

# GUATEMALA



Decision of 25 June 2012 <i>OJ L 346 of 15 December 2012</i>
Article 57 of the Agreement <i>OJ L 346 of 15 December 2012</i>
Annex III <i>OJ L 346 of 15 December 2012</i>

## **COUNCIL DECISION**

**of 25 June 2012**

**on the signing, on behalf of the European Union, of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other, and the provisional application of Part IV thereof concerning trade matters**

**(2012/734/EU)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217 in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 23 April 2007 the Council authorised the Commission to negotiate an Association Agreement with Central America, on behalf of the European Union and its Member States. The negotiating directives were amended on 10 March 2010 to include Panama in the negotiation process.
- (2) Those negotiations were concluded at the occasion of the EU-Latin American and Caribbean Summit in Madrid in May 2010 and the Agreement establishing an Association between the European Union and its Member States on the one hand, and Central America on the other (hereinafter referred to as 'the Agreement') was initialled on 22 March 2011.
- (3) Article 353(4) of the Agreement provides for the provisional application of Part IV of the Agreement concerning trade matters.
- (4) The Agreement should be signed on behalf of the European Union and Part IV thereof applied on a provisional basis, pending the completion of the procedures for the conclusion of the Agreement.
- (5) The Agreement does not affect the rights of investors of the Member States to benefit from any more favourable treatment provided for in any agreement related to investment to which a Member State and a signatory Central American Republic are Parties.
- (6) The provisional application of Part IV of the Agreement does not prejudice

the allocation of competences between the European Union and its Member States in accordance with the Treaties.

- (7) Pursuant to Article 218(7) of the Treaty, it is appropriate for the Council to authorise the Commission to approve modifications to the list of geographical indications recommended by the Subcommittee on Intellectual Property to the Association Committee for approval by the Association Council pursuant to Articles 247 and 274.2(a) of the Agreement.
- (8) It is appropriate to set out the relevant procedures for the protection of geographical indications pursuant to the Agreement.
- (9) Pursuant to Article 356 of the Agreement, it is appropriate to clarify that the Agreement shall not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts and tribunals.
- (10) The provisions of the Agreement that fall within the scope of Part Three, Title V of the Treaty on the Functioning of the European Union bind the United Kingdom and Ireland as separate Contracting Parties, and not as part of the European Union, unless the European Union together with the United Kingdom and/or Ireland have jointly notified the Central America Party that the United Kingdom or Ireland is bound as part of the European Union in accordance with the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union.
- (11) If the United Kingdom and/or Ireland ceases to be bound as part of the European Union in accordance with Article 4a of that Protocol (No 21), the European Union together with the United Kingdom and/or Ireland shall immediately inform the Central America Party of any change in their position. In that case, they shall remain bound by the provisions of the Agreement in their own right. The same applies to Denmark in accordance with the Protocol (No 22) on the position of Denmark annexed to those Treaties,

HAS ADOPTED THIS DECISION:

The signing of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other, is hereby authorised on behalf of the Union, subject to the conclusion of the said Agreement.

The text of the Agreement is attached to this Decision.

#### *Article 2*

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Union.

#### *Article 3*

Part IV of the Agreement shall be applied on a provisional basis by the European Union in accordance with Article 353(4) of the Agreement, pending the completion of the procedures for its conclusion. Article 271 shall not be provisionally applied.

In order to determine the date of provisional application the Council shall fix the date by which the notification referred to in Article 353(4) of the Agreement is to be sent to the Republics of Central America. That notification shall include reference to the provision which is not to be provisionally applied.

The date from which Part IV of the Agreement will be provisionally applied shall be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

#### *Article 4*

For the purposes of Article 247 of the Agreement, modifications of the Agreement through decisions of the Association Council, as proposed by the Subcommittee on Intellectual Property on geographical indications, shall be approved by the Commission on behalf of the European Union. Where interested parties cannot reach agreement following objections relating to a geographical indication, the Commission shall adopt a position on the basis of the procedure laid down in Article 15(2) of Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs <sup>(1)</sup>.

#### *Article 5*

1. A name protected under Annex XVIII to the Agreement (Protected Geographical Indications) may be used by any operator marketing agricultural products, foodstuffs, wines, aromatised wines or spirits conforming to the corresponding specification.

2. The Member States and the institutions of the European Union shall enforce the protection provided for in Article 246 of the Agreement, including at the request of an interested party.

#### *Article 6*

The applicable provision for the purposes of adopting the necessary implementing rules for the application of the rules contained in Appendix 2A of Annex II (Concerning the Definition of the Concept of ‘Originating Products’ and Methods of Administrative Cooperation) and Appendix 2 of Annex I (Elimination of Customs Duties) to the Agreement is Article 247a of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code <sup>(2)</sup>.

#### *Article 7*

The Agreement shall not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts and tribunals.

#### *Article 8*

This Decision shall enter into force on the day of its adoption.

Done at Luxembourg, 25 June 2012.

*For the Council*  
*The President*  
C. ASHTON

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<sup>(1)</sup> OJ L 93, 31.3.2006, p. 12.

<sup>(2)</sup> OJ L 302, 19.10.1992, p. 1.

## AGREEMENT

establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other

(...)

THE EUROPEAN UNION,

on the one hand, and

THE REPUBLIC OF COSTA RICA,

THE REPUBLIC OF EL SALVADOR,

THE REPUBLIC OF GUATEMALA,

THE REPUBLIC OF HONDURAS,

THE REPUBLIC OF NICARAGUA,

THE REPUBLIC OF PANAMA, hereinafter referred to as "Central America",

on the other,

CONSIDERING the traditional historical, cultural, political, economic and social links between the Parties and the desire to strengthen their relations based on common principles and values, building on the existing mechanisms that govern relations between the Parties, as well as the desire to consolidate, deepen and diversify bi-regional links in areas of common interest in a spirit of mutual respect, equality, non-discrimination, solidarity and mutual benefit;

CONSIDERING the positive development in both regions during the last two decades, which has enabled the furtherance of common goals and interests to enter into a new stage of relations, deeper and more modern and permanent, in order to establish a bi-regional association that responds to the current internal challenges as well as new international realities;

EMPHASISING the importance that the Parties attach to the consolidation of the political dialogue and economic cooperation process established to date between the Parties under the San José Dialogue initiated in 1984 and renewed on numerous occasions since then;

RECALLING the conclusions of the 2006 Vienna Summit, including the commitments undertaken by Central America as regards the deepening of regional economic integration;

RECOGNISING the progress achieved in the Central American economic integration process, such as, the ratification of the Convenio Marco para el Establecimiento de la Unión Aduanera Centroamericana and the Tratado sobre Inversión y Comercio de Servicios, as well as the implementation of a jurisdictional mechanism securing enforcement of regional economic legislation throughout the Central American region;

REAFFIRMING their respect for democratic principles and fundamental human rights as set out in the Universal Declaration of Human Rights;

RECALLING their commitment to the principles of the rule of law and good governance;

BASED on the principle of shared responsibilities and convinced of the importance of preventing illicit drug use and of reducing its harmful effects, including the fight against the cultivation, production, processing and trafficking of drugs and its precursors, and money laundering;

NOTING that the provisions of this Agreement that fall within the scope of Part III, Title V of the Treaty on the Functioning of the European Union bind the United Kingdom and Ireland as separate Contracting Parties, and not as part of the European Union, unless the European Union together with the UK and/or Ireland have jointly notified the Republics of the CA Party that the United Kingdom (UK) or Ireland is bound as part of the European Union in accordance with Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union. If the United Kingdom and/or Ireland ceases to be bound as part of the European Union in accordance with Article 4a of the Protocol No. 21, the European Union together with the UK and/or Ireland shall immediately inform the Republics of the CA Party of any change in their position in which case they shall remain bound by the provisions of this Agreement in their own right. The same applies to Denmark in accordance with the Protocol annexed to those Treaties on the position of Denmark;

HIGHLIGHTING their commitment to working together in pursuit of the objectives of poverty eradication, job creation, equitable and sustainable development, including aspects of vulnerability to natural disasters, environmental conservation and protection and biodiversity, and the progressive integration of the Republics of the CA Party into the world economy;

REAFFIRMING the importance that the Parties attach to the principles and rules which govern international trade, in particular those contained in the Marrakesh Agreement Establishing the World Trade Organisation, done on April 15, 1994 (hereinafter referred to as the "WTO Agreement"), and the multilateral agreements annexed to the WTO Agreement, and to the need to apply them in a transparent and non-discriminatory manner;

CONSIDERING the difference in economic and social development existing between the Republics of the CA Party and the EU Party and the shared objective of strengthening the process of economic and social development in Central America;

DESIRING to strengthen their economic relations, particularly trade and investment, strengthening and improving the current level of access of the Republics of the CA Party to the European Union market, thus contributing to economic growth in Central America and the reduction of asymmetries between the two regions;

CONVINCED that this Agreement will create a climate conducive to growth in sustainable economic relations between them, more particularly in the trade and investment sectors which are essential to the realisation of the economic and social development and technological innovation and modernisation;

HIGHLIGHTING the need to build upon the principles, objectives and mechanisms that govern relations between the two regions, in particular the Political Dialogue and Cooperation Agreement between the European Community and its Member States, and the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama signed in 2003 (hereinafter referred to as the "2003 Political Dialogue and Cooperation Agreement"), as well as the 1993 Framework Cooperation Agreement signed between the same parties;

AWARE of the need to promote sustainable development in both regions through a development partnership involving all relevant stakeholders, including civil society and the private sector, in line with the principles set out in the Monterrey Consensus and the Johannesburg Declaration, and its Plan for Implementation;

REAFFIRMING that the States in their exercise of sovereign power to exploit their natural resources, according to their own environmental and developmental policies, should promote sustainable development;

MINDFUL of the need to develop a comprehensive dialogue on migration to strengthen bi-regional cooperation on migration issues in the framework of the Political Dialogue and Cooperation Parts of this Agreement and ensure the effective promotion and protection of human rights of all migrants;

RECOGNISING that no provision in this Agreement shall in any way refer to, nor shall be interpreted or construed in any way as defining the position of the Parties in ongoing or future bilateral or multilateral trade negotiations;

EMPHASISING the will to cooperate in international fora on issues of mutual interest;

BEARING IN MIND the strategic partnership developed between the European Union and Latin America and the Caribbean in the context of the 1999 Rio Summit and reaffirmed at the 2002 Madrid Summit, the 2004 Guadalajara Summit, the 2006 Vienna Summit, the 2008 Lima Summit and the 2010 Madrid Summit;

TAKING INTO ACCOUNT the Madrid Declaration of May 2010;

HAVE DECIDED TO CONCLUDE THIS AGREEMENT:

(...)

## Article 53

### Customs Cooperation and Mutual Assistance

1. The Parties shall promote and facilitate cooperation between their respective customs services in order to ensure that the objectives set out in Chapter 3 (Customs and Trade Facilitation) of Title II of Part IV of this Agreement are attained, particularly in order to guarantee the simplification of customs procedures and the facilitation of legitimate trade while retaining their control capabilities.



2. The cooperation shall give rise, among others, to:

- (a) exchanges of information concerning customs legislation and procedures, particularly in the following areas:
  - (i) simplification and modernisation of customs procedures;
  - (ii) facilitation of transit movements;
  - (iii) enforcement of intellectual property rights by the customs authorities;
  - (iv) relations with the business community;
  - (v) free circulation of goods and regional integration;
- (b) the development of joint initiatives in mutually agreed areas;
- (c) the promotion of coordination between all relevant border agencies, both internally and across borders.

3. The Parties shall provide mutual administrative assistance in customs matters in accordance with the provisions of Annex III to Part IV of this Agreement.

## ANNEX III

### MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS

#### Article 1

##### Definitions

For the purposes of this Annex:

- (a) "applicant authority" means a competent customs authority or other administrative authority which has been designated by a Party for this purpose and which makes a request for assistance on the basis of this Annex;
- (b) "breach of customs legislation" means any violation or attempted violation of customs legislation;
- (c) "customs legislation" means any legal, regulatory or binding administrative provision applicable in the territories of the Parties, governing the import, export and transit of goods and their placing under any other customs regime, procedure or operation, including measures of prohibition, restriction and control;
- (d) "information" means data in any form, documents, records, reports and copies of these that may be certified or legalised;
- (e) "personal data" means all information relating to an identified or identifiable individual; and
- (f) "requested authority" means a competent customs authority or other administrative authority which has been designated by a Party for this purpose and which receives a request for assistance on the basis of this Annex.

#### Article 2

##### Scope

1. The Parties shall assist each other, in the areas within their competence, in the manner and under the conditions laid down in this Annex, to ensure the correct application of the customs legislation, in particular by preventing, investigating and combating breaches of customs legislation.
2. Assistance in customs matters, as provided for in this Annex, shall apply to any customs authority or other administrative authority of the Parties which is competent for the application of this Annex. It shall not prejudice the rules governing mutual assistance in criminal matters, nor shall it cover information obtained under powers exercised at the request of a judicial authority, except where communication of such information is authorised by that authority.
3. Assistance to recover duties, taxes or fines is not covered by this Annex.

#### Article 3

##### Assistance on Request

1. At the request of the applicant authority, the requested authority shall provide all relevant information which may enable it to ensure that customs legislation is correctly applied, including information regarding activities noted or planned which are or could constitute breaches of customs legislation.

2. At the request of the applicant authority, the requested authority shall inform:

- (a) whether goods exported from the territory of one of the Parties have been imported into the territory of the other Party in observance of the applicable customs legislation, specifying, where appropriate, the customs procedure applied to the goods;
- (b) whether goods imported into the territory of one of the Parties have been exported from the territory of the other Party in observance of the applicable customs legislation, specifying, where appropriate, the customs procedure applied to the goods.

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

- (a) natural or legal persons in respect of whom there are grounds for believing that they are or have been involved in committing breaches of customs legislation;
- (b) places where stocks of goods have been or may be assembled in such a way that there are grounds for believing that these goods are intended to be used in committing breaches of customs legislation;
- (c) goods that are or may be transported in such a way that there are grounds for believing that they are intended to be used in committing breaches of customs legislation;
- (d) means of transport that are or may be used in such a way that there are grounds for believing that they are intended to be used in committing breaches of customs legislation.

## Article 4

### Spontaneous Assistance

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

- (a) activities which are or appear to be operations in breach of customs legislation and which may be of interest to the other Party;
- (b) new means or methods employed in carrying out operations in breach of customs legislation;
- (c) goods known to be subject to operations in breach of customs legislation;
- (d) natural or legal persons in respect of whom there are grounds for believing that they are or have been involved in breaches of customs legislation;
- (e) means of transport in respect of which there are grounds for believing that they have been, are, or may be used in breaches of customs legislation.

## Article 5

### Delivery and Notification

1. At the request of the applicant authority, the requested authority shall, in accordance with legal or regulatory provisions applicable to the latter, take all necessary measures in order to deliver any documents or to notify any decisions, emanating from the applicant authority and falling within the scope of this Annex, to an addressee residing or established in the territory of the requested authority.

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

## Article 6

### Form and Substance of Requests for Assistance

1. Requests pursuant to this Annex shall be made in writing. They shall be accompanied by the documents necessary to enable compliance with the request. When required because of the urgency of the situation, oral requests may be accepted, but shall be confirmed in writing no later than five days after the oral request. In the event that this condition is not met, the requested authority may disregard the request or consider it as not having been presented.

2. Requests pursuant to paragraph 1 shall include the following information:

- (a) the applicant authority and if possible, the name of the responsible officer;
- (b) the requested authority;
- (c) the assistance requested;
- (d) the object of and the reason for the request;
- (e) the legal or regulatory provisions and other legal elements on which the request is based;
- (f) indications as exact and comprehensive as possible on the natural or legal persons who are the target of the investigations;
- (g) a summary of the relevant facts and of the enquiries already carried out; and
- (h) indicate if it would not itself be able to provide the requested assistance if it were to receive such a request.

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

4. If a request does not meet the formal requirements set out above, its correction or completion may be requested; in the meantime, precautionary measures may be ordered in accordance with the legal or regulatory provisions of the requested authority.

## Article 7

### Execution of Requests

1. In order to comply with a request for assistance, the requested authority shall proceed, within the limits of its competence and available resources, as though it were acting on its own account or at the request of other authorities of that same Party, by supplying information already possessed, by carrying out appropriate enquiries or by arranging for them to be carried out. This provision shall also apply to any other authority to which the request has been addressed by the requested authority when the latter cannot act on its own.

2. Requests for assistance shall be executed in accordance with the legal or regulatory provisions of the requested Party and in accordance with this Annex.
3. Duly authorised officials of a Party may, with the agreement of the other Party involved and subject to the conditions laid down by the latter, be present to obtain in the offices of the requested authority or any other concerned authority in accordance with paragraph 1, information relating to activities that are or may constitute breaches of customs legislation which the applicant authority needs for the purposes of this Annex.
4. Duly authorised officials of a Party involved may, with the agreement of the other Party involved and subject to the conditions laid down by the latter, be present at enquiries carried out in the latter's territory.
5. In the event that the requested authority is not itself competent to comply with the request for assistance, it shall transmit the request to the competent service and notify the applicant authority of the measures taken.

## Article 8

### Form in which Information is to be communicated

1. The requested authority shall communicate results of enquiries to the applicant authority in writing together with relevant documents, certified or legalised copies or other items.
2. This information may be provided in computerised form or by electronic means.
3. Original documents shall be transmitted only upon request in cases where certified or legalised copies would be insufficient. These originals shall be returned at the earliest opportunity.

## Article 9

### Exceptions to the Obligation to Provide Assistance

1. Assistance may be refused or may be subject to the satisfaction of certain conditions or requirements, in cases where a Party considers that assistance under this Annex would:
  - (a) be likely to prejudice the sovereignty of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama or that of a Member State of the European Union which has been requested to provide assistance under this Annex; or
  - (b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to under Article 10, paragraph 2; or
  - (c) violate an industrial, commercial or professional secret.
2. Assistance may be postponed by the requested authority on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.

3. Where the applicant authority seeks assistance which it would itself be unable to provide if so requested, it shall draw attention to that fact in its request. It shall then be for the requested authority to decide how to respond to such a request.

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

## Article 10

### Information Exchange and Confidentiality

1. Any information communicated pursuant to this Annex shall be treated as confidential or restricted in nature, depending on the rules applicable in each of the Parties. It shall be covered by the obligation of confidentiality or professional secrecy as applicable in each of the Parties, and shall enjoy the protection extended to this type of information, in accordance with the legal and regulatory provisions of each Party.

2. Personal data may be exchanged, in accordance with each Party's legislation, only where the Party which may receive them undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the Party that may supply them.

3. The use, in judicial or administrative proceedings instituted in respect of breaches of customs legislation, of information obtained under this Annex, is considered to be for the purposes of this Annex. Therefore, the Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence, information obtained and documents consulted in accordance with the provisions of this Annex. The competent authority which supplied that information or gave access to those documents shall be notified of such use.

4. Information obtained shall be used solely for the purposes of this Annex. Where one of the Parties wishes to use such information for other purposes, it shall obtain the prior written consent of the authority which provided the information. Such use shall then be subject to any restrictions laid down by that authority.

## Article 11

### Experts and Witnesses

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

## Article 12

### Assistance Expenses

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

### Article 13

#### Implementation

1. The implementation of this Annex shall be entrusted to the customs authorities or other competent authorities of the Parties, who shall adopt all practical measures and arrangements necessary for its application. They may recommend to the competent bodies amendments which they consider should be made to this Annex.
2. The Parties shall consult each other and subsequently keep each other informed of the detailed rules of implementation which are adopted in accordance with the provisions of this Annex.

### Article 14

#### Other Agreements

1. Taking into account the respective competencies of the European Union and its Member States on the one hand and Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama on the other, the provisions of this Annex shall:
  - (a) not affect the obligations of the Parties under any other international agreement or convention;
  - (b) be deemed complementary to Agreements on mutual assistance which have been or may be concluded between individual Member States of the European Union and Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama or between these countries; and
  - (c) not affect the European Union's provisions governing the communication between the competent services of the European Commission and the customs authorities of the Member States of the European Union of any information obtained under this Annex which could be of interest to the European Union.
2. Notwithstanding the provisions of paragraph 1(b), the provisions of this Annex shall take precedence over the provisions of any bilateral Agreement on mutual assistance which has been or may be concluded between individual Member States of the European Union and Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama insofar as the provisions of the latter are incompatible with those of this Annex.
3. In respect of questions relating to the applicability of this Annex, the Parties shall consult each other to resolve the matter in the framework of the Sub-Committee on Customs, Trade Facilitation and Rules of Origin established under Article 123 of Chapter 3 of Title II (Trade in Goods) of Part IV of this Agreement.