breach of customs legislation.
2. All assistance under this Title by either Contracting Party shall be performed in accordance with its relevant laws, rules and other legal instruments and within the limits of its customs authority's competence and available resources.
3. This Title is intended solely for the mutual administrative assistance between the Contracting Parties; the provisions of this Title shall not give rise to a right on the part of any private person to obtain information, to obtain, suppress or exclude any evidence or to impede the execution of a request.
4. This Title shall not prejudice the rules governing mutual assistance in criminal matters. Nor shall it apply to information obtained under powers exercised at the request of the judicial authority, except where communication of such information has the prior authorisation of the said judicial authority consulted for this purpose on a case-by-case basis.

Article 8

Information on methods, trends and operations

1. Either customs authority shall communicate, either on request or on its own initiative, any available information relating to:
 - a) new customs law enforcement techniques having proved their effectiveness;
 - b) new trends, means or methods of committing breaches of customs legislation.
2. Either on request or on their own initiative, the customs authorities shall provide each other with information on operations, completed or planned, which constitute or appear to constitute a breach of customs legislation in the territory of the other Contracting Party.

Article 9

Assistance on request

1. On request, the requested authority shall inform the requesting authority about the customs legislation and procedures applicable in that Contracting Party and relevant to inquiries relating to a breach of customs legislation.
2. On request, the requested authority shall, in particular, provide the requesting authority with the following information:
 - a) whether goods imported into the territory of the requesting Contracting Party have been lawfully exported from the territory of the requested Contracting Party and specifying, where appropriate, the customs procedure applied to the goods;

- b) whether goods exported from the territory of the requesting Contracting Party have been lawfully imported into the territory of the requested Contracting Party, and specifying, where appropriate, the customs procedure applied to the goods.
3. On request, and subject to specific provisions under Article 13, the requested authority shall provide information on, and maintain special surveillance over:
- (a) persons known to the requesting 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 requesting authority as giving rise to suspected illicit traffic;
 - (c) means of transport suspected by the requesting authority of being used to commit breaches of customs legislation;
 - (d) premises suspected by the requesting authority of being used to commit breaches of customs legislation.

Article 10

Spontaneous assistance

In serious cases that could involve substantial damage to the economy, public health, public security or any other vital interest of one Contracting Party, the customs authority of the other Contracting Party shall, to the extent possible, supply information on its own initiative.

Article 11

Form in which information is to be communicated

1. The requested authority shall communicate appropriate information to the requesting authority in the form of documents, certified copies of documents, reports or electronic versions thereof. All relevant information for interpreting or utilising that information shall be supplied at the same time.
2. Original files, documents and other materials shall only be requested in cases where copies would be insufficient. Upon specific request, copies of such files, documents and other materials shall be appropriately authenticated.
3. Original files, documents and other materials that have been transmitted shall be returned as soon as possible; rights of the requested authority or of third parties relating thereto shall remain unaffected.

Article 12

Experts and witnesses

1. The customs authority of one Contracting Party may authorise its employees, upon the request of the customs authority of the other Contracting Party, to appear as witnesses or experts in judicial or administrative proceedings in the territory of the other Contracting Party and to produce such files, documents or other materials, or authenticated copies thereof, as may be considered essential for the proceedings.
2. When appearing in judicial or administrative proceedings in the circumstances of paragraph 1, witnesses or experts will be afforded the full protection of the law of the requesting Contracting Party pertaining to testimony of a privileged or confidential nature which may be protected from disclosure under that law.

3. 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 13

Communication of requests

1. Requests for assistance under this Title shall be made in writing and shall be accompanied by any documents deemed useful. When the circumstances so require, requests may also be made verbally. Such requests shall be promptly confirmed in writing. Written requests may be made by electronic means from which a paper record may be made.
2. Requests pursuant to paragraph 1 shall include the following information:
 - (a) the requesting authority;
 - (b) the measure requested;
 - (c) the object of and the reason for the request;
 - (d) the laws, rules and other legal elements involved;
 - (e) information which is as exact and comprehensive as possible on the persons who are the target of the investigations; and
 - (f) a summary of the relevant facts and of the investigations already carried out, including the customs authorities involved at the time of the request.
3. The requested authority shall agree to follow a certain procedure in responding to a request, unless that procedure would conflict with legal and administrative provisions of the requested Contracting Party.
4. The information referred to in this Title shall be communicated only to officials who are specifically designated for this purpose by each customs authority. Lists of officials so designated shall be exchanged in accordance with Article 19 (3) of this Agreement.
5. Requests shall be submitted in an official language of the requested authority or in a language acceptable to that authority.

6. If a request does not meet the formal requirements, the requested authority may ask for its correction or completion. The requested authority may take interim measures.

Article 14

Execution of requests

1. If the requested authority does not have the information requested, it shall in accordance with its legislation, either:
 - (a) initiate inquiries to obtain that information; or
 - (b) promptly transmit the request to the appropriate agency; or
 - (c) indicate which relevant authorities are concerned.
2. Any inquiry under paragraph 1 may include the taking of statements from persons from whom information is sought in connection with a breach of customs legislation and from witnesses and experts.

Article 15

Duties of officials

1. On written request, with the authorisation of the requested authority and subject to conditions the latter may impose, for the purpose of investigating a breach of customs legislation, officials specifically designated by the requesting authority may be present during an inquiry conducted by the requested authority in the territory of the requested Contracting Party and relevant to the requesting authority.
2. When officials of the requesting authority are present in the territory of the other Contracting Party in the circumstances provided for in paragraph 1, they must at all times be able to furnish proof of their official capacity.

3. Duly authorised 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 or other authority for which the requested authority is responsible, information relating to a breach of customs legislation which the requesting authority needs for the purposes of this Title.

Article 16

Confidentiality of information

1. Any information received under this Title shall be treated as confidential and shall at least be subject to the same protection and confidentiality as the same kind of information is subject to under the laws applicable in the Contracting Party where it is received.
2. Information obtained shall be used solely for the purposes of this Title. Where one of the Contracting Parties requests the use of such information for other purposes, it shall obtain the prior written consent of the customs authority which furnished the information. Such use shall then be subject to any restrictions laid down by that authority.
3. Paragraph 2 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 evidence obtained in accordance with the provisions of this Title. The competent authority which supplied that evidence shall be notified in advance of such use.
4. Personal data may be exchanged 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 protection applicable to that particular case in the Contracting Party which may supply the data.

5. Dissemination of information among customs authorities within each Contracting Party will occur only on a need-to-know basis. Where information is shared pursuant to this paragraph, the Contracting Party that supplied the information shall be so informed in advance of sharing the information.

Article 17

Exceptions to the obligation to provide assistance

1. In cases where assistance under this Title would infringe upon the sovereignty of Canada or a Member State of the European Community or prejudice security, public policy or other essential interest (such as that referred to in Article 16 (4)) of a Contracting Party, or would involve a violation of industrial, commercial or professional secrecy or would be inconsistent with its legislation, assistance may be refused, or made subject to the fulfilment of certain conditions or requirements.
2. If the requesting 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 grounds that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case the requested authority shall consult with the requesting authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.
4. Where assistance is denied or postponed, reasons for the denial or postponement shall be given without delay.

Article 18

Costs

1. The customs authorities shall waive all claims for reimbursement of costs incurred in the execution of this Title.

2. If expenses of a substantial or 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 IV

FINAL PROVISIONS

Article 19

Implementation of the Agreement

1. The management of this Agreement shall be entrusted to the customs authority of Canada and the competent services of the Commission of the European Communities and, where appropriate, the customs authorities of the Member States.
2. The customs authorities shall take measures so that their officials responsible for the investigation or combating of breaches of customs legislation maintain personal and direct relations with each other.
3. The customs authorities shall decide on detailed arrangements to facilitate the implementation of this Agreement.
4. The customs authorities shall endeavour to resolve any problem or doubt arising from the interpretation or application of this Agreement.

Article 20

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 see to the proper functioning of the Agreement and shall examine all issues arising from its application. In fulfilling this role, its main functions will be to:
 - (a) take the measures necessary for customs cooperation in accordance with the objectives of this Agreement and for the expansion of this Agreement with a view to increasing the level of customs cooperation and supplementing it on specific sectors or matters;
 - (b) exchange views on any points of common interest regarding customs cooperation, including future measures and the resources for them;
 - (c) in general terms, recommend solutions aimed at attaining the objectives of this Agreement.
3. The Joint Customs Cooperation Committee shall adopt its rules of procedure.

Article 21

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 Canada; and
 - not affect the provisions governing the communication between the competent services of the Commission and the customs authorities of the Member States on a need-to-know basis of any information obtained under this Agreement which could be of interest to the European 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 Canada 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 20.

Article 22

Territorial application

This Agreement shall apply to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and to the territory of Canada under the conditions laid down in Canadian law.

Article 23

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.

Article 24

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. This Agreement is intended to be of unlimited duration but either Contracting Party may terminate it at any time by notification through diplomatic channels.

3. The termination shall take effect one month from the date of the notification of denunciation 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, being duly authorised thereto, have signed this Agreement.

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 Canada:

M ... Minister for

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