

PROTOCOLS

PROTOCOL 11

on mutual assistance in Customs Matters

Article 1

Definitions

For the purposes of this Protocol:

- (a) ‘customs legislation’ shall mean provisions applicable in the territories of the Contracting Parties governing the import, export, transit of goods and their placing under any other customs procedure, including measures of prohibition, restriction and control adopted by the said Parties;
- (b) ‘customs duties’ shall mean all duties, taxes, fees or other charges which are levied and collected in the territories of the Contracting Parties, in application of customs legislation, but not including fees and charges which are limited in amount to the approximate costs of services rendered;
- (c) ‘applicant authority’ shall mean a competent administrative 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 administrative authority which has been appointed by a Contracting Party for this purpose and which receives a request for assistance in customs matters;
- (e) ‘contravention’ shall mean any violation of the customs legislation as well as any attempted violation of such legislation.

Article 2

Scope

1 The Contracting Parties shall assist each other, in the manner and under the conditions laid down in this Protocol, in ensuring that customs legislation is correctly applied, in particular by the prevention, detection and investigation of contraventions of this legislation.

2 Assistance in customs matters, as provided for in this Protocol, applies to any administrative authority of the Contracting Parties which is competent for the application of this Protocol. It shall not prejudice the rules governing mutual assistance in criminal matters.

Article 3

Assistance on request

1 At the request of the applicant authority, the requested authority shall furnish it with all relevant information to enable it to ensure that customs legislation is correctly applied, including

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information regarding operations noted or planned which contravene or would contravene such legislation.

2 At the request of the applicant authority, the requested authority shall inform it 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.

3 At the request of the applicant authority, the requested authority shall take the necessary steps to ensure that a surveillance is kept on:

- a natural or legal persons of whom there are reasonable grounds for believing that they are contravening or have contravened customs legislation;
- b movement of goods notified as possibly giving rise to substantial contraventions of customs legislation;
- c means of transport for which there are reasonable grounds for believing that they have been, are or may be used in the contravening of customs legislation.

Article 4

Spontaneous assistance

The Contracting Parties shall within their competences provide each other with assistance if they consider that to be necessary for the correct application of customs legislation, particularly when they obtain information pertaining to:

- operations which have contravened, contravene or would contravene such legislation and which may be of interest to other Contracting Parties;
- new means or methods employed in realizing such operations;
- goods known to be subject to substantial contravention of customs legislation on import, export, transit or any other customs procedure.

Article 5

Delivery/Notification

At the request of the applicant authority, the requested authority shall in accordance with its legislation take all necessary measures in order to:

- deliver all documents;
- notify all decisions;

falling within the scope of this Protocol to an addressee, residing or established in its territory.

Article 6

Form and substance of requests for assistance

1 Requests pursuant to the present Protocol 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 pursuant to paragraph 1 shall include the following information:

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- a the applicant authority;
 - b the measure requested;
 - c the object of and the reason for the request;
 - d laws, rules and other legal instruments involved;
 - e indications as exact and comprehensive as possible on the natural or legal persons being the target of the investigations;
 - f a summary of the relevant facts, except in cases provided for in Article 5.
- 3 Requests shall be submitted in an official language of the requested authority or in a language acceptable to such authority.
- 4 If a request does not meet the formal requirements, its correction or completion may be demanded; the ordering of precautionary measures may, however, take place.

Article 7

Execution of requests

- 1 In order to comply with a request for assistance, the requested authority or, when the latter cannot act on its own, the administrative department to which the request has been addressed by this authority, shall proceed, within its competence and resources available, as though it were acting on its own account or at the request of other authorities of that same Contracting Party, by supplying information already possessed, by carrying out appropriate enquiries or by arranging for them to be carried out.
- 2 Requests for assistance will be executed in accordance with the laws, rules and other legal instruments of the requested Contracting Party.
- 3 Duly authorized officials of a Contracting Party may, with the agreement of the other Contracting Party involved 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 the contravention of customs legislation which the applicant authority needs for the purposes of this Protocol.
- 4 Officials of a Contracting Party may, with the agreement of the other Contracting Party, be present at enquiries carried out in the latter's territory.

Article 8

Form in which information is to be communicated

- 1 The requested authority shall communicate results of enquiries to the applicant authority in the form of documents, certified copies of documents, reports and the like.
- 2 The documents provided for in paragraph 1 may be replaced by computerized information produced in any form for the same purpose.

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Article 9

Exceptions to the obligation to provide assistance

- 1 The Contracting Parties may refuse to give assistance as provided for in this Protocol, where to do so would:
 - a be likely to prejudice sovereignty, public policy (*l'ordre publique*), security or other essential interests; or
 - b involve currency or tax regulations other than regulations concerning customs duties; or
 - c violate an industrial, commercial or professional secret.
- 2 Where the applicant authority asks for assistance which it would itself be unable to provide if so asked, it shall draw attention to that fact in its request. It shall then be left to the requested authority to decide how to respond to such a request.
- 3 If assistance is withheld or denied, the decision and the reasons therefor must be notified to the applicant authority without delay.

Article 10

Obligation to observe confidentiality

Any information communicated in whatever form pursuant to this Protocol shall be of a confidential nature. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to like information under the relevant laws applicable in the Contracting Party which received it and the corresponding provisions applying to the Community authorities.

Article 11

Use of information

- 1 Information obtained shall be used solely for the purposes of this Protocol and may be used within each Contracting Party for other purposes only with the prior written consent of the administrative authority which furnished the information and shall be subject to any restrictions laid down by that authority. These provisions are not applicable to information concerning offences relating to narcotic drugs and psychotropic substances. Such information may be communicated to other authorities directly involved in the combat of illicit drug traffic.
- 2 Paragraph 1 shall not impede the use of information in any judicial or administrative proceedings subsequently instituted for failure to comply with customs legislation.
- 3 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 Protocol.

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Article 12

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 Protocol in the jurisdiction of another Contracting Party, and 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 matter and by virtue of what title or qualification the official will be questioned.

Article 13

Assistance expenses

The Contracting Parties shall waive all claims on each other for the reimbursement of expenses incurred pursuant to this Protocol, except, as appropriate, for expenses to experts and witnesses and to interpreters and translators who are not dependent upon public services.

Article 14

Implementation

1 The management of this Protocol shall be entrusted to the central customs authorities of the EFTA States, on the one hand, and the competent services of the EC Commission and, where appropriate, the customs authorities of the EC Member States, on the other. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration rules in the field of data protection. They may recommend to the competent bodies amendments which they consider should be made to this Protocol.

2 The Contracting Parties shall transmit to each other lists of the competent authorities appointed to act as correspondents for the purpose of the operational implementation of this Protocol.

As regards cases covered by Community competence, due account shall be taken in this respect of specific situations which, because of the urgency or the fact that only two countries are involved in a request or communication, may require direct contacts between the competent services of the EFTA States and of the EC Member States for the handling of requests or exchange of information. This information shall be supplemented by lists, to be revised when necessary, of officials of those services responsible for preventing, investigating and combating contravention of customs legislation.

Moreover, in order to ensure the maximum efficiency of operation of this Protocol, the Contracting Parties shall take appropriate measures to ensure that the departments responsible for combating customs fraud establish direct personal contacts, including when applicable at the level of local customs authorities, in order to facilitate exchange of information and handling of requests.

3 The Contracting Parties shall consult each other and subsequently keep each other informed of the detailed rules of implementation which are adopted in accordance with the provisions of this Article.

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Article 15

Complementarity

1 This Protocol shall complement and not impede application of any agreements on mutual assistance which have been concluded or may be concluded between EC Member States and EFTA States as well as between the EFTA States. Nor shall it preclude more extensive mutual assistance granted under such agreements.

2 Without prejudice to Article 11, these agreements do not prejudice Community provisions governing the communication between the competent services of the EC Commission and the customs authorities of the Member States of any information obtained in customs matters which could be of Community interest.