
**INTERNATIONAL CONVENTION
ON MUTUAL ADMINISTRATIVE ASSISTANCE
IN CUSTOMS MATTERS**

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WORLD CUSTOMS ORGANIZATION

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TABLE OF CONTENTS

I. CONVENTION

	Pages
Preamble	9-10
Chapter I : Definitions – Article 1	11-12
Chapter II : Scope of the Convention – Article 2	13
Chapter III : General Assistance Procedures	
Article 3 – Communication of Requests	14
Article 4 – Spontaneous Assistance	15
Chapter IV : Information	
Article 5 – Information for the Application and Enforcement of Customs Law	16
Article 6 – Information Relating to Customs Offences	16
Article 7 – Information for the Assessment of Import or Export Duties and Taxes	16
Article 8 – Particular Types of Information	17
Article 9 – Automatic Exchange of Information	17
Article 10 – Advance Exchange of Information	17-18
Chapter V : Special Types of Assistance	
Article 11 – Surveillance	19
Article 12 – Controlled Delivery	19
Article 13 – Notification	20
Article 14 – Recovery of Customs Claims	20
Article 15 – Experts and Witnesses	20
Article 16 – Presence of Officials in the Territory of Another Contracting Party	20
Article 17 – Presence of Officials of the Requesting Administration at the Invitation of the Requested Administration	21
Article 18 – Arrangements for Visiting Officials	21
Chapter VI : Cross-Border Co-operation	
Article 19 – General Provisions	22
Article 20 – Hot Pursuit	22
Article 21 – Cross-Border Surveillance	23
Article 22 – Covert Investigations	23
Article 23 – Joint Control and Investigation Teams	23
Chapter VII : Use, Confidentiality and Protection of Information	
Article 24 – Use of Information	24
Article 25 – Confidentiality and Protection of Information	24
Article 26 – Personal Data Protection	25

I. CONVENTION

	Pages
Chapter VIII : Centralization of Information	
Article 27 – Purpose of Centralization	26
Article 28 – Non-Personal Information	26
Article 29 – Information on Natural and Legal Persons	27-28
Article 30 – Other Information	28
Article 31 – Central Automated Information System	28-29
Article 32 – Management of the Central Automated Information System	29
Chapter IX : Security of the Central Automated Information System	
Article 33 – Responsibility for Security Measures	30
Article 34 – Implementation of Security Measures	30-31
Chapter X : Protection of Information in the Central Automated Information System	
Article 35 – Inclusion of Information	32
Article 36 – Use of Information	32
Article 37 – Retention of Personal Data	32-33
Article 38 – Access	33-34
Article 39 – Modification of Non-Personal Information in the Central Automated Information System	34
Article 40 – Modification of Personal Data in the Central Automated Information System	34-35
Article 41 – Responsibilities and Liabilities	35
Chapter XI : Exemptions and Reservations	
Article 42 – Exemptions	36
Article 43 – Reservations	36
Chapter XII : Costs – Article 44	37
Chapter XIII : Final Provisions	
Article 45 – Management of the Convention	38-39
Article 46 – Signature, Ratification and Accession	39-40
Article 47 – Territorial Application of the Convention	40
Article 48 – Implementation and Application of the Convention	41
Article 49 – Amendments to the Convention	41
Article 50 – Settlement of Disputes	41
Article 51 – Entry into Force	42
Article 52 – Denunciation	42
Article 53 – Depositary of the Convention	42-43
Article 54 – Registration and Authentic Texts	43-44

II. COMMENTARY

	Pages
A. Introduction	45
B. Scope and Structure of the International Convention on Mutual Administrative Assistance in Customs Matters	46
C. Provisions of the International Convention on Mutual Administrative Assistance in Customs Matters	46
Preamble	46-47
Chapter I : Definitions – Article 1	47-48
Chapter II : Scope of the Convention – Article 2	48-49
Chapter III : General Assistance Procedures	
Article 3 – Communication of Requests	49-50
Article 4 – Spontaneous Assistance	50
Chapter IV : Information	
Article 5 – Information for the Application and Enforcement of Customs Law	50-51
Article 6 – Information Relating to Customs Offences	51
Article 7 – Information for the Assessment of Import or Export Duties and Taxes	51-52
Article 8 – Particular Types of Information	52
Article 9 – Automatic Exchange of Information	53
Article 10 – Advance Exchange of Information	53
Chapter V : Special Types of Assistance	
Article 11 – Surveillance	53-54
Article 12 – Controlled Delivery	54
Article 13 – Notification	54-55
Article 14 – Recovery of Customs Claims	55
Article 15 – Experts and Witnesses	55-56
Article 16 – Presence of Officials in the Territory of Another Contracting Party	56
Article 17 – Presence of Officials of the Requesting Administration at the Invitation of the Requested Administration	56
Article 18 – Arrangements for Visiting Officials	56-57
Chapter VI : Cross-Border Co-operation	
Article 19 – General Provisions	57-58
Article 20 – Hot Pursuit	58
Article 21 – Cross-Border Surveillance	58
Article 22 – Covert Investigations	59
Article 23 – Joint Control and Investigation Teams	59

II. COMMENTARY

	Pages
Chapter VII : Use, Confidentiality and Protection of Information	
Article 24 – Use of Information	59-60
Article 25 – Confidentiality and Protection of Information	60
Article 26 – Personal Data Protection	61
Chapter VIII : Centralization of Information	
Article 27 – Purpose of Centralization	62
Article 28 – Non-Personal Information	62
Article 29 – Information on Natural and Legal Persons	62
Article 30 – Other Information	62
Article 31 – Central Automated Information System	63
Article 32 – Management of the Central Automated Information System	63-64
Chapter IX : Security of the Central Automated Information System	
Article 33 – Responsibility for Security Measures	64
Article 34 – Implementation of Security Measures	64
Chapter X : Protection of Information in the Central Automated Information System	
Article 35 – Inclusion of Information	65
Article 36 – Use of Information	65
Article 37 – Retention of Personal Data	65-66
Article 38 – Access	66
Article 39 – Modification of Non-Personal Information in the Central Automated Information System	66-67
Article 40 – Modification of Personal Data in the Central Automated Information System	67
Article 41 – Responsibilities and Liabilities	67
Chapter XI : Exemptions and Reservations	
Article 42 – Exemptions	68
Article 43 – Reservations	68-69
Chapter XII : Costs – Article 44	69
Chapter XIII : Final Provisions	
Article 45 – Management of the Convention	69-70
Article 46 – Signature, Ratification and Accession	70-71
Article 47 – Territorial Application of the Convention	71
Article 48 – Implementation and Application of the Convention	71
Article 49 – Amendments to the Convention	71
Article 50 – Settlement of Disputes	71-72
Article 51 – Entry into Force	72
Article 52 – Denunciation	72

II. COMMENTARY

	Pages
Article 53 – Depositary of the Convention	72
Article 54 – Registration and Authentic Texts	72

III. PROCEDURE FOR RATIFYING THE CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS

A. The Members decision to accept the Convention	73
B. Signature or ratification	73
C. Notification	73
D. Entry into force of the Convention	74

IV. BENEFITS OF THE JOHANNESBURG CONVENTION 75

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I. INTERNATIONAL CONVENTION
ON MUTUAL ADMINISTRATIVE ASSISTANCE
IN CUSTOMS MATTERS

Preamble

THE CONTRACTING PARTIES to this Convention, established under the auspices of the Customs Co-operation Council, now known as the World Customs Organization;

Recognizing that closer co-operation between Customs administrations is a principal aim of the Convention establishing a Customs Co-operation Council;

Convinced that more effective co-operation between Customs administrations can be achieved through the goodwill of the Contracting Parties;

Considering the importance of the accurate assessment of Customs duties and other taxes and of ensuring proper enforcement by Customs administrations of prohibitions, restrictions and measures of control in respect of specific goods;

Considering that offences against Customs law are prejudicial to the security of the Contracting Parties and their economic, commercial, fiscal, social, public health and cultural interests;

Taking into account the threat of transnational organized crime and terrorist groups with their substantial resources and the need to effectively combat them;

Recognizing the increased global concern for the security and facilitation of the international trade supply chain and the Customs Co-operation Council's Resolution of June 2002 to that effect;

Recognizing the importance of achieving a balance between compliance and facilitation to ensure the free flow of legitimate trade and to meet the needs of governments for the protection of society and revenues;

Convinced that international trade will be facilitated by the adoption of modern control techniques, such as risk management, by Customs administrations;

Recognizing that the international exchange of information is an essential component of effective risk management and that such exchange of information should be based on clear legal provisions;

Taking into account the International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences, adopted at Nairobi on 9 June 1977 under the auspices of the Customs Co-operation Council, which lays down a framework to facilitate mutual administrative assistance in Customs matters;

Convention

10

Taking into account the United Nations Convention against Transnational Organized Crime, adopted at New York on 15 November 2000 and for which the High-Level Political Signing Conference was held in Palermo from 12 to 15 December 2000, which lays down a framework for international mutual assistance in criminal matters with a view to preventing and combating transnational organized crime;

Having regard to international Conventions containing prohibitions, restrictions and measures of control in respect of specific goods;

Having regard to the United Nations Universal Declaration of Human Rights of 1948;

Have agreed as follows :

CHAPTER I

Definitions

Article 1

For the purposes of this Convention :

- (a) "Administrative Committee" shall mean the Committee responsible for the management of this Convention as established in Article 45;
- (b) "Council" shall mean the organization set up by the Convention establishing a Customs Co-operation Council, done at Brussels on 15 December 1950 and entered into force on 4 November 1952;
- (c) "Council officer" shall mean any officer or employee of the Council and any other person designated by the Secretary General to perform functions for the purposes of this Convention;
- (d) "cross-border co-operation" shall mean the co-operation between the Customs administrations of the Contracting Parties across their respective borders;
- (e) "Customs administration" shall mean the Customs authority and any other authority of a Contracting Party authorized under national law and designated by that Contracting Party to apply any provision of this Convention;
- (f) "Customs claim" shall mean any amount of Customs duties that cannot be collected in one of the Contracting Parties;
- (g) "Customs duties" shall mean all duties, taxes, fees or any other charges which are levied in the territories of the Contracting Parties in application of Customs law, but not including fees and charges for services rendered;
- (h) "Customs law" shall mean any legal and administrative provisions applicable or enforceable by the Customs administration of a Contracting Party in connection with the importation, exportation, transshipment, transit, storage and movement of goods, including legal and administrative provisions relating to measures of prohibition, restriction and control, and to combating money laundering;
- (i) "Customs offence" shall mean any breach, or attempted breach, of a Contracting Party's Customs law;
- (j) "Customs or Economic Union" shall mean a Union, constituted by and composed of Members, which has competence to adopt its own regulations that are binding on those Members in respect of matters governed by this Convention, and has competence to decide, in accordance with its internal procedures, to sign, ratify or accede to this Convention;
- (k) "Enforcement Committee" shall mean the Enforcement Committee of the Council;

Convention

12

- (l) "information" shall mean any data, whether or not processed or analysed, and documents, reports, and other communications in any format, including electronic, or certified or authenticated copies thereof;
- (m) "international trade supply chain" shall mean all processes involved in the cross-border movement of goods from the place of origin to the place of final destination;
- (n) "official" shall mean any Customs officer or other government agent designated by a Customs administration;
- (o) "person" shall mean both natural and legal persons, unless the context otherwise requires;
- (p) "personal data" shall mean any data concerning an identified or identifiable natural person;
- (q) "ratification" shall include acceptance or approval;
- (r) "requesting administration" shall mean the Customs administration which requests assistance;
- (s) "requested administration" shall mean the Customs administration from which assistance is requested;
- (t) "requesting Contracting Party" shall mean the Contracting Party whose Customs administration requests assistance;
- (u) "requested Contracting Party" shall mean the Contracting Party whose Customs administration is requested to provide assistance;
- (v) "Secretary General" shall mean the Secretary General of the Council.

CHAPTER II

Scope of the Convention

Article 2

1. Contracting Parties shall, through their Customs administrations, provide each other with administrative assistance under the terms set out in this Convention, for the proper application of Customs law, for the prevention, investigation and combating of Customs offences and to ensure the security of the international trade supply chain.
2. Any activity carried out under this Convention by a Contracting Party shall be in accordance with its legal and administrative provisions and within the limits of its Customs administration's competence and available resources.
3. Each Contracting Party shall notify the Secretary General of the authorities, referred to in Article 1 (e), authorized under national law and designated by that Contracting Party to apply any provision of this Convention. The Secretary General shall communicate this information and any updates thereof to the other Contracting Parties.
4. This Convention only covers mutual administrative assistance between the Contracting Parties and is not intended to have an impact on mutual legal assistance agreements between them. If mutual assistance is to be provided by other authorities of a requested Contracting Party, the requested administration shall indicate those authorities and, where known, the relevant agreement or arrangement applicable.
5. The provisions of this Convention shall not give rise to a right on the part of any person to impede the execution of a request for assistance.

CHAPTER III

General Assistance Procedures

Article 3

Communication of Requests

1. Requests for assistance under this Convention shall be communicated directly between the Customs administrations concerned. Each Customs administration shall designate an official contact point for this purpose and shall provide details thereof to the Secretary General. The Secretary General shall communicate this information and any updates thereof to the other Customs administrations.
2. Requests for assistance under this Convention shall be made in writing or electronically, and shall be accompanied by any information deemed useful for the purpose of complying with such requests. The requested administration may require written confirmation of electronic requests. Where the circumstances so require, requests may be made verbally. Such requests shall be confirmed as soon as possible either in writing or, if acceptable to the requested and requesting administrations, by electronic means.
3. Requests shall be made in a language acceptable to the Customs administrations concerned. Any documents accompanying such requests shall be translated, to the extent necessary, into a mutually acceptable language. The requested administration shall in any case accept requests for assistance and accompanying documents in one of the official languages of the Council which it may specify.
4. Requests made pursuant to paragraph 2 of this Article, shall include the following details :
 - (a) the name of the requesting administration;
 - (b) the matter at issue, type of assistance requested, and reasons for the request;
 - (c) a brief description of the case under review and the legal and administrative provisions that apply;
 - (d) the names and addresses of the persons to whom the request relates, if known;
 - (e) a reference in accordance with paragraph 2 of Article 42, if applicable;
 - (f) the verifications made in accordance with paragraph 2 of Article 7.
5. Where the requesting administration requests that a certain procedure or methodology be followed, the requested administration shall comply with such a request, subject to its national legal and administrative provisions.

Article 4

Spontaneous Assistance

In cases that could involve substantial damage to the economy, public health, public security, including the security of the international trade supply chain, or other vital interests of any Contracting Party, the Customs administration of any Contracting Party shall, wherever possible, supply assistance on its own initiative without delay.

CHAPTER IV

Information

Article 5

Information for the Application and Enforcement of Customs Law

The Customs administrations shall provide each other, either on request or on their own initiative, with information which helps to ensure proper application of Customs law and the prevention, investigation and combating of Customs offences and to ensure the security of the international trade supply chain. Such information may include :

- (a) new enforcement techniques having proved their effectiveness;
- (b) new trends, means or methods of committing Customs offences;
- (c) goods known to be the subject of Customs offences, as well as transport and storage methods used in respect of those goods;
- (d) persons known to have committed a Customs offence or suspected of being about to commit a Customs offence;
- (e) any other data that can assist Customs administrations with risk assessment for control and facilitation purposes.

Article 6

Information Relating to Customs Offences

The Customs administration of a Contracting Party shall provide the Customs administration of any other Contracting Party concerned, either on its own initiative or on request, with information on activities, planned, ongoing, or completed which provide reasonable grounds to believe that a Customs offence has been committed or will be committed in the territory of the Contracting Party concerned.

Article 7

Information for the Assessment of Import or Export Duties and Taxes

1. On request, the requested administration shall, without prejudice to Article 42, in support of the proper application of Customs law or in the prevention of Customs fraud, provide information to assist a requesting administration that has reasons to doubt the truth or accuracy of a declaration.
2. The request shall specify the verification procedures that the requesting administration has undertaken or attempted and the specific information requested.

Article 8

Particular Types of Information

On request, the requested administration shall provide the requesting administration, who has reason to doubt the accuracy of information provided to it in a Customs matter, with information relative to :

- (a) whether goods imported into the territory of the requesting Contracting Party have been lawfully exported from the territory of the requested Contracting Party;
- (b) whether goods exported from the territory of the requesting Contracting Party have been lawfully imported into the territory of the requested Contracting Party and the Customs procedure, if any, under which the goods have been placed.

Article 9

Automatic Exchange of Information

Contracting Parties may, by mutual arrangement in accordance with paragraph 2 of Article 48, exchange any information covered by this Convention on an automatic basis.

Article 10

Advance Exchange of Information

1. Contracting Parties may, by mutual arrangement in accordance with paragraph 2 of Article 48, exchange specific information in advance of the arrival of consignments in their respective territories to ensure, in particular, the security of the international trade supply chain.
2. Such information shall, to the extent possible, comprise the following data elements :
 - i. consignor or consignor code or exporter or exporter code;
 - ii. description of goods or tariff code number;
 - iii. UNGD number (dangerous goods code);
 - iv. type of packages identification;
 - v. number of packages;
 - vi. measure unit qualifier;
 - vii. total gross weight;
 - viii. total invoice amount;
 - ix. currency code;
 - x. place of loading or place of loading code;
 - xi. carrier identification or carrier name;
 - xii. equipment identification number;
 - xiii. equipment size and type identification;
 - xiv. seal number;

- xv. identification of means of transport crossing the border of the territory of the Contracting Party or code;
 - xvi. nationality of means of transport crossing the border of the territory of the Contracting Party or code;
 - xvii. conveyance reference number;
 - xviii. transport charges method of payment or code;
 - xix. Customs office of exit or code;
 - xx. country(ies) of routing or code;
 - xxi. first port of arrival or code;
 - xxii. date and time of arrival at first port of arrival in the territory of the Contracting Party or code;
 - xxiii. consignee or consignee code or importer or importer code;
 - xxiv. notify party or notify party code;
 - xxv. delivery destination;
 - xxvi. agent or agent code;
 - xxvii. Unique Consignment Reference Number.
3. The Administrative Committee shall have the authority to modify the list referred to in paragraph 2 of this Article.

CHAPTER V

Special Types of Assistance

Article 11

Surveillance

1. On request, the requested administration shall, to the extent possible, maintain surveillance over and provide the requesting administration with information on :
 - (a) goods either in transport or in storage known to have been used or suspected of being used to commit a Customs offence in the territory of the requesting Contracting Party;
 - (b) means of transport known to have been used or suspected of being used to commit a Customs offence in the territory of the requesting Contracting Party;
 - (c) premises known to have been used or suspected of being used in connection with the commission of a Customs offence in the territory of the requesting Contracting Party;
 - (d) persons known to have committed or suspected of being about to commit a Customs offence in the territory of the requesting Contracting Party, particularly those moving into and out of the territory of the requested Contracting Party.
2. The Customs administration of any Contracting Party may maintain such surveillance on its own initiative if it has reason to believe that activities planned, ongoing or completed appear to constitute a Customs offence in the territory of another Contracting Party.

Article 12

Controlled Delivery

1. Contracting Parties may, by mutual arrangement in accordance with paragraph 2 of Article 48, permit the movement of unlawful or suspect goods out of, through, or into their territories, with the knowledge and under the control of the Customs administration, with a view to investigating and combating Customs offences.
2. If such movements cannot be carried out under the control of the Customs authority, that authority shall endeavour to initiate co-operation with the national authorities that have such competence or shall transfer the case to them.

Article 13

Notification

1. On request, the requested administration shall, if permissible under its national law, take all necessary measures to notify a person residing or established in its territory of all decisions taken by the requesting administration in application of Customs law concerning that person, that fall within the scope of this Convention.
2. Such notification shall be made in accordance with the procedures applicable in the territory of the requested Contracting Party for similar national decisions.

Article 14

Recovery of Customs Claims

1. On request, Customs administrations may afford each other assistance with a view to the recovery of Customs claims.
2. Detailed arrangements for assistance in recovering Customs claims shall be made between the Contracting Parties concerned, in accordance with paragraph 2 of Article 48.

Article 15

Experts and Witnesses

On request, the requested administration may authorize its officials to appear before a court or tribunal in the territory of the requesting Contracting Party as experts or witnesses in a matter related to the application of Customs law.

Article 16

Presence of Officials in the Territory of Another Contracting Party

On request, officials specially designated by a requesting administration may, with the authorization of the requested administration and subject to conditions the latter may impose, for the purpose of investigating a Customs offence :

- (a) examine, in the offices of the requested administration, documents and any other information in respect of that Customs offence, and be supplied with copies thereof;
- (b) be present during an inquiry conducted by the requested administration in the territory of the requested Contracting Party which is relevant to the requesting administration; these officials shall only have an advisory role.

Article 17

Presence of Officials of the Requesting Administration at the Invitation of the Requested Administration

1. Where the requested administration considers it appropriate for an official of the requesting administration to be present when, pursuant to a request, measures of assistance are carried out, it may invite the participation of the requesting administration subject to any terms and conditions it may specify.
2. The Customs administrations concerned may, by mutual arrangement in accordance with paragraph 2 of Article 48, expand the role of the visiting official beyond an advisory one.

Article 18

Arrangements for Visiting Officials

1. Without prejudice to Articles 19, 20, 21, 22 and 23, when officials of a Contracting Party are present in the territory of another Contracting Party under the terms of this Convention, they must at all times be able to furnish, in a language acceptable to the requested administration, proof of their official identity and status in their Customs administration and of their official status as granted in the territory of the requested administration.
2. Officials shall, while in the territory of another Contracting Party under the terms of this Convention, be responsible for any offence they may commit and shall enjoy, to the extent provided by that Party's national laws, the same protection as accorded to its own Customs officers.

CHAPTER VI

Cross-Border Co-operation

Article 19

General Provisions

Officials of a Contracting Party may, by mutual arrangement in accordance with paragraph 2 of Article 48, engage in any of the activities set out in this Chapter in the territory of another Contracting Party and in accordance with any additional conditions as may be stipulated by the Contracting Party in whose territory these activities take place. Any of these activities shall cease as soon as the Contracting Party in whose territory the activities are taking place so requests.

Article 20

Hot Pursuit

1. Officials of a Contracting Party pursuing in their Party's territory an individual observed in the act of committing a Customs offence that could give rise to extradition, or participating in such an offence, may continue pursuit in the territory of another Contracting Party, subject to a prior request, authorization and any conditions the requested Contracting Party may impose.
2. If, for particularly urgent reasons, it has not been possible to inform the competent authorities of another Contracting Party prior to entry into its territory or where those authorities have not been able to engage in active pursuit, the pursuit may be continued without prior authorization.
3. Where pursuit is continued without prior authorization, the competent authorities of the Contracting Party in whose territory the pursuit is continued, shall be immediately informed of the crossing of the border and a formal request for authorization, outlining the grounds for crossing the border without prior authorization, shall be submitted as soon as possible.
4. At the request of the pursuing officials, the competent authorities of the Contracting Party where the pursuit is taking place shall challenge the pursued individual so as to establish his or her identity or to detain him or her.
5. Where the pursuit takes place on the sea, it shall, where it extends to the high sea, be carried out in conformity with the international law of the sea as reflected in the United Nations Convention on the Law of the Sea.

Article 21

Cross-Border Surveillance

1. Officials of a Contracting Party, keeping under surveillance in their Party's territory a person about whom there are serious grounds to believe that he or she is involved in a Customs offence, may continue the surveillance in the territory of another Contracting Party subject to a prior request, authorization and any conditions the requested Contracting Party may impose.
2. If, for particularly urgent reasons, prior authorization cannot be requested, surveillance pursuant to paragraph 1 of this Article may be continued provided that the competent authorities of the Contracting Party in whose territory the surveillance is to be continued, are immediately informed of the crossing of the border and a formal request for authorization, outlining the grounds for crossing the border without prior authorization, is submitted as soon as possible.

Article 22

Covert Investigations

1. A requested Contracting Party may authorize officials of a requesting Contracting Party to investigate in its territory, under cover of false identities, to ascertain or clarify facts about a Customs offence where it would be extremely difficult to do so otherwise. The officials in question shall be authorized to collect information and to make contact with the subjects of investigations or other persons associated with them in the course of their investigative activities.
2. Such investigations shall be carried out in accordance with the law and procedures of the Contracting Party in whose territory the investigations are being conducted.

Article 23

Joint Control and Investigation Teams

1. Contracting Parties may establish joint control or investigation teams to detect and prevent particular types of Customs offences requiring simultaneous and co-ordinated activities.
2. Such teams shall operate in accordance with the law and procedures of the Contracting Party in whose territory the activities are being carried out.

CHAPTER VII

Use, Confidentiality and Protection of Information

Article 24

Use of Information

1. Without prejudice to Article 36, any information communicated under this Convention shall be used only by the Customs administration for which it was intended and solely for the purpose of administrative assistance under the terms set out in this Convention.
2. On request, the Contracting Party that supplied the information may, notwithstanding paragraph 1 of this Article, authorize its use for other purposes or by other authorities, subject to any terms and conditions it may specify. Such use shall be in accordance with the legal and administrative provisions of the Contracting Party which seeks to use the information. The use of information for other purposes includes its use in criminal investigations, prosecutions or proceedings.

Article 25

Confidentiality and Protection of Information

1. Any information communicated under this Convention shall be treated as confidential and shall, at least, be subject to the same protection and confidentiality as the same kind of information is subject to under the national legal and administrative provisions of the Contracting Party where it is received.
2. Personal data exchange between two or more Contracting Parties under this Convention shall not begin until the Contracting Parties concerned have, by mutual arrangement in accordance with paragraph 2 of Article 48, decided that such data will be afforded, in the territory of the receiving Contracting Party, a level of protection that satisfies the requirements of the national law of the supplying Contracting Party.
3. In the absence of a mutual arrangement as referred to in paragraph 2 of this Article, personal data may only be supplied when the supplying Contracting Party is satisfied that such personal data will be protected in the territory of the receiving Contracting Party in accordance with the provisions of this Convention.
4. Contracting Parties shall, at the time of signature, ratification of or accession to this Convention, inform the Secretary General in writing of their national legal and administrative provisions in respect of confidentiality of information and protection of personal data. They shall make a written declaration to the Secretary General, at the time of signature, ratification of or accession, of their commitment to, at least, abide by the confidentiality of information and data protection provisions of this Convention.

Article 26

Personal Data Protection

1. Personal data shall only be supplied to a Customs administration. The supply of personal data to any other authority shall only be allowed after prior approval by the Customs administration supplying the data concerned.
2. On request, the Customs administration receiving personal data shall inform the Customs administration which supplied that data of the use made of it and the results achieved.
3. Personal data supplied under this Convention shall be kept only for the time necessary to achieve the purpose for which it was supplied.
4. The Customs administration supplying personal data shall, to the extent possible, ensure that this data has been collected fairly and lawfully and that it is accurate and up to date and not excessive in relation to the purposes for which it is supplied.
5. If personal data supplied is found to be incorrect or should not have been exchanged, this shall be notified immediately. The Customs administration that has received such data shall amend or delete it.
6. The Customs administrations shall record the supply or receipt of personal data exchanged under this Convention.
7. The Customs administrations shall take the necessary security measures to protect personal data exchanged under this Convention from unauthorized access, amendment or dissemination.
8. A Contracting Party shall be liable, in accordance with its legal and administrative provisions, for damage caused to a person through the use of personal data exchanged under this Convention. This shall also be the case where the damage was caused by a Contracting Party supplying inaccurate data or supplying data that is contrary to this Convention.
9. If the Contracting Party found liable for damage under paragraph 8 of this Article is not the Contracting Party that supplied the personal data, the Contracting Parties concerned shall agree on the terms and conditions of reimbursement to the liable Contracting Party of any sums it paid out in compensation.

CHAPTER VIII

Centralization of Information

Article 27

Purpose of Centralization

1. The information referred to in Articles 28, 29 and 30 shall be placed in a secure central automated information system for the purpose of risk assessment to ensure the proper application of Customs law, to prevent, investigate and combat Customs offences and to ensure the security of the international trade supply chain.
2. Personal data shall also be placed in a secure central automated information system for the purpose of providing information on persons known to have committed a Customs offence or suspected of being about to commit a Customs offence.

Article 28

Non-Personal Information

1. For the purposes of Articles 27 and 31 and if permissible under their national laws, Customs administrations shall communicate to the central automated information system the following non-personal information :
 - i. case reference information, where appropriate;
 - ii. commodities;
 - iii. quantities and unit of measurement;
 - iv. means of transport;
 - v. means of concealment;
 - vi. indication whether commodities are detected at importation, exportation, in transit or inland;
 - vii. routing;
 - viii. means of detection.
2. The Administrative Committee shall have the authority to modify the list in paragraph 1 of this Article.

Article 29

Information on Natural and Legal Persons

1. For the purposes of Articles 27 and 31 and if permissible under their national laws, Customs administrations may communicate to the central automated information system the following information :

(A) On natural persons :

- i. family name, maiden name, given names and aliases, and former names, as appropriate;
- ii. date and place of birth;
- iii. nationality;
- iv. type and number of identity paper(s);
- v. sex;
- vi. country of residence;
- vii. nature of offence;
- viii. occupation;
- ix. distinguishing features;
- x. prior history or information on suspects;
- xi. registration numbers of the means of transport;
- xii. indicators of level of danger that a person may pose;
- xiii. specific reason for inclusion of data;
- xiv. criminal organization belonged to;
- xv. known associates.

(B) On legal persons :

- i. name, trade name;
- ii. country of registration;
- iii. registration number;
- iv. date of registration;
- v. registered office;

- vi. trading address;
 - vii. nature of business;
 - viii. nature of offence;
 - ix. prior history or information on suspected legal persons;
 - x. specific reason for inclusion of data;
 - xi. names of principal officers or employees and, if appropriate, any other identifying information as indicated under paragraphs (A) i to xv.
2. The Administrative Committee shall have the authority to modify the lists in paragraphs 1 (A) and (B) of this Article.

Article 30

Other Information

Customs administrations may communicate to the central automated information system, if permissible under their national laws, any other information that may be relevant for the proper application of Customs law, for the prevention, investigation and combating of Customs offences, and for ensuring the security of the international trade supply chain.

Article 31

Central Automated Information System

1. The information referred to in Articles 28, 29 and 30 shall be placed in a secure central automated information system for Customs purposes. This system shall be managed from the Headquarters of the Council and be accessible under the provisions laid down in Article 38.
2. The communication of information by a Contracting Party to the central automated information system shall be subject to that Contracting Party's legal and administrative provisions, unless this Convention lays down more stringent provisions.
3. Each Contracting Party shall designate a competent authority in its Customs administration to be responsible at the national level for the correct operation of the central automated information system and for the measures necessary to ensure compliance with the provisions of Chapters VIII and X.
4. The Secretary General shall designate Council officers to be responsible at the Council level for the correct operation and maintenance of the central automated information system and for the measures necessary to ensure compliance with the provisions of Chapters VIII and X.

5. Each Contracting Party shall notify the Secretary General of the competent authority it has designated under paragraph 3 of this Article, who shall make this information available to the other Contracting Parties, along with any relevant information regarding Council officers designated under paragraph 4 of this Article. The information referred to in this paragraph shall be included in the central automated information system, but not be subject to the provisions of Chapter VII.

Article 32

Management of the Central Automated Information System

1. A team shall be set up to manage the central automated information system with regard to technical, operational and procedural matters. It shall consist of representatives from the Customs administrations of the Contracting Parties and Council officers. The composition of the Management Team shall be decided by the Administrative Committee.
2. The Management Team shall establish procedures for all technical and operational matters including procedures relating to :
 - (a) communication of information, in accordance with Articles 28, 29 and 30;
 - (b) access to the central automated information system and to the information it contains, in accordance with Article 38; and
 - (c) modification of information, in accordance with the provisions of Articles 39 and 40.
3. Following the approval by the Administrative Committee of the procedures referred to in paragraph 2 of this Article, the Management Team shall ensure their implementation.
4. The Management Team shall report at least annually to the Administrative Committee on the management of the central automated information system under paragraphs 1, 2 and 3 of this Article, making recommendations as necessary.

CHAPTER IX

Security of the Central Automated Information System

Article 33

Responsibility for Security Measures

1. The Contracting Parties and the Secretary General shall be responsible for the implementation of all necessary measures for the security of the central automated information system. The objectives of these measures shall include, but not be limited to :
 - (a) preventing unauthorized access to equipment used for the processing of information in the system;
 - (b) preventing unauthorized access to the system;
 - (c) preventing unauthorized entry, reading, copying, amending or deletion of any information in the system;
 - (d) ensuring that it is possible to check and establish which designated competent authorities and Council officers, referred to in paragraph 1 of Article 38, have access to the central automated information system, and which designated officials and Council officers, referred to in paragraph 2 of Article 38, have access to the information in the system;
 - (e) ensuring that it is possible to check and establish which information has been introduced into the system, by whom, and to monitor queries;
 - (f) preventing the unauthorized reading, copying, amendment or deletion of information during the communication of data and the transport of data media.
2. The independent representative or representatives appointed under paragraph 1 (f) of Article 45 shall carry out verifications of access to and queries about personal data to ensure that access and queries made were admissible and were made by authorized users. A record of all verifications shall be maintained in the system for reporting to the Administrative Committee and deleted after twelve months.

Article 34

Implementation of Security Measures

1. Each Contracting Party shall designate a competent authority in its Customs administration to implement, at the national level, the security measures referred to in paragraph 1 of Article 33.
2. The Secretary General shall designate Council officers to implement, at the

Council level, the security measures referred to in paragraph 1 of Article 33.

3. Each Contracting Party shall notify the Secretary General of the competent authority it has designated under paragraph 1 of this Article, who shall make this information available to the other Contracting Parties, along with any relevant information regarding designated Council officers under paragraph 2 of this Article. The information referred to in this paragraph shall be included in the central automated information system, but not be subject to the provisions of Chapter VII.

CHAPTER X

Protection of Information in the Central Automated Information System

Article 35

Inclusion of Information

The inclusion of information in the central automated information system shall be governed by the legal and administrative provisions of the supplying Contracting Party unless this Convention lays down more stringent provisions.

Article 36

Use of Information

1. The use of information obtained from the central automated information system shall be governed by the legal and administrative provisions of the Contracting Party using such information, unless this Convention lays down more stringent provisions.
2. Contracting Parties may only use information obtained from the central automated information system in order to achieve the purposes stated in Article 27. However, on request, the Contracting Party that supplied the information may authorize its use for other purposes, subject to any terms and conditions it may specify. Such other use shall be in accordance with the legal and administrative provisions of the Contracting Party which seeks to use the information. The use of information for other purposes includes its use in criminal investigations, prosecutions or proceedings.
3. Under the responsibility of the Secretary General, Council officers may use information obtained from the central automated information system only to carry out tasks as required under this Convention, subject to any conditions the Administrative Committee may impose.
4. Personal data may only be used if obtained from the central automated information system in accordance with paragraph 7 of Article 38.

Article 37

Retention of Personal Data

1. Personal data included in the central automated information system shall be kept only for the time necessary to achieve the purpose for which it was supplied. Contracting Parties shall specify the period of retention in the system of any personal data they supply.

2. A supplying Contracting Party may extend the period of retention referred to in paragraph 1 of this Article if the retention of its personal data is necessary for the purposes for which it was supplied. If there is no extension of this period, the data shall be deleted from the central automated information system at the initiation of the Contracting Party that supplied the personal data.
3. The Secretary General shall inform the supplying Contracting Party of the imminent deletion of personal data under paragraph 2 of this Article, giving one month's notice.
4. The independent representative or representatives appointed under paragraph 1 (f) of Article 45 shall carry out verifications to ensure that the period of retention of personal data in the central automated information system is being complied with. A record of all verifications shall be maintained in the system for reporting to the Administrative Committee and deleted after twelve months.

Article 38

Access

1. The competent authorities and Council officers designated in accordance with paragraphs 3 and 4 of Article 31 shall have access to the central automated information system.
2. For the purposes of Article 27 and without prejudice to paragraph 7 of this Article, Contracting Parties shall designate officials in their Customs administrations, and the Secretary General shall designate Council officers, who shall have access to information in the central automated information system.
3. Access to the system shall be in accordance with the procedures referred to in paragraph 2 of Article 32. For the purpose of applying Article 32, the Management Team shall have access to the central automated information system.
4. The Administrative Committee may permit access to the non-personal information in the central automated information system by international and regional governmental organizations on the basis of reciprocity and subject to any conditions the Administrative Committee may specify.
5. The representative or representatives appointed by the Administrative Committee under paragraph 1 (f) of Article 45 shall have access to the central automated information system.
6. Each Contracting Party shall notify the Secretary General of the officials it has designated under paragraph 2 of this Article. The Secretary General shall make this information available to all Contracting Parties along with any relevant information regarding Council officers designated under the same paragraph. The information referred to in this paragraph shall be included in the central automated information system, but not be subject to the provisions of Chapter VII.
7. Contracting Parties may stipulate who shall have access, or who shall not have access, to the personal data they supply.

8. The rights of natural persons with regard to personal data in the central automated information system, in particular their right of access, shall be put into effect in accordance with the legal and administrative provisions of the Contracting Party in whose territory such rights are invoked.

Article 39

Modification of Non-Personal Information in the Central Automated Information System

1. Non-personal information in the central automated information system shall only be amended, supplemented, corrected or deleted at the initiation of the supplying Contracting Party.
2. Non-personal information shall be amended, supplemented, corrected or deleted in accordance with the procedures established and implemented by the Management Team under paragraphs 2 and 3 of Article 32.

Article 40

Modification of Personal Data in the Central Automated Information System

1. Personal data in the central automated information system shall only be amended, supplemented, corrected, or deleted at the initiation of the supplying Contracting Party.
2. If a Contracting Party notes that the personal data it supplied is inaccurate, or was included or is stored in the central automated information system contrary to this Convention, it shall arrange for the amendment, supplementation, correction or deletion of this personal data without delay. The Contracting Party concerned shall arrange with the Secretary General to notify those who have been stipulated to have access to personal data, as referred to in paragraph 7 of Article 38, of such amendment, supplementation, correction or deletion.
3. If a Contracting Party has information to suggest that any personal data is inaccurate, or was included or is stored in the central automated information system contrary to this Convention, it shall advise the supplying Contracting Party as soon as possible. The latter shall check the data concerned and, if necessary, arrange for its amendment, supplementation, correction or deletion without delay. The supplying Contracting Party shall arrange with the Secretary General to notify those who have been stipulated to have access to personal data, as referred to in paragraph 7 of Article 38, of such amendment, supplementation, correction or deletion.
4. If, at the time of including personal data in the central automated information system, a Contracting Party realizes that its personal data conflicts with personal data supplied by another Contracting Party, it shall immediately advise the Contracting Party which supplied that data. The Contracting Parties concerned shall attempt to resolve the matter. If resolving the matter results in an

amendment, supplementation, correction or deletion of personal data, the Contracting Party which had supplied the data shall arrange with the Secretary General to notify those who have been stipulated to have access to personal data, as referred to in paragraph 7 of Article 38, of such amendment, supplementation, correction or deletion.

5. Where a court or other competent authority within the territory of any Contracting Party makes a final decision regarding the amendment, supplementation, correction or deletion of personal data in the central automated information system, the Contracting Party in whose territory the decision is made shall arrange, if it supplied the data, for the amendment, supplementation, correction or deletion of this data without delay, or, if the data was supplied by another Contracting Party, it shall advise the supplying Contracting Party of the decision. The supplying Contracting Party shall then arrange for the amendment, supplementation, correction or deletion of the data without delay.

Article 41

Responsibilities and Liabilities

1. A Contracting Party shall be responsible, to the extent possible, for the accuracy, currency and lawfulness of the information it has included in the central automated information system.
2. A Contracting Party shall be liable, in accordance with its legal and administrative provisions, for damage caused to a person through the use of information obtained from the central automated information system by that Contracting Party. This shall also be the case where the damage was caused by the supplying Contracting Party entering inaccurate data or entering data that is contrary to this Convention.
3. If the Contracting Party found liable for damage under paragraph 2 of this Article is not the Contracting Party that supplied the information, the Contracting Parties concerned shall agree on the terms and conditions of reimbursement to the liable Contracting Party of any sums it paid out in compensation.
4. A Contracting Party shall be liable, in accordance with its legal and administrative provisions, for damage caused to a person through the use of information by Council officers obtained from the central automated information system contrary to this Convention, to the extent that this information had been included in the system by that Contracting Party.
5. If damage is established by a competent judicial authority with respect to paragraph 4 of this Article, the Contracting Party concerned may refer the decision to the Administrative Committee who will make a recommendation to the Council regarding any reimbursement.

CHAPTER XI

Exemptions and Reservations

Article 42

Exemptions

1. Where any assistance requested under this Convention may infringe the sovereignty, laws and treaty obligations, security, public policy or any other substantive national interest of a requested Contracting Party, or prejudice any legitimate commercial or professional interests, such assistance may be declined by that Contracting Party or provided subject to any terms or conditions it may require.
2. Where a requesting administration would be unable to comply if a similar request were made by the requested administration, it shall draw attention to that fact in its request. Compliance with such a request shall be at the discretion of the requested administration.
3. Assistance may be postponed if there are grounds to believe that it will interfere with any ongoing investigation, prosecution or proceeding. In such a case, the requested administration shall consult with the requesting administration to determine if assistance can be given subject to such terms or conditions as the requested administration may specify.
4. If the requested administration considers that the effort required to fulfill a request is clearly disproportionate to the perceived benefit to the requesting administration, it may decline to provide the requested assistance.
5. Where assistance is declined or postponed, reasons for declining or postponement shall be given.

Article 43

Reservations

1. Articles 9, 10, 12, 14, 15, 16, 17, 19, 20, 21, 22, 23, 29 and 30 may, in whole or in part, be subject to reservations.
2. A Contracting Party shall be deemed to have accepted all provisions in Articles 9, 10, 12, 14, 15, 16, 17, 19, 20, 21, 22, 23, 29 and 30 unless at the time of signature, ratification of, or accession to the Convention, it has notified the Secretary General of any reservations referring to these provisions.
3. A Contracting Party that has entered reservations may withdraw them, in whole or in part, at any time by notification to the depositary specifying the date on which such withdrawal takes effect.

CHAPTER XII

Costs

Article 44

1. Subject to paragraphs 2 and 3 of this Article, the costs incurred in the application of this Convention shall be borne by the requested Contracting Party.
2. Expenses and allowances paid to experts and witnesses, as well as costs of translators and interpreters, other than Government employees, shall be borne by the requesting Contracting Party.
3. If the execution of a request requires expenses of a substantial or extraordinary nature, the Contracting Parties shall 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.

CHAPTER XIII

Final Provisions

Article 45

Management of the Convention

1. An Administrative Committee shall be established to :
 - (a) consider issues relating to the implementation and administration of this Convention, and any amendments proposed thereto;
 - (b) recommend to Contracting Parties amendments to this Convention;
 - (c) recommend to Contracting Parties measures to secure the uniform interpretation and application of this Convention;
 - (d) decide the composition of the Management Team referred to in paragraph 1 of Article 32;
 - (e) examine and approve the technical and operational procedures referred to in paragraph 2 of Article 32 relating to the central automated information system;
 - (f) appoint one or more independent representatives to carry out the verifications referred to in paragraph 2 of Article 33 and paragraph 4 of Article 37 and determine the scope, frequency and other terms and conditions for such verifications;
 - (g) determine the conditions referred to in paragraph 3 of Article 36 relating to the use by Council officers of information obtained from the central automated information system;
 - (h) determine the conditions referred to in paragraph 4 of Article 38 relating to permitting access to non-personal information in the central automated information system by international and regional governmental organizations;
 - (i) make recommendations to the Council regarding reimbursement under paragraph 5 of Article 41;
 - (j) maintain relations with other international organizations concerned;
 - (k) consider any other issues of relevance to this Convention that may be referred to it;
 - (l) inform the Enforcement Committee and the Council of its decisions.
2. The Administrative Committee shall take decisions regarding the modification of the lists in Articles 10, 28 and 29, as required, without recourse to Article 49 and

regarding implementation of these decisions.

3. All Contracting Parties to this Convention shall be members of the Administrative Committee.
4. Any entity qualified to become a Contracting Party to this Convention under the provisions of Article 46 may be invited to attend the sessions of the Administrative Committee as an observer. The status and rights of such observers shall be determined by the Administrative Committee. The Administrative Committee may invite the representatives of international organizations to attend its sessions as observers.
5. The Administrative Committee shall establish its own rules of procedure by a majority of not less than two-thirds of the Contracting Parties to this Convention. In the absence of rules of procedure of the Administrative Committee at the time of the entry into force of this Convention, the rules of procedure of the Council shall be applicable until the Administrative Committee adopts its own rules.
6. Without prejudice to paragraph 5 of this Article, matters related to this Convention before the Administrative Committee shall be decided by consensus of those present. Where a decision cannot be arrived at by consensus, the matter shall be decided by a simple majority vote of those present. In any case, for the purpose of modifying the lists in paragraph 2 of Article 10, paragraph 1 of Article 28, paragraph 1 of Article 29, as well as for the purpose of appointing one or more representatives under paragraph 1(f) of this Article, the decision shall be taken by a majority of not less than two-thirds of the Contracting Parties present and entitled to vote. In the case of permitting access to non-personal information referred to in paragraph 4 of Article 38, the decision shall be taken by unanimous vote of those present.
7. Each Contracting Party shall be entitled to one vote. Where paragraphs 3 and 4 of Article 46 apply, the Customs or Economic Unions which are Contracting Parties shall have, in the case of voting, only a number of votes equal to the total votes allocated to their Members which are Contracting Parties.
8. The Administrative Committee shall meet at least once each year. It shall annually elect a Chairperson and a Vice-Chairperson. The Customs administrations of the Contracting Parties shall communicate to the Secretary General any requests for the inclusion of items on the Agenda of the sessions of the Administrative Committee. The Secretary General shall circulate the invitation and the draft Agenda to the Customs administrations of the Contracting Parties and to the observers referred to in paragraph 4 of this Article at least six weeks before the Administrative Committee meets.
9. The Council shall provide the Administrative Committee with secretariat services.

Article 46

Signature, Ratification and Accession

1. Any Member of the Council and any Member of the United Nations or its

specialized agencies may become a Contracting Party to this Convention :

- (a) by signing it without reservation of ratification;
 - (b) by depositing an instrument of ratification after signing it subject to ratification; or
 - (c) by acceding to it.
2. This Convention shall be open until 28 June 2004 for signature at the Headquarters of the Council in Brussels by the Members referred to in paragraph 1 of this Article. Thereafter, it shall be open for accession by such Members.
 3. Any Customs or Economic Union may become a Contracting Party to this Convention in accordance with paragraphs 1 and 2 of this Article. Such Customs or Economic Union shall inform the Secretary General of the Members forming the Union, as well as of its competence with respect to the matters governed by this Convention. Such Customs or Economic Union shall also inform the Secretary General of any substantial modification in the extent of its competence.
 4. A Customs or Economic Union which is a Contracting Party to this Convention shall, for the matters within its competence, exercise in its own name the rights, and fulfil the responsibilities, which the Convention confers on the Members of such a Union which are Contracting Parties to this Convention. In such a case, the Members of such a Union shall not be entitled to individually exercise these rights, including the right to vote.
 5. Any Contracting Party which ratifies this Convention or accedes thereto shall be bound by any amendments to this Convention which have entered into force at the date of deposit of its instrument of ratification or accession.

Article 47

Territorial Application of the Convention

1. Any Contracting Party may at any time declare by notification given to the depositary that this Convention shall extend to all or any of its territories for whose international relations it is responsible. Such notifications shall take effect three months after the date of the receipt thereof by the depositary. However, this Convention shall not apply to any territories named in the notification before this Convention has entered into force for the Contracting Party concerned.
2. Any Contracting Party which has made notification under paragraph 1 of this Article extending this Convention to any territory for whose international relations it is responsible may notify the depositary, under the procedure of Article 52 of this Convention, that the territory in question will no longer apply this Convention.

Article 48

Implementation and Application of the Convention

1. In applying this Convention, Contracting Parties shall take the necessary measures to ensure, to the extent possible, that their officials who are responsible for investigating or combating Customs offences maintain personal and direct relations with each other.
2. Two or more Contracting Parties may decide on the mutual arrangements to facilitate the implementation and application of this Convention between them.

Article 49

Amendments to the Convention

1. The text of any amendment recommended to the Contracting Parties by the Administrative Committee in accordance with paragraph 1(b) of Article 45, shall be communicated by the Secretary General to all Contracting Parties and to those Members of the Council that are not Contracting Parties.
2. Any proposed amendment to this Convention shall enter into force three months after the expiry of a period of twenty four months from the date of communication of the proposed amendment in accordance with paragraph 1 of this Article, provided that no objection to the proposed amendment has been communicated by a Contracting Party to the Secretary General during this period.
3. If an objection to the proposed amendment has been lodged by a Contracting Party before the expiry of the period of twenty four months specified in paragraph 2 of this Article, the amendment shall be deemed not to have been accepted.

Article 50

Settlement of Disputes

1. Without prejudice to paragraph 1 (c) of Article 45, any dispute between two or more Customs administrations concerning the interpretation or application of this Convention shall so far as possible be settled by negotiation between them.
2. Any dispute that is not settled by negotiation shall be referred by the Contracting Parties to the Administrative Committee which shall thereupon consider the dispute and make recommendations for its settlement.
3. The Contracting Parties in dispute may agree in advance to accept the recommendations of the Administrative Committee as binding.
4. Disputes for which no solutions are found shall be settled by diplomatic means.

Article 51

Entry into Force

1. This Convention shall enter into force three months after five of the entities referred to in paragraphs 1 and 3 of Article 46 thereof have signed the Convention without reservation of ratification or have deposited their instrument of ratification or accession.
2. After entry into force in accordance with paragraph 1 of this Article, this Convention shall enter into force for any other Contracting Party three months after it has become a Contracting Party in accordance with the provisions of Article 46.

Article 52

Denunciation

1. This Convention is of unlimited duration but any Contracting Party may denounce it at any time after the date of its entry into force under Article 51 thereof.
2. The denunciation shall be notified in writing, deposited with the depositary.
3. The denunciation shall take effect six months after the receipt of the instrument of denunciation by the depositary.

Article 53

Depositary of the Convention

1. This Convention, all signatures with or without reservation of ratification and all instruments of ratification or accession shall be deposited with the Secretary General.
2. The depositary shall :
 - (a) receive and keep custody of the original texts of this Convention;
 - (b) prepare certified copies of the original texts of this Convention and transmit them to the Contracting Parties and those Members of the Council which are not Contracting Parties and to the Secretary General of the United Nations;
 - (c) receive any signature with or without reservation of ratification, ratification or accession to this Convention and receive and keep custody of any instruments, notifications and communication relating to it;
 - (d) receive and keep custody of national legal and administrative provisions and written declarations in respect of paragraph 4 of Article 25;

- (e) receive and keep custody of any notifications of reservations by Contracting Parties in accordance with Article 43;
 - (f) examine whether the signature or any instrument, notification or communication related to this Convention is in due and proper form and, if need be, bring the matter to the attention of the Contracting Party in question;
 - (g) notify the Contracting Parties, those Members of the Council that are not Contracting Parties, and the Secretary General of the United Nations of :
 - the date of entry into force of this Convention in accordance with Article 51 of this Convention;
 - notifications received in accordance with Articles 43, 46, 47 and 51 of this Convention;
 - denunciations under Article 52 of this Convention;
 - any amendments accepted or objected to in accordance with Article 49 of this Convention and the date of their entry into force; and
 - any decisions taken by the Administrative Committee referred to under paragraph 2 of Article 45;
 - (h) notify the Contracting Parties of the authorities referred to in paragraph 3 of Article 2;
 - (i) notify the Customs administrations of the official contact points referred to in paragraph 1 of Article 3.
3. In the event of any difference appearing between a Contracting Party and the depositary as to the performance of the latter's function, the depositary or that Contracting Party shall bring the question to the attention of the other Contracting Parties and to the signatories or, as the case may be, the Administrative Committee.

Article 54

Registration and Authentic Texts

In accordance with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Secretary General.

In witness hereof the undersigned, being duly authorized thereto, have signed this Convention.

Convention

44

Done at Brussels, this twenty-seventh day of June two thousand and three in the English and French languages, both texts being equally authentic, in a single original which shall be deposited with the Secretary General who shall transmit certified copies to all the entities referred to in paragraphs 1 and 3 of Article 46 of this Convention.

* * *

II. COMMENTARY ON THE INTERNATIONAL CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS

A. INTRODUCTION

The traditional task of Customs has been to collect Customs duties on imported goods, primarily to contribute to the revenue of Governments. Over time, the Customs role has evolved to include protection of society. Customs administrations continue to be the central governmental agencies dealing with the international movement of goods, means of transport, and passengers.

The globalization of trade has been accompanied by significant increases in both the volume and speed of movement of goods internationally, resulting in an increase in opportunities to commit Customs offences. In addition, the development and wider use of electronic communication presents new challenges and opportunities. Economic and geographical conditions, rates of duty, prohibitions, restrictions, and measures of control in force in a particular country determine, to a large extent, the type and frequency of Customs offences that occur in that country. As a result, Customs administrations are facing added pressures in the performance of their enforcement functions.

Customs administrations operate on the basis of their national legislation which normally grants them wide ranging powers but only within their national territories, and for their own purposes. This means that Customs administrations often have to deal with goods arriving in their territory with little or no external support or background information to assist them with their controls, other than Customs declarations and accompanying documents.

To deal with the increase in international trade, transport, electronic communication and Customs offences, and to achieve effective enforcement of Customs legislation while facilitating legitimate trade, Customs administrations have implemented modern control techniques that rely increasingly on risk analysis and selectivity. These techniques, supplemented by random controls where necessary, enable Customs' efforts to be concentrated on high-risk consignments,

Effective risk assessment and selectivity rely on the availability of information from a variety of sources, including Customs, exporting countries, trade and transport. To facilitate and provide a legal basis for the exchange of information among Customs administrations on a global level, a multilateral instrument for the exchange of information is required. A multilateral instrument can serve to integrate a Customs administration's approach to international co-operation, that may have been based on concluding bilateral agreements with many different partners, by providing a viable alternative to such agreements which alleviates problems of inconsistency and lack of uniformity that may arise in the application of these agreements.

The exchange of information and the provision of other types of assistance to ensure the proper application of Customs laws and to prevent, investigate and combat Customs offences are normally referred to as "mutual administrative assistance". This differs from "mutual legal assistance" which is provided, for instance, when information is required in evidential form for the purposes of criminal proceedings.

B. SCOPE AND STRUCTURE OF THE INTERNATIONAL CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS

The provisions contained in this Convention constitute a comprehensive instrument for mutual administrative assistance in Customs matters. The Convention is wider in scope than the International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences (Nairobi Convention, 1977), as it also addresses the proper application of Customs law and accommodates the WCO's Council Resolution on Security and Facilitation of the International Trade Supply Chain (June 2002), while recognizing, in principle, the primacy of national legislation in the application of its provisions. It contains a number of provisions that take account of modern methods of co-operation such as controlled delivery, hot pursuit, and joint control and investigation teams.

In reflecting the importance of risk assessment in enhancing compliance with Customs law and in facilitating the legitimate movement of trade across international borders, the Convention introduces the concepts of information exchange between Contracting Parties on an automatic basis and in advance of the arrival of consignments in the country of importation.

The Convention lays down specific provisions for the use, confidentiality and protection of information exchanged between Contracting Parties, including provisions for the protection of personal data. In Chapter VIII, it provides a legal basis for the centralization of information in a Central Automated Information System that may include personal data. It also provides for the establishment of an Administrative Committee, consisting of all Contracting Parties, to manage the Convention.

In addition to providing a legal basis for administrative assistance in traditional areas of Customs competence, such as valuation, classification, and origin, the Convention supports Customs role in combating organized crime across borders. As far as Customs matters are concerned, the Convention, by addressing mutual administrative assistance, complements the mutual legal assistance provisions contained in the United Nations Convention against Transnational Organized Crime (Palermo Convention), adopted and signed in 2000.

The present Convention contains a number of mandatory articles that represent core provisions for a sound legal basis for the provision of mutual administrative assistance. These provisions are contained in Articles 1 to 8, 11, 13, 18, 24 to 28 and 31 to 54. The remaining articles are non-core and may be subject to reservations, in whole or in part. The Convention should, therefore, be seen as a flexible instrument to assist Members in enhancing co-operation and exchange of information.

C. PROVISIONS OF THE INTERNATIONAL CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS

Preamble

Closer co-operation between Customs administrations is one of the principle objectives of the World Customs Organization (WCO). The International Convention

on Mutual Administrative Assistance in Customs Matters, adopted by the WCO Council in June 2003, provides Customs administrations with a modern and comprehensive legal instrument to meet this objective.

The Preamble notes the need to protect revenue by ensuring the accurate assessment and collection of Customs duties and other taxes collected at both importation and exportation. It emphasizes the need to protect society, which includes safeguarding the social, health and cultural interests of Contracting Parties. It also recognizes the importance of ensuring the security of the international trade supply chain.

The Preamble highlights the importance of the international exchange of information in the process of risk management which is essential to achieve a balance between compliance and facilitation.

Lastly, the Preamble recognizes that the International Convention on Mutual Administrative Assistance in Customs Matters takes into account the legal framework established under other relevant international instruments.

CHAPTER I : DEFINITIONS

Article 1

Article 1 provides an explanation for a number of key and recurring terms used in this Convention.

(e) Customs administration

Since the competence of Customs administrations varies widely between Contracting Parties, the definition of “Customs administration” allows authorities in addition to a Customs authority, normally law enforcement agencies such as police or border guards, to apply any of the provisions of this Convention. However, the definition sets out certain conditions that must be met for authorities of a Contracting Party to be considered a Customs administration for the purposes of this Convention :

- the authorities referred to above must have legal power under national law to apply any of the provisions of the Convention; and
- where appropriate, the authorities must be designated by the Contracting Party to apply any of the provisions of the Convention. In other words, a Contracting Party may designate any authority (ministry, agency or other authority) that has been authorised under national law to apply the Convention, as a Customs administration.

The type of reference, or other measure required under national law in order to authorise and, where appropriate, designate authorities to apply any of the provisions of the Convention is entirely subject to national legislation.

(h) Customs law

For the purposes of this Convention the term “Customs law” should be broadly

interpreted to include any law or regulation applicable or enforceable by the Customs administration of a Contracting Party as defined under 1 (e) in connection with the importation, exportation, transshipment, transit, storage and movement of goods.

The reference to measures of prohibition, restriction or control, and to combating money laundering should be regarded as an example of the range of provisions which may be applied or enforced by a Customs administration. It does not imply that a Customs authority will be the enforcement agency for these measures.

(i) Customs offence

The term "Customs offence" refers to any violation or attempted violation of Customs law as defined in this Convention. For all practical purposes, the definition of Customs offence also includes any activities or attempted activities that might threaten the security of the international trade supply chain.

(l) Information

The term "information" is defined in the broadest possible way in order to cover data contained in paper documents and data kept in any other form including electronic. It should be noted that intelligence, being information which has been processed or analysed, is included in this definition.

CHAPTER II : SCOPE OF THE CONVENTION

Article 2

The first paragraph outlines the purposes to be achieved by Contracting Parties when providing each other with administrative assistance under this Convention. These purposes are :

- proper application of Customs law;
- prevention, investigation and combating of Customs offences; and
- ensuring the security of the international trade supply chain.

The "investigation" referred to in the second bullet point above regarding the purposes of the Convention does not include criminal investigation. However, if a Contracting Party wishes to use any information received under this Convention for a criminal investigation, it must obtain the approval of the supplying Contracting Party in accordance with Article 24 of the Convention.

The second paragraph makes clear that the Convention shall be implemented by a Contracting Party in accordance with its laws and regulations and within the limits of its Customs administration's legal powers and available human or financial resources. This paragraph shall apply to all the activities carried out under this Convention.

The third paragraph obliges Contracting Parties to notify the Secretary General of the authorities that have been authorized under national law and designated by the Contracting Parties to apply the Convention. In turn, the Secretary General is obliged

to transmit this information and any updates thereto to all Contracting Parties.

The fourth paragraph emphasizes that the Convention covers administrative assistance between Contracting Parties, pointing out that it is not intended to replace or in any other way affect the provisions of other agreements or arrangements between the Contracting Parties, including agreements on mutual legal assistance between judicial authorities relating to criminal matters. This paragraph also recognizes that different agencies or administrations of a Contracting Party may have different areas of competence and that a request for assistance may be hindered by the requesting administration not knowing to whom to address a request. For this reason, the paragraph specifies that the appropriate authority must be indicated.

The “relevant agreement or arrangement applicable” referred to in fourth paragraph includes any existing co-operative relationship between the Customs administration of a Contracting Party and the relevant authorities of other Contracting Parties, other than their Customs administration.

The fifth paragraph makes clear that legal or natural persons do not derive from this Convention any right to obstruct the execution of a request by any Contracting Party by, for example, initiating legal action to that effect.

CHAPTER III : GENERAL ASSISTANCE PROCEDURES

Article 3

Communication of Requests

This Article lays down the procedures to be followed in requesting assistance. It states that requests for assistance under this Convention are to be communicated directly between the Customs administrations concerned, without the need to go through diplomatic channels. Designated contact points will provide the means for dealing with requests and all subsequent communications related thereto. The Secretary General will make sure that information on official contact points, including any updates thereto, is made available to all Customs administrations. The obligation to submit this information lies with the Customs administrations.

The Article further states that requests for assistance are to be made in writing or by electronic means, such as facsimile or e-mail. Contracting Parties may require written confirmation of electronic requests, for instance for legal or operational reasons. However, in extremely urgent cases, a verbal request may be accepted, but it must be confirmed as soon as possible in writing, or if both requested and requesting administrations agree by electronic means.

The Article further sets out the content of requests for assistance to facilitate their execution. This includes the appropriate references to any related prior requests as well as the reasons for the request.

A Customs administration may request that a particular procedure or methodology be followed. For example, the requesting administration may request that a specific line of questioning be used or that specific documents be obtained. The requesting administration should provide as much justification as possible for its

request together with all supporting information deemed useful by the requesting administration. The requested administration shall comply, unless affording the assistance requested would be contrary to its national legislation or administrative provisions. In this case, it should inform the requesting administration of the reasons for not complying.

Article 4

Spontaneous Assistance

Article 4 refers to cases where a Contracting Party must provide, wherever possible, assistance on its own initiative and without delay. This spontaneous assistance is provided when there is reason to believe that goods destined for another Contracting Party could cause substantial damage to that Contracting Party. For example, such damage could be created by :

- the diversion of chemical precursors, used legitimately for the purification of water, for the illicit manufacturing of drugs;
- the movement of nuclear, chemical and biological weapons, and weapons of mass destruction;
- foodstuffs found to be contaminated; or
- goods or means of transport suspected of endangering the international trade supply chain.

Under the provisions of this Article, it will be possible for a Contracting Party to provide spontaneous assistance to another Contracting Party where bribery or attempted bribery of a Customs official is suspected or has taken place potentially leading to substantial damage to the economy, public health, public security, including the security of the international trade supply chain or other vital interest of Contracting Parties.

CHAPTER IV : INFORMATION

Article 5

Information for the Application and Enforcement of Customs Law

The Article provides for Customs administrations to exchange, either on request or on their own initiative, any information in the manner and, where appropriate, under the conditions set out in this Convention to assist in the proper application of Customs law, and to conduct risk assessments and investigations to prevent and detect Customs offences.

The Customs administrations may exchange, for instance, information :

- contained in Customs documents or systems relating to the movement of goods between the territories of Contracting Parties concerned, which are

suspected of being contrary to the Customs law of the other Contracting Party;

- covering enforcement techniques, emerging trends and new ways and means of committing Customs offences;
- concerning goods, transport and storage methods relating to the commission of Customs offences; and
- concerning offenders or suspected offenders.

Article 6

Information Relating to Customs Offences

Information relating to Customs offences, as referred to in this Article, will be provided by a Customs administration, either on its own initiative or on request.

A typical example of a Contracting Party providing information on its own initiative is where during the investigation of a Customs offence in the territory of that Contracting Party links are revealed with a possible Customs offence in the territory of another Contracting Party. Another example may be where one Contracting Party is in possession of information that relates to a possible Customs offence in the territory of another Contracting Party, although there may be no Customs offence in its own territory.

Another example of a request under this Article is where during the investigation of a Customs offence in the territory of one Contracting Party the need for further information arises which may only be obtained from another Contracting Party.

Article 7

Information for the Assessment of Import or Export Duties and Taxes

Article 7 provides a legal basis for the Customs administration of a Contracting Party to request from the Customs administration of another Contracting Party all necessary information for the proper application of Customs law or for the prevention of fraud, where the requesting Customs administration has grounds to suspect the truth or accuracy of a declaration with a view to ensuring the correct assessment of duties and taxes.

This Article is intended to cover cases of a substantial or serious nature and is not intended to allow for routine or trivial requests. The provision of information is subject to the exemptions of Article 42, particularly paragraph 4, which allows the requested administration to decline a request if its efforts to provide information would clearly be disproportionate to the perceived benefit to the requesting administration. The information to be provided by the requested administration may include documents that are issued or kept by authorities other than the requested administration, such as import or export licenses that are typically issued by authorities other than Customs.

Customs administrations may, under this Article, provide any information :

- enabling false declarations or declarations that are materially incorrect to be detected and investigated with a view to the correct assessment of duties and taxes, in particular with regard to Customs value, classification or origin of the goods;
- concerning certificates of origin, invoices, or other documents known to be or suspected of being false or materially incorrect ;
- concerning the authenticity of any official document produced in support of a declaration.

Requests for information shall specify what verification procedures were undertaken or attempted in the territory of the requesting Customs administration. In this respect, a requesting administration should, prior to making a request under paragraph 1 of this Article, ensure, as far as possible, that verification procedures have been undertaken in its territory which should include :

- (a) examination of documentation relevant to a Customs declaration;
- (b) examination of records of previous declarations by the same importer/exporter;
- (c) assessment of risk regarding the importation/exportation;
- (d) consultation of any relevant database;
- (e) importer's/exporter's history of compliance;
- (f) making contact with the importer/exporter to obtain additional information to determine the truth or accuracy of the declaration; and
- (g) examination of importer's/exporter's accounting documents.

Article 8

Particular Types of Information

Article 8 states that the requested Customs administration shall provide, on request from the other Customs administration, information concerning the lawfulness of certain importation and exportation transactions between Contracting Parties. For instance, in respect of certain goods being exported, the national laws in some exporting Contracting Parties require confirmation of lawful importation of those goods into the country of destination, e.g. (specified) clearance documents.

Requests for information under the provisions of this Article relate to instances where the requesting administration has reason to doubt the accuracy of the information supplied to it by the person concerned in a Customs matter. As in Article 7, this Article is intended to relate to cases of a substantial or serious nature and is not intended to cover for routine or trivial requests

Article 9

Automatic Exchange of Information

This Article provides the option for two or more Contracting Parties to exchange any information on an automatic basis. For this purpose, they may make arrangements regarding the type of information they wish to exchange, its format, and the frequency of its transmission. For example, Contracting Parties may agree to exchange information on bulk import/export data for specified goods at regular intervals.

Automatic refers to the transmission of information of interest to a Contracting Party on a regular basis without the need to make individual requests.

Article 10

Advance Exchange of Information

This Article provides for Customs administrations of Contracting Parties to exchange specific information, as listed in paragraph 2, to help identify high-risk consignments in advance of their arrival in their respective territories. Such timely risk assessment also has the benefit of facilitating the movement of legitimate trade. This provision is in line with the Council's Resolution on Security and Facilitation of the International Trade Supply Chain.

Contracting Parties may agree, in accordance with paragraph 2 of Article 48, to exchange any of the data elements of paragraph 2 of this Article prior to the arrival of consignments in the country of import. These data elements have been selected as being necessary for the identification of high-risk consignments relating particularly to the security of the international trade supply chain.

The Administrative Committee established under Article 45 has the authority to modify the list of data elements to accommodate the changing needs of Contracting Parties for information to conduct risk assessments. This allows for the modification of the list of elements in paragraph 2 of this Article only. Any other modification to this Article must be carried out under the amendment provisions of Article 49.

CHAPTER V : SPECIAL TYPES OF ASSISTANCE

Article 11

Surveillance

Paragraph 1 of this Article provides for the maintenance of surveillance and provision of information by the requested administration on goods in transport or in storage, on means of transport, on premises or on persons where the requesting administration suspects that these goods, means of transport, premises or persons may be involved in infringements of its Customs legislation. Surveillance and information under this paragraph are provided within the scope of the requested administration's competence and available resources.

Suspicious on the part of the requesting administration may arise from :

- an investigation carried out by the requesting administration on irregularities established in its own territory where there is reason to believe that they can be traced back to activities in the territory of the other Contracting Party; or
- information from the requested administration.

Paragraph 2 of this Article provides for the possibility that a Customs administration maintains surveillance on its own initiative. If, for example, a Customs administration comes across activities planned, ongoing or completed which appear to constitute a Customs offence in the territory of another Contracting Party, it may, on its own initiative, decide to maintain surveillance in order to provide the other Customs administration with any information on these activities.

Article 12

Controlled Delivery

This technique allows suspect or illegal goods to proceed across borders to their destination under surveillance, without being detained or seized, in order to identify and apprehend suspects who are responsible for smuggling them rather than limiting action to seizing illegal goods at the border and only apprehending the couriers of those goods. Controlled deliveries can assist the identification and dismantling of smuggling networks. It is anticipated that the competent authority of the requested Contracting Party would take over control of the delivery as it crosses its border, or at an agreed hand-over point. As far as possible, supervision of the goods must be continuously maintained to give the competent authority the opportunity to apprehend the suspects and detain or seize the goods at any time during the operation.

Controlled deliveries shall be carried out in accordance with the procedures of and under the responsibility of the requested Contracting Party. Suspect consignments may be intercepted and their contents left intact, removed or replaced in part or in whole. Where the controlled delivery necessitates passage through territories other than those of the Contracting Parties, the full approval of the competent authorities in those territories must be secured in accordance with any applicable legal provision.

The Article also provides that if, under national law, the Customs authority is not authorized to carry out a controlled delivery, it must approach the agency that has jurisdiction to conduct controlled deliveries and co-operate with it in carrying out the operation or transfer the case to that agency.

Article 13

Notification

This Article provides for instances where it is not possible or appropriate for a Customs administration to send documents relating to the application of Customs law concerning persons residing or established in the territory of another Contracting Party directly to those persons. The Customs administration that receives a request for

notification will endeavour to comply with that request, subject to its national legal and administrative provisions as referred to in paragraph 2 of this Article.

Article 14

Recovery of Customs Claims

Under Article 1(f), a Customs claim is defined as any amount of Customs duties and taxes that cannot be collected in one of the Contracting Parties. Examples of assistance under this Article may include :

- provision of information by the requested Customs administration in connection with a customs claim;
- notification by the requested Customs administration of documents concerning a Customs claim from the requesting Contracting Party and relating to the person concerned. Such notification may take place according to the provisions of Article 13 of this Convention;
- precautionary measures to be taken by the requested Customs administration to secure the recovery of a Customs claim, such as petitioning a Court to freeze assets;
- enforcement action by the requested Customs administration to recover a Customs claim on behalf of the requesting Customs administration.

The following elements should be clearly indicated in an arrangement between Contracting Parties in accordance with paragraph 2 of Article 48 :

- the type of assistance in recovery which may be requested (see the examples above);
- the documents to be attached to the request (for instance, in the case of a request for enforcement action: an official copy of the instrument permitting enforcement in the requesting Contracting Party);
- whether the requested Contracting Party may allow deferral of payment or payment by instalments;
- whether time limits (any period beyond which a Customs claim cannot be enforced) are governed by the law of the requesting Contracting Party or by that of the requested Contracting Party.

Article 15

Experts and Witnesses

Where it is not sufficient for witness statements to be given solely in writing or when the presence of an expert is required, the Customs administration of a

Contracting Party may request the Customs administration of another Contracting Party to authorize its officials, if possible, to appear before a court or a tribunal in the territory of the requesting Contracting Party as experts or witnesses in a Customs matter.

The Customs administration of the Contracting Party accepting the request shall, in authorizing appearance, state any limits within which its officials should make their statements. The request for appearance shall specify, in particular, in what case and what capacity the official is to be heard. A court or tribunal may be broadly interpreted to include competent judicial or administrative bodies. In certain cases, the appearance of officials may be covered under other agreements such as those covering mutual legal assistance. Article 15 is subject to the provisions of paragraph 2 of Article 48 of the Convention.

Article 16

Presence of Officials in the Territory of Another Contracting Party

Under paragraph (a) of this Article, visiting officials may examine documents and other information relevant to an investigation by their administration of a Customs offence, in the offices of the requested administration. Subject to the provisions of paragraph 2 of Article 2, visiting officials may be supplied with copies of documents and other information they need.

Under paragraph (b), visiting officials are not allowed to participate in inquiries conducted by the requested administration except in an advisory role. They are subject to the provisions of Article 18.

Article 17

Presence of Officials of the Requesting Administration at the Invitation of the Requested Administration

A requested administration may ask the requesting administration to send an official to assist in carrying out the request for assistance, for instance because of his or her specific knowledge of the matter concerned.

Visiting officials are subject to the provisions of Article 18 and any terms and conditions that the requested administration may specify. These terms and conditions relate to, for instance the specific functions the visiting official may carry out in complying with the request for assistance.

Article 18

Arrangements for Visiting Officials

The provisions of this Article are applicable to officials present in the territory of the other Contracting Party under Articles 15, 16 and 17. The Customs administrations of the Contracting Parties concerned may decide on the appropriate proof of official

identity and status in their Customs administrations of visiting officials and of the means to demonstrate the official status granted in the territory of the requested administration.

Visiting officials shall receive as much protection as is available to them under the national law of the receiving Contracting Party. Where appropriate, the Contracting Party which is to receive officials from another Contracting Party should communicate to that Party in advance the level of protection it can provide.

Visiting officials should not wear uniforms nor carry arms and weapons unless otherwise approved by the requested Contracting Party.

CHAPTER VI : CROSS-BORDER CO-OPERATION

Articles 19 to 23

Hot Pursuit, Cross-Border Surveillance, Covert Investigations and Joint Control and Investigation Teams

This Chapter provides a legal framework for cross-border co-operation measures that are optional. Contracting Parties are not obliged to implement any of the provisions of the Chapter unless they decide to do so by mutual arrangement with specific partners under paragraph 2 of Article 48. They may, in addition, impose certain terms and conditions as situations require.

The measures included in the Chapter stem from the need to fight Customs offences more effectively as transnational organized crime is not restrained by borders, and offenders seek to frustrate enforcement efforts by border control agencies, such as Customs, knowing that these agencies are normally restricted to operating on their own territory. Cross-border illegal activities that infringe Customs law can, under special circumstances, be countered by allowing officials of one Contracting Party to continue pursuit or surveillance of individuals in the territory of another Contracting Party.

Provisions on cross-border co-operation are particularly useful in situations where the Contracting Parties concerned share common land borders, although the techniques of co-operation can also be used for other situations (sea, air, inland waterways). The expression "officials" in Articles 19 –23, as well as other articles, is broader than the expression "Customs officer" used elsewhere in this Convention. The term "official", as defined in Article 1 (n), may cover Customs officers as well as other law enforcement officers, such as police officers or border guards, who may take part in cross-border co-operation.

Article 19

General Provisions

Contracting Parties must decide on the mutual arrangements, under paragraph 2 of Article 48, necessary for the implementation of cross-border co-operation. Such arrangements may relate to :

- the types of Customs offences which require cross-border co-operation;
- the procedure for obtaining authorization from the appropriate authorities;
- the procedure for compensating for any damage incurred during cross-border activities;
- the conditions under which cross-border activities may be carried out, such as the geographical limits of these operations, their maximum duration, and rules concerning the carriage and use of firearms;
- the use that can be made of information obtained during cross-border activities.

Cross-border activities shall cease immediately at the request of the Contracting Party in whose territory cross-border activities are taking place.

Article 20

Hot Pursuit

Hot pursuit can be initiated when one individual (or more) is observed in the act of committing, or participating in, a Customs offence that could give rise to extradition and this individual is crossing the border in an attempt to evade apprehension. Contact must be established with the competent authorities of the Contracting Party in whose territory the hot pursuit is to take place to request prior authorization to cross the border and assistance in apprehending the individual. In particularly urgent circumstances, the pursuit can be continued without prior authorization provided that the crossing of the border is reported and that a formal request is made as soon as possible afterwards. If those competent authorities are not able to react, the pursuing officials may continue the pursuit across the border to detain the individual until the competent authorities of the Contracting Party in whose territory the pursuit is taking place arrive to take charge of him or her. The entire process will normally end with the extradition of the individual and prosecution in the territory where the Customs offence was committed.

Pursuits taking place on the high seas must comply with the relevant provisions of the United Nations Convention on the Law of the Seas.

Article 21

Cross-Border Surveillance

The surveillance of an individual about whom there are serious grounds for believing that he or she is involved in a Customs offence can be continued across the border, with the authorization of the requested Contracting Party, subject to any condition which may be imposed by that Contracting Party. In particularly urgent circumstances, the surveillance can be continued without prior authorization provided that the crossing of the border is reported and that a formal request is made as soon as possible afterwards.

Article 22

Covert Investigations

The requested Contracting Party may authorize officials of a requesting Contracting Party to operate in its territory under cover of a false identity to conduct covert investigations. Requests for covert investigations may only be made where it would otherwise be extremely difficult to ascertain facts about a Customs offence. In the course of such investigations, officials are only authorized to make contact and collect information from suspects and other individuals associated with them. Covert investigations must be carried out in accordance with the law and procedures of the Contracting Party in whose territory they are taking place.

Article 23

Joint Control and Investigation Teams

Customs administrations may set up joint control or investigation teams to detect and prevent Customs offences that call for simultaneous and co-ordinated control activities. These teams can effectively combat transnational organized crime. The two Contracting Parties should determine conditions governing the functions of these teams in accordance with the provisions of paragraph 2 of Article 48.

The activities of joint control or investigation teams must be carried out in accordance with the law and procedures of the Contracting Party in whose territory they are taking place.

CHAPTER VII : USE, CONFIDENTIALITY AND PROTECTION OF INFORMATION

Article 24

Use of Information

Article 24 specifies certain conditions under which information exchanged between Contracting Parties may be used. Information shall only be used for the purpose of administrative assistance and by the Customs administration for which it was intended. However, the receiving Contracting Party may, with the approval of the supplying Contracting Party, use that information for other purposes or by other authorities, subject to any terms or conditions the supplying Contracting Party may specify, including that such information shall not be used in a criminal investigation, prosecution or judicial proceeding. Failure to comply with such terms and conditions will constitute a breach of the Convention.

For the purpose of this Article, the term information refers to natural persons as well as non-personal information, including information about legal persons.

This Article does not preclude a Customs administration that has received a request for information from consulting other authorities or agencies with a view to

determining whether complying with that request may interfere with any ongoing investigation, prosecution or proceeding by that other authority or agency as referred to in paragraph 3 of Article 42.

Article 25

Confidentiality and Protection of Information

Under paragraph 1 of this Article, any information communicated in any format or frequency under this Convention must be treated as confidential and be subject to at least the same protection and confidentiality as the same kind of information is subject to under the national legal and administrative provisions of the Contracting Party where it is received. For the purpose of this Article, the term information refers to natural persons as well as non-personal information, including information about legal persons.

If the level of confidentiality and protection relating to information on legal persons accorded by the requesting Contracting Party does not comply with the level of confidentiality and protection required under the legal and administrative provisions of the requested Contracting Party, the latter may decline to provide the requested information, in accordance with paragraph 1 of Article 42.

There has been an increasing awareness that the exchange of personal data is a very sensitive area. In many countries, data protection legislation has been put into effect.. The principles underlying this legislation aim to extend the safeguards of rights and fundamental freedoms for natural persons, in particular concerning the right to privacy. Paragraph 2 of Article 25 aims to balance the need of the Contracting Parties to exchange information for the purposes of mutual administrative assistance with the rights of individuals to privacy. The provisions of this paragraph allow Contracting Parties to decide, by mutual arrangement, the level of personal data protection that satisfies the requirements of their national laws. Under such a mutual arrangement, Contracting Parties may also decide how to indicate whether information, at the time of its communication, should be treated as personal data.

Where no mutual arrangement exists, paragraph 3 of this Article provides for the possibility for personal data to be supplied only when the supplying Contracting Party is satisfied that the receiving Contracting Party will protect this data in accordance with the provisions of this Convention, in particular the provisions of paragraph 1 of this Article and Article 26.

Under paragraph 4, Contracting Parties must make a written declaration to the Secretary General, at the time of signature, ratification of or accession to this Convention that they will, at least, abide by the confidentiality of information and data protection provisions of this Convention. At the same time, they must inform the Secretary General in writing of their national legal and administrative provisions covering confidentiality of information and protection of personal data by providing appropriate references to these provisions, or by communicating pertinent texts in one of the official languages of the Council, if available.

Article 26

Personal Data Protection

The provisions of this Article concern personal data exchanged by Customs administrations under the Convention whether or not through the Central Automated Information System referred to in Article 31.

Personal data may only be supplied to a Customs administration which may not communicate it to another authority without prior approval from the supplying Contracting Party. The personal data supplied must only be kept for the time necessary for the purpose for which it was supplied and be protected from unauthorized access, amendment or dissemination. The Customs administration supplying the data has the duty to ensure, as far as possible, that this data is collected fairly and lawfully and is accurate and up to date.

The liability for any damage resulting from the use of personal data is established in accordance with national legal and administrative provisions.

A Contracting Party is liable, in accordance with its national legal and administrative provisions, for any damage caused to a person through the use, by that Contracting Party, of personal data it received from another Contracting Party. This is the case whether or not the personal data used was accurate when supplied by another Contracting Party or supplied contrary to the Convention.

CHAPTER VIII : CENTRALIZATION OF INFORMATION

Chapters VIII, IX and X constitute, together with Chapter VII, the legal basis for placing certain data in a central automated data base managed from the Headquarters of the Council, referred to in the text as the Central Automated Information System. The development of this legal base was requested by the Council in its June 2002 Sessions to provide a legal means for Contracting Parties to share information in a central database.

Articles 27, 28, 29, 30 and 31 of Chapter VIII should be read together because they relate to the communication of information to a secure central automated information system for the potential benefit of all Contracting Parties. Information communicated by Contracting Parties is placed in the system to support Customs efforts in ensuring compliance with any law governing the movement of goods and travellers across borders applied by Customs administrations.

Non-personal information referred to in Chapter VIII includes information in Article 28, 29 (B) (i-x) and any non-personal information communicated under Article 30. Personal data includes information in Article 29 (A) and (B) (xi) and any personal data communicated under Article 30.

Article 27

Purpose of Centralization

This Article sets out the purpose for the inclusion, in accordance with Articles 28, 29 and 30, of non-personal information and personal data in the central automated information system. Information is centralized to facilitate the conduct of risk assessments to ensure the proper application of Customs law, to combat Customs offences and to help ensure the security of the international trade supply chain. In addition, personal data is centralized to provide information to identify persons known to have committed or suspected of being about to commit a Customs offence.

Article 28

Non-Personal Information

Article 28 places an obligation on Contracting Parties to communicate to the central automated information system, if allowed by national law, non-personal information about Customs offences or potential Customs offences, as listed in items i to viii. This list was identified by Council Members as information required for analyses of trends and patterns of Customs offences committed earlier. Item ii “commodities” refers to the type of goods seized.

Article 29

Information on Natural and Legal Persons

Article 29 allows Contracting Parties to communicate, if permitted under national law, to the central automated information system information on natural and legal persons for the purpose of identifying individuals and organizations of international interest. The data fields in A and B of this Article were developed by Council Members as information required for the development of intelligence and targets for enforcement activity. The data fields refer to individuals and organizations who are known to have committed or are suspected of being about to commit a Customs offence.

The Administrative Committee established under Article 45 has the authority to modify the lists in Articles 28 and 29 to accommodate the changing needs of Contracting Parties. This allows for the modification of the lists only in those Articles. Any other modification to these Articles must be carried out under the amendment provisions of Article 49.

Article 30

Other Information

Article 30 allows Contracting Parties to communicate, if permitted under national law, to the central automated information system any information, other than that referred to in Articles 28 and 29, which could be useful for the proper application of Customs law, to combat Customs offences and to ensure the security of the international trade supply chain. This information could be in the form of analytical reports, images of the goods seized or information about the latest concealment methods.

Article 31

Central Automated Information System

The information communicated to the Secretary General under Articles 28, 29 and 30 is placed in a central automated information system. This system is managed from the Headquarters of the Council and is accessible under the provisions of Article 38.

At the time information is being communicated to the central automated information system, the Contracting Party communicating the information may indicate whether this information is treated under its national law as personal data or non-personal information.

Unless the Convention lays down more stringent provisions, the communication of information to the central automated information system is subject to national legal and administrative provisions. "More stringent provisions" of the Convention can apply where national law does not contain provisions for the communication of information or the provisions contained in national law are less strict than those contained in the Convention.

For instance, where the national legislation of a Contracting Party does not contain provisions regarding the communication of information, the provisions of Articles 25 and 26 of this Convention will apply.

Contracting Parties and the Secretary General must designate competent authorities and Council officers, respectively, for technical support of the system and to ensure compliance with the provisions of Chapters VIII and X. Technical support means having the right equipment (information technology infrastructure) and ensuring smooth and continuous operation to allow access, input and retrieval of data.

The measures necessary to ensure compliance with the provisions of Chapter VIII include making available the required training, manuals, and procedures regarding the input, analysis and retrieval of the information placed in the system.

The measures necessary to ensure compliance with the provisions of Chapter X include procedures for the inclusion, use, retention and modification of information in the system that must take into account the relevant national legal and administrative provisions at the national level and any conditions set by the Administrative Committee at the Council level.

Article 32

Management of the Central Automated Information System

This Article calls for the establishment of a Management Team, consisting of representatives from the Customs administrations of the Contracting Parties and Council officers. The Administrative Committee, established under Article 45, will decide the composition of the Management Team, which will include the number of participating Contracting Parties and Council Officers to participate.

The Management Team, under the authority of the Administrative Committee, develops and manages the technical, operational and procedural matters relating to the central automated information system. The Management Team shall report to the Administrative Committee at least once a year.

CHAPTER IX : SECURITY OF THE CENTRAL AUTOMATED INFORMATION SYSTEM

Article 33

Responsibility for Security Measures

The responsibility for the security of the central automated information system is assigned to the Secretary General at the Council level and to the Contracting Parties at the national level. Paragraph 1 of this Article sets out a number of security measures the objectives of which are the protection of the system from unauthorized access and handling.

To ensure that access to and queries about personal data are made in accordance with established security procedures, the Administrative Committee shall appoint one or more independent representatives to carry out verifications of such access and queries (paragraph 1 (f) of Article 45). The term “independent” refers to representatives operating on behalf of the Administrative Committee but not under its control. The representatives could be drawn from national data protection agencies, among other organizations.

Article 34

Implementation of Security Measures

The competent authorities and Council officers designated under paragraphs 1 and 2 of Article 34 are given the task of implementing the security measures referred to in paragraph 1 of Article 33. For the purpose of this Article, implementation may include development of security measures under the responsibility of the Contracting Parties and the Secretary General. For technical and other support, they shall rely on and work together with the authorities and Council officers designated under paragraphs 3 and 4 of Article 31.

Information about all designated competent authorities shall be communicated to the Secretary General, who shall make this information available to all Contracting Parties, together with information about designated Council officers. This information shall be made available on the central automated information system but will not be protected under the provisions of Chapter VII.

CHAPTER X : PROTECTION OF INFORMATION IN THE CENTRAL AUTOMATED INFORMATION SYSTEM

The provisions of this Chapter on personal data protection are in addition to the provisions of Article 26

Article 35

Inclusion of Information

Unless the Convention lays down more stringent provisions, the inclusion of information in the central automated information system is subject to national legal and administrative provisions of the supplying Contracting Parties. An example of where “more stringent provisions” of the Convention can apply is where national law does not contain provisions for the communication of information or the provisions contained are less stringent than those contained in the Convention. The expression “more stringent provisions” refers to provisions being more strict.

Article 36

Use of Information

Article 36 specifies certain conditions under which information exchanged between Contracting Parties may be used. Information obtained from the central automated information system shall only be used for the purpose of administrative assistance and by the Customs administration for which it was intended. However, the receiving Contracting Party may, with the approval of the supplying Contracting Party, use that information for other purposes or make it available for the use of other authorities, subject to any terms or conditions the supplying Contracting Party may specify. For instance, such information shall not be used in a criminal investigation, prosecution or judicial proceeding without the prior permission of the supplying Contracting Party. Failure to comply with such terms and conditions will constitute a breach of the Convention.

Council officers may use information from the central automated information system to carry out tasks identified in the Convention under the responsibility of the Secretary General and subject to conditions that the Administrative Committee may specify.

The term information includes information relating to natural and legal persons as well as to non-personal information. Information relating to natural persons (personal data) may be used by Contracting Parties or Council officers only if they are authorized by the supplying Contracting Party to have access to its personal data in the central automated information system.

Article 37

Retention of Personal Data

According to this Article, the period of retention of personal data in the central

automated information system is to be determined by the supplying Contracting Party and must not exceed the time required to achieve the purpose for which the data was supplied. . The supplying Contracting Party must specify the date on which the retention period ends. The Secretary General must then alert the supplying Contracting Party one month in advance to the forthcoming deletion of its personal data. This could be accomplished through electronic notification on the central automated information system. At the end of the retention period, the data must be deleted from the system unless the supplying Contracting Party extends the period of retention.

To ensure that periods of retention of personal data in the system are complied with by supplying Contracting Parties, the Administrative Committee shall appoint one or more independent representatives to carry out verifications. The term “independent” refers to representatives operating on behalf of the Administrative Committee but not under its control. The representatives could be drawn from national data protection agencies, among other organizations.

Article 38

Access

This Article makes a distinction between different levels of access to the central automated information system :

- access to the system (but not to any information contained therein)
 - by competent authorities and Council officers designated under paragraphs 3 and 4 of Article 31 and by the Management Team established under Article 32, for technical support purposes;
 - by representatives of the Administrative Committee for verification purposes referred to in paragraph 2 of Article 33 and paragraph 4 of Article 37;
- access to non-personal information in the system by officials designated by Contracting Parties and Council officers designated by the Secretary General under paragraph 2 of Article 38 for the purposes of Article 27, and by international and regional governmental organizations as permitted by the Administrative Committee under paragraph 4 of Article 38;
- access to personal data in the system as determined by the supplying Contracting Party in accordance with paragraph 7 of Article 38.

Article 39

Modification of Non-Personal Information in the Central Automated Information System

Modification of non-personal information, including any modification of information about legal persons as listed in Article 29 (1) (B) (i to x), is carried out at the instigation of the supplying Contracting Party, in accordance with procedures

established and implemented by the Management Team under paragraphs 2 and 3 of Article 32.

Article 40

Modification of Personal Data in the Central Automated Information System

Modification of personal data includes, in addition to the list in Article 29 (1) (A), any modification of information about legal persons as listed in Article 29 (1) (B) (xi). Personal data is modified at the instigation of the supplying Contracting Party.

If it is realized that personal data supplied to the central automated information system is inaccurate or is in any way contrary to the Convention, the supplying Contracting Party must arrange for the data to be amended, supplemented, corrected or deleted without delay. The supplying Contracting Party must also arrange with the Secretary General to notify those who have been stipulated in paragraph 7 of Article 38 of such amendment, supplementation, correction or deletion.

Where it is necessary for personal data to be modified as a result of a final decision by a court or other competent authority, the supplying Contracting Party must arrange for the modification of the data as described above.

Article 41

Responsibilities and Liabilities

The supplying Contracting Party is liable, in accordance with its legal and administrative provisions, for damage caused to a person through the use of information it has supplied to the central automated information system.

The supplying Contracting Party is also liable, in accordance with its legal and administrative provisions, for damage caused to a person through the use by Council officers of information contrary to the terms of the Convention, to the extent that it has supplied the information to the system. By assigning liability in this way, paragraph 4 of Article 41 recognizes that Council officers, with their privileges and immunities under Article XIII (b) of the Convention establishing a Customs Co-operation Council, cannot be brought before a national court of justice in their official capacity.

In such exceptional cases, if damage is established by a competent judicial authority of the Contracting Party concerned and the decision is referred to the Administrative Committee, under paragraph 5 of Article 41, that Committee will make a recommendation to the Council regarding any reimbursement. Any damage shall only be covered in accordance with the legal and administrative provisions of the Contracting Party concerned. Attention is drawn to the fact that the use of personal data by Council officers is always subject to the prerogative of the Contracting Parties to stipulate which Council officers, if any, shall have access to the personal data they supplied to the system.

CHAPTER XI : EXEMPTIONS AND RESERVATIONS

Article 42

Exemptions

The requested administration undertakes to act on all requests received under this Convention. This Article gives a number of reasons why assistance under the Convention may be declined or postponed. This is without prejudice to the second paragraph of Article 2 which lays down two fundamental requirements for assistance under this Agreement. (see also the commentary to Article 2)

The first paragraph outlines the circumstances under which assistance may be declined or provided, subject to terms and conditions as may be required by the providing Contracting Party. These include infringement of the sovereignty, laws and treaty obligations, security, public policy or any other substantive national interest of the requested Contracting Party.

Where the legitimate commercial interests of any enterprise, public or private, would be prejudiced, or the professional interests of specific groups would be compromised by the assistance sought, the requested administration may decline to provide that assistance. Declining the provision of assistance may be justified when, for instance, providing the assistance could reveal confidential details of a manufacturing process or infringe professional secrecy.

It must be stressed that assistance should only be declined after careful consideration by the requested Contracting Party to determine whether the perception of an infringement of substantive national interests of the Contracting Party is justified, or whether the legitimate commercial and professional interests would indeed be compromised, if the assistance were provided. Unwarranted use of the provisions of this Article can defeat the aims of the Convention and may lead to loss of confidence and goodwill between the Contracting Parties.

The second paragraph requires a requesting administration to indicate in its request if it would itself be unable to comply with a similar request for assistance. In such a case, the requested administration can nevertheless decide to comply with the request.

The third paragraph allows for the postponement of the requested assistance if complying with the request would interfere with any ongoing investigation (criminal or otherwise), prosecution or other proceedings in the territory of the requested Contracting Party.

The last paragraph prescribes that if assistance under this Convention is declined or postponed, full reasons for declining or postponement shall be given. These reasons may allow the Contracting Parties to discuss possible alternative approaches.

Article 43

Reservations

The International Convention contains a number of mandatory articles that represent core provisions for a sound legal basis for the provision of mutual administrative assistance. These provisions are contained in Articles 1 to 8, 11, 13, 18, 24 to 28 and 31 to 54. The remaining Articles are considered non-core and may be subject to reservations. Contracting Parties may enter reservations to the non-core Articles at the time of signature, ratification or accession to the Convention. They may opt not to be bound by all or part of the provisions in any of the non-core Articles.

The Article states that reservations may be withdrawn, in whole or in part, at any time.

CHAPTER XII : COSTS

Article 44

In principle, any costs attached to providing assistance for mutual administrative assistance shall be borne by the Contracting Party providing assistance. In the second paragraph, with respect to requests for assistance, an exception is made for the costs of experts and witnesses, as well as those for translators and interpreters who are not government employees. These costs, which may be considerable, will be paid by the requesting Contracting Party.

The third paragraph deals with cases in which substantial or extraordinary costs are incurred for the execution of a request. In such cases, the Contracting Parties shall agree the exact terms and conditions of complying with the request and the costs involved.

CHAPTER XIII : FINAL PROVISIONS

Article 45

Management of the Convention

This Article provides for the establishment of an Administrative Committee to, among other things, facilitate the implementation of the Convention, ensure the uniform interpretation and application of the provisions of the Convention by all Contracting Parties, determine the conditions relating to access to non-personal information in the central automated information system by international and regional governmental organizations and use of information obtained from the system by Council officers, and modify the lists in Articles 10, 28 and 29 in response to the changing needs of Contracting Parties. All Contracting Parties shall be Members of the Administrative Committee.

Observers attending Administrative Committee sessions may participate in discussions to the extent permitted by the Committee, which will also determine their status and rights. The Administrative Committee shall establish its own rules of procedure by a majority of not less than two-thirds of the Contracting Parties. Until its rules of procedure are established, the Administrative Committee shall use the rules of procedure of the Council.

The matters referred to in paragraph 1 of Article 45 must be decided in the Administrative Committee by a consensus. Failing that, a simple majority will suffice. However, for the purpose of modifying the lists in Articles 10, 28 and 29 and for appointing independent representatives under paragraph 1 (f) of this Article, a majority of two-thirds of the Contracting Parties present and entitled to vote is required.

Each Contracting Party is entitled to one vote. A customs or economic union shall, for the matters within its competence, exercise the right to vote in its own name and has the number of votes allotted to its members which are Contracting Parties.

The Administrative Committee shall meet at least once a year. It may meet more than once a year if the circumstances so require. Proposals and requests for inclusion of items on the Committee's agenda shall be brought to the attention of the Customs administrations of the Contracting Parties and observers at least six weeks prior to the meeting for their consideration.

The Council will provide the Administrative Committee with Secretariat services.

Article 46

Signature, Ratification and Accession

This Article specifies three ways of becoming a Contracting Party to the Convention :

1. by signing the Convention without reservation of ratification (paragraph 1 (a)), having fulfilled any applicable national legal requirements. This means that by signing the Convention (until 28 June 2004) at the Council's Headquarters, a member is expressing its consent to be bound by the Convention without the need for any additional formal processes;
2. by depositing an instrument of ratification, having first signed the Convention subject to ratification and having fulfilled any applicable national legal requirements. This means that a member, having first signed the Convention, becomes bound by the Convention only upon depositing its instrument of ratification with the Secretary General being the depositary for this Convention (Article 53);
3. by acceding to the Convention (paragraph 1 (c)), having fulfilled any applicable national legal requirements. This means that a member is expressing its consent to be bound by the Convention upon depositing its instrument of accession with the Secretary General.

Provision has been made for customs or economic unions to become Contracting Parties to the Convention because states forming such a union may, in certain areas, have transferred part of their powers to the union and may no longer have competence in these areas in their own name. In these situations of mixed competence (where only some areas that are covered by the Convention have been transferred to the union by its members, the union and its member states participate within the limits of their respective competence.

Upon becoming a Contracting Party to the Convention, a customs or economic union shall inform the Secretary General of the members forming the union and of its competence with respect to the matters governed by the Convention. The union shall also inform the Secretary General of any subsequent substantial modifications to the extent of its competence.

Article 47

Territorial Application of the Convention

This Article provides for a Contracting Party to notify the Secretary General of the application of the Convention to all or any of the territories for whose international relations it has responsibility. The Convention will not apply to any of these territories unless the Convention has entered into force for the Contracting Party concerned. The Contracting Party may also notify the Secretary General if any of its territories will no longer apply this Convention.

Article 48

Implementation and Application of the Convention

In order to facilitate the implementation of the Convention and enhance mutual assistance, this Article makes it obligatory for Contracting Parties to take the necessary measures to ensure, as far as possible, that their enforcement officials establish and maintain direct relations with each other. Furthermore, this Article allows two or more Contracting Parties to decide between them the terms, conditions or other arrangements that best suit their circumstances when applying the Convention.

Article 49

Amendments to the Convention

Amendments to the Convention recommended by the Administrative Committee must be communicated by the Secretary General to all Contracting Parties and Members of the Council who are not Contracting Parties. To take account of the time that may be required in some countries for legislative consideration and approval of proposed amendments, the Article specifies that such amendments shall enter into force three months after the expiration of a period of two years from the date of the aforementioned communication, provided that no objection has been communicated by a Contracting Party to the Secretary General during this period. If an objection is communicated within the two-year period, then the proposed amendment is nullified.

Article 50

Settlement of Disputes

This Article provides for the settlement by mutual accord of any dispute with respect to this Convention. When a solution cannot be found by mutual accord, a

conflict shall be referred to the Administrative Committee for a recommended solution. Contracting Parties in dispute may agree in advance to be bound by the recommended solution of the Administrative Committee. In other cases, where the recommended solution proposed by the Administrative Committee is not acceptable, Contracting Parties may settle their disputes by diplomatic means.

Article 51

Entry into Force

This Article states that the Convention enters into force three months after five entities have signed the Convention without reservation of ratification or have deposited their instrument of ratification or accession. These entities may be members of the Council, members of the United Nations or its specialized agencies, or customs or economic unions

The Convention enters into force for any other Contracting parties three months after signature, ratification or accession by them.

Article 52

Denunciation

This Article specifies that the Convention is of unlimited duration. A Contracting Party may, however, denounce the Convention (cease to be a Contracting Party) at any time. The denunciation must be in writing and deposited with the Secretary General. The denunciation will take effect six months after the Secretary General receives the instrument of denunciation.

Article 53

Depositary of the Convention

This Article states that the Secretary General of the Council shall be the depositary of the Convention. The Secretary General's functions as the depositary are listed in paragraph 2 (a to i) of this Article.

The depositary is under an obligation to act impartially. If a difference arises between a Contracting Party and the depositary, either shall bring the issue to the attention of the other Contracting Parties and to the signatories or to the Administrative Committee.

Article 54

Registration and Authentic Texts

This Article states that the Convention shall be transmitted by the Secretary General for registration with the Secretariat of the United Nations in conformity with Article 102 of the Charter of the United Nations.

III. PROCEDURE FOR RATIFYING THE CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS

A. The Members' decision to accept the Convention

(a) The authority empowered to ratify conventions will make the decision to become a contracting party by accepting the Convention, and will determine whether any reservations are to be entered in respect of the text of the Convention.

(b) Accepting the Convention means :

There are three ways of becoming a Contracting Party to the Convention :

- i. signing the Convention without reservation of ratification until 28 June 2004; or
- ii. signing the Convention, until 28 June 2004, subject to ratification and depositing the instrument of ratification with the Secretary General at a later date; or
- iii. acceding to the Convention after 28 June 2004 by depositing an instrument of accession with the Secretary General.

B. Signature or ratification

(a) If the Convention is to be signed without or with reservation of ratification by the diplomatic representative accredited with the Kingdom of Belgium, where the WCO has its headquarters, the Customs administration of the Member concerned will reach agreement with the WCO on a date for the signing ceremony.

(b) If the Convention is to be signed by the Head of the Customs administration at WCO headquarters, the administration will need to fix the date of the signing ceremony with the Secretariat and provide information about the identity and status of the signatory. Normally, the representative of the Contracting Party who is to sign the Convention is given an instrument of authority from the appropriate body in their country, a copy of which is provided to the Secretariat. The name and designation of the person authorised to sign is included in a list that is kept with the Convention.

C. Notification

(a) Under the Convention, the Secretary General of the WCO is appointed as the depositary of the instruments of signature and ratification of the Convention, which he receives as notification from Members.

(b) The Secretariat will notify WCO Members and non-members and the Secretariat of the United Nations of acceptances of the Convention and the corresponding dates of application.

D. Entry into Force of the Convention

- (a) The Convention enters into force three months after five entities (any Member of the Council and any Member of the United Nations as well as any Customs or Economic Union) have signed the Convention without reservation of ratification or have deposited their instrument of ratification or accession.
- (b) When the Convention enters into force, it will be registered with the United Nations in accordance with Article 102 of the Charter of the United Nations.

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IV. BENEFITS OF THE JOHANNESBURG CONVENTION

Acceding to the Convention enables the Customs administration, in particular, to:

- legally exchange information, including personal data, and assistance directly with the partner of choice, which is not possible under the current Nairobi Convention;
 - exchange information on consignments in advance of their arrival at destination in order to secure the international trade supply chain;
 - have available a WCO instrument on mutual administrative assistance in Customs matters under which it is possible to enter reservations in respect of all provisions which do not constitute basic principles of the Convention, an option that does not exist under the Nairobi Convention;
 - extend mutual administrative assistance to cover many aspects of Customs work in a complementary fashion to the principles of mutual legal assistance accepted by most Members in the United Nations' Palermo Convention;
 - provide a legal base for a central automated information system; and
 - have an instrument to supplement bilateral agreements dealing appropriately with topical issues relating to the protection of society and the collection of revenue.
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