



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DECISION

on the signature and conclusion of the Agreement between the European Community and the United States of America on intensifying and broadening the Agreement of 28 May 1997 on customs co-operation and mutual assistance in customs matters to include co-operation on Container Security and related matters

(presented by the Commission)

EXPLANATORY MEMORANDUM

INTRODUCTION

1. Following 11 September 2001, the United States launched several initiatives in order to tackle the perceived terrorist threat of container transport. One of the measures taken is the Container Security Initiative, which aims at making maritime transport more secure without hindering legitimate global trade. A critical element of this initiative is the availability of advance information to perform sophisticated targeting and the stationing of US customs officials in the port of shipment.
2. Participation of Community ports in the Container Security Initiative is necessary to avoid significant barriers to large volumes of transatlantic trade with the United States resulting from customs control measures in US ports.

PROPOSED EXPANSION OF THE EC/US AGREEMENT TO COVER CONTAINER SECURITY

3. On 18 March 2003, the Council unanimously authorised the Commission to negotiate with the US an expansion of the “Agreement between the European Community and the United States of America on customs co-operation and mutual assistance in customs matters” (hereinafter the “EC/US Agreement”).¹
4. The draft “Agreement between the European Community and the United States of America on intensifying and broadening the Agreement of 28 May 1997 on customs co-operation and mutual assistance in customs matters to include co-operation on Container Security and related matters” (hereinafter the “Agreement”) expands the customs co-operation between the European Community and the United States to container security and related matters. It envisages the prompt and successful extension of the Container Security Initiative to all ports in the European Community that meet relevant requirements. The draft Agreement also sets out a work programme for further implementation measures cooperation, including the development of standards for risk management techniques, information required to identify high-risk shipments imported into the Parties, and industry partnership programs.
5. The Commission considers that the text of the proposed agreement is in accordance with the negotiating directives. In order to enable the Agreement on intensifying and broadening the EC/US Agreement to be signed, the Commission proposes that the Council approve the attached proposal for a decision on the signing and conclusion of the Agreement.

CHOICE OF THE LEGAL BASIS

6. Article 133 of the EC Treaty gives the Community the exclusive competence to formulate a commercial policy based on “uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade”.

¹ OJ L 222 of 12.8.1997, p. 17–24.

7. One of the core elements of the commercial policy are uniform customs tariffs and the conclusion of trade agreements aiming at the abolition of restrictions to international trade the lowering of customs barriers and the functioning of the customs union towards third countries.
8. To that end the Community has concluded a large number of bilateral customs co-operation agreements, including the EC/US Agreement.
9. The draft agreement intensifying and broadening the EC/US Agreement comes in essentials within the context of Article 133 of the EC Treaty. Its direct aim is to ensure continued flow of transatlantic trade between Community ports and the United States of America on the basis of uniform principles. The expansion of the cooperation agreement establishes a framework to ensure equal levels and standards of control for US and EC operators in all Member States and thereby facilitates legitimate trade. The external co-ordination of customs control standards with the United States of America is also necessary to ensure the continued flow of legitimate trade in containers from all Community ports.

PROPOSED CO-ORDINATION MECHANISM FOR FURTHER INTENSIFYING CO-OPERATION ON CONTAINER SECURITY

10. The framework agreed at the Community level leaves open to which Community ports the Container Security Initiative shall be actually expanded. Certain Member States have already implemented declarations of principle with the United States identifying ports that participate in the Container Security Initiative and providing for the stationing of US customs officials in these ports.
11. It is appropriate to authorise Member States to implement the expansion of the Container Security Initiative to all Community ports through arrangements with the United States or to maintain existing declarations of principles provided that these are in conformity with the Treaty establishing the European Communities and compatible with the EC/US Agreement as expanded.
12. It is also necessary to ensure close cooperation between the Member States and the Community institutions for the purpose of the further intensification and broadening of the customs co-operation under the EC/US Agreement as expanded.
13. To that end a consultation procedure shall be established whereby Member States envisaging to negotiate further arrangements or agreements with the United States on matters covered by the EC/US Agreement as expanded by the Agreement would immediately notify such intention and provide the relevant information. If so requested by a Member State or the Commission within short time limits the information shall be subject of consultations between the Member States and the Commission.
14. The main purpose of the consultations shall be to facilitate the exchange of information and to ensure that the arrangements are consistent with the Treaty establishing the European Communities and common policies, in particular the common framework of co-operation with the United States set out in the EC/US Agreement as expanded.

15. Where the Commission considers that an arrangement or agreement that a Member State wishes to implement with the United States of America is incompatible with the EC/US Agreement as expanded or that the subject-matter should be addressed in the framework of the EC/US Agreement as expanded, it shall inform the Member State accordingly.
16. The consultation procedure shall be without prejudice to the respective competencies of the Member States and the European Community to conclude the arrangements or agreements envisaged.

Proposal for a

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133, in conjunction with Article 300 (2), first sentence,

Having regard to the proposal from the Commission,

Whereas:

- (1) The Container Security Initiative launched by the United States after the terrorist attacks on September 11th 2001 aims at making maritime transport more secure without hindering legitimate global trade. An important element of this initiative is the availability of advance information to perform sophisticated targeting.
- (2) Participation of Community ports in the Container Security Initiative is necessary to avoid significant barriers to large volumes of transatlantic trade with the United States resulting from customs control measures in US ports. Certain Community ports are already participating in the Container Security on the basis of bilateral declarations of principle between individual Member States and the United States of America. These declarations of principle identify Community ports that participate in the Container Security Initiative and provide for the stationing of US customs officials therein.
- (3) The Agreement between the European Community and the United States of America on customs co-operation and mutual assistance in customs matters” (hereinafter the “EC/US Agreement”)² provides for the possibility of expanding the agreement with a view to increasing the levels of customs co-operation and supplementing them by means of agreements on specific sectors or matters.
- (4) The Commission has negotiated on behalf of the European Community an agreement with the United States of America intensifying and broadening the EC/US Agreement of 28 May 1997 on customs co-operation and mutual assistance in customs matters to include co-operation on Container Security and related matters (hereinafter the “Agreement”)³,

² OJ L 222 of 12.8.1997, p. 17– 24.

³ OJ L 222 of 12.8.1997, p. 17– 24.

- (5) The Agreement expands the customs co-operation between the European Community and the United States to cover container security and related matters. It envisages the prompt and successful expansion of the Container Security Initiative to all ports in the European Community that meet relevant requirements. The Agreement also sets out a work programme for further implementation measures cooperation, including the development of standards for risk management techniques, information required to identify high-risk shipments imported into the Parties, and industry partnership programs.
- (6) The external co-ordination of customs control standards with the United States of America is necessary to ensure the continued flow of legitimate trade in containers. In particular, it is essential to ensure that all Community ports can participate in the Container Security Initiative on the basis of uniform principles. Thus, the direct aim and content of the Agreement concerns the facilitation of legitimate trade from Community ports with the United States of America.
- (7) It is, therefore, necessary to approve the Agreement on intensifying and broadening the Agreement on customs co-operation and mutual assistance in customs matters to include co-operation on Container Security and related matters that has been initialled on 18 November 2003;
- (8) Member States shall be authorised to implement the expansion of the Container Security Initiative to all Community ports through arrangements with the United States identifying Community ports that participate in the Container Security Initiative and providing for the stationing of US customs officials therein or to maintain any such existing declarations of principles to that end, provided these arrangements are in conformity with the Treaty establishing the European Communities and compatible with the EC/US Agreement as expanded by the Agreement.
- (9) It is necessary to ensure close cooperation between the Member States and the Community institutions for the purpose of the further intensification and broadening of the customs co-operation under the EC/US Agreement.
- (10) To that end a consultation procedure shall be established whereby Member States envisaging to negotiate further arrangements or agreements with the United States on matters covered by the EC/US Agreement as expanded would immediately notify such intention and provide the relevant information. If so requested by a Member State or the Commission within short time limits the information shall be subject of consultations between the Member States and the Commission.
- (11) The main purpose of the consultations shall be to facilitate the exchange of information and to ensure that the arrangements are consistent with the Treaty establishing the European Communities and common policies, in particular the common framework of co-operation with the United States set out in the EC/US Agreement as expanded.
- (12) Where the Commission considers that an arrangement or agreement that a Member State wishes to implement with the United States of America is incompatible with the EC/US Agreement as expanded or that the subject-matter should be addressed in the framework of the EC/US Agreement as expanded, it shall inform the Member State accordingly.

- (13) The consultation procedure shall be without prejudice to the respective competencies of the Member States and the European Community to conclude the arrangements or agreements envisaged.

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the United States of America on intensifying and broadening the Agreement on customs co-operation and mutual assistance in customs matters to include co-operation on Container Security and related matters is hereby approved on behalf of the European Community.

The text of the Agreement is attached to this decision.

Article 2

The President of the Council is hereby authorised to designate the person empowered to sign the Agreement on behalf of the European Community thereby expressing the consent of the Community to be bound.

Article 3

1. Member States are authorised to implement arrangements with the United States of America in order to expand the Container Security Initiative to further ports in the Community. Such arrangements shall make reference to the EC/US Agreement as expanded and comply with Article 5(2) thereof.

Member States may also maintain any such arrangements with the United States of America. To the extent that such arrangements are not compatible with the EC/US Agreement as expanded, Member States concerned shall enter into contact with the United States so as to eliminate the incompatibilities established.

2. Member States envisaging to negotiate further arrangements, agreements or amendments to existing ones with the United States relating to matters covered by the EC/US Agreement as expanded shall immediately notify the Commission and the other Member States and provide relevant information with the notification.
3. If so requested by a Member State or the Commission within 8 working days of the receipt of the notification, the information shall be subject of consultations between the Member States and the Commission.
4. The main purpose of the consultations provided for in paragraph 3 shall be to facilitate the exchange of information and to ensure that the arrangements or agreements are consistent with the Treaty establishing the European Communities and common policies, in particular the common framework of co-operation with the United States set out in the EC/US Agreement as expanded.
5. The consultations shall take place no later than 7 working days after the receipt of the notification within the Committee established by Article 247 of Regulation 2913/92.

6. If within 5 working days after the consultations the Commission concludes that an arrangement or agreement that a Member State wishes to implement with the United States of America is incompatible with the EC/US Agreement as expanded or that the subject-matter should be addressed in the framework of the EC/US Agreement as expanded, it shall inform the Member State accordingly.
7. Member States shall transmit to the Commission and to the other Member States a copy of arrangements or agreements referred to in paragraph 1 and 2, as well as any denunciation of, or amendments thereto.

This consultation procedure is without prejudice to the respective competencies of the Member States and the European Community.

Done at Brussels,

*For the Council
The President*

ANNEX

Draft

Agreement between the European Community and the United States of America on intensifying and broadening the Agreement on customs co-operation and mutual assistance in customs matters to include co-operation on Container Security and related matters

THE EUROPEAN COMMUNITY AND THE UNITED STATES OF AMERICA,

Having regard to the provisions of the Agreement between the European Community and the United States of America on customs co-operation and mutual assistance in customs matters, which was signed May 28, 1997, hereafter called "the CMAA";

Whereas:

- (1) Acknowledging that U.S. Customs and Border Protection is, as of March 1, 2003, the successor to the United States Customs Service under the CMAA;
- (2) Recalling that the Contracting Parties may by mutual consent decide to expand areas of co-operation under the CMAA pursuant to Article 3;
- (3) Recalling that, under Article 22 of the CMAA, the JCCC consists of representatives of the Customs Authorities of the Contracting Parties, which in the European Community are the competent services of the Commission of the European Communities assisted by the customs authorities of the Member States of the European Community and in the United States of America is the U.S. Customs and Border Protection, Department of Homeland Security;
- (4) Recognizing that the Joint Customs Co-operation Committee (JCCC) was established under Article 22 of the CMAA;
- (5) Acknowledging the long-standing, close and productive relations between the Customs Authorities of the United States of America and of the European Community;
- (6) Being convinced that this co-operation can be further improved by, among other things, intensifying the exchange of relevant information and best practices among the U.S. Customs and Border Protection, the European Commission and the Customs Authorities of Member States of the European Community in order to ensure that general customs controls of international trade take due account of security concerns;
- (7) Acknowledging the importance of extending this co-operation to all modes of international transport and all kinds of goods, initially putting priority on sea-container transport;

- (8) Recognizing the high volume of two-way sea-container and other modes of trade between the European Community and the United States of America, and the important role of both the European Community and the U.S. as transport hubs for containers coming from many countries;
- (9) Recognizing that global sea containers are imported into, transhipped through, or transiting the United States of America and the European Community;
- (10) Being convinced that there is a need to deter, prevent, and interdict any terrorist attempts to disrupt global trade by concealing terrorist weapons in global sea-container trade or other shipments, or by using such shipments as weapons;
- (11) Being convinced of the need to increase security for the European Community and the United States of America and at the same time facilitate legitimate trade;
- (12) Noting the importance of developing, to the extent practicable, reciprocal systems for securing and facilitating legitimate trade with due regard to threat assessments;
- (13) Recognising that substantially greater security of legitimate trade can be achieved through a system where the customs authority of the importing country works collaboratively with customs authorities involved in earlier parts of the supply chain to use timely information and inspection technology to target and screen high-risk containers before they are shipped from their ports or places of loading or transhipment;
- (14) Supporting the objectives of the Container Security Initiative (CSI), which is designed to safeguard global maritime trade by enhancing co-operation at seaports world wide in order to identify and examine high-risk containers and ensure their in-transit integrity;
- (15) Recalling Article 5 of the CMAA that determines the relationship between that Agreement and any bilateral agreement on co-operation and mutual assistance in customs matters that have been or may be concluded between individual Member States of the European Community and the United States;
- (16) Recognizing that expansion of CSI should occur as quickly as possible for all ports within the European Community where the exchange of sea-container traffic with the United States of America is more than *de minimis* and where certain minimum requirements are met and where adequate inspection technology exists;

HAVE AGREED ON THE FOLLOWING:

Article 1

To intensify and broaden customs co-operation under the CMAA to improve the security of sea-container and other shipments from all locations that are imported into, transhipped through, or transiting the European Community and the United States of America.

Article 2

To take due account of Article 5 of the CMAA, which determines the relations between the CMAA and any bilateral agreement on co-operation and mutual assistance in customs matters between Member States of the European Community and the United States of America, and any CSI Declarations of Principles that complement such bilateral agreements

Article 3

That the objectives of the intensified and broadened co-operation include, but are not limited to:

- (1) Supporting the prompt and successful expansion of the CSI to all ports in the European Community that meet relevant requirements, and promoting comparable standards in the relevant U.S. ports;
- (2) Working together to reinforce the customs related aspects for securing the logistics chain of international trade and, in particular, as a first priority to enhance the identification and security screening of all high-risk sea-container shipments ;
- (3) Establishing minimum standards, to the greatest extent practicable, for risk-management techniques and related requirements and programs; and
- (4) Co-ordinating positions, to the greatest extent practicable, in any multilateral fora where issues related to container security may be appropriately raised and discussed.

Article 4

To consider in the JCCC the appropriate form and content of documents and/or measures further implementing the intensified and broadened customs co-operation under this Agreement.

Article 5

To form a Working Group, comprised of representatives of U.S. Customs and Border Protection and of the European Commission assisted by interested Member States in order to examine and make recommendations to the JCCC on issues including, but not limited to those identified in the Annex.

Article 6

That the Working Group is to report on a regular basis to the Commissioner of U.S. Customs and Border Protection and the Director-General of the Taxation and Customs Union Directorate General of the European Commission and annually to the JCCC on the progress of its work.

Article 7

This agreement shall enter into force upon signature by the Parties which shall have the effect of expressing their consent to be bound. If the agreement is not signed the same day on behalf of both Parties, the agreement shall enter into force on the day on which the second signature is affixed.

Signed at, on

FOR THE EUROPEAN COMMUNITY

FOR THE UNITED STATES OF AMERICA:

ANNEX to the Agreement between the European Community and the United States of America on intensifying and broadening the CMAA to include co-operation on Container Security and related matters

The Working Group created under Paragraph 5 of the Agreement between the European Community and the United States of America on intensifying and broadening the CMAA to include co-operation on Container Security and related matters shall examine and make recommendations on issues including, but not limited to, the following areas of co-operation between U.S. Customs and Border Protection and Customs authorities in the European Community with a view to ensuring that general customs controls of international trade take due account of security concerns:

- a. Defining minimum standards, in particular in view of participating in CSI, and recommending methods by which those standards may be met;
- b. Identifying and broadening the application of best practices concerning security controls of international trade, especially those developed under CSI;
- c. Defining and establishing standards to the greatest extent practicable for the information required to identify high-risk shipments imported into, transhipped through, or transiting the United States and the European Community;
- d. Improving and establishing standards to the greatest extent practicable for targeting and screening such high-risk shipments, to include information exchange, the use of automated targeting systems, and the development of minimum standards for inspection technologies and screening methodologies;
- e. Improving and establishing standards to the greatest extent practicable for industry partnership-programs designed to improve supply chain security and facilitate the movement of legitimate trade;
- f. Identifying any regulatory or legislative changes that would be necessary to implement the recommendations of the Working Group; and
- g. Considering the type of documents and measures further implementing the intensified and broadened customs co-operation on the issues set out in this Annex.