



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.04.2004
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2004/0093(ACC)

Proposal for a

COUNCIL DECISION

**on an agreement between the Government of the People's Republic of China and the
European Community on cooperation and mutual administrative assistance in customs
matters**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. In April 1993 the Council authorised the Commission to negotiate customs cooperation agreements on behalf of the Community with Canada, Hong Kong, Japan, Korea and the United States. This authorisation has been extended in May 1997 with regard to the ASEAN countries and China. Such agreements have so far been signed with the Republic of Korea (1997), the USA (1997), Canada (1997) and Hong Kong (1999). A new customs agreement with India will shortly be adopted by the Council.
2. The negotiations shall be conducted in accordance with the Directives set out in the Council Decision of April 1993.
3. There have been a number of meetings with the authorities of the People's Republic of China, both in Brussels and Beijing regarding the customs cooperation and mutual administrative assistance agreement. Following the round of negotiations that took place in Beijing on 10-12 February 2004, the parties agreed on the text of the enclosed Agreement.
4. In order to enable the Agreement on customs cooperation and mutual administrative assistance in customs matters to be concluded by the European Community and signed as soon as possible, the Commission proposes that the Council approve the attached proposal for a decision on the signing and conclusion of the Agreement.

Proposal for a

COUNCIL DECISION

on an agreement between the Government of the People's Republic of China and the European Community on cooperation and mutual administrative assistance in customs matters

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 read in conjunction with Article 300 (2), sub-paragraph one, first sentence, thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) in April 1993 the Council adopted a Decision authorising the Commission to negotiate a customs cooperation agreement on behalf of the Community with Canada, Hong Kong, Japan, Korea and the United States, extended in May 1997 with regard to the ASEAN countries and China,
- (2) the Agreement between the European Community and the People's Republic of China on customs cooperation and mutual administrative assistance in customs matters should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and People's Republic of China on customs cooperation and mutual administrative assistance in customs matters is hereby approved on behalf of the European Community.

The text of the Agreement is attached to this Decision.

Article 2

The Commission, assisted by representatives of the Member States, shall represent the Community on the Joint Customs Cooperation Committee set up under Article 21 of the Agreement.

Article 3

The President of the Council is hereby authorised to designate the persons empowered to sign the Agreement on behalf of the Community, thereby expressing the consent of the Community to be bound.

Article 4

The President of the Council shall effect the notification provided for in Article 22 of the Agreement on behalf of the Community.¹

Done at Brussels,

For the Council
The President

¹ The date of the entry into force of the Agreement will be published in the *Official Journal of the European Communities* by the General Secretariat of the Council.

ANNEX
AGREEMENT
BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
AND THE EUROPEAN COMMUNITY
ON COOPERATION AND MUTUAL ADMINISTRATIVE ASSISTANCE
IN CUSTOMS MATTERS

THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA, and THE EUROPEAN COMMUNITY (hereinafter referred to as the 'Contracting Parties'),

CONSIDERING the importance of the commercial links between the People's Republic of China and the European Community, and desirous of contributing to the benefit of both Contracting Parties, to the harmonious development of those links;

BELIEVING THAT, in order to attain this objective, there should be an undertaking to develop customs cooperation;

TAKING into account the development of customs cooperation between the Contracting Parties, concerning customs procedures;

CONSIDERING that operations in breach of customs legislation including infringements of intellectual property rights, are prejudicial to the economic, fiscal and commercial interests of both Contracting Parties, and recognising the importance of ensuring the accurate assessment of customs duties and other taxes, in particular, by a correct application of the rules on customs valuation, origin and tariff classification;

CONVINCED that action against such operations can be made more effective through cooperation between competent administrative authorities;

HAVING regard to obligations imposed under international conventions already accepted by, or applied to the Contracting Parties; as well as Customs related activities undertaken by the World Trade Organisation;

HAVING regard to the Agreement on Trade and Economic Cooperation between the European Economic Community and the People's Republic of China signed in 1985.

HAVE AGREED AS FOLLOWS:

TITLE 1

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of the Agreement:

- (a) 'customs legislation' shall mean any laws, provisions or other legally binding instruments of the European Community or the People's Republic of China, governing the import, export and transit of goods and their placing under any other

customs regime or procedure, including measures of prohibitions, restrictions and control;

- (b) 'customs authority' shall mean, in the People's Republic of China, the General Administration of Customs of the People's Republic of China, and in the European Community, the competent services responsible for customs matters of the Commission of the European Communities and the customs authorities of the Member States of the European Community;
- (c) 'applicant authority' shall mean a competent customs authority which is designated by a Contracting Party for this purpose and which makes a request for administrative assistance, on the basis of this Agreement;
- (d) 'requested authority' shall mean a competent customs authority which is designated by a Contracting Party for this purpose and which receives a request for administrative assistance, on the basis of this Agreement;
- (e) 'personal data' shall mean all information relating to an identified or identifiable individual;
- (f) 'operation in breach of customs legislation' shall mean any violation or attempted violation of the customs legislation;
- (g) 'person' shall mean either a human being or a legal entity;
- (h) 'information' shall mean data, whether or not processed or analysed, and documents, reports, and other communications in any format, including electronic, or certified or authenticated copies thereof.

Article 2

Territorial application

This Agreement shall apply on the one hand, to the customs territory of the People's Republic of China and, on the other hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty.

Article 3

Future developments

The Contracting Parties may by mutual consent expand this Agreement with a view to increasing the levels of customs cooperation and supplementing them, in accordance with their respective customs legislation, by means of agreements on specific sectors or matters.

TITLE II

Article 4

Performance of cooperation and assistance

All cooperation and assistance under this Agreement shall be performed by the Contracting Parties in accordance with their relevant laws, provisions, and other legal instruments. In addition, all cooperation and assistance under this Agreement by either Contracting Party shall be performed within the limits of its competence and available resources.

Article 5

Obligations imposed under other agreements

1. Taking into account the respective competencies of the European Community and the Member States, the provisions of this Agreement shall:
 - (a) not affect the obligations of the Contracting Parties under any other international agreement or convention,
 - (b) be deemed complementary with agreements on customs cooperation and mutual administrative assistance which have been or may be concluded between individual Member States and the People's Republic of China,
 - (c) not affect the Community provisions governing the communication between the competent services of the Commission and the customs authorities of the Member States of any information obtained under this Agreement which could be of interest to the Community;
2. Notwithstanding the provisions of paragraph 1, the provisions of this Agreement shall take precedence over the provisions of any bilateral agreement on customs cooperation and mutual administrative assistance which has been or may be concluded between individual Member States and the People's Republic of China, insofar as the provisions of the latter are incompatible with those of this Agreement.
3. In respect of questions relating to the applicability of this Agreement, the Contracting Parties shall consult each other to resolve the matter in the framework of the Joint Customs Cooperation Committee set up under Article 21 of this Agreement.

TITLE III

CUSTOMS COOPERATION

Article 6

Scope of the cooperation

1. The Contracting Parties shall undertake to develop customs cooperation. In particular, the Contracting parties shall seek to cooperate in:
 - (a) establishing and maintaining channels of communication between their customs authorities to facilitate and secure the rapid exchange of information;
 - (b) facilitating effective coordination between their customs authorities;
 - (c) any other administrative matters related to this Agreement that may from time to time require their joint action.
2. The Contracting Parties undertake to develop trade facilitation actions in customs matters taking account of the work done in this connection by international organisations.
3. Under this Agreement, customs cooperation shall cover all matters relating to the application of customs legislation.

Article 7

Cooperation in customs procedures

The Contracting Parties affirm their commitment to the facilitation of the legitimate movement of goods and shall exchange information and expertise on measures to improve customs techniques and procedures and on computerised systems with a view towards implementing that commitment in accordance with the provisions of this Agreement.

Article 8

Technical cooperation

The Customs Authorities of the Contracting Parties may provide each other with technical assistance when mutually beneficial in Customs matters including:

- (a) the exchange of personnel and experts, for the purposes of promoting the mutual understanding of each other's Customs law, procedures and techniques;
- (b) the training, particularly developing specialised skills of their Customs officials;

- (c) the exchange of professional, scientific and technical data relating to customs law and procedures.
- (d) techniques and improved methods of processing passengers and cargo.
- (e) any other general administrative matters that may from time to time require joint actions by their Customs administrations.

Article 9

Coordination in international organisations

The customs authorities shall seek to develop and strengthen their cooperation on topics of common interest in order to seek a coordinated position when those topics are discussed in the framework of international organisations.

TITLE IV

MUTUAL ADMINISTRATIVE ASSISTANCE

Article 10

Scope

1. The Customs authorities shall assist each other by providing appropriate information which helps to ensure the proper application of customs legislation and the prevention, investigation and combating of any breach of Customs legislation.
2. Assistance in customs matters, as provided for in this Agreement, shall apply to any administrative authority of the Contracting Parties which is competent for the application of this Agreement. 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;
3. Assistance to recover duties, taxes or fines, or the arrest or detention of any person or seizure or detention of property is not covered by this Agreement.

Article 11

Assistance on request

1. At the request of the applicant authority, the requested authority shall provide it with all relevant information which may enable it to ensure that customs legislation is correctly applied, including information regarding activities detected or planned which are or could be operations in breach of customs legislation. In particular, upon request, the Customs authorities shall furnish to each other information regarding activities that may result in offences within the territory of the other Party, for example, incorrect customs declarations and certificates of origin, invoices or other documents known to be, or suspected of being, incorrect or falsified.

2. At the request of the applicant authority, the requested authority shall inform it of:
 - (a) the authenticity of official documents produced in support of a goods declaration made to the customs authority of the requesting party;
 - (b) whether goods exported from the territory of one of the Contracting Parties have been legally imported into the territory of the other Contracting Party, specifying, where appropriate, the customs procedure applied to the goods;
 - (c) whether goods imported into the territory of one of the Contracting Parties have been legally exported from the territory of the other Contracting Party, specifying, where appropriate, the customs procedure applied to the goods.
3. At the request of the applicant authority, the requested authority shall, within the framework of its laws, provisions or other legally binding instruments, take the necessary steps to ensure special surveillance of:
 - (a) persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;
 - (b) places where stocks of goods have been or may be stored or assembled in such a way that there are reasonable grounds for believing that these goods are intended to be used in operations in breach of customs legislation;
 - (c) goods that are or may be transported in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation;
 - (d) means of transport that are or may be used in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation.

Article 12

Spontaneous assistance

The Contracting Parties shall assist each other, at their own initiative and in accordance with their laws, provisions or other legally binding instruments if they consider that to be necessary for the correct application of customs legislation, in particular in situations that could involve substantial damage to the economy, public health, public security or similar vital interest of the other Contracting Party 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 Contracting 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) persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;

- (e) means of transport in respect of which there are reasonable grounds for believing that they have been, are, or may be used in operations in breach of customs legislation.

Article 13

Form and substance of requests for assistance

1. Requests pursuant to this Agreement 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 promptly in writing.
2. Requests pursuant to paragraph 1 shall include the following information:
 - (a) The formal endorsement of the applicant authority;
 - (b) the action requested;
 - (c) the object of and the reason for the request;
 - (d) the laws, regulations or other legally binding instruments involved;
 - (e) indications as exact and comprehensive as possible on the persons who are the target of the investigations;
 - (f) a summary of the relevant facts and of the enquiries already carried out.
3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to that authority. This requirement shall not apply to any documents that accompany the request under paragraph 1.
4. If a request does not meet the formal requirements set out above, its correction or completion may be requested; precautionary measures may be ordered in the meantime.

Article 14

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 resource, as though it were acting on its own account or at the request of other authorities of that same Contracting Party, by supplying information already possessed, by carrying out appropriate enquiries or by arranging for them to be carried out.
2. Requests for assistance shall be executed in accordance with the laws, regulations or other legally binding instruments of the requested authority.
3. Duly authorised officials of a Contracting Party may, with the agreement of the other Contracting Party and subject to the conditions laid down by the latter, be present at enquiries carried out in the latter's jurisdiction into specific cases.

4. In the event that the request cannot be complied with, the applicant authority shall be notified promptly of that fact, with a statement of the reasons and of any other information that the requested authority considers may be of assistance to the applicant authority.

Article 15

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 copies or other items.
2. This information may be in computerised form which shall where necessary be confirmed in writing immediately afterwards.

Article 16

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 Contracting Party is of the opinion that assistance under this Agreement would:
 - (a) be likely to prejudice the sovereignty of the People's Republic of China or that of a Member State of the European Community which has been requested to provide assistance under this Agreement; or
 - (b) be likely to prejudice public order, security or other essential interests, in particular in the cases referred to under Article 17(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 undue delay.

Article 17

Information exchange and confidentiality

1. Any information communicated in whatsoever form pursuant to this Agreement shall be of a confidential or restricted nature, depending on the rules applicable in each of the Contracting Parties. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws of the Contracting Party that received it and the corresponding provisions applying to the Community authorities.
2. Personal data may be exchanged only where the Contracting Party which may receive it undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the Contracting Party that may supply it. The Contracting Party that may supply the information shall not stipulate any requirements that are more onerous than those applicable to it in its own jurisdiction. The Contracting Parties shall communicate to each other information on their applicable rules, including where appropriate, legal provisions in force in the Member States of the Community.
3. Nothing in this Agreement shall preclude the use of information or documents obtained in accordance with this Agreement as evidence in administrative proceedings subsequently instituted in respect of operations in breach of customs legislation. Therefore, the Contracting Parties may, in their records of evidence, reports and testimonies and in administrative proceedings use as evidence information obtained and documents consulted in accordance with the provisions of this Agreement. 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 Agreement. Where one of the Contracting 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.
5. Practical arrangements for the implementation of this Article shall be determined by the Joint Customs Cooperation Committee established under Article 21.

Article 18

Experts and witnesses

An official of a requested authority may be authorised to appear, within the limitations of authorisation granted, as an expert or witness in administrative proceedings regarding the matters covered by this Agreement in the territory of the other Contracting Party, and produce such objects, documents or certified copies thereof, as may be needed for the proceedings. The request for appearance must indicate specifically before which 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 19

Assistance expenses

1. The Contracting Parties shall waive all claims on each other for the reimbursement of expenses incurred pursuant to this Agreement, except, as appropriate, for expenses to experts and witnesses, and those to interpreters and translators who are not public service employees.
2. If expenses of a substantial or extraordinary nature are, or will be, required to execute the request, the Contracting Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

TITLE V

FINAL PROVISIONS

Article 20

Implementation

1. The implementation of this Agreement shall be entrusted to the customs authorities of the Commission of the European Communities and, where appropriate, of the Member States of the European Community on the one hand, and to the Customs authority of the People's Republic of China, on the other. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration the rules in force in particular in the field of data protection. They may recommend to the competent bodies amendments which they consider should be made to this Agreement.
2. The Contracting 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 Agreement.

Article 21

Joint Customs Cooperation Committee

1. A Joint Customs Cooperation Committee is hereby established, consisting of representatives of the customs authorities of the People's Republic of China and the European Community. It shall meet at a place, on a date and with an agenda, fixed by mutual agreement.
2. The Joint Customs Cooperation Committee shall inter alia:
 - (a) see to the proper functioning of the Agreement;
 - (b) examine all issues arising from its application;

- (c) take measures necessary for customs cooperation in accordance with the objectives of this Agreement;
 - (d) exchange views on any points of common interest regarding customs cooperation, including future measures and the resources for them;
 - (e) recommend solutions aimed at helping to attain the objectives of this Agreement.
3. The Joint Customs Cooperation Committee shall adopt its internal rules of procedure.
 4. The Joint Customs Cooperation Committee will where appropriate, keep informed the Joint Commission set up under Article 15 of the Agreement on Trade and Economic Cooperation between the European Economic Community and China of activities going on under this Agreement.

Article 22

Entry into force and duration

1. This Agreement shall enter into force on the first day of the month following the date on which the Contracting Parties have notified each other of the completion of the procedures necessary for this purpose.
2. Each Contracting party may terminate this Agreement by giving notice to the other in writing. The termination shall take effect three months from the day of notification to the other Contracting Party. Requests for assistance which have been received prior to the termination of the Agreement shall be completed in accordance with the provisions of this Agreement.

Article 23

Authentic texts

This Agreement shall be drawn up in duplicate in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish, Swedish and Chinese languages, each text being equally authentic.

In witness whereof, the undersigned, being duly authorised to do so, have signed this Agreement.

Done in duplicate at Brussels onin the year two thousand

For the European Community

*For the Government of the People's
Republic of China*