INTERNATIONAL CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE FOR THE PREVENTION, INVESTIGATION AND REPRESSION OF CUSTOMS OFFENCES

(Nairobi, 9 June 1977)

WORLD CUSTOMS ORGANIZATION*

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* World Customs Organization (WCO) is the working name of the Customs Co-operation Council (CCC)

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I. INTERNATIONAL CONVENTION ON VISUAL ADMINISTRATIVE ASSISTANCE FOR THE PREVENTION, INVESTIGATION AND REPRESSION OF CUSTOMS OFFENCES

Preamble

THE CONTRACTING PARTIES to the present Convention, established under the auspices of the Customs Co-operation Council,

Considering that offences against Customs law are prejudicial to the economic, social and fiscal interests of States and to the legitimate interests of trade,

Considering that action against Customs offences can be rendered more effective by co-operation between Customs administrations, and that such co-operation is one of the aims of the Convention establishing a Customs Co-operation Council,

Have agreed as follows :

CHAPTER I

Definitions

Article 1

For the purposes of this Convention :

(a) the term "Customs law" means all the statutory or regulatory provisions enforced or administered by the Customs administrations concerning the importation, exportation or transit of goods;

(b) the term "Customs offence" means any breach, or attempted breach, of Customs law;

(c) the term "Customs fraud" means a Customs offence by which a person deceives the Customs and thus evades, wholly or partly, the payment of import or export duties and taxes or the application of prohibitions or restrictions laid down by Customs law or obtains any advantage contrary to Customs law;

(d) the term "smuggling" means Customs fraud consisting in the movement of goods across a Customs frontier in any clandestine manner;

(e) the term "import or export duties and taxes" means Customs duties and all other duties, taxes, fees or other charges which are collected on or in connection with the importation or exportation of goods but not including fees and charges which are limited in amount to the approximate cost of services rendered;

(f) the term "person" means both natural and legal persons, unless the context otherwise requires;

(g) the term "the Council" means the organization set up by the Convention establishing a Customs Co-operation Council, done at Brussels on 15 December 1950;

(h) the term "Permanent Technical Committee" means the Permanent Technical Committee of the Council;

(ij) the term "ratification" means ratification, acceptance or approval.

CHAPTER II

Scope of the Convention

Article 2

1. The Contracting Parties bound by one or more Annexes to this Convention agree that their Customs administrations shall afford each other mutual assistance with a view to preventing, investigating and repressing Customs offences, in accordance with the provisions of this Convention.

2 The Customs administration of a Contracting Party may request mutual assistance as provided for in paragraph 1 of this Article in the course of any investigation or in connection with any judicial or administrative proceedings being undertaken by that Contracting Party. If the Customs administration is not itself conducting the proceedings, it may request mutual assistance only within the limits of its competence in these proceedings. Similarly, if proceedings are undertaken in the country of the requested administration, the latter provides the assistance requested within the limits of its competence in these proceedings.

3 Mutual assistance as provided for in paragraph 1 of this Article shall not extend to requests for the arrest of persons or for the recovery of duties, taxes, charges, fines or any other monies on behalf of another Contracting Party.

Article 3

If a Contracting Party considers that the assistance sought would infringe upon its sovereignty, security or other substantial national interests or prejudice the legitimate commercial interests of any enterprise, public or private, it may decline to provide that assistance or give it subject to certain conditions or requirements.

Article 4

If the Customs administration of a Contracting Party requests assistance which it itself would be unable to give if requested to do so by the other Contracting Party, it shall draw attention to the fact in its request. Compliance with such a request shall be within the discretion of the requested Contracting Party.

CHAPTER III

General assistance procedures

Article 5

1. Any intelligence, documents or other information communicated or obtained under this Convention :

(a) shall be used only for the purposes specified in this Convention, including use in judicial or administrative proceedings, and subject to such restrictions as may be laid down by the Customs administration which furnished them; and

(b) shall be afforded in the receiving country the same protection in respect of confidentiality and official secrecy as applies in that country to the same kind of intelligence, documents and other information obtained in its own territory.

2. Such intelligence, documents or other information may be used for other purposes only with the written consent of the Customs administration which furnished them and subject to any restrictions laid down by that administration and to the provisions of paragraph 1 (b) of this Article.

Article 6

1. The communications between Contracting Parties provided for by this Convention shall pass directly between Customs administrations. The Customs administrations of the Contracting Parties shall designate the services or officials responsible for such communications and shall advise the Secretary General of the Council of the names and addresses of those services or officials. The Secretary General shall communicate this information to the other Contracting Parties.

2. The Customs administration of the requested Contracting Party shall, subject to the laws and regulations in force in its territory, take all necessary measures to comply with a request for assistance.

3. The Customs administration of the requested Contracting Party shall reply to a request for assistance as soon as possible.

Article 7

1. Requests for assistance under this Convention shall normally be made in writing; they shall contain the requisite information and be accompanied by such documents as may be deemed useful.

2. Requests in writing shall be in a language acceptable to the Contracting Parties concerned. Any documents accompanying such requests shall be translated into a mutually acceptable language, if necessary.

3. Contracting Parties shall in all cases accept requests for assistance and accompanying documents in English or French accompanied by a translation into English or French.

4. When, for reasons of urgency in particular, requests for assistance have not been made in writing, the requested Contracting Party may require written confirmation.

Article 8

Any expenses incurred under this Convention in respect of experts or witnesses shall be borne by the requesting Contracting Party. The Contracting Parties shall waive all claims for reimbursement of any other costs incurred in the execution of this Convention.

CHAPTER IV

Miscellaneous provisions

Article 9

The Council and the Customs administrations of the Contracting Parties shall arrange for the services responsible for the prevention, investigation, and repression of Customs offences to maintain personal and direct relations with a view to furthering the general aims of the Convention.

Article 10

For the purposes of this Convention any Annex or Annexes to which a Contracting Party is bound shall be construed to be an integral part of the Convention, and in relation to that Contracting Party any reference to the Convention shall be deemed to include a reference to such Annex or Annexes.

Article 11

The provisions of this Convention shall not preclude the application of any more extensive mutual assistance which certain Contracting Parties grant or may grant in future.

CHAPTER V

Role of the Council and of the Permanent Technical Committee

Article 12

1. The Council shall, in accordance with the provisions of this Convention, be responsible for the administration and development of this Convention.

2. To these ends the Permanent Technical Committee shall, under the authority of the Council and in accordance with any directions given by the Council, have the following functions :

(a) to submit to the Council proposals for such amendments to this Convention as it may consider necessary;

(b) to furnish opinions on the interpretation of provisions of the Convention;

(c) to maintain relations with the other international organizations concerned and, in particular, with the competent bodies of the United Nations, with UNESCO and with the International Criminal Police Organization/Interpol, as regards action against illicit traffic in narcotic drugs and psychotropic substances, and action against illicit traffic in works of art, antiques and other cultural property;

(d) to take any action likely to further the general aims of the Convention and in particular to study new methods and procedures to facilitate the prevention, investigation and repression of Customs offences, to convene meetings, etc.;

(e) to perform such tasks as the Council may direct in relation to the provisions of the Convention.

Article 13

For the purposes of voting in the Council and in the Permanent Technical Committee each Annex shall be taken to be a separate Convention.

CHAPTER VI

Final provisions

Article 14

Any dispute between two or more Contracting Parties concerning the interpretation or application of this Convention shall be settled by negotiation between them.

Article 15

1. Any State Member of the Council and any State 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 30th June 1978 for signature at the Headquarters of the Council in Brussels by the States referred to in paragraph 1 of this Article. Thereafter, it shall be open for their accession.

3. Each State referred to in paragraph 1 of this Article shall at the time of signing, ratifying or acceding to this Convention specify the Annex or Annexes it accepts, it being necessary to accept at least one Annex. It may subsequently notify the Secretary General of the Council that it accepts one or more further Annexes.

4. The instruments of ratification or accession shall be deposited with the Secretary General of the Council.

5. Customs or economic unions may, together with all their Member States or at any time after their Member States have become Contracting Parties to this Convention, also become Contracting Parties to this Convention in accordance with the provisions of paragraphs 1, 2 and 3 of this Article. However, such unions shall not have the right to vote.

Article 16

1. This Convention shall enter into force three months after five of the States referred to in paragraph 1 of Article 15 thereof have signed the Convention without reservation of ratification or have deposited their instruments of ratification or accession.

2. For any Contracting Party signing without reservation of ratification, ratifying or acceding to this Convention after five States have signed it without reservation of ratification or have deposited their instruments of ratification or accession, this Convention shall enter into force three months after the said Contracting Party has signed without reservation of ratification or deposited its instrument of ratification or accession.

3. Any Annex to this Convention shall enter into force three months after two States have accepted that Annex. For any Contracting Party which subsequently accepts an Annex after two States have accepted it, that Annex shall enter into force three months after the said Contracting Party has notified its acceptance. No Annex shall however enter into force for a Contracting Party before the Convention has entered into force for that Contracting Party.

Article 17

[*] As amended by the Protocol which entered into force on 27 July 1989.

1. Any State may, at the time of signing this Convention without reservation of ratification or of depositing its instruments of ratification or accession, or any time thereafter, declare by notification given to the Secretary General of the Council that this Convention shall extend to all or any of the territories for whose international relations it is responsible. Such notification shall take effect three months after the date of receipt thereof by the Secretary General of the Council. However, the Convention shall not apply to the territories named in the notification before the Convention has entered into force for the State concerned.

2. Any State which has made a notification under paragraph 1 of this Article extending this Convention to any territory for whose international relations it is responsible may notify the Secretary General of the Council, under the procedure of Article 19 of this Convention, that the territory in question will no longer apply the Convention.

Article 18[*]

Each Contracting Party shall be deemed to have acceded to, or accepted all the provisions in, the Convention or the Annexes thereto unless, at the time of acceding to the Convention or separately accepting an Annex or at any time thereafter, it has notified the Secretary General of the Council of any reservations in respect of provisions to which it cannot subscribe. It shall undertake to examine periodically the provisions in respect of which it has entered reservations and notify the Secretary General of the Council in the event of the withdrawal of the reservations.

Article 19

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 16 thereof.

2. The denunciation shall be notified by an instrument in writing, deposited with the Secretary General of the Council.

3. The denunciation shall take effect six months after the receipt of the instrument of denunciation by the Secretary General of the Council.

4. The provisions of paragraphs 2 and 3 of this Article shall also apply in respect of the Annexes to this Convention, any Contracting Party being entitled at any time after the date of their entry into force under Article 16 of the Convention, to withdraw its acceptance of one or more Annexes. Any Contracting Party which withdraws its acceptance of all the Annexes shall be deemed to have denounced the Convention.

5. Any Contracting Party which denounces the Convention or withdraws its acceptance of one or more Annexes shall remain bound by the provisions of Article 5 of this Convention for as long as it retains in its possession any intelligence, documents or other information obtained under the Convention.

Article 20

[*] As amended, according to the simplified procedure provided for in Article 20. Entered into force on 7 October 1995.

1. The Council may recommend amendments to this Convention.

2. The text of any amendment so recommended shall be communicated by the Secretary General of the Council to all Contracting Parties to this Convention, to the other signatory States and to those States Members of the Council that are not Contracting Parties to this Convention.

3. Any proposed amendment communicated in accordance with the preceding paragraph shall come into force with respect to all Contracting Parties three months after the expiry of a period of two years following the date of communication of the proposed amendment during which period no objection to the proposed amendment has been communicated to the Secretary General of the Council by a State which is a Contracting Party.

4. If an objection to the proposed amendment has been communicated to the Secretary General of the Council by a State which is a Contracting Party before the expiry of the period of two years specified in paragraph 3 of this Article, the amendment shall be deemed not to have been accepted and shall have no effect whatsoever.

Article 21

1. Any Contracting Party ratifying or acceding to this Convention shall be deemed to have accepted any amendments thereto which have entered into force at the date of deposit of its instrument of ratification or accession.

2. Any Contracting Party which accepts an Annex shall be deemed to have accepted any amendments to that Annex which have entered into force at the date on which it notifies its acceptance to the Secretary General of the Council.

Article 22

The Secretary General of the Council shall notify the Contracting Parties to this Convention, the other signatory States, those States Members of the Council that are not Contracting Parties to this Convention, and the Secretary General of the United Nations of :

(a) signatures, ratifications, accessions and notifications under Article 15 of this Convention;

(b) the date of entry into force of this Convention and of each of the Annexes in accordance with Article 16;

(c) notification received in accordance with Article 17;

(d) denunciation under Article 19;

(e) any amendment deemed to have been accepted in accordance with Article 20 and the date of its entry into force.

Article 23

Upon its entry into force this Convention shall be registered with the Secretariat of the United Nations, in accordance with Article 102 of the Charter of the United Nations.

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

Done at Nairobi, this ninth day of June nineteen hundred and seventy-seven, in the English and French languages, both texts being equally authentic, in a single original which shall be deposited with the Secretary General of the Council who shall transmit certified copies to all the States referred to in paragraph 1 of Article 15 of this Convention.

ANNEX I

Assistance by a Customs administration on its own initiative

1. The Customs administration of a Contracting Party shall, on its own initiative, communicate to the Customs administration of the Contracting Party concerned, any information of a substantial nature which has come to light in the course of its normal activities and which gives good reason to believe that a serious Customs offence will be committed in the territory of the other Contracting Party. The information to be communicated shall concern, in particular, the movements of persons, goods and means of transport.

2. The Customs administration of a Contracting Party shall, where deemed appropriate, communicate on its own initiative to the Customs administration of another Contracting Party documents, reports, records of evidence or certified copies thereof in support of the information furnished under paragraph 1.

3. The Customs administration of a Contracting Party shall, on its own initiative, communicate to the Customs administration of another Contracting Party that is directly concerned, any information likely to be of material assistance to it in connection with Customs offences and, particularly, in connection with new means or methods of committing such offences.

ANNEX II

Assistance, on request, in the assessment of import or export duties and taxes

l. At the request of the Customs administration of a Contracting Party which has good reason to believe that a serious Customs offence has been committed in its country, the Customs administration of the requested Contracting Party shall communicate all available information which may help to ensure the proper assessment of import or export duties and taxes

2. A Contracting Party shall be taken to have fulfilled its obligations in this respect if, for example, it communicates as appropriate in response to a request the following information or documents available to it :

(a) in respect of the value of goods for Customs purposes : the commercial invoices presented to the Customs of the country of exportation or importation or copies of such invoices, certified or not by the Customs, as the circumstances may require; documentation showing current export or import prices; a copy of the declaration of value made on exportation or importation of the goods; trade catalogues, price lists, etc. published in the country of exportation or in the country of importation;

(b) in respect of the tariff classification of goods : analyses carried out by laboratory services to determine the tariff classification of the goods; the tariff description declared on importation or exportation;

(c) in respect of the origin of goods : the declaration of origin made on exportation, when such declaration is required; the Customs status of the goods in the country of exportation (Customs transit Customs warehouse, temporary admission, free zone, free circulation, exported under drawback, etc.).

ANNEX III

Assistance, on request, relating to controls

At the request of the Customs administration of a Contracting Party, the Customs administration of another Contracting Party shall communicate to that Customs administration information concerning the following matters :

(a) the authenticity of official documents produced in support of a Goods declaration made to the Customs authorities of the requesting Contracting Party;

(b) whether goods imported into the territory of the requesting Contracting Party have been lawfully exported from the territory of the other Contracting Party;

(c) whether goods exported from the territory of the requesting Contracting Party have been lawfully imported into the territory of the requested Contracting Party.

ANNEX IV

Assistance, on request, relating to surveillance

At the request of the Customs administration of a Contracting Party, the Customs administration of another Contracting Party shall, to the extent of its competence and ability, maintain special surveillance for a specified period over :

(a) the movements, particularly the entry into and exit from its territory, of particular persons reasonably believed to be professionally or habitually engaged in Customs offences in the territory of the requesting Contracting Party;

(b) movements of particular goods which are reported by the Customs administration of the requesting Contracting Party as giving rise to important illicit traffic towards or from the territory of that Contracting Party;

(c) particular places where stocks of goods have been built up, giving reason to assume that they are to be used for illicit importation into the territory of the requesting Contracting Party;

(d) particular vehicles, ships, aircraft or other means of transport reasonably believed to be used to commit Customs offences in the territory of the requesting Contracting Party,

and shall communicate a report thereon to the Customs administration of the requesting Contracting Party.

ANNEX V

Enquiries and notifications, on request, on behalf of another Contracting Party

1. At the request of the Customs administration of a Contracting Party, the Customs administration of another Contracting Party shall, subject to the laws and regulations in force in its territory, make enquiries to obtain evidence concerning a Customs offence under investigation in the territory of the requesting Contracting Party, and take statements from any persons sought in connection with that offence or from witnesses or experts, and communicate the results of the enquiry, as well as any documents or other evidence, to the Customs administration of the requesting Contracting Party.

2. At the written request of the Customs administration of a Contracting Party, the Customs administration of another Contracting Party shall, subject to the laws and regulations in force in its territory, notify the persons concerned residing in its territory or have them notified by the competent authorities of any action or decisions taken by the requesting Contracting Party concerning any matter falling within the scope of this Convention.

ANNEX VI

Appearance by Customs officials before a court or tribunal abroad

Where it is not sufficient for evidence to be given solely in the form of a written statement, at the request of the Customs administration of a Contracting Party the Customs administration of another Contracting Party, to the extent of its ability shall authorize its officials to appear before a court or tribunal in the territory of the requesting Contracting Party as witnesses or experts in the matter of a Customs offence. The request for appearance shall specify, in particular, in what case and in what capacity the official is to be heard The Customs administration of the Contracting Party accepting the request shall, in authorizing appearance, state any limits with which its officials should comply in giving evidence.

ANNEX VII

Presence of Customs officials of one Contracting Party

in the territory of another Contracting Party

1. At the written request of the Customs administration of a Contracting Party investigating a specific Customs offence, the Customs administration of another Contracting Party shall, where deemed appropriate, authorize officials specially designated by the requesting Contracting Party to consult, in its offices, the relevant books, registers and other documents or data media held in those offices, take copies thereof, or extract any information or particulars relating to the offence.

2. In the application of the provisions of paragraph 1 above all possible assistance and co-operation shall be afforded to the officials of the requesting Contracting Party to facilitate their investigations.

3. At the written request of the Customs administration of a Contracting Party, the Customs administration of another Contracting Party shall, where deemed appropriate, authorize officials of the requesting administration to be present in the territory of the requested Contracting Party in connection with enquiries into or the official reporting of a Customs offence of concern to the requesting Contracting Party.

ANNEX VIII

Participation in investigations abroad

Where deemed appropriate by both Contracting Parties, the officials of the Customs administration of a Contracting Party shall, at the request of another Contracting Party, participate in investigations carried out in the territory of that other Contracting Party.

ANNEX IX

Pooling of information

l. The Customs administrations of Contracting Parties shall communicate to the Secretary General of the Council the information specified hereafter insofar as it is of international interest.

2. The Secretary General of the Council shall institute and keep up-to-date a central index of information communicated to him by Contracting Parties and shall use information from it to prepare summaries and studies of new and recurring trends in Customs fraud. He shall periodically review the index to eliminate information which, in his opinion, has outlived its utility or become out-of-date.

3. The Customs administrations of the Contracting Parties shall, upon request by the Secretary General of the Council and subject to the other provisions of the Convention and this Annex, provide the Secretary General with such complementary information as may be necessary to prepare the summaries and studies referred to in paragraph 2 of this Annex.

4. The Secretary General of the Council shall circulate to the services or officials named by the Customs administrations of the Contracting Parties specific information contained in the central index, to the extent that he deems such circulation useful, and any summaries and studies referred to in paragraph 2 of this Annex.

5. The Secretary General of the Council shall, upon request, supply Contracting Parties with any other information available to him under this Annex.

6. The Secretary General of the Council shall honour any restrictions that a Contracting Party having provided information may have placed on its circulation

7. A Contracting Party having communicated information shall be entitled to require that it be subsequently deleted from the central index and from any registers established by Contracting Parties to which it has been communicated and that no further use be made of it.

Part I : Persons

Section I : Smuggling

8. Notifications under this Section shall provide information concerning :

(a) persons finally convicted of smuggling; and

(b) where appropriate, persons suspected of smuggling or apprehended in the act of smuggling in the territory of the Contracting Party making the notification, even though legal proceedings have not been completed,

it being understood that when Contracting Parties refrain from notifying the names and descriptions of the persons involved because such notification is prohibited by their national law, they shall nevertheless make a notification containing as many as possible of the items listed in this Section.

In principle, the information notified shall be limited to offences which have resulted in or could lead to imprisonment or a fine exceeding the equivalent of US$2,000.

9. The information to be furnished shall, so far as possible include the following :

(A) Natural persons

(a) Surname

(b) Forenames

(c) Maiden name (if applicable)

(d) Nickname or alias

(e) Occupation

(f) Address (present)

(g) Date and place of birth

(h) Citizenship/Nationality

(ij) Country of residence and countries visited during the past 12 months

(k) Type and number of identity papers, including country and date of issue

(l) Physical description

(1) Sex
(2) Height
(3) Weight
(4) Build
(5) Hair
(6) Eyes
(7) Complexion
(8) Distinctive marks or peculiarities

(m) Brief particulars of offence (including particulars of type, quantity and origin of goods, involved in the offence, manufacturer, shipper and consignor) and circumstances which led to its detection

(n) Nature and amount of penalty and/or sentence imposed

(o) Other observations, including languages spoken and (if available) any previous convictions recorded

(p) Contracting Party furnishing the information (including reference number).

(B) Legal persons (firms)

(a) Name

(b) Address

(c) Names of principal officers or employees of the firm against whom legal action has been taken and, if appropriate, identifying data as indicated under Part (A), Items (a) - (1)

(d) Related multinational company

(e) Nature of business carried on

(f) Nature of offence

(g) Particulars of offence (including manufacturer, shipper and consignor) and circumstances which led to its detection

(h) Amount of penalty

(ij) Other observations, including (if available) any previous convictions recorded

(k) Contracting Party furnishing the information (including reference number).

10. As a general rule, the Secretary General of the Council shall circulate information relating to natural persons at least to the countries of citizenship/nationality and residence and to the countries visited by the person during the past 12 months

Section II : Customs fraud other than smuggling

11. Notifications under this Section shall provide information concerning :

(a) persons finally convicted of Customs fraud other than smuggling;

(b) where appropriate, persons suspected of such fraud, even though legal proceedings have not been completed,

it being understood that when Contracting Parties refrain from notifying the names and descriptions of the persons involved because such notification is prohibited by their national law, they shall nevertheless make a notification containing as many as possible of the items listed in this Section.

In principle, the information notified shall be limited to offences which have resulted in or could lead to imprisonment or a fine exceeding the equivalent of US$2,000

12. The information to be furnished shall, so far as possible, include the following :

(a) Name (or firm name) and address

(b) Names and identifying data of principal officers of the firm against which legal action has been taken

(c) Kind of goods

(d) Country of origin

(e) Related multinational company

(f) Name and address of seller

(g) Name and address of shipper

(h) Names and addresses of other parties involved (buying or selling agent, other middlemen, etc.)

(ij) Port(s) or place(s) at which goods were exported

(k) Brief particulars of offence and circumstances which led to its defection

(l) Amount of penalty and loss of revenue, if any

(m) Other observations, including (if available) any previous convictions recorded

(n) Contracting Party furnishing the information (including reference number).

Part II : Methods of smuggling and other fraud,

including fraud by forgery, falsification and counterfeiting

13. Notifications under this Part shall provide information relating to methods of smuggling and other fraud, including methods of concealment, fraud by forgery, falsification or counterfeiting, in all cases of significant international interest. Contracting Parties shall report each use of a known method of smuggling and other fraud as well as new, unusual or possible method so that current trends in this field can be detected.

14. The information to be furnished shall so far as possible, include the following :

(a) Description of methods of smuggling and other fraud, including fraud by forgery, falsification or counterfeiting. If available, the description (make, model, registration number etc.) of any means of transport used. Where applicable, data from the approval plate or certificate of containers or vehicles, the designs of which were approved under an international Convention, and information about any violation of seals, bolts, sealing devices or other parts of containers or vehicles

(b) Description, if applicable, of the place of concealment, including, where possible, a photograph or sketch

(c) Description of goods concerned

(d) Nature and description of forgery, falsification or counterfeiting; use to which the forged, falsified or counterfeited documents, Customs seals, registration plates, etc., were put

(e) Other observations, including the circumstances which led to detection

(f) Contracting Party furnishing the information (including reference number).

Part III : Vessels involved in smuggling

15. Notifications under this Part shall provide information relating to vessels, of all types, that have been involved in smuggling, but should be limited, in principle, to cases which are considered to be of international interest.

16. Insofar as it is available and can be communicated under national law, the information to be furnished shall include the following :

(a) Name and brief identification of vessel (S.S., M.V., tonnage, silhouette, etc.)

(b) Name and address of owner/chartered

(c) Flag

(d) Port of registry and, if different, home port

(e) Name and citizenship/nationality of master (and, if applicable, principal officers)

(f) Nature of the offence, including description of goods seized

(g) Description, if applicable, of the place of concealment (including, where possible, a photograph or sketch) and of the circumstances which led to the discovery

(h) Country of origin of goods seized

(ij) First port of lading

(k) Final port of destination

(l) Ports of call between (ij) and (k)

(m) Other observations (number of cases in which the same vessel, shipping company, charter or other vessel operator had been involved in smuggling, etc.)

(n) Contracting Party furnishing the information (including reference number).

ANNEX X

Assistance in action against the smuggling of narcotic drugs and psychotropic substances

1. The provisions of this Annex shall not preclude the application of measures in force at the national level in the matter of co-ordination of the activities of the various authorities competent to take action against the abuse of narcotic drugs and psychotropic substances. They shall also not impede, but complement, the implementation of the provisions of the Single Convention on Narcotic Drugs 1961, and of the 1971 Convention on Psychotropic Substances by Parties to these Conventions which have also accepted this Annex.

2. The provisions of this Annex concerning the smuggling of narcotic drugs and psychotropic substances shall wherever appropriate and to the extent of the competence of the Customs administrations, apply also to the financial operations undertaken in connection with such smuggling.

Exchange of information by Customs administrations on their own initiative

3. The Customs administrations of Contracting Parties shall, on their own initiative and without delay, communicate to other Customs administrations which may be directly concerned, any available information concerning :

(a) operations which are known or suspected to constitute, or which seem likely to give rise to, smuggling of narcotic drugs or psychotropic substances;

(b) persons known to be engaged in or, insofar as information concerning such persons can be communicated under national law, persons suspected of engaging in operations referred to in paragraph (a) above, and vehicles, ships, aircraft and other means of transport used, or suspected of being used, for such operations;

(c) new means or methods used for smuggling narcotic drugs or psychotropic substances;

(d) products which are newly developed or newly used as narcotic drugs or psychotropic substances and which are the subject of smuggling.

Assistance, on request, relating to surveillance

4. At the request of the Customs administration of a Contracting Party, the Customs administration of another Contracting Party shall, to the extent of its competence and ability, maintain special surveillance for a specified period over :

(a) the movements, particularly the entry into and exit from its territory, of particular persons reasonably believed to be professionally or habitually engaged in the smuggling of narcotic drugs and psychotropic substances in the territory of the requesting Contracting Party;

(b) movements of narcotic drugs or psychotropic substances which are reported by the Customs administration of the requesting Contracting Party as giving rise to important illicit traffic towards or from the territory of that Contracting Party;

(c) particular places where stocks of narcotic drugs and psychotropic substances have been built up, giving reason to assume that they are to be used for illicit importation into the territory of the requesting Contracting Party;

(d) particular vehicles, ships, aircraft or other means of transport reasonably believed to be used for smuggling narcotic drugs or psychotropic substances into the territory of the requesting Contracting Party,

and shall communicate a report thereon to the Customs administration of the requesting Contracting Party.

Enquiries, on request, on behalf of another Contracting Party

5. At the request of the Customs administration of a Contracting Party, the Customs administration of another Contracting Party shall, subject to the laws and regulations in force in its territory, make enquiries to obtain evidence concerning any smuggling of narcotic drugs or psychotropic substances under investigation in the territory of the requesting Contracting Party, and take statements from any persons sought in connection with that smuggling or from witnesses or experts, and communicate the results of the enquiry, as well as any documents or other evidence, to the Customs administration of the requesting Contracting Party.

Action by Customs officials of one Contracting Party in the territory of another Contracting Party

6. Where it is not sufficient for evidence to be given solely in the form of a written statement, at the request of the Customs administration of a Contracting Party the Customs administration of another Contracting Party, to the extent of its ability, shall authorize its officials to appear before a court or tribunal in the territory of the requesting Contracting Party as witnesses or experts in the matter of smuggling of narcotic drugs or psychotropic substances. The request for appearance shall specify, in particular, in what case and in what capacity the official is to be heard. The Customs administration of the Contracting Party accepting the request shall, in authorizing appearance, state any limits with which its officials should comply in giving evidence.

7. At the written request of the Customs administration of a Contracting Party, the Customs administration of another Contracting Party shall, where deemed appropriate and to the extent of its competence and ability, authorize officials of the requesting administration to be present in the territory of the requested Contracting Party in connection with enquiries into or the official reporting of smuggling of narcotic drugs or psychotropic substances of concern to the requesting Contracting Party.

8. Where deemed appropriate by both Contracting Parties and subject to the laws and regulations in force in their territories, the officials of the Customs administration of a Contracting Party shall, at the request of another Contracting Party, participate in investigations carried out in the territory of that other Contracting Party.

Pooling of information

9. The Customs administrations of Contracting Parties shall communicate to the Secretary General of the Council, to the extent that such information is of international interest, information specified hereafter.

10. The Secretary General of the Council shall institute and keep up-to-date a central index of information communicated to him by Contracting Parties and shall use information from it to prepare summaries and studies of new and recurring trends in the smuggling of narcotic drugs or psychotropic substances. He shall periodically review the index to eliminate information which, in his opinion, has outlived its utility or become out-of-date.

11. The Customs administrations of the Contracting Parties shall, upon request by the Secretary General of the Council and subject to the other provisions of the Convention and this Annex, provide the Secretary General with such complementary information as may be necessary to prepare the summaries and studies referred to in paragraph 10 of this Annex.

12. The Secretary General of the Council shall circulate to the services or officials named by the Customs administrations of the Contracting Parties specific information contained in the central index, to the extent that he deems such circulation useful, and any summaries and studies referred to in paragraph 10 of this Annex.

13. The Secretary General of the Council shall, unless advised to the contrary by the Contracting Party furnishing the information, also circulate to the services or officials named by the other Members of the Council, to the competent bodies of the United Nations and to the International Criminal Police Organization/Interpol and to other international organizations with which arrangements have been made in this respect, any information concerning the smuggling of narcotic drugs and psychotropic substances contained in the central index, to the extent that he deems such circulation useful, and any summaries or studies that he may have prepared on this subject under paragraph 10 of this Annex.

14. The Secretary General of the Council shall, upon request, supply a Contracting Party having accepted this Annex with any other information available to him in connection with the pooling of information provided by this Annex.

Central index, Part I : Persons

15. Notifications under this Part of the central index shall provide information concerning :

(a) persons finally convicted of smuggling; and

(b) where appropriate, persons suspected of smuggling or apprehended in the act of smuggling in the territory of the Contracting Party making the notification, even though legal proceedings have not been completed,

it being understood that when Contracting Parties refrain from notifying the names and descriptions of the persons involved because such notification is prohibited by their national legislation, they shall nevertheless make a notification containing as many as possible of the items listed in this Part of the central index.

16. The information to be furnished shall, so far as possible, include the following :

(a) Surname

(b) Forenames

(c) Maiden name (if applicable)

(d) Nickname or alias
(e) Occupation

(f) Address (present)

(g) Date and place of birth

(h) Citizenship/Nationality

(ij) Country of residence and countries visited during the past 12 months

(k) Type and number of identity papers, including country and date of issue

(l) Physical description

(1) Sex
(2) Height
(3) Weight
(4) Build
(5) Hair
(6) Eyes
(7) Complexion
(8) Distinctive marks or peculiarities

(m) Brief particulars of offence (including particulars of type, quantity and origin of goods involved in the offence, manufacturer, shipper and consignor) and the circumstances which led to the detection of the offence

(n) Nature and amount of penalty and/or sentence imposed

(o) Other observations, including languages spoken and (if available) any previous convictions recorded

(p) Contracting Party furnishing the information (including reference number).

17. As a general rule, the Secretary General of the Council shall circulate information relating to Part I of the central index at least to the countries of citizenship/nationality and residence and to the countries visited by the person concerned during the past 12 months.

Central index, Part II : Methods

18. Notifications under this Part of the central index shall provide information relating to methods of smuggling narcotic drugs and psychotropic substances, including methods of concealment, in all cases of significant international interest. Contracting Parties shall report each use of a known method of smuggling as well as new, unusual or possible methods so that current trends in this field can be detected.

19. The information to be furnished shall, so far as possible, include the following :

(a) Description of methods of smuggling. If available, the description (make, model, registration number, etc.) of any means of transport used. Where applicable, data from the approval plate or certificate of containers or vehicles, the designs of which were approved under an international Convention, and information about any violation of seals, bolts, sealing devices or other parts of containers or vehicles

(b) Description, if applicable, of the place of concealment, including, where possible, a photograph or sketch

(c) Description of goods concerned

(d) Other observations, including the circumstances which led to detection

(e) Contracting Party furnishing the information (including reference number).

Central index, Part III : Vessels involved in smuggling

20. Notifications under this Part of the central index shall provide information relating to vessels, of all types, that have been involved in the smuggling of narcotic drugs or psychotropic substances, but should be limited, in principle, to cases which are considered to be of international interest.

21. Insofar as it is available and can be communicated under national law, the information to be furnished shall include the following :

(a) Name and brief identification of vessel (S.S., M.V., tonnage, silhouette, etc.)

(b) Name and address of owner/charterer

(c) Flag

(d) Port of registry and, if different, home port

(e) Name and citizenship/nationality of master (and, if applicable, principal officers)

(f) Nature of the offence, including description of goods seized

(g) Description, if applicable, of the place of concealment (including, where possible, a photograph or sketch) and a description of the circumstances which led to the discovery

(h) Country of origin of goods seized

(ij) First port of lading

(k) Final port of destination

(l) Ports of call between (ij) and (k)

(m) Other observations (number of cases in which the same vessel, shipping line, charterer or other vessel operator has been involved in smuggling, etc.)

(n) Contracting Party furnishing the information (including reference number).

ANNEX XI

Assistance in action against the smuggling of works of art, antiques and other cultural property

1. The provisions of this Annex apply to works of art, antiques and other "cultural property" which, on religious or secular grounds, is held to be of importance for archaeology, prehistory, history, literature, art or science, within the meaning of paragraphs (a)-(k) of Article l of the UNESCO Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property (Paris, 14 November 1970), insofar as such works of art, antiques and other cultural property are subject of smuggling. They do not preclude the application of national measures of co-operation with national services for the protection of the cultural heritage and, in the Customs field, they supplement the implementation of the provisions of the UNESCO Convention by Contracting Parties to that Convention which have also accepted this Annex.

2. The provisions of this Annex concerning the smuggling of works of art, antiques and other cultural property shall, wherever appropriate and to the extent of the competence of the Customs administrations, apply also to the financial operations undertaken in connection with such smuggling.

Exchange of information by Customs administrations on their own initiative

3. The Customs administrations of Contracting Parties shall, on their own initiative and without delay, communicate to other Customs administrations which may be directly concerned, any available information concerning :

(a) operations which are known or suspected to constitute, or which seem likely to give rise to, smuggling of works of art, antiques or other cultural property;

(b) persons known to be engaged in or, insofar as information concerning such persons can be communicated under national law, persons suspected of engaging in operations referred to in paragraph (a) above, and vehicles, ships, aircraft and other means of transport used, or suspected of being used, for such operations;

(c) new means or methods used for smuggling works of art, antiques or other cultural property.

Assistance, on request, relating to surveillance

4. At the request of the Customs administration of a Contracting Party, the Customs administration of another Contracting Party shall, to the extent of its competence and ability, maintain special surveillance for a specified period over :

(a) the movements, particularly the entry into and exit from its territory, of particular persons reasonably believed to be professionally or habitually engaged in the smuggling of works of art, antiques or other cultural property in .the territory of the requesting Contracting Party;

(b) movements of works of art, antiques or other cultural property which are reported by the Customs administration of the requesting Contracting Party as giving rise to important illicit traffic from the territory of that Contracting Party;

(c) particular vehicles, ships, aircraft or other means of transport reasonably believed to be used for smuggling works of art, antiques or other cultural property from the territory of the requesting Contracting Party,

and shall communicate a report thereon to the Customs administration of the requesting Contracting Party.

Enquiries, on request, on behalf of another Contracting Party

5. At the request of the Customs administration of a Contracting Party, the Customs administration of another Contracting Party shall, to the extent of its ability and subject to the laws and regulations in force in its territory, make enquiries to obtain evidence concerning any smuggling of works of art, antiques or other cultural property under investigation in the territory of the requesting Contracting Party, and take statements from any persons sought in connection with that smuggling or from witnesses or experts, and communicate the results of the enquiry, as well as any documents or other evidence, to the Customs administration of the requesting Contracting Party.

Action by Customs officials of a Contracting Party in the territory of another Contracting Party

6. Where it is not sufficient for evidence to be given solely in the form of a written statement, at the request of the Customs administration of a Contracting Party the Customs administration of another Contracting Party, to the extent of its ability, shall authorize its officials to appear before a court or tribunal in the territory of the requesting Contracting Party as witnesses or experts in the matter of smuggling of works of art, antiques or other cultural property. The request for appearance shall specify, in particular, in what case and in what capacity the official is to be heard. The Customs administration of the Contracting Party accepting the request shall, in authorizing appearance, state any limits with which its officials should comply in giving evidence.

7. At the written request of the Customs administration of a Contracting Party, the Customs administration of another Contracting Party shall, where deemed appropriate and to the extent of its competence and ability, authorize officials of the requesting administration to be present in the territory of the requested Contracting Party in connection with enquiries into or the official reporting of smuggling of works of art, antiques or other cultural property of concern to the requesting Contracting Party.

8. Where deemed appropriate by both Contracting Parties and subject to the laws and regulations in force in their territories, the officials of the Customs administration of a Contracting Party shall, at the request of another Contracting Party, participate in investigations carried out in the territory of that other Contracting Party.

Pooling of information

9. The Customs administrations of Contracting Parties shall communicate to the Secretary General of the Council, to the extent that such information is of international interest, the information specified hereafter.

10. The Secretary General of the Council shall institute and keep up-to-date a central Index of information communicated to him by Contracting Parties and shall use information from it to prepare summaries and studies of new and recurring trends in the smuggling of works of art,

antiques or other cultural property. He shall periodically review the index to eliminate information which, in his opinion, has outlived its utility or become out-of-date.

11. The Customs administrations of the Contracting Parties shall, upon request by the Secretary General of the Council and subject to the other provisions of the Convention and this Annex, provide the Secretary General with such complementary information as may be necessary to prepare the summaries and studies referred to in paragraph 10 of this Annex.

12. The Secretary General of the Council shall circulate to the services or officials named by the Customs administrations of the Contracting Parties specific information contained in the central index, to the extent that he deems such circulation useful, and any summaries and studies referred to in paragraph 10 of this Annex.

13. The Secretary General of the Council shall, unless advised to the contrary by the Contracting Party furnishing the information, also circulate to UNESCO and to the International Criminal Police Organization/Interpol any information concerning the smuggling of works of art, antiques or other cultural property contained in the central index, to the extent that there has been illicit transfer of ownership and he deems such circulation useful, together with any summaries or studies that he may have prepared on this subject under paragraph 10 of this Annex.

14. The Secretary General of the Council shall, upon request, supply a Contracting Party having accepted this Annex with any other information available to him in connection with the pooling of information provided for by this Annex.

Central index, Part I : Persons

15. Notifications under this Part of the central index shall provide information concerning :

(a) persons finally convicted of smuggling; and

(b) where appropriate, persons suspected of smuggling or apprehended in the act of smuggling in the territory of the Contracting Party making the notification, even though legal proceedings have not been completed,

it being understood that when Contracting Parties refrain from notifying the names and descriptions of the persons involved because such notification is prohibited by their national legislation, they shall nevertheless make a notification containing as many as possible of the items listed in this Part of the central index.

16. The information to be furnished shall, so far as possible, include the following :

(a) Surname

(b) Forenames

(c) Maiden name (if applicable)

(d) Nickname or alias

(e) Occupation

(f) Address (present)

(g) Date and place of birth

(h) Citizenship/Nationality

(ij) Country of residence and countries visited during the past 12 months

(k) Type and number of identity papers, including country and date of issue

(l) Physical description

(1) Sex
(2) Height
(3) Weight
(4) Build
(5) Hair
(6) Eyes
(7) Complexion
(8) Distinctive marks or peculiarities

(m) Brief particulars of offence (including particulars of type and origin of goods involved in the offence, and whether there has been an illicit transfer of ownership) and the circumstances which led to the detection of the offence

(n) Nature and amount of penalty and/or sentence imposed

(o) Other observations, including languages spoken and (if available) any previous convictions recorded

(p) Contracting Party furnishing the information (including reference number).

17. As a general rule, the Secretary General of the Council shall circulate information relating to Part I of the central index at least to the countries of citizenship/nationality and residence and to the countries visited by the person concerned during the past 12 months.

Central index, Part II : Methods

18. Notifications under this Part of the central index shall provide information relating to methods of smuggling works of art, antiques or other cultural property, including methods of concealment, in all cases of significant international interest. Contracting Parties shall report each use of a known method of smuggling as well as new, unusual or possible method so that current trends in this field can be detected.

19. The information to be furnished shall, so far as possible, include the following :

(a) Description of methods of smuggling. If available, the description (make, model, registration number, in the case of land vehicles, type of vessel, etc.) of any means of transport used. Where applicable, data from the approval plate or certificate of containers or vehicles, the designs of which were approved under an international Convention, and about any violation of seals, bolts, sealing devices or other parts of containers or vehicles

(b) Description, if applicable, of the place of concealment, including, where possible, a photograph or sketch

(c) Description of goods concerned

(d) Other observations, including the circumstances which led to detection

(e) Contracting Party furnishing the information (including reference number).

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II. COMMENTARY

A. General

1. Historical background

From the very outset, the Council has always sought means of international co-operation which would assist Customs administrations in combating Customs offences. As early as 5 December 1953, it adopted the Recommendation on mutual administrative assistance. This Recommendation enabled the Customs administrations of Members who accepted it to establish very close co-operation, based mainly on direct personal contact between the services concerned.

The 1953 Recommendation provided for direct mutual assistance between Customs administrations in the field of Customs enforcement, without the need to go through a central agency. The Recommendation of 28 June 1954 for the pooling of information concerning persons convicted of Customs offences established a system whereby information was circulated by the Council General Secretariat. The Recommendation of 8 June 1967 extended this system by providing for the pooling of information concerning not only persons convicted of Customs fraud, but also places of concealment in means of transport, other methods of smuggling, goods particularly liable to be smuggled and known to be the subject of definite smuggling trends and fraud by forgery, falsification or counterfeiting (documents, Customs seals, etc.).

On 22 May 1975, the Council adopted a new Recommendation on the pooling of information concerning Customs fraud, further broadening the scope of the 1967 Recommendation. In addition to persons finally convicted of Customs fraud, the new Recommendation also covered persons suspected of smuggling or other fraud or apprehended in the act of smuggling provided, however, that the national legislation did not prohibit the communication of such information to other countries. The role of the Council General Secretariat was extended, in that the latter was now required not only to administer the central index and circulate the information contained therein, but also to decide which information should be circulated and to use information from the index to prepare summaries and studies of trends in Customs fraud. Finally, a separate Annex concerning vessels involved in smuggling was included in the new Recommendation.

In 1967, sharing the concern of many countries regarding the alarming increase in the abuse of narcotic drugs and psychotropic substances, the Council adopted a Resolution inviting Members to develop mutual assistance between their Customs administrations, to the greatest possible extent, with a view to preventing and detecting illicit traffic in narcotic drugs and psychotropic substances. This Resolution was followed by the Recommendation of 8 June 1971 on the spontaneous exchange of information concerning illicit traffic in narcotic drugs and psychotropic substances. This Recommendation supplemented the legal means available to Customs services by enabling them to exchange operational intelligence, particularly where the success of an operation depended on speed of action; however, as pointed out in the text of this Recommendation, the sole purpose of this exchange of information was to reinforce the activities of the authorities competent to take action against the abuse of narcotic drugs and psychotropic substances.

From 1973 onwards the Council's attention had been drawn to the problem of preventing and repressing the fraudulent exportation of works of art, antiquities and other cultural property, a matter of concern to the representatives of many countries. In a Resolution adopted on 16 June 1976, the Council drew the attention of its Members to the importance of the UNESCO Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property (1970) and invited them to develop mutual administrative assistance to combat the smuggling of works of art and antiquities, by actively exploiting the possibilities offered by the Recommendations of 1953 and 1967 (as amended in 1975).

The creation of these various legal instruments showed that the Council attached importance to international co-operation to combat Customs fraud, which was assuming an increasingly international character; it had adopted instruments dealing more specifically with the types of smuggling about which its Members were most concerned. However, certain States experienced difficulty in granting administrative assistance merely on the basis of Recommendations and considered that bilateral Conventions on mutual administrative assistance would provide a more effective means of action against Customs offences. In order to facilitate and encourage such agreements, the Council proposed a model bilateral Convention on mutual administrative assistance, for consideration by the countries concerned. In June 1967, the Council in fact adopted the "model bilateral Convention on mutual administrative assistance for the prevention, investigation and repression of Customs offences". This model was given the form and wording of a potentially ready-made Convention. However, States remained completely free to delete or modify the provisions of the model as they saw fit, or insert additional provisions adapted to their mutual needs. Alternatives were even included for certain Articles of the model Convention. This enabled countries wishing to conclude a bilateral agreement to choose the provision which best met their requirements.

However, it became evident that the conclusion of regional bilateral or multilateral agreements, although extremely fruitful and desirable for the countries concerned, could not provide an entirely satisfactory means of international action against Customs fraud, which was becoming increasingly widespread and certain aspects of which concerned all countries. For this reason, in 1974, the Council instructed the Permanent Technical Committee to prepare a draft multilateral Convention on mutual administrative assistance, on the understanding that the resulting instrument should be sufficiently effective and binding, while being acceptable to as many countries as possible. This work culminated in the adoption, on 9 June 1977, at the Council's meeting in Nairobi (Kenya), of an international Convention on mutual administrative assistance for the prevention, investigation and repression of Customs offences.

2. General scope and structure of the Convention

The Convention consists of a Body and 11 Annexes which may be accepted independently of each other. This system was adopted because it is very flexible. It allows countries which would not, at present, be in a position to implement all the provisions of a mutual administrative assistance Convention to become Contracting Parties to the Convention, accepting only certain Annexes (at least one).

Since States need accept only those Annexes which they are in a position to apply, in the original text of the Convention it was provided that no reservations were permitted (Article 18). To make its provisions accessible to as many countries as possible, the Convention is structured in such a way that States may accept only those Annexes which are compatible with their national legislation.

However, in the course of the efforts to promote the Convention, it was found that the provisions of Article 18 were one of the major obstacles to the full growth in the number of

Contracting Parties. Consequently, the Enforcement Committee decided to amend the provisions of Article 18 of the Convention, given the difficulties that certain countries had highlightened. This action by the Enforcement Committee was prompted by the desire not to exclude outright countries which were unable to accept the Convention as it stood.

The Council, at its 81st/82nd Sessions, approved a recommendation by the Enforcement Committee that the simplified amendment procedure be applied to the Amendment of Article 18.

Article 18 of the Nairobi Convention, which previously stated "No reservations to this Convention shall be permitted" has been replaced by the following text and entered into force on 7 October 1995 in pursuance of the provisions of Article 20 of the Convention.

" Each Contracting Party shall be deemed to have acceded to, or accepted all the provisions in, the Convention or the Annexes thereto unless, at the time of acceding to the Convention or separately accepting an Annex or at any time thereafter, it has notified the Secretary General of the Council of any reservations in respect or provisions to which it cannot subscribe. It shall undertake to examine periodically the provisions in respect of which it has entered reservations and notify the Secretary General of the Council in the event of the withdrawal of the reservations."

The objective of this amendment is to promote the broadest possible international co-operation on the basis of the Council's legal instruments by removing obstacles which might in some cases prevent or delay the accession of countries to the Convention.

Besides this amendment, there is an escape clause in the form of Article 3 which provides that the requested State need grant assistance only to the extent that this would not infringe upon its sovereignty, security or other substantial national interest or prejudice the legitimate commercial interest of any enterprise, public or private.

It should also be noted that, as is generally the case in the field of mutual administrative assistance, the Convention is based on the concept of reciprocity, i.e. a Contracting Party has an obligation to render assistance to another Contracting Party only insofar as both have accepted the same Annex.

3. Rules for the interpretation of the Nairobi Convention

Interpretation of the Nairobi Convention shall be governed by the following principles :

A. General scope of the Convention

1. Application of the provisions of the Nairobi Convention

There is nothing in the Convention to prevent Contracting Parties from concluding bilateral or regional agreements* with each other :

(a) Where the provisions of the Nairobi Convention seem too general to meet particular co-operation requirements, the Contracting Parties concerned may modify the scope of those provisions by signing more specific agreements* with particular countries.

* The use of this word does not preclude the conclusion of other arrangements between Contracting Parties.
* The use of this word does not preclude the conclusion of other arrangements between Contracting Parties.

(b) Specific co-operation of this kind may take several forms; in particular, it may involve the exchange of certain sensitive data or information that is of purely local interest.

(c) This bilateral or regional co-operation should, however, still have as its framework the provisions of the Nairobi Convention which constitute the ideal basis for co-operation and mutual administrative assistance between Contracting Parties.

2. Limits of the competence of Customs administrations

Where the Customs administration is not competent in a specific area or shares competence with another administration, administrative assistance shall be rendered on the following basis :

(a) The requested Customs administration shall grant the assistance sought where it is competent to do so, and within the limits of the powers given to Customs by the provisions of the national legislation.

(b) In instances where competence is shared with another agency (police, gendarmerie, etc.), the requested Customs administration shall endeavour, as far as possible, to collect all the necessary information and forward it to the requesting Customs administration.

3. Role of the Council and of the Enforcement Committee

All the references to the Permanent Technical Committee in the text of the Convention or its Annexes shall be taken as a reference to the Enforcement Committee which, since its establishment in 1983, has had full competence in the field of enforcement.

B. General scope of the Annexes

Pooling of information (Annexes IX - X - XI)

"Central Index" shall be taken to mean any system of pooling information designed to meet the requirements of Contracting Parties in respect of the exchange of information of international interest including national trends, modus operandi, major seizures and articles of special interest in the field of combating Customs fraud, drug trafficking and the smuggling of works of arts, antiques and other cultural property.

B. Body of the Convention

1. Preamble

Offences against Customs law are prejudicial not only to the economic and fiscal interests of States but also to the social interests of the international community, particularly as regards the smuggling of narcotic drugs and psychotropic substances, or of cultural property which is part of a country's national heritage.

The Customs Co-operation Council was established to improve the efficiency and effectiveness of Customs administrations. It must defend the legitimate interests of trade, by repressing illicit activities which might be facilitated by the simplification of Customs procedures or the reduction of Customs formalities. The Preamble points out that the strengthening of co-operation between Customs administrations is one of the aims of the Convention establishing a Customs Co-operation Council.

2. Definitions (Chapter I)

"Customs law" (Article 1, definition (a))

As the competence of Customs administrations varies from country to country, the term "Customs law" will not have the same meaning for all Contracting Parties.

The definition is couched in very general terms. It refers to, for example, the application of control measures (as control is implicit in the Customs activities described in the rest of the definition), the case of financial operations (insofar as the goods themselves are concerned and to the extent of the competence of the Customs administrations), and the case of refunds granted by Members of the European Economic Community in connection with the exportation of certain agricultural products, insofar as they involve a "provision enforced or administered by the Customs administration" of these countries at exportation.

According to the context in which it is used, the term "Customs administrations" may designate either the central administration or the outside services. If they consider it necessary, Contracting Parties may introduce appropriate national provisions to define the competence of the various levels. Also, under Article 6, the Contracting Parties have to designate the services or officials responsible for direct communications between Contracting Parties.

"Smuggling" (Article 1, definition (d))

This definition covers not only cases where goods have been concealed to escape Customs controls, but also cases where goods, although not concealed, have not been properly declared to the Customs. It covers all modes of transport, including the post.

"Import or export duties and taxes" (Article 1, definition (e))

This definition reproduces the one which appears in other international instruments prepared by the Council, particularly the international Convention on the simplification and harmonization of Customs procedures (Kyoto Convention).

In this connection, the Permanent Technical Committee considered that the mutual assistance provided for by the Convention does not apply in cases of dumping (since the WTO/GATT anti-dumping Code includes assistance measures on this subject) or of countervailing duties (which are referred to in Article VI of WTO/GATT).

"Ratification" (Article 1, definition (ij))

The definition of the term “ratification” facilitates the drafting of the final provisions of the Convention by avoiding the need to repeat the terms "ratification", "acceptance" and "approval" in several Articles. The internal legal provisions of individual States concerning the conditions to be met before the competent national authorities may decide on the international instrument declaring the State's willingness to be bound remain applicable. This definition of ratification makes it possible for each State to choose the procedure it prefers for undertaking commitments at international level. It is pointed out that this definition corresponds to the provisions of Article 2 (1) (b) of the Vienna Convention on the Law of Treaties of 23 May 1969.

3. Scope of the Convention (Chapter II)

(a) Reciprocity (Article 2, paragraph 1)

As stated above, a Contracting Party has an obligation to render assistance to another Contracting Party only insofar as both have accepted the same Annex (however, see paragraph (e) below).

As specified in the text, although the obligations are assumed by the Contracting Parties, assistance is afforded by their Customs administrations.

(b) Requests for assistance in connection with judicial proceedings (Article 2, paragraph 2)

The text of this paragraph is worded in such a way that it does not exclude from the scope of this Convention information which might be of use in connection with judicial proceedings, since these are precisely the most important cases. However, the limits of the competence of Customs administrations is recognized, particularly where judicial proceedings are being undertaken and the text carefully avoids any overlap with possible agreements on mutual assistance in criminal matters. This is why it specifies that this Article applies only in cases where a Customs administration requests assistance from another Customs administration. In all cases, the provisions of the national legislation concerning the competent authorities must be respected. Given that, in principle, only measures of administrative assistance fall within the competence of a Customs administration, no administration can be required to furnish judicial assistance which does not fall within the limit of its competence.

(c) Exclusions (Article 2, paragraph 3)

This paragraph excludes, on the one hand, requests for the arrest of persons and, on the other hand, requests for assistance with the recovery of duties, taxes, charges, etc., both these measures having been deemed to go beyond what States, at present, normally agree upon in the matter.

(d) Escape clause (Article 3)

The circumstances in which Contracting Parties may refuse assistance are the same as those provided for in the 1967 model bilateral Convention on mutual administrative assistance for the prevention, investigation and repression of Customs offences (Article 17) and in Article IV of the Convention establishing a Customs Co-operation Council, concerning the protection of the legitimate commercial interests of any enterprise, public or private. This clause should be applied only after careful consideration to determine whether the commercial interests in question are legitimate or not. Moreover, Article 3 provides that, while the requested Contracting Party may invoke this text to refuse assistance, it may nevertheless agree to provide such assistance subject to certain conditions or requirements.

(e) Possible derogation from the principle of reciprocity (Article 4)

Under the principle of reciprocity, a Customs administration should request from another Customs administration only that assistance which it would itself be able to give if requested to do so. Article 4 provides that, even if this principle cannot be respected, assistance may be requested, provided that the requesting administration draws attention to this fact in its request. However, as specified in connection with Article 2, paragraph 1, the Convention does not oblige the requested Contracting Party to comply with such a request.

4. General assistance procedures (Chapter III)

(a) Use which may be made of intelligence, documents and other information (Article 5)

Article 5 provides that :

- intelligence, documents or other information communicated or obtained under this Convention may be used for the prevention, investigation and repression of Customs offences, including use in judicial or administrative proceedings, without objections on the grounds of their confidentiality, unless the Customs administration which furnished them has expressly laid down restrictions to such use;

- the Contracting Party which receives such intelligence, documents or other information must guarantee protection in respect of confidentiality;

- such intelligence, documents or other information may be used for purposes other than the prevention, investigation or repression of Customs offences with the written consent of the Customs administration which furnished them.

(b) Procedure for communications between Customs administrations (Articles 6 and 7)

Articles 6 and 7 lay down the procedures to be followed and the conditions in which communications take place between Customs administrations. Paragraph 2 of Article 6 stresses that all the measures a Customs administration is required to take pursuant to a request are subject to the same restrictions and requirements as are imposed by national law in purely national proceedings of the same kind.

It should also be noted that, for the purposes of Article 7, requests for assistance made by telex, telegram or other means of telecommunication that reproduce the text are regarded as requests made "in writing".

5. Miscellaneous provisions (Chapter IV)

(a) Personal and direct relations between services responsible for prevention. investigation and repression (Article 9)

The provisions of Article 9 must be read in conjunction with those of Article 6, paragraph 1, which provides that the Secretary General shall communicate to Contracting Parties the names and addresses of services or officials responsible for direct communications between the Customs administrations of the Contracting Parties. One means of ensuring that personal and direct relations are maintained between the services responsible for the prevention, investigation and repression of Customs offences is, for example, to prepare and keep up-to-date a list of the names and addresses of officials responsible for these various services. Another means of achieving this objective is to convene meetings of officials in charge of these services, as provided in Article 12, paragraph 2 (d). It is pointed out that, under Article 9, the Council is itself required to make appropriate arrangements in this connection.

(b) More extensive mutual administrative assistance (Article 11)

In general, the more extensive mutual administrative assistance referred to in Article 11 is assistance provided for by bilateral or multilateral (regional) agreements. However, this provision does not prevent Contracting Parties from granting still more extensive assistance than that provided for by such agreements.

Moreover, the Convention is not intended to affect the facilities provided under existing or future bilateral agreements. Bilateral agreements may even be concluded between Contracting Parties to the Convention, to supplement the provisions of the Convention on specific points and to settle certain aspects which are of particular interest to the countries concerned.

6. Role of the Council and of the Permanent Technical Committee (Chapter V)

With regard to Article 12, paragraph 2 (b) it should be noted that the Permanent Technical Committee may furnish opinions on the interpretation of provisions of the Convention, but not on the modes of application of the Convention in particular cases, a task which should be left to the Contracting Parties concerned.

7. Final provisions (Chapter VI)

(a) Settlement of disputes (Article 14)

The text of Article 14 differs from the corresponding texts in other Council Conventions in that it does not provide for disputes between Contracting Parties to be referred to the Permanent Technical Committee and to the Council.

(b) Possibility for all States of the United Nations to become Contracting Parties (Protocol of amendment to Article 15)

The text of the Protocol of amendment to Article 15 of the Nairobi Convention was adopted by the Council at its 65th/66th Sessions (June 1985). It was accepted by all the Contracting Parties, and entered into force on 27 July 1989.

(c) Limitations on the extent of assistance

As stated before, Article 18 has been amended and now permits reservations to the Convention. Members have now the possibility to define for themselves the extent of the assistance they will provide. In addition, there is an escape clause in the form of Article 3 which provides that the requested State need grant assistance only to the extend that this would not infringe on its sovereignty, security or other substantial national interests or prejudice the legitimate commercial interests of any enterprise, public or private.

A number of the provisions of the Convention also incorporate clauses of this kind, enabling the requested State to invoke its national legislation as grounds for refusing administrative assistance which is beyond its competence.

(d) Possibility of Customs or economic unions becoming Contracting Parties (Article 15, paragraph 5)

The text of this provision is based on the one which appears in the 1975 TIR Convention (Article 52, paragraph 3). The application of this clause may have repercussions on other provisions of the Convention, particularly in respect of the entry into force of the Convention and its Annexes (Article 16), the entry into force of amendments (Article 20) and the acceptance of amendments which have previously entered into force (Article 21). It should be noted that, in these Articles, there is a distinction between the term : "Contracting Parties which covers both States and, where appropriate, Customs or economic unions and the terms : "States" and "States which are Contracting Parties, which do not include Customs or economic unions.

(e) Amendment procedure (Article 20)

The simplified amendment procedure provided for in Article 20 is based on Article 59 of the 1975 TIR Convention. To take account of the time which might be needed in some countries for consideration by Parliament, paragraph 3 of Article 20 fixes at two years the period during which objections to proposed amendments may be communicated.

C. Annexes to the Convention

1. General scope of the Annexes

In order to become a Contracting Party to the Convention, it is necessary to accept at least one Annex (Article 15, paragraph 3). An Annex enters into force three months after two States have accepted it, but cannot enter into force for a Contracting Party before the Convention has come into force for that Contracting Party (Article 16, paragraph 3).

Taken together, the Annexes to the Convention cover all categories of goods (including, for example, ships stores or arms, explosives and ammunition) which might be the subject of Customs offence. The only restrictions which might possibly exclude certain goods would be derived from the general provisions concerning the scope of the Convention or the scope of the term "Customs law". However, Annex X covers only narcotic drugs and psychotropic substances and Annex XI covers only works of art, antiques and other cultural property. As a result, States which accept any or all of the Annexes from I to IX are obliged to apply them in respect of all goods except narcotic drugs, psychotropic substances, works of art, antiques and other cultural property. On the other hand, States which accept only Annex X or Annex XI are bound only with regard to the goods covered by those Annexes.

2. Assistance by a Customs administration on its own initiative (Annex I)

It is pointed out that the provisions of paragraph 3 of Annex I, which apply to information of direct concern to a Contracting Party, do not overlap with the corresponding provisions concerning the pooling of information in Annex IX, X or XI, which apply to information of general interest.

3. Assistance, on request, in the assessment of import or export duties and taxes (Annex II)

The onus is on the requesting Contracting Party to request the assistance provided for by Annex II only when it has good reason to believe that a serious Customs offence has been committed. The requesting Contracting Party judges whether this requirement has been met but, as the requests for assistance must contain the requisite information and be accompanied by such documents as may be deemed useful (Article 7, paragraph 1), the requested administration will be in a position to form its own opinion on the circumstances of the offence.

The obligations of Contracting Parties who accept Annex II are laid down in paragraph 1 of the Annex. The text of paragraph 2 is merely intended to give examples of the ways in which these obligations can be fulfilled.

It should also be noted that wherever the expression : "Information or documents available to it" is used in this Annex, it means that the information or documents can be easily and rapidly procured by an administration, without the need for a special investigation.

4. Assistance, on request, relating to controls (Annex III)

It follows from the general intent of the Convention that assistance under the terms of this Annex should be requested only when there is a good reason to consider or suspect that an offence has been committed in the territory of the requesting Contracting Party.

5. Assistance, on request, relating to surveillance (Annex IV)

The expression : "to the extent of its competence and ability", used in Annex IV, was inserted to take account of differences which may exist between countries with regard to the territorial competence of Customs administrations (for example, the action of Customs services may be confined to certain parts of the territory) and the means available to Customs administrations for carrying out the surveillance requested.

6. Enquiries and notifications, on request, on behalf of another Contracting Party (Annex V)

The expression : "subject to the laws and regulations in force in its territory" in paragraph 2 of Annex V means that the notifications referred to in this paragraph must be made in the requested country and must comply with the requested country's national laws and regulations applicable to such cases.

The expression : "any matter falling within the scope of this Convention" in paragraph 2 of Annex V obliges Contracting Parties who have accepted this Annex to make such notifications, under the conditions laid down, even in respect of matters covered by Annexes which they have not themselves accepted.

7. Appearance by Customs officials before a court or tribunal abroad (Annex VI)

The reference to the fact that evidence may often be given in the form of a written statement is intended to emphasize that appearances before courts or tribunals in foreign countries should be the exception rather than the rule. Moreover, the requested administration is required to grant the assistance requested only to the extent that the officials called upon to give evidence abroad are available and that staffing does not present a problem. However, the provisions of Annex VI apply even where a court or tribunal deals with questions or assessment of import or export duties or taxes in connection with a Customs offence. If the competent body is not a court or tribunal, recourse may be had to the provisions of other Annexes to the Convention.

This Annex provides that the Customs administration may set limits with which its officials must comply in giving evidence before a foreign court or tribunal. The Convention should not, however, encroach on the rules governing the giving of evidence in the courts.

8. Presence of Customs officials of one Contracting Party in the territory of another Contracting Party (Annex VII)

Paragraph 3 of Annex VII provides for the presence of foreign officials in connection with enquiries of concern to the foreign country; however, in this Annex, only the official's presence is provided for. Cases in which the foreign official participates directly in investigations are dealt with by Annex VIII.

The Convention contains no provisions concerning the legal position of officials of the Customs administration of a Contracting Party in the territory of another Contracting Party, or the protection they should be given. This question should be settled directly between the Contracting Parties concerned.

9. Participation in investigations abroad (Annex VIII)

Under the provisions of this Annex, where two Contracting Parties deem this appropriate, an official may visit a foreign country to assist in an investigation being carried out in that country, without it being specified whether or not this investigation is of concern to the country which sends him. The two Contracting Parties shall agree on the extent of this participation.

10. Pooling of information (Annex IX)

Annex IX incorporates the main provisions of the Council Recommendation of 22 May 1975 on the pooling of information concerning Customs fraud. However, certain amendments have been made to the text of the Recommendation. Essentially, these are as follows :

- under the provisions of paragraph 2, the Secretary General of the Council must periodically review the index to eliminate information which has outlived its utility or become out-of-date; this provision was not included in the 1975 Recommendation;

- under the provisions of paragraph 3, the Secretary General of the Council is entitled, as stated in the Recommendation of 1975, to request complementary information. However, the text specifies that such information must be necessary to prepare summaries and studies;

- paragraph 4 stipulates that the information must be circulated to named services or officials. It is therefore up to the Contracting Parties who accept this Annex to supply a list of names and notify any subsequent amendments thereto;

- race is not mentioned in the list of descriptive elements set out at paragraph 9 (A). It could be included, if necessary, under Item (o) Other observations;

- the right to refrain from naming suspected persons, when this is prohibited by the national law, has been extended to cover persons finally convicted (paragraphs 8 and 11). The term "national legislation" is to be taken to cover all provisions of general application enacted either by the legislature or by the executive and effective at national level;

- in addition to the information provided for in the 1975 Recommendation, in paragraphs 9 (A) (m), 9 (B) (g), 12 (k) and 14 (e), Contracting Parties who have accepted this Annex are invited to indicate the circumstances which led to the detection of a Customs offence (or a place of concealment). Information of this type can be very useful to other countries participating in the information pooling system;

- as regards information concerning vessels involved in smuggling, paragraph 16 specifies that such information need be furnished only "insofar as it is available and can be communicated under national law".

It should also be pointed out that the term "name" appearing in paragraph 9 (B), must be interpreted in its broadest sense, to include the full trading name of the firm, regardless of its legal status (public company, limited company, etc.).

The Council has decided that a Contracting Party which supplies an item of information is free to state how long the information should remain in the Council's Central Index (maintained under the provisions of Annex IX) and in the files of other Contracting Parties. The Contracting Party which has supplied the information will be notified of its withdrawal.

11. Assistance in action against the smuggling of narcotic drugs and psychotropic substances (Annex X)

(a) Financial operations undertaken in connection with the smuggling of narcotic drugs

Paragraph 2 of Annex X states that, wherever appropriate and to the extent of the competence of the Customs administrations, the provisions of this Annex concerning the smuggling of narcotic drugs and psychotropic substances, apply also to financial operations undertaken in connection with such smuggling. This text was included in the Annex at the request of the United Nations Division of Narcotic Drugs and the International Narcotics Control Board. It takes into account the provisions of the Single Convention on Narcotic Drugs of 1961 (Article 36, paragraph 2, subparagraph (a) (ii) and the 1971 Convention on psychotropic substances (Article 22, paragraph 2, subparagraph (a) (ii) which require that Contracting Parties to these Conventions make any financial operation in connection with, inter alia, the smuggling of narcotic drugs and psychotropic substances, a punishable offence. With regard to the illicit trafficking in narcotic drugs, on 12 May 1976, the Economic and Social Council of the United Nations adopted a Resolution E/RES/2002(LV) on "Financial transactions related to illicit trafficking in narcotics". In this Resolution, the United Nations Economic and Social Council points out that this traffic requires large sums of money and that leaders of illicit trafficking organizations might be involved in these transactions, without actively participating in the movement of drugs. Close attention by authorities to financial transactions concerning persons suspected of involvement in illicit drug trafficking might therefore lead to the apprehension and conviction of major drug traffickers. It therefore urges governments which have not already done so to enact such legislation as may be necessary to make financial support provided knowingly, by whatever means, in furtherance of drug offences, including smuggling, a punishable offence, and to co-operate with one another in exchanging information to identify drug traffickers committing such an offence.

(b) Exchange of information by Customs administrations on their own initiative (paragraph 3)

Paragraph 3 reproduces the substance of the Customs Co-operation Council Recommendation of 8 June 1971 on the spontaneous exchange of information concerning illicit traffic in narcotic drugs and psychotropic substances. However, it should be noted that the expression : "smuggling of narcotic drugs or psychotropic substances" has been used in place of "illicit traffic" and that the obligations concerning the spontaneous communication of information involve only Customs administrations which may be directly concerned. Also, with regard to paragraph (b), it is specified that information concerning suspected persons need be communicated only : "insofar as information concerning such persons can be communicated under national law".

(c) Assistance, on request, relating to surveillance (paragraph 4)

The text of paragraph 4 reproduces that of Annex IV to the Convention, the one difference being that paragraph 4 concerns only the smuggling of narcotic drugs and psychotropic substances.

(d) Enquiries, on request, on behalf of another Contracting Party (paragraph 5)

Paragraph 5 reproduces the text of paragraph 1 of Annex V to the Convention, but concerns only the smuggling of narcotic drugs and psychotropic substances.

(e) Action by Customs officials of one Contracting Party in the territory of another Contracting Party

Paragraph 6 of this part of the Annex reproduces the provisions of Annex VI, applying them to the smuggling of narcotic drugs and psychotropic substances.

Paragraph 7 reproduces the provisions of paragraph 3 of Annex VII. To make these provisions acceptable to the greatest possible number of countries, it is specified that authorization is granted only to the extent of the competence and ability of the requested administration. During the preparatory work on Annex X it was agreed that when the Customs administration of the requested Contracting Party was not competent in this situation it should forward the request to the competent administration of its country and then transmit the reply to the requesting administration.

Paragraph 8 reproduces the text of Annex VIII, but includes the following expression : "and subject to the laws and regulations in force in their territories".

(f) Pooling of information

This part of the Annex is directly based on Annex IX. However, whereas Annex IX is based on the concept of reciprocity, i.e. the information contained in the Central Index is communicated only to Contracting Parties who have accepted the Annex, paragraph 13 of Annex X provides that, unless the Contracting Party furnishing the information advises to the contrary, information concerning the smuggling of narcotic drugs and psychotropic substances is also circulated to the other Members of the Council, to the competent Bodies of the United Nations, to the International Criminal Police Organization/Interpol and to other International organizations with which arrangements have been made in this respect. Moreover, whereas paragraph 8 of Annex IX provides that, in principle, information notified shall be limited to offences which have resulted in or could lead to imprisonment or a fine exceeding the equivalent of US$2,000, there is no such restriction in Annex X.

12. Assistance in action against the smuggling of works of art, antiques and other cultural property (Annex XI)

Under the provisions of paragraph 2, Annex XI also applies, wherever appropriate and to the extent of the competence of the Customs administration, to the financial operations undertaken in connection with the smuggling of works of art, antiques and other cultural property. In addition, paragraph 13 of this Annex provides that, unless advised to the contrary by the Contracting Party furnishing the information, the Secretary General of the Council shall also circulate to UNESCO and to the International Criminal Police Organization/Interpol any information concerning the smuggling of works of art, antiques or other cultural property, contained in the Central Index.

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III. BENEFITS OF THE NAIROBI CONVENTION

I. Exchange of information

From the very outset, the Council has sought means of international co-operation which would assist Customs administrations in combating Customs offences. Thus, it adopted a number of Recommendations designed to enable the Customs administrations of Member States which accepted them to establish and strengthen co-operation, mainly by direct personal contact between the services concerned.

It also introduced a system for the pooling and circulation of information concerning persons convicted of Customs fraud, places of concealment in means of transport, other methods of fraud, goods particularly susceptible to fraud, and fraud by forgery, falsification or counterfeiting.

In 1967, sharing the concern of many countries regarding the alarming increase in drug abuse, the Council adopted a Resolution followed, in 1971, by a Recommendation on the spontaneous exchange of information concerning illicit traffic in narcotic drugs and psychotropic substances.

In 1973, in particular, the Council's attention was drawn to the problem of preventing and repressing the fraudulent importation of works of art, antiques and other cultural property. In a Resolution adopted in 1976, the Council alerted its Members to the importance of the UNESCO Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property, and invited them to develop mutual administrative assistance to combat the smuggling of work of art and antiques, by actively exploiting the possibilities offered by the Recommendations of 1953, 1967 and 1975.

By creating these various legal instruments the Council showed how much importance it attached to international co-operation in combating Customs fraud; it also endeavoured to encourage the conclusion of bilateral or regional agreements by drafting a model bilateral Convention on mutual administrative assistance, adopted in 1967.

However, it became evident that the conclusion of regional bilateral or multilateral agreements, although extremely fruitful, could not of itself provide an entirely satisfactory means of world-wide international action against Customs fraud, which was becoming increasingly widespread and in some respects a matter of universal concern. For this reason, the Council undertook the preparation of an international instrument which, while sufficiently effective and binding, would at the same time be acceptable to as many countries as possible.

The Nairobi Convention fully envelops the areas covered by the various existing Council Recommendations and Resolutions concerning mutual administrative assistance in the field of Customs enforcement.

Throughout the preparatory work on the Convention, it was stressed that for the purposes of adoption and acceptance Annexes I to IX should be regarded as constituting a single text covering Customs activities directed against commercial fraud in general, whereas Annexes X and Xl dealt with specific areas and could therefore be regarded as "separate Conventions".

The Convention and its 11 Annexes reflect the wishes of the countries and institute a form of multilateral co-operation which leaves ample scope for the conclusion of regional bilateral or multilateral agreements.

Several countries have established bilateral or multilateral relations founded on the principles laid down by the Nairobi Convention.

Annex X of the Convention provides the necessary basis for specialized co-operation between the various services responsible for combating drug abuse. Together with the 1961 United Nations single Convention on narcotic drugs and the 1971 Convention on psychotropic substances, it constitutes an appropriate legal framework for the struggle against this social scourge

The Nairobi Convention provides for the sharing of experience and for direct personal relations between officials responsible for handling confidential information. Information can be exchanged either directly or through the Council's central index.

II. Surveillance, investigations and assistance during judicial proceedings

Accession to the Nairobi Convention also gives Contracting Parties a basis for co-operation in connection with surveillance, the investigation of Customs offences and judicial proceedings. Certain countries may already assist each other in these areas without being bound to do so. The Nairobi Convention makes such assistance mandatory.

Intelligence, documents or other information communicated or obtained under the Convention may be used for the prevention, investigation and repression of Customs offences, including use in judicial or administrative proceedings. Article 5 of the Convention adds that there should be no restrictions on the use of such information on the grounds of its confidentiality unless, of course, the Customs administration which furnished it expressly laid down restrictions on such use. Moreover, the text carefully avoids any overlap with possible agreements on mutual assistance in criminal matters. This is why it specifies that the Article concerned applies only in cases where a Customs administration requests assistance from another Customs administration.

III. Reasons for acceding to the Nairobi Convention

The foregoing paragraphs explain the role which the Convention is intended to play in combating fraud in general, and the illicit traffic in narcotic drugs, psychotropic substances and cultural property in particular.

There can be no doubt that the Nairobi Convention constitutes the ideal framework for broader and more effective co-operation between Contracting Parties.

It is clear that transnational crime, which is continuously expanding and proliferating, is a cross-border form of crime and that the globalization of markets presents criminal organizations with more and more opportunities. Since frontier controls are, inter alia, the responsibility of Customs, the latter can play a key role in combating organized crime. Customs Administrations need to consider the initiatives necessary to strengthen their actions. For several years the Council has made available to its Members the Nairobi Convention which met customs administrative co-operation needs.

With amendment of Article 18 of the Convention that lifted the main obstacles preventing accession, the Nairobi Convention remains an effective, specific and available instrument to which more countries could accede.

Escape clauses

Although the Convention is a legally binding instrument which places obligations directly upon the Contracting Parties, the Nairobi Convention contains various escape clauses, more particularly the possibility for entering reservations provided for in Article 18 and the general provisions of Article 3. These should allay any possible misgivings on the part of member States regarding strict compliance with their national legislation.

It has been argued that the Annexes burden and bind Customs administrations in such a way that it might be difficult for them to accept additional obligations based upon an international instrument. A detailed study of all the rules shows that close co-operation was in fact intended by the authors of the Convention. However, as a general rule a participating country cannot be asked to do more than it would for its own purposes and in its own interest (cf., for instance, the formula “the Customs administration ... shall, to the extent of its competence and ability, ..."). In addition, in many parts of the Annexes clauses are inserted which lessen constraints which might otherwise give countries cause for concern (for instance, "Where deemed appropriate" in Annex I, paragraph 2).

Over the years, some Members have expressed serious concerns as they felt that there was a conflict between the Nairobi Convention and their national legislation on data protection issues. This argument no longer holds as data protection issues can be addressed by entering reservations provided for in amended Article 18, which compliments the general escape clause contained in Article 3.

Some judicial authorities in Member countries have argued that there could be an overlap between the multilateral Convention and existing bilateral agreements for co-operation with a particular foreign country. It must be stressed that the Convention mentions expressly that it does not preclude the application of any more exhaustive mutual assistance (Article 11), which is normally the case with bilateral agreements where there is usually a closer relationship within a similar legal environment or a long history of co-operation, etc. The Convention is not a substitute for some more detailed legal basis but offers a provisional solution where no such legal basis yet exists.

On the other hand, it must always be borne in mind that multilateral, and not just bilateral co-operation is the ultimate goal.

Customs administrations must also be aware of the fact that the Convention covers only administrative, and not judicial assistance, which may be dealt with in other international instruments. As stipulated in Article 2 of the Convention, it is the Customs administration of a Contracting Party (and not a court) which may request assistance, and then only within the limits of its own competence (and not the competence of the court, even in connection with a judicial procedure).

Reciprocity rule

Although Article 4 provides for a possible relaxation of the rule, the principle of reciprocity is respected to the extent that a Contracting Party has an obligation to render assistance to another Contracting Party only insofar as both have accepted the same Annex (Article 2). Other provisions of both the Convention and its Annexes are also concerned with maintaining a balance in the services rendered.

In addition to the general provisions of Article 3 and Article 4 of the Convention, there are many provisions in the body of the Convention and the Annexes where reference is made to national legislation (for instance, Article 5, Article 6, paragraph 2, Annex X, paragraphs 1, 3, 5 and 8 - see also above Part 2, paragraph III). In other words, no assistance can be given unless national legislation so allows.

IV. Conclusions

The aims of the Nairobi Convention, however worthwhile, can be achieved only if the instrument is accepted world-wide. Customs administrations should therefore play their part in the efforts to promote the broadest possible acceptance of the Convention. To conclude, the main benefits which accrue to States can be summarized as follows :

- Broader exchange of information on illicit traffic;

- Effective co-operation, direct and multilateral, between Member States with a view to protecting their national economy, public health and other interests;

- Communication of evidence, testimony, etc., by other countries for use in judicial proceedings;

- Compliance with requests for assistance made by other States only to the extent of the requested administration's own competence and ability and, above all, subject to national legislation;

- Continuing control over the use made of a Contracting Party's information or documents in the framework of mutual administrative assistance, in view of the need to protect the confidentiality of such communications;

- Maintenance of personal and direct relations between the services responsible for the prevention, investigation and repression of fraud.

For these and many other reasons, the Nairobi Convention can be regarded as a necessary legal basis for relations between Contracting Parties.

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IV. PROCEDURES ACCEDING TO THE NAIROBI CONVENTION

I. Accession

A Council Member may become a Contracting Party to the Convention by acceding to it and by accepting at least one Annex.

This part of the brochure deals with the process of accession and examines in detail the preparatory administrative work which has to be carried out in countries wishing to accede to the Convention. The nature and magnitude of the work and formalities involved in acceding to any international instrument may, of course, differ substantially from country to country. It is hoped, however, that the following very general description and examples will facilitate the task of the Customs personnel of the administrations concerned.

II. Role of the Secretary General of the Council

The Secretary General is required to notify specified parties of the existence of the Convention, the status of its acceptance, and any amendments made to it. In addition to making these formal communications, he may from time to time invite Member States which have not yet acceded to the Convention to consider doing so.

As a rule, notifications and invitations are transmitted by the Secretary General through diplomatic channels, i.e., via diplomatic missions in Brussels, to the Ministry responsible for foreign affairs in the country concerned. In addition, the Secretary General receives instruments of accession and, through the same channels, notifies Contracting Parties of accessions to the Convention and acceptances of Annexes.

III. Preparatory work to be carried out in the acceding country

General considerations

In many countries, it is the government's legal department or the Ministry responsible for foreign affairs which examines the principles involved in accession to international instruments. In the case of the Nairobi Convention the Customs administration must play a part, especially in deciding which Annexes should be accepted and, notwithstanding the Convention's various escape clauses (Article 3, in particular), in determining whether and how the national legislation should be amended to bring it into line with the provisions of the Annexes concerned, since it is the Customs which implements the relevant laws and regulations and is therefore in a position to give advice on the practical aspects and implications of changes in the legislation.

As the Nairobi Convention recommends a system of mutual administrative assistance between Member States, it includes aspects which are of interest to a number of government departments. Consequently, all government departments having an interest in the Annexes should be consulted when consideration is being given to acceding to the Convention; they should also be asked to assist the Customs administration and support its action during the accession process.

For administrative and legislative convenience, it is advisable that countries accept as many Annexes as possible at the time of accession to the Convention. Furthermore, if the country concerned is convinced of the need to establish the broadest possible basis for co-operation with the other Contracting Parties, the briefs concerning accession submitted to the national political authorities should emphasize the complementary nature of the various Annexes and the advantages of accepting them at the time of accession.

Once the decision to accede to the Convention has been made, the next stage is to decide which Annexes should be accepted. Here, a number of factors must be taken into account.

Detailed examination of Annexes

Each Annex gives particulars of the procedures to be established for co-operation between the Contracting Parties.

In Appendix I to this brochure the content and scope of each Annex are briefly outlined .

Generally speaking, the examination of the Annexes with a view to their acceptance will depend on the level of co-operation which the country concerned wishes to establish with the other Contracting Parties.

With regard to the interpretation of the Convention and, in particular, of its Annexes, reference should always be made to the commentaries reproduced below and to the Enforcement Handbook.

IV. Preparation of briefs or memoranda

As soon as all the above-mentioned decisions have been taken, the Customs administration or other competent department must prepare the brief or memorandum which will be required by various officials involved in the different stages of obtaining government approval for accession to the Convention and acceptance of the various Annexes selected.

On the basis of the various briefs or memoranda concerning accession to which the Council Secretariat has had access, it would appear that the main points to be included are :

(a) A concise description of the Customs Co-operation Council, specifying its membership and the date on which the country in question joined;

(b) A list of the other Council instruments already accepted by the country concerned;

(c) A concise description of the Nairobi Convention and its enforcement objectives, together with a reference to the fact that it comprises 11 Annexes covering assistance in various fields;

(d) A list of the countries which are already Contracting Parties to the Nairobi Convention.

In any event, the Secretariat is ready to assist any requesting Member State with the preparation of briefs on the Nairobi Convention.

V. Conclusion of the accession process

The flow-chart (Appendix II) on the last page is an attempt to outline, in a schematic manner, the possible stages in the process of accession. Of course the number, flow and sequence of the stages involved will differ from country to country. This chart is included in order to inform any Customs administration which is considering the preparation of a recommendation to its government to accede to the Convention of the various stages which could be applicable in the country concerned. This information will help to acquaint the Customs administration with the framework within which the preparatory work is being carried out. Customs administrations will thus be able to follow the progress of the preparatory work in its various stages, and estimate when it is likely that the instruments of accession will be deposited with the Secretary General.

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V. APPENDICES

DESCRIPTION

Annex I - Assistance by a Customs administration on its own initiative

Contracting Parties who accept Annex I undertake to communicate, on their own initiative, to the Customs administration of another Contracting Party, any information available to them which gives good reason to suppose that a serious Customs offence will be committed in the territory of that Contracting Party. On a more general level, Contracting Parties undertake to communicate to the Customs administration of another Contracting Party that is directly concerned, any information likely to be of material assistance to it in connection with Customs offences which might be committed.

Annex II - Assistance on request, in the assessment of import or export duties and taxes

Annex II deals with assistance in the assessment of import or export duties and taxes. Such assistance is provided only in response to a request from the Customs administration of a Contracting Party which has good reason to believe that a serious Customs offence has been committed in its country. The information or documents to be communicated concern, essentially, the value of goods for Customs purposes, tariff classification and origin.

Annex III - Assistance, on request, relating to controls

The assistance provided for by Annex III is supplied only on request. Essentially, it concerns controls on the authenticity of documents and the legality of import and export operations.

Annex IV - Assistance, on request, relating to surveillance

Annex IV provides that, at the request of a Contracting Party the Customs administration of another Contracting Party shall maintain special surveillance over the movements of suspects, the movements of particular goods which are likely to give rise to illicit traffic, particular places where there may be stocks of goods which could give rise to illicit traffic, and suspect vehicles, ships and aircraft.

Annex V - Enquiries and notifications, on request, on behalf of another Contracting Party

Annex V concerns enquiries made in a country which is a Contracting Party to the Convention, at the request of the Customs administration of another Contracting Party. Of course, the results of the enquiry, together with any documents or other evidence, are subsequently communicated to the requesting Customs administration. This Annex also concerns the notification of actions or decisions taken by the requesting Contracting Party when the person to be notified is residing in the territory of the requested Contracting Party.

Annex VI - appearance by Customs officials before a court or tribunal abroad

Under the terms of this Annex, the Customs administration of a Contracting Party may request that the Customs administration of another Contracting Party authorize its officials to appear before a court or tribunal in the territory of the requesting Contracting Party, as witnesses or experts in the matter of a Customs offence.

However, appearances before courts or tribunals in foreign countries should be the exception rather than the rule, and should be requested only when a written statement would not suffice.

Annex VII - Presence of Customs officials of one Contracting Party in the territory of another Contracting Party

Under this Annex, officials of the Customs administration of a Contracting Party may be authorized to consult books, registers and other documents in the offices of the Customs administration of another Contracting Party.

This Annex also provides for the presence of foreign investigative officers in connection with enquiries of concern to a foreign country.

Annex VIII - Participation in investigations abroad

Annex VIII goes beyond Annex VII in providing for the participation of officials of one Contracting Party in investigations carried out in the territory of another.

Annex IX - Pooling of information

This Annex provides for the creation by the Council of a central index containing information of international interest relating to Customs fraud. The information contained in this index is communicated to the Customs administrations of Contracting Parties. The Secretary General of the Council is also required to use the information contained in the central index to prepare summaries and studies concerning Customs fraud.

Information reported for inclusion in the central index may concern persons convicted of smuggling or, under certain conditions, persons suspected of smuggling, or of Customs fraud other than smuggling. The information may also concern legal persons or companies.

Information relating to methods of smuggling and other fraud, including fraud by forgery, falsification and counterfeiting, may also be communicated.

Another part of the central index contains information concerning vessels of all types that have been involved in smuggling, provided that the information is of international interest.

Annex X - Assistance in action against the smuggling of narcotic drugs and psychotropic substances

Annex X deals specifically with assistance in action against the smuggling of narcotic drugs and psychotropic substances. Where appropriate, it also covers financial operations undertaken in connection with such smuggling.

Essentially, this Annex provides for the following assistance measures : exchange of information by Customs administrations on their own initiative, assistance, on request, relating to surveillance (suspects, suspect vehicles, ships, aircraft, etc.); enquiries on request on behalf of another Contracting Party; action by Customs officials of one Contracting Party in the territory of another Contracting Party (appearances before courts or tribunals; presence or participation in investigations).

The Annex also provides for the pooling of information concerning narcotic drugs and psychotropic substances in a central index dealing essentially with persons convicted or suspected of smuggling, methods of smuggling narcotic drugs and psychotropic substances, and vessels involved in the smuggling of these products.

As Customs administrations are not always the only administrations concerned with the repression of illicit traffic in narcotic drugs or psychotropic substances, the Convention provides for the establishment of the necessary relations with the competent bodies of the United Nations and with ICPO/Interpol. Similarly, co-operation at national level with other competent authorities must be safeguarded.

Annex XI - Assistance in action against the smuggling of works of art, antiques and other cultural property

Annex XI deals specifically with assistance in action against the smuggling of works of art, antiques and other cultural property. It refers expressly to the UNESCO Convention of 14 November 1970 on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property. Where appropriate, it also applies to financial operations undertaken in connection with the smuggling of the goods concerned.

The assistance provided for by this Annex covers, in particular exchange of information by Customs administrations on their own initiative; assistance, on request relating to surveillance; enquiries on request on behalf of another Contracting Party; action by Customs officials of a Contracting Party in the territory of another Contracting Party (appearances before courts or tribunals, participation in investigations); pooling of information concerning both persons and smuggling methods, at the Council's General Secretariat.

Relations with UNESCO and the International Criminal Police Organization/Interpol are taken into account.

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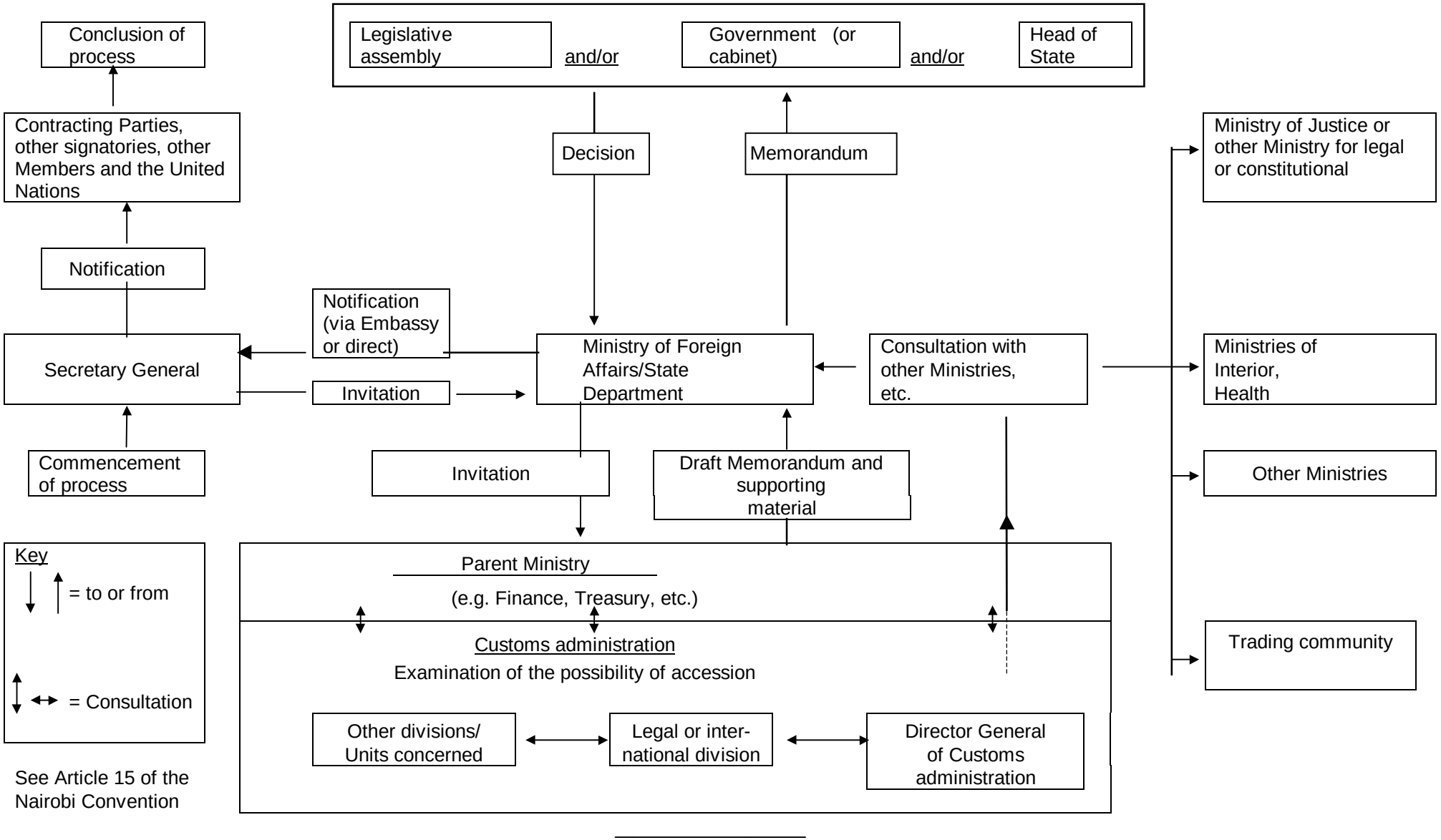
DIFFERENT STAGES IN THE PROCESS OF ACCESSION TO THE NAIROBI CONVENTION



The **Customs Co-operation Council *** (*C.C.C.) was established by a Convention signed in Brussels on 15th December 1950.*

Under the terms of that Convention, the functions of the Council are :

(a) To study all questions relating to co-operation in customs matters.

(b) To examine the technical aspects, as well as the economic factors related thereto, of customs systems with a view to proposing to its Members practical means of attaining the highest possible degree of harmony and uniformity.

(c) To prepare draft Conventions and amendments to Conventions and to recommend their adoption by interested Governments.

(d) To make recommendations to ensure the uniform interpretation and application of the Conventions concluded as a result of its work as well as those concerning the Nomenclature for the Classification of Goods in Customs Tariffs and the Valuation of Goods for Customs Purposes and, to this end, to perform such functions as may be expressly assigned to it in those Conventions in accordance with the provisions thereof.

(e) To make recommendations, in a conciliatory capacity, for the settlement of disputes concerning the interpretation or application of the Conventions referred to in paragraph (d) above.

(f) To ensure the circulation of information regarding Customs regulations and procedures.

(g) On its own initiative or on request, to furnish to interested Governments information or advice on customs matters within the general purposes of the present Convention and to make recommendations thereon.

(h) To co-operate with other inter-governmental organisations as regards matters within its competence.

The Council possesses juridical personality.

Le **Conseil de Coopération Douanière** * *(C.C.D.) a été institué par une Convention signée le 15 décembre 1950, à Bruxelles.*

Aux termes de cette Convention, le C.C.D. est chargé :

a) d'étudier toutes questions relatives à la coopération douanière;

b) d'examiner les aspects techniques des régimes douaniers, ainsi que les facteurs économiques qui s'y rattachent, en vue de proposer à ses membres des moyens pratiques pour obtenir le plus haut degré d'harmonisation et d'uniformité;

c) d'élaborer des projets de conventions et d'amendements aux conventions ainsi que d'en recommander l'adoption aux Gouvernements intéressés;

d) de faire des Recommandations pour assurer l'interprétation et l'application uniformes des conventions conclues à la suite de ses travaux, ainsi que de la Convention sur la Nomenclature pour la classification des marchandises dans les tarifs douaniers et la Convention sur la Valeur en douane des marchandises et, à cette fin, de remplir les fonctions qui lui sont expressément assignées par les dispositions desdites Conventions;

e) de faire des Recommandations en tant qu'organisme de conciliation pour le règlement des différends qui peuvent surgir au sujet de l'interprétation ou de l'application des Conventions visées au paragraphe d) ci-dessus;

f) d'assurer la diffusion des renseignements concernant la réglementation et la technique douanières;

g) de fournir aux Gouvernements intéressés, d'office ou à leur demande, des renseignements ou des avis sur les questions douanières rentrant dans le cadre des objectifs généraux de la Convention portant création du Conseil et de faire des Recommandations à ce sujet;

h) de coopérer avec les autres organisations intergouvernementales au sujet des matières relevant de sa compétence.

Le Conseil possède la personnalité juridique.

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* *In June 1994 the Council adopted the informal working name "World Customs Organization (WCO)" for the Customs Co-operation Council, in order to indicate more clearly its nature and world-wide status. The Convention establishing the Organization has not been amended, and "Customs Co-operation Council" remains the official name.*

* *En juin 1994, le Conseil a adopté la dénomination officieuse "Organisation mondiale des douanes (OMD)" pour le Conseil de coopération douanière, afin de préciser plus clairement la nature de l'organisation et sa vocation internationale. La Convention portant création de l'Organisation n'ayant pas été amendée, son nom officiel demeure "Conseil de coopération douanière".*

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