



**COUNCIL OF
THE EUROPEAN UNION**

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject : Council Decision concerning the conclusion of the Agreement between the European Community and the United States of America on intensifying and broadening the Agreement on customs cooperation and mutual assistance in customs matters to include cooperation on Container Security and related matters

COMMON GUIDELINES

Consultation deadline: 29.03.2004

COUNCIL DECISION

of

concerning the conclusion of the Agreement between
the European Community and the United States of America
on intensifying and broadening the Agreement on customs cooperation
and mutual assistance in customs matters to include cooperation
on Container Security and related matters

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas:

- (1) The Agreement between the European Community and the United States of America on customs cooperation and mutual assistance in customs matters ¹ ("CMAA") provides for the possibility of its expansion with a view to increasing the levels of customs cooperation and supplementing them by means of agreements on specific sectors or matters.
- (2) The Commission has negotiated on behalf of the Community an agreement with the USA intensifying and broadening the CMAA to include cooperation on Container Security and related matters (the "Agreement").
- (3) The Agreement expands the customs cooperation between the Community and the USA to cover container security and related matters. It envisages the prompt and successful expansion of the Container Security Initiative to all ports in the Community that meet relevant requirements. The Agreement also sets out a work programme for further implementation measures, including the development of standards for risk management techniques, information required to identify high-risk shipments imported into the Parties, and industry partnership programmes.

¹ OJ L 222, 12.8.1997, p. 17.

- (4) The external coordination of customs control standards with the USA is necessary to ensure supply chain security while guaranteeing 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 and that comparable standards are promoted in US ports. Thus, the direct aim and content of the Agreement concerns the facilitation of legitimate trade between the Community and the USA while ensuring on a reciprocal basis a high level of security by allowing for cooperation in developing actions in specific control areas in respect of which the Community has competence.
- (5) Member States should have the possibility to expand the Container Security Initiative to all Community ports through arrangements with the USA 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 and compatible with the CMAA as expanded by the Agreement.
- (6) It is necessary to ensure close cooperation between the Member States and the Community institutions for the purpose of further intensification and broadening of the customs cooperation under the CMAA as expanded.

- (7) To that end a consultation procedure should be established whereby Member States envisaging to negotiate arrangements with the USA on matters covered by the CMAA 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 should be the subject of consultations between the Member States and the Commission.
- (8) The main purpose of the consultations should be to facilitate the exchange of information and to ensure that the arrangements are consistent with the Treaty and with common policies, in particular the common framework of cooperation with the USA set out in the CMAA as expanded.
- (9) Where the Commission considers that an arrangement that a Member State wishes to implement with the USA is incompatible with the CMAA as expanded or that the subject-matter should be addressed in the framework of the CMAA as expanded, it should inform the Member State accordingly.
- (10) The consultation procedure should be without prejudice to the respective competencies of the Member States and the Community to conclude the arrangements envisaged.
- (11) The Agreement should be approved,

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 cooperation and mutual assistance in customs matters to include cooperation on Container Security and related matters ("the Agreement") 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(s) empowered to sign the Agreement in order to bind the Community.

Article 3

1. Member States may maintain or conclude arrangements with the USA in order to include Community ports in the Container Security Initiative. Any such arrangement shall make reference to the CMAA as expanded and comply with the latter, including minimum standards once they are adopted.

The Commission and the Member States concerned may consult each other in order to ensure that such arrangements comply with the CMAA as expanded.

2. Before a Member State commences negotiations on arrangements with the USA relating to matters other than those referred to in paragraph 1 but covered by the CMAA as expanded, it shall notify the Commission and the other Member States and provide any relevant information with the notification.

3. Member States or the Commission may request, within eight working days of the receipt of the notification, consultations with the other Member States and the Commission. Such consultations shall take place within three weeks of the receipt of the notification. Where the matter is urgent, consultations shall take place without delay.

4. The Commission shall, no later than 5 days after the conclusion of the consultations, give its written opinion on the compatibility of the arrangements notified with the CMAA as expanded, including, where appropriate, the need to address the matter in the framework of that Agreement.

5. The consultations shall take place within the Committee established by Article 247 of Regulation EEC No 2913/92 of 12 October 1992 establishing the Community Customs Code ¹.

¹ OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council (OJ L 311, 12.12.2000, p. 17).

6. Member States shall transmit to the Commission and to the other Member States a copy of the arrangements referred to in paragraphs 1 and 2, as well as any denunciation of, or amendments thereto.

Done at Brussels,

For the Council
The President

AGREEMENT
BETWEEN THE EUROPEAN COMMUNITY
AND THE UNITED STATES OF AMERICA
ON INTENSIFYING AND BROADENING THE AGREEMENT ON
CUSTOMS COOPERATION AND MUTUAL ASSISTANCE
IN CUSTOMS MATTERS TO INCLUDE
COOPERATION 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 cooperation 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 cooperation 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) Recognising that the Joint Customs Cooperation 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 cooperation 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 cooperation to all modes of international transport and all kinds of goods, initially putting priority on sea-container transport;
- (8) Recognising 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) Recognising 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 transshipment;
- (14) Supporting the objectives of the Container Security Initiative (CSI), which is designed to safeguard global maritime trade by enhancing cooperation 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 cooperation 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 of America;
- (16) Recognising 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 cooperation 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 cooperation 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 cooperation 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) Coordinating 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 cooperation 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 cooperation
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 cooperation on Container Security and related matters shall examine and make recommendations on issues including, but not limited to, the following areas of cooperation 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 of America 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 cooperation on the issues set out in this Annex.

