



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 05.03.1997
COM(97) 81 final

97/0084 (ACC)

Proposal for a

COUNCIL DECISION

concerning the conclusion of the agreement in the form of an exchange of letters adding to the Free Trade Agreement between the European Economic Community and the Swiss Confederation an additional protocol on mutual administrative assistance in customs matters

(presented by the Commission)

EXPLANATORY MEMORANDUM

In 1989 the Council authorized the Commission to negotiate an agreement on mutual administrative assistance in customs matters with the EFTA countries. Negotiations took place between the Community and all the EFTA countries, including Switzerland, culminating in Protocol 11 to the Agreement on the European Economic Area,¹ to which Switzerland did not in the end accede.

Therefore, in order establish the same type of administrative assistance with Switzerland as exists with other EFTA countries and with the Central and Eastern European countries, the Council authorized the Commission on 26 February 1996 to negotiate a similar protocol to the free trade agreement with Switzerland.²

In accordance with these directives, the Commission, in liaison with the relevant Council working party, negotiated an agreement in the form of an exchange of letters concerning an additional protocol to the Free trade agreement.

The exchange of letters was initialled on 22 January.

The Community must now sign the exchange of letters and conclude the agreement.

¹ OJ L 1, 3.1.1994.

² OJ L 300, 31.12.1972.

COUNCIL DECISION

of1997

concerning the conclusion of the agreement in the form of an exchange of letters adding to the Free Trade Agreement between the European Economic Community and the Swiss Confederation an additional protocol on mutual administrative assistance in customs matters

(97/...../EC)

THE COUNCIL OF THE EUROPEAN UNION,

having regard to the Treaty establishing the European Community, and in particular Articles 113 and 228 (2) thereof,

having regard to the Commission's proposal¹,

whereas, for mutual administrative assistance in customs matters to take place between the two parties, it appears necessary to add an additional protocol to the Free Trade Agreement concluded between the European Economic Community and the Swiss Confederation²,

whereas negotiations to that effect have taken place with the Swiss Confederation and have led to an agreement in the form of an exchange of letters which it is in the Community's interest to approve;

HAS DECIDED AS FOLLOWS :

Article 1

The agreement in the form of an exchange of letters between the European Community and the Swiss Confederation, adding to the Free Trade Agreement concluded between the European Economic Community and the Swiss Confederation an additional protocol on mutual administrative assistance in customs matters, is hereby approved in the name of the Community.

If the agreement did not enter into force on 1 July 1997, it will temporarily be applied as from this date.

The text of the agreement in the form of an exchange of letters is annexed to the present decision.

Article 2

The President of the Council is hereby authorized to designate the persons authorized to sign the agreement in the form of an exchange of letters, referred to in Article 1, with a view to committing the Community thereto.

Article 3

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

Done at, on1997

¹ JO C

² JO L 300 du 31.12.72, p. 189

For the Council
The President

**AGREEMENT IN THE FORM OF AN EXCHANGE OF LETTERS
BETWEEN THE EUROPEAN COMMUNITY
AND THE SWISS CONFEDERATION
ADDING TO THE FREE TRADE AGREEMENT
AN ADDITIONAL PROTOCOL
ON MUTUAL ADMINISTRATIVE ASSISTANCE
IN CUSTOMS MATTERS**

AGREEMENT

**in the form of an exchange of letters amending the Agreement of 22 July 1972
between Switzerland and the European Economic Community**

A. Letter from the European Community

Brussels,

Sir,

I have the honour to refer to the negotiations between representatives of the Community and the Swiss Confederation with a view to concluding an agreement on mutual assistance in customs matters adding an additional protocol to the agreement of 22 July 1972.

This additional protocol, the text of which is annexed hereto, will form an integral part of the agreement of 22 July 1972 and will enter into force on the first day of the second month following the date of notification that the necessary procedures have been accomplished. Pending the accomplishment of those procedures, it shall apply provisionally from 1 July 1997.

I should be grateful if you would confirm the agreement of the Swiss Confederation to the foregoing.

Yours faithfully,

For the Council of the European Union

B. Letter from the Swiss Confederation

Berne,

Sir,

I have the honour to acknowledge receipt of your letter of today's date with the following content.

"I have the honour to refer to the negotiations between representatives of the Community and the Swiss Confederation with a view to concluding an agreement on

mutual assistance in customs matters adding an additional protocol to the Agreement of 22 July 1972.

This additional protocol, the text of which is annexed hereto, will form an integral part of the agreement of 22 July 1972 and will enter into force on the first day of the second month following the date of notification that the necessary procedures have been accomplished. Pending the accomplishment of those procedures, it shall apply provisionally from 1 July 1997.

I should be grateful if you would confirm the agreement of the Swiss Confederation to the foregoing.”

I can confirm the agreement of the Swiss Confederation to the foregoing.

Yours faithfully,

For the Swiss Confederation

**ADDITIONAL PROTOCOL ON MUTUAL ADMINISTRATIVE
ASSISTANCE IN CUSTOMS MATTERS**

ARTICLE 1

Definitions

For the purposes of this Protocol :

- a) "Goods" shall mean all goods falling within Chapters 1 to 97 of the Harmonized System, irrespective of the scope of the agreement of 22 July 1972;
- b) "customs legislation" shall mean any legal or regulatory provision adopted by the European Community or by Switzerland governing the import, export, and transit of goods and their placing under any customs procedure, including measures of prohibition, restriction and control;
- 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) "breaches of customs legislation" shall mean any violation or attempted violation of that legislation.

ARTICLE 2

Scope

1. The Contracting Parties shall assist each other, in the areas within their jurisdiction, in the manner and under the conditions laid down in this Protocol, in ensuring that the customs legislation is correctly applied, in particular by the prevention, detection and investigation of operations in breach of that legislation.
2. Assistance in customs matters, as provided for in this Protocol, shall apply 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. Nor shall it cover information obtained under powers exercised at the request of the judicial authorities, except where communication of such information has the prior authorization of the said authorities.

ARTICLE 3

Assistance on request

1. At the request of the applicant authority, the requested authority shall furnish it with all relevant information which may 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 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, within the framework of its laws, take the necessary steps to ensure special surveillance of:
 - (a) natural or legal persons of whom there are reasonable grounds for believing that they are or have been in breach of customs legislation;
 - (b) places where goods are stored in a way that gives grounds for suspecting that they are intended to supply operations in breach of customs legislation;
 - (c) movements of goods notified as possibly giving rise to breaches of customs legislation;

- (d) means of transport for which there are reasonable grounds for believing that they have been, are or may be used in operations in breach of customs legislation.

ARTICLE 4

Spontaneous assistance

The Contracting Parties shall provide each other, at their own initiative and in accordance with their laws, rules and other legal instruments, 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 are or appear to be in breach of such legislation and which may be of interest to the other Contracting Party;
- new means or methods employed in carrying out such operations;
- goods known to be subject to breaches of customs legislation;
- natural or legal persons of whom there are reasonable grounds for believing that they are or have been in breach of customs legislation;
- means of transport for which there are reasonable grounds for believing that they have been, are or may be used in operations in breach of customs legislation.

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,
- to notify all decisions, as well as any other relevant act which forms part of the procedure in question

falling within the scope of this Protocol to an addressee, residing or established in its territory. In such a case, Article 6 (3) shall apply to the request for delivery or notification.

ARTICLE 6

Form and substance of requests for assistance

1. Requests pursuant to this Protocol shall be made in writing. They shall be accompanied by the documents necessary to enable compliance with 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 :
 - (a) the applicant authority making the request;
 - (b) the measure requested;
 - (c) the object of and the reason for the request;
 - (d) the laws, rules and other legal elements involved;
 - (e) indications as exact and comprehensive as possible on the natural or legal persons who are the target of the investigations;
 - (f) a summary of the relevant facts and of the enquiries already carried out, 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 that authority.
4. If a request does not meet the formal requirements, its correction or completion may be requested; precautionary measures may, however, be ordered.

ARTICLE 7

Execution of requests

1. In order to comply with a request for assistance, the requested authority shall proceed, within the limits of its competence and available resources, 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. This provision shall also apply to the administrative department to which the request has been addressed by the requested authority when the latter cannot act on its own.
2. Requests for assistance shall 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 subject to 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 operations which are or may be in breach of customs legislation which the applicant authority needs, in the context of an enquiry, for the purposes of this Protocol.
4. Officials of a Contracting Party may, with the agreement of the other Contracting Party involved and subject to the conditions laid down by the latter, 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.

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 the sovereignty of Switzerland or that of a Member State of the Community which has been asked to provide assistance under this Protocol; or
 - (b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to under Article 10 (2); or
 - (c) involve currency or tax regulations other than customs legislation; or
 - (d) violate an industrial, commercial or professional secret.
2. Where the applicant authority requests 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 for the requested authority to decide how to respond to such a request.
3. If assistance is refused, the decision and the reasons therefor must be notified to the applicant authority without delay.

ARTICLE 10
Confidentiality

1. Any information communicated in whatsoever form pursuant to this Protocol shall be of a confidential or restricted nature, depending on the rules applicable in each of the Contracting Parties. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws of the Contracting Party which received it and the corresponding provisions applying to the Community institutions.
2. Personal data, that is all information relating to an identified or identifiable individual, may be exchanged only where the receiving Contracting Party undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the supplying Contracting Party.

ARTICLE 11
Use of information

1. Information obtained shall be used solely for the purposes of this Protocol. Where one of the Contracting Parties requests the use of such information for other purposes, it shall ask for the prior written consent of the authority which furnished the information. Such use shall then be subject to any restrictions laid down by that authority.
2. Paragraph 1 shall not impede the use of information in any judicial or administrative proceedings instituted for failure to comply with customs legislation. The competent authority which supplied that information shall be notified of such use without delay.
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.

ARTICLE 12

Experts and witnesses

An official of a requested authority may be authorized to appear, within the limitations of the authorization granted, as an expert or witness in judicial or administrative proceedings regarding the matters covered by this Protocol in the jurisdiction of the other 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 matters 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 public service employees.

ARTICLE 14

Application

1. The application of this Protocol shall be entrusted to the customs authorities of Switzerland on the one hand and the competent services of the Commission of the European Communities and, where appropriate, the customs authorities of the Member States of the European Community on the other. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration the rules in force in the field of data protection.
2. 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 Protocol. In particular, they shall exchange the list of competent authorities authorized to intervene under this Protocol.

Joint declaration

The parties agree that a working group should be created by the Joint Committee to assist it in the management of the protocol on mutual administrative assistance.

FINANCIAL STATEMENT

concerning the signing and conclusion of an agreement
in the form of an exchange of letters between the European Community and the
Swiss Confederation on an additional protocol to the free trade agreement
concerning mutual administrative assistance in customs matters

1. **Title of operation:**
Signing and conclusion of an agreement in the form of an exchange of letters between the European Community and the Swiss Confederation on an additional protocol to the free trade agreement concerning mutual administrative assistance in customs matters
2. **Budget headings involved:**
No specific budget heading
3. **Legal basis:**
Articles 113 and 228 of the EC Treaty
4. **Description of operation:**
 - 4.1 **General objective**
To provide a legal basis for the exchange of information and requests for assistance between the Community and Switzerland with a view to combating customs fraud.
 - 4.2 **Duration and arrangements for renewal**
Unlimited (same as the free trade agreement to which it will be annexed).
5. **Classification of expenditure or revenue:**
No expenditure or revenue foreseen
6. **Type of expenditure:**
None
7. **Financial impact:**
The agreement will make it easier to obtain assistance from Switzerland in finding the information and evidence needed by Member State customs authorities for, *inter alia*, the post-clearance recovery of customs duties evaded by frauds **within** the Community. No direct expenditure or revenue is involved.
8. **Fraud prevention measures:**
Not applicable: no expenditure involved.
9. **Cost-benefit analysis:**
 - 9.1. **Specific and quantified objectives; target population**
The usefulness of the provisions will depend on what future customs investigations throw up by way of cases where the information is available in Switzerland (where Switzerland is, for instance, the place of establishment of the person organizing the transactions in question, the place of payment, the place of transit to and from the Community or the actual place where goods are stored).

Better international cooperation makes fraud and breaches of the rules more difficult to perpetrate and easier to detect and prosecute, and improves the implementation of customs legislation and thus all the financial and economic measures stemming from it that are designed to protect the Community's budget, economy and market.

9.2. Grounds for the operation

This is part of a strategy embarked upon by the Community in 1989 with all neighbouring countries and its main trading partners.

9.3. Monitoring and evaluation of the operation

It is up to the Member States to make proper use of the provisions, with the possibility of Community coordination under the relevant Community provisions on mutual administrative assistance (Regulation No 1468/81). Any bilateral problems can be dealt with by an ad hoc working party.

10. **Administrative expenditure (Section III, Part A, of the Budget):**

10.1 Impact of the number of posts:

The cost of the human resources required by this measure will be met from existing resources.

10.2 Increase in other administrative expenditure as a result of the operation

The operating costs of this measure will be met from existing resources.

FOR AGREEMENT	GIVEN BY:		
DG or department	Name of official	Date	Telephone
1. SG			
2. DG I			
3. DG VI			
4. DG IX			
5. DG XV			
6. DG XIX			
7. DG XX			
For opinion			
(mandatory)			
Legal Service			

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