



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.01.1999
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99/0017 (ACC)

Proposal for a

COUNCIL DECISION

concerning the conclusion of the Agreement
between the European Community and Hong Kong, China
on customs cooperation and mutual assistance in customs matters

(presented by the Commission)

Explanatory memorandum

By its decision of 5 April 1993, the Council authorised the Commission to negotiate customs co-operation agreements with some of the Community's main trading partners, in particular Hong Kong, and adopted the necessary negotiation directives.

There have been a number of meetings with the authorities of Hong Kong, China, both in Hong Kong and Brussels. Following these discussions, the text of the Agreement was initialled on 3 November 1998.

The Agreement is now being put to the Council to be signed and concluded.

The Commission considers that the initialled text is in accordance with the negotiation directives adopted by the Council on 5 April 1993.

In order to enable the Agreement on customs co-operation and mutual administrative assistance in customs matters to be 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.

COUNCIL DECISION
concerning the conclusion of the Agreement
between the European Community and Hong Kong, China
on customs cooperation and mutual assistance in customs matters

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof, in conjunction with the first sentence of Article 228 (2) thereof,

Having regard to the proposal from the Commission,

Whereas on 5 April 1993 the Council authorized the Commission to negotiate, on behalf of the Community, customs cooperation agreements with some of the Community's main trading partners;

Whereas the Agreement between the European Community and Hong Kong, China on customs cooperation and mutual assistance in customs matters should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and Hong Kong, 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 authorized to designate the persons empowered to sign the Agreement on behalf of the Community.

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

Article 5

This Decision shall be published in the Official Journal of the European Communities.

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.

AGREEMENT
BETWEEN
THE EUROPEAN COMMUNITY
AND HONG KONG, CHINA
ON CO-OPERATION
AND MUTUAL ADMINISTRATIVE ASSISTANCE
IN CUSTOMS MATTERS

1d

The EUROPEAN COMMUNITY and HONG KONG, CHINA¹ (hereinafter referred to as the 'Contracting Parties'),

CONSIDERING the importance of the commercial links between the European Community and Hong Kong, China 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 co-operation;

TAKING into account the development of customs co-operation between the Contracting Parties, concerning customs procedures;

CONSIDERING that operations in breach of customs legislation 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;

CONVINCED that action against such operations can be made more effective by co-operation between their competent administrative authorities;

HAVING regard to obligations imposed under international conventions already accepted by, or applied to the Contracting Parties; and having regard also to the recommendation of the Customs Co-operation Council on mutual administrative assistance of December 5, 1953,

HAVE AGREED AS FOLLOWS:

¹ In accordance with Article 151 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China

TITLE I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Agreement:

(a) 'customs legislation' shall mean any laws, regulations or other legally binding instruments of the European Community or Hong Kong, China governing the import, export and transit of goods and their placing under any other customs regime or procedure, including measures of prohibition, restriction and control falling under the competence of the customs authorities and other administrative authorities;

(b) 'customs authority' shall mean, in the European Community, the competent services of the Commission of the European Communities and the customs authorities of the Member States of the European Community, and in Hong Kong, China, the Customs and Excise Department;

(c) 'applicant authority' shall mean a competent administrative authority which has been designated by a Contracting Party for this purpose and which makes a request for assistance on the basis of this Agreement;

(d) 'requested authority' shall mean a competent administrative authority which has been designated by a Contracting Party for this purpose and which receives a request for assistance, on the basis of this Agreement;

(e) 'personal data' shall mean all information relating to an identified or identifiable human being;

(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.

Article 2

Territorial application

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other hand, to Hong Kong, China.

Article 3

Future developments

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

Article 4

Scope of the cooperation

1. The customs authorities 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 the secure and rapid exchange of information;
 - (b) facilitating effective co-ordination between their customs authorities;
 - (c) any other administrative matters related to this Agreement that may from time to time require their joint action.
2. Under this Agreement, customs cooperation shall cover all matters relating to the application of customs legislation.

Article 5

Scope of assistance

1. The Contracting Parties shall assist each other, in the areas within their competence and within the limits of available resources, and in the manner and under the conditions laid down in this Agreement, to ensure the correct application of customs legislation, in particular by preventing, investigating and combating operations in breach of that legislation.
2. Assistance in customs matters under this Agreement shall be provided between the customs and other administrative authorities of the Contracting Parties which are 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 is not covered by this Agreement.

Article 6

Obligations imposed under other agreements

1. Taking into account the respective competences 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 Hong Kong, China, and
 - (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 Hong Kong, 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 II

CUSTOMS CO-OPERATION

Article 7

Co-operation 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 computerized systems with a view toward implementing that commitment in accordance with the provisions of this Agreement.

Article 8

Technical assistance

1. The customs authorities may provide technical assistance to each other and exchange personnel when mutually beneficial, and according to the availability of resources, for the purpose of advancing their understanding of each other's customs techniques, procedures and computerized systems.
2. They may also, when appropriate, exchange information about technical assistance to any other customs administrations.

Article 9

Discussions in international organizations

The customs authorities shall seek to develop and strengthen their cooperation on topics of common interest with a view to facilitating discussions on customs matters in the framework of international organizations, such as the Customs Co-operation Council.

TITLE III

MUTUAL ADMINISTRATIVE ASSISTANCE

Article 10

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.
2. At the request of the applicant authority, the requested authority shall inform it:
 - (a) whether goods exported from one of the Contracting Parties have been properly imported into the other, specifying, where appropriate, the customs procedure applied to the goods;
 - (b) whether goods imported into one of the Contracting Parties have been properly exported from the other, 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, regulations 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 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 11

Spontaneous assistance

The Contracting Parties shall assist each other, at their own initiative and in accordance with their laws, regulations or other legally binding instruments, 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 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 12

Delivery, Notification

1. At the request of the applicant authority, the requested authority shall, in accordance with laws, regulations or other legally binding instruments applicable to the latter, take all necessary measures in order :

- (a) to deliver any documents of an administrative nature or
- (b) to notify any decisions,

emanating from the applicant authority and falling within the scope of this Agreement, to an addressee residing or established in the jurisdiction 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. This requirement shall not apply to any documents that are to be delivered under paragraph 1.

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 must be confirmed in writing immediately.

2. Requests pursuant to paragraph 1 shall include the following information :
 - (a) 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 taken 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 resources, 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. This provision shall also apply to any other authority to which the request has been addressed in accordance with this Agreement by the requested authority when the latter cannot act on its own.
2. Requests for assistance shall be executed in accordance with the laws, regulations or other legally binding instruments of the requested Contracting Party.
3. Duly authorized 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 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 be operations in breach of customs legislation which the applicant authority needs for the purposes of this Agreement.

4. Duly authorized 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.
5. 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 computerized form.
3. Original files and documents shall be transmitted only upon request in cases where certified copies would be insufficient. These originals shall be returned at the earliest opportunity. The rights of the requested authority or of third parties relating to the originals shall remain unaffected.

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 Party is of the opinion that assistance under this Agreement would:

- (a) be likely to prejudice the vital interests of Hong Kong, China or those of a Member State which has been requested to provide assistance under this Agreement; or
 - (b) be likely to prejudice public order, security or other essential principles, in particular those 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 therefor 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.

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 proceedings or charges subsequently instituted before the courts or tribunals in respect of operations in breach of customs legislation. Therefore, the Contracting Parties may, in their records of evidence, reports and testimonies and in proceedings and charges which may subsequently be brought before the courts or tribunals, 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 Co-operation Committee under Article 21.

Article 18

Experts and witnesses

An official of a requested authority may be authorized to appear, within the limitations of the authorization granted, as an expert or witness before an authority in the other Contracting Party regarding the matters covered by this Agreement, and produce such objects, documents or certified copies thereof as may be needed for this purpose. The

request for appearance must indicate specifically before which 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

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 payable to experts and witnesses, and those to interpreters and translators who are not public service employees.

TITLE IV

FINAL PROVISIONS

Article 20

Implementation

1. The implementation of this Agreement shall be entrusted on the one hand to the competent services of the Commission of the European Communities and, where appropriate, the customs authorities of the Member States of the European Community and on the other hand to the Customs and Excise Department of Hong Kong, China. 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 Co-operation Committee

1. A Joint Customs Co-operation Committee is hereby established, consisting of representatives of the European Community and of Hong Kong, China. It shall meet at a place, on a date and with an agenda, fixed by mutual agreement.

2. The Joint Customs Co-operation Committee shall see to the proper functioning of the Agreement and shall examine all issues arising from its application. In fulfilling this role, its main functions will be to:
 - (a) review the progress of the customs co-operation in accordance with this Agreement and identify new areas and specific sectors for further customs co-operation;
 - (b) exchange views on any points of common interest regarding customs co-operation, including future measures and the resources for them; and
 - (c) in general terms, recommend solutions aimed at helping to attain the objectives of this Agreement.
3. The Joint Customs Co-operation Committee shall adopt its internal rules of procedure.

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 date 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 Chinese, Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish 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 on in the year one thousand nine hundred and ninety-.....

For the European Community

For Hong Kong, China

DOCUMENTS

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