

PROTOCOL D

**CONCERNING MUTUAL ADMINISTRATIVE ASSISTANCE
IN CUSTOMS MATTERS
REFERRED TO IN ARTICLE 3 (3) OF THE AGREEMENT**

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Article 1

Definitions

For the purposes of this Protocol:

- (a) "goods" shall mean all goods falling within Chapters 1 to 97 of the Harmonized System, irrespective of the scope of the Free Trade Agreement concluded between the EFTA States and Turkey;
- (b) "customs legislation" shall mean any legal or regulatory provision adopted by the individual EFTA States or by Turkey, governing the import, export, and transit of goods and their placing under any customs procedure, including measures of prohibition, restriction and control;
- (c) "applicant authority", shall mean a competent administrative authority which has been appointed by a State Party for this purpose and which makes a request for assistance in customs matters;
- (d) "requested authority", shall mean a competent administrative authority which has been appointed by a State Party for this purpose and which receives a request for assistance in customs matters;
- (e) "breaches of customs legislation" shall mean any violation or attempted violation of that legislation.

Article 2

Scope

1. The State Parties shall assist each other, in the areas within their competence, in the manner and under the conditions laid down in this Protocol, in ensuring that the customs legislation is correctly applied, in particular by the prevention, detection and investigation of operations in breach of that legislation.

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

¹ Protocol D was added by Joint Committee Decision No. 4 of 2000 (16 November 2000)

matters. Nor shall it cover information obtained under powers exercised at the request of the judicial authorities, except where communication of such information has the prior authorization of the said authorities.

Article 3

Assistance on request

1. At the request of the applicant authority, the requested authority shall furnish it with all relevant information which may enable it to ensure compliance with customs legislation, including information regarding operations noted or planned which are or might be in breach of such legislation.

2. At the request of the applicant authority, the requested authority shall inform it whether goods exported from the territory of one of the State Parties have been properly imported into its territory, specifying, where appropriate, the customs procedure applied to the goods.

3. At the request of the applicant authority, the requested authority shall, within the framework of its laws, take the necessary steps to ensure special surveillance of:

- (a) natural or legal persons of whom there are reasonable grounds for believing that they are or have been in breach of customs legislation;
- (b) places where goods are stored in a way that gives grounds for suspecting that they are intended to supply operations in breach of customs legislation;
- (c) movements of goods notified as possibly giving rise to substantial breaches of customs legislation;
- (d) means of transport for which there are reasonable grounds for believing that they have been, are or may be used in operations in breach of customs legislation.

Article 4

Spontaneous assistance

The State Parties shall provide each other, at their own initiative and in accordance with their laws, rules and other legal instruments, with assistance if they consider that to be necessary for the correct application of customs legislation, particularly when they obtain information pertaining to:

- operations which are or appear to be in breach of such legislation and which may be of interest to other State Parties;
- new means or methods employed in carrying out such operations;
- goods known to be subject to substantial breaches of customs legislation;

- natural or legal persons of whom there are reasonable grounds for believing that they are or have been in substantial breach of customs legislation;
- means of transport for which there are reasonable grounds for believing that they have been, are or may be used in operations in substantial breach of customs legislation.

Article 5

Technical assistance

The State Parties, by a mutually agreed programme, may provide each other technical assistance, including:

- (a) information and experience exchange in the use of technical equipment for control;
- (b) training of customs officials;
- (c) exchange of experts in customs matters;
- (d) exchange of specific, scientific and technical information related to the effective application of customs legislation.

Article 6

Delivery/Notification

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

- to deliver all documents,
- to notify all decisions, as well as any other relevant documents which form part of the procedure in question,

falling within the scope of this Protocol to an addressee, residing or established in its territory. In such a case, Article 7 (3) shall apply to the request for delivery or notification.

Article 7

Form and substance of requests for assistance

1. Requests pursuant to this Protocol shall be made in writing. They shall be accompanied by the documents necessary to enable compliance with the request. When

required because of the urgency of the situation, oral requests may be accepted, but must be confirmed in writing immediately.

2. Requests pursuant to paragraph 1 shall include the following information :
 - (a) the applicant authority making the request;
 - (b) the measure requested;
 - (c) the object of and the reason for the request;
 - (d) the laws, rules and other legal elements involved;
 - (e) indications as exact and comprehensive as possible on the natural or legal persons who are the target of the investigations;
 - (f) a summary of the relevant facts and of the enquiries already carried out, except in cases provided for in Article 6.
3. Requests shall be submitted in an official language of the requested authority or in English or in a language acceptable to that authority.
4. If a request does not meet the formal requirements, its correction or completion may be requested; precautionary measures may, however, be ordered.

Article 8

Execution of requests

1. In order to comply with a request for assistance, the requested authority shall proceed, within the limits of its competence and available resources, as though it were acting on its own account or at the request of other authorities of that same State Party, by supplying information already possessed, by carrying out appropriate enquiries or by arranging for them to be carried out. This provision shall also apply to the administrative department to which the request has been addressed by the requested authority when the latter cannot act on its own.
2. Requests for assistance shall be executed in accordance with the laws, rules and other legal instruments of the requested State Party.
3. Duly authorized officials of a State Party may, with the agreement of the State Party involved and subject to the conditions laid down by the latter, obtain from the offices of the requested authority or other authority for which the requested authority is responsible, information relating to operations which are or may be in breach of customs legislation which the applicant authority needs, in the context of an enquiry, for the purposes of this Protocol.

4. Officials of a State Party may, with the agreement of the State Party involved and subject to the conditions laid down by the latter, be present at enquiries carried out in the latter's territory.

Article 9

Form in which information is to be communicated

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

Article 10

Exceptions to the obligation to provide assistance

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

Article 11

Confidentiality

1. Any information communicated in whatsoever form pursuant to this Protocol shall be of a confidential or restricted nature. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws of the State Party which received it.
2. Personal data, that is all information relating to an identified or identifiable individual, may be exchanged only where the receiving State Party undertakes to protect

such data in at least an equivalent way to the one applicable to that particular case in the supplying State Party.

Article 12

Use of information

1. Information obtained shall be used solely for the purposes of this Protocol. Where one of the State Parties requests the use of such information for other purposes, it shall ask for the prior written consent of the authority which furnished the information. Such use shall then be subject to any restrictions laid down by that authority. Information related to illicit drug trafficking may be communicated to other authorities directly involved in the combat of illicit drug traffic.
2. Paragraph 1 shall not impede the use of information in any judicial or administrative proceedings instituted for failure to comply with customs legislation. The competent authority which supplied that information shall be notified of such use without delay.
3. The State Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Protocol.

Article 13

Experts and witnesses

An official of a requested authority may be authorized to appear, within the limitations of the authorization granted, as an expert or witness in judicial or administrative proceedings regarding the matters covered by this Protocol in the jurisdiction of another State Party, and produce such objects, documents or authenticated copies thereof, as may be needed for the proceedings. The request for an appearance must indicate specifically on what matters and by virtue of what title or qualification the official will be questioned.

Article 14

Assistance expenses

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

Article 15

Application

1. The application of this Protocol shall be entrusted to the customs authorities of the State Parties. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration the rules in force in the field of data protection.

2. The State Parties shall consult each other and subsequently keep each other informed through the EFTA Secretariat of the detailed rules of implementation which are adopted in accordance with the provisions of this Protocol. In particular, they shall exchange the list of competent authorities authorized to intervene under this Protocol.

Article 16

Complementarity

This Protocol shall complement and not impede application of any agreements on mutual administrative assistance which have been concluded or may be concluded between the State Parties. Nor shall it preclude more extensive mutual assistance granted under such agreements.
