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(Acts whose publication is not obligatory)

## COUNCIL

## DECISION No 5/2004 OF THE EU-MEXICO JOINT COUNCIL

of 15 December 2004

adopting, pursuant to Article 17(3) of Decision No 2/2000, an Annex to the said Decision on mutual administrative assistance in customs matters

(2005/201/EC)

THE JOINT COUNCIL,

Having regard to the Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part<sup>(1)</sup> (hereinafter the 'Agreement'),

Having regard to the EU-Mexico Joint Council Decision No 2/2000<sup>(2)</sup>, and in particular Article 17(3) thereof,

Whereas Article 17(3) of Decision No 2/2000 envisages that the administrations of both Parties are to provide mutual administrative assistance in customs matters in accordance with the provisions of an Annex on mutual administrative assistance on customs matters to be adopted by the Joint Council no later than one year from the entry into force of Decision No 2/2000,

HAS DECIDED AS FOLLOWS:

*Article 1*

The Annex on mutual administrative assistance in customs matters to Council Decision No 2/2000 set out in the Annex hereto is hereby adopted.

*Article 2*

This Decision shall enter into force on the first day of the month following that in which it is adopted by the Joint Council.

Done at Brussels, 15 December 2004.

*For the Joint Council*

*The President*

L. E. DERBEZ

<sup>(1)</sup> OJ L 276, 28.10.2000, p. 45.

<sup>(2)</sup> OJ L 157, 30.6.2000, p. 10.

## ANNEX

## 'ANNEX

**ON MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS***Article 1***Definitions**

For the purposes of this Annex:

- (a) "customs legislation" shall mean any legal or regulatory provisions adopted by the European Community and Mexico governing the import, export, and transit of goods and their placing under any other customs regime or procedure, including measures of prohibition, restriction and control;
- (b) "applicant authority" shall mean a competent customs authority which has been designated by a Party for this purpose and which makes a request for assistance on the basis of this Annex;
- (c) "requested authority" shall mean a competent customs authority which has been designated by a Party for this purpose and which receives a request for assistance on the basis of this Annex;
- (d) "customs authority" shall mean for the European Community, the competent services of the Commission of the European Communities and the customs authorities of its Member States; and for Mexico, the Secretaria de Hacienda y Crédito Público or its successor;
- (e) "personal data" shall mean all information relating to an identified or identifiable individual;
- (f) "operation in breach of customs legislation" shall mean any violation or attempted violation of customs legislation;
- (g) "information" shall mean any data, documents, reports, certified or authenticated copies thereof or other communications, including information which has been processed and/or analysed to provide an indication relevant to an operation in breach of customs legislation.

*Article 2***Scope**

1. This Annex is intended solely for the mutual administrative assistance between the Parties, the provisions of this Annex shall not give rise to a right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of a request.
2. The Parties shall assist each other, in the areas within their competence, in the manner and under the conditions laid down in this Annex, to ensure the correct application of the customs legislation, in particular by preventing, investigating and combating operations in breach of that legislation.
3. Assistance in customs matters, as provided for in this Annex, shall apply to any administrative authority of the Parties which is competent for the application of this Annex. 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 a judicial authority, except where communication of such information is authorised by that authority.

4. Assistance to recover duties, taxes or fines is not covered by this Annex.

#### Article 3

##### **Assistance on request**

1. At the request of the applicant authority, the requested authority shall provide it with all relevant information which may enable it to ensure that customs legislation is correctly applied, including information regarding activities noted or planned which are or could be operations in breach of customs legislation.
2. At the request of the applicant authority, the requested authority shall inform it:
  - (a) whether goods exported from the territory of one of the Parties have been properly imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods;
  - (b) whether goods imported into the territory of one of the Parties have been properly exported from 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 legal or regulatory provisions, take the necessary steps to ensure special surveillance of:
  - (a) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;
  - (b) places where stocks of goods have been or may be assembled or subject to operations in such a way that there are reasonable grounds for believing that these goods are intended to be used in operations in breach of customs legislation;
  - (c) goods in transport or in storage in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation;
  - (d) means of transport that are, have been or may be used in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation.

#### Article 4

##### **Spontaneous assistance**

The Parties shall assist each other, at their own initiative and in accordance with their legal or regulatory provisions, if they consider that to be necessary for the correct application of customs legislation, particularly by providing information obtained pertaining to:

- (a) activities, which are or appear to be operations in breach of customs legislation and which may be of interest to the other Party;
- (b) new means or methods employed in carrying out operations in breach of customs legislation;
- (c) goods known to be subject to operations in breach of customs legislation;
- (d) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;
- (e) means of transport in respect of 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 legal or regulatory provisions applicable to the latter, take all necessary measures in order:

- (a) to deliver any documents; or
- (b) to notify any decisions,

emanating from the applicant authority and falling within the scope of this Annex, to an addressee residing or established in the territory of the requested authority.

Requests for delivery of documents or notification of decisions shall be made in writing in an official language of the requested authority or in a language acceptable to that authority.

*Article 6***Form and substance of requests for assistance**

1. Requests pursuant to this Annex 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;
- (b) the measure requested;
- (c) the object of and the reason for the request;
- (d) the legal or regulatory provisions 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.

3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to that authority. This requirement shall not apply to any documents that accompany the request under paragraph 1.

4. If a request does not meet the formal requirements set out above, its correction or completion may be requested; in the meantime precautionary measures may 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 Party, by supplying information already possessed, by carrying out appropriate enquiries, including verifications, inspections and the examination of records, or by arranging for them to be carried out. This provision shall also apply to any other authority to which the requested authority has addressed the request when the latter cannot act on its own.

2. Requests for assistance shall be executed in accordance with the legal or regulatory provisions of the requested Party.

3. Duly authorised officials of a Party may, with the agreement of the other Party and subject to the domestic law of the requested authority and within the conditions laid down by the latter, be present to obtain from the offices of the requested authority, or any other authority as laid down in paragraph 1, the relevant books, registers and other documents or data media held in those offices, make copies thereof, or extract any information or particulars relating to operations in breach of customs legislation which the applicant authority needs for the purposes of this Agreement.

4. Subject to the domestic law of the requested authority and to the conditions laid down by the latter, duly authorised officials of a Party may, with the agreement of the other Party and subject to the conditions laid down by the latter, be present at enquiries carried out in the latter's territory.

5. A request by either customs authority that a certain procedure be followed shall be complied with, subject to the national legal and administrative provisions of the requested authority.

#### Article 8

##### **Form in which information is to be communicated**

1. The requested authority shall communicate the results of enquiries and provide any information requested, subject to Article 9, to the applicant authority in writing together with relevant documents, certified copies or other items and may, where appropriate, include any relevant information for interpreting or using it.

2. This information may be in computerised form.

3. Originals of files, documents and other materials, or certified or authenticated copies thereof, shall be transmitted only in cases where copies would be insufficient.

4. Originals of files, documents and other materials that have been transmitted shall be returned at the earliest opportunity; rights of the Parties or of third parties relating thereto shall remain unaffected.

#### Article 9

##### **Exceptions to the obligation to provide assistance**

1. Assistance may be refused or may be subject to the satisfaction of certain conditions or requirements, in cases where a Party is of the opinion that assistance under this Annex would:

(a) be likely to prejudice the sovereignty of the Party which has been requested to provide assistance under this Annex; 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) violate an industrial, commercial or professional secret.

2. The requested authority may postpone assistance on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.

3. Where the applicant authority seeks assistance which it would (itself) be unable to provide if so requested, 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.

4. In the event that a request cannot be complied with, the applicant authority shall be promptly notified of that fact with a statement of the reasons and circumstances, which might be of importance for the further pursuit of the matter.

5. For the cases referred to in paragraphs 1 and 2, the decision of the requested authority and the reasons therefor must be communicated to the applicant authority without delay.

*Article 10***Information exchange and confidentiality**

1. Any information communicated in whatsoever form pursuant to this Annex shall be of a confidential or restricted nature, depending on the rules applicable in each of the 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 Party that received it and the corresponding provisions applying to the Community authorities.
2. Personal data may be exchanged only where the Party, which may receive them, undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the Party that may supply them. To this end, the Parties shall communicate to each other information on their applicable rules, including, where appropriate, legal provisions in force in the Member States of the Community, including any change therein occurring after the entry into force of this Annex.
3. The use, in judicial or administrative proceedings instituted in respect of operations in breach of customs legislation, of information obtained under this Annex, is considered to be for the purposes of this Annex. Therefore, the 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 Annex. The competent authority, which supplied that information or gave access to those documents, shall be notified of such use.
4. Information obtained shall be used solely for the purposes of this Annex. Where one of the Parties wishes to use such information for other purposes, it shall obtain the prior written consent of the authority which provided the information. Such use shall then be subject to any restrictions laid down by that authority.

*Article 11***Experts and witnesses**

An official of a requested authority may be authorised to appear, within the limitations of the authorisation granted, as an expert or witness in judicial or administrative proceedings instituted in the territory of the other Party regarding the matters covered by this Annex, and produce such objects, documents or certified copies thereof, as may be needed for the proceedings. The request for appearance must indicate specifically before which judicial or administrative authority the official will have to appear, on what matters and by virtue of what title or qualification the official will be questioned.

*Article 12***Assistance expenses**

1. The Parties shall waive all claims on each other for the reimbursement of expenses incurred pursuant to this Annex, except, as appropriate, for expenses to experts and witnesses, and those to interpreters and translators who are not public service employees.
2. If expenses of a substantial and extraordinary nature are, or will be required to execute the request, the Parties may 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.

*Article 13***Implementation**

1. Without prejudice to the terms of Article 14(3) the Parties agree that any matter arising from the implementation of this Annex may be entrusted on the one hand, to the customs authority of Mexico, and on the other hand to the competent services of the Commission of the European Communities and the customs authorities of the Member States as appropriate. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration the rules in force in particular in the field of data protection. They may recommend to the competent bodies amendments which they consider should be made to this Annex.
2. The 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 Annex. In particular, before the entry into force of this Annex, the Parties shall communicate to each other the competent customs authority designated for the implementation of this Annex. Any changes thereafter shall be notified.

*Article 14***Other agreements**

1. Taking into account the respective competencies of the European Community and the Member States, the provisions of this Annex shall:
    - (a) not affect the obligations of the Parties under any other international agreement or convention;
    - (b) be deemed complementary to agreements on mutual assistance which have been or may be concluded between individual Member States and Mexico; and shall
    - (c) not affect the Community provisions governing the communication between the competent services of the Commission of the European Communities and the customs authorities of the Member States of any information obtained under this Annex which could be of interest to the Community.
  2. Notwithstanding the provisions of paragraph 1, the provisions of this Annex shall take precedence over the provisions of any bilateral agreement on mutual assistance which has been or may be concluded between individual Member States and Mexico in so far as the provisions of the latter are incompatible with those of this Annex.
  3. In respect of questions relating to the applicability of this Annex, the Parties shall consult each other to resolve the matter in the framework of the Special Committee on Customs Cooperation set up under Article 17 of Decision No 2/2000 of the EU-Mexico Joint Council.
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