COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.09.1996
COM(96) 461 final

96/0233 (ACC)

Proposal for a

COUNCIL DECISION

on the conclusion of the customs cooperation and mutual assistance Agreement between the European Community and the Republic of Korea

(presented by the Commission)

Explanatory memorandum

By its decision of 5 April 1993, the Council authorized the Commission to negotiate customs cooperation agreements with some of the Community's main trading partners, in particular the Republic of Korea, and adopted the necessary negotiating directives.

There have been a number of meetings with the Korean authorities, in Brussels and Seoul. Following these negotiations, the text of the Agreement was initialled on 3 July this year.

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 negotiating directives adopted by the Council on 5 April 1993.

In order to enable the customs cooperation and mutual assistance Agreement to be signed at the ministerial meeting in October, 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 the conclusion of
the customs cooperation and mutual assistance Agreement
between the European Community
and the Republic of Korea

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof, together with the first sentence of Article 228(2) and the first subparagraph of Article 228(3),

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 customs cooperation and mutual assistance Agreement between the European Community and the Republic of Korea should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The customs cooperation and mutual assistance Agreement between the European Community and the Republic of Korea 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 European Community on the Joint Customs Cooperation Committee set up under Article 15 of the Agreement.

Article 3

The President of the Council is hereby authorized to designate the persons empowered to sign the Agreement.

Article 4

The President of the Council shall effect the notification provided for in Article 19 of the Agreement on behalf of the European 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 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 REPUBLIC OF KOREA
AND
THE EUROPEAN COMMUNITY
ON CO-OPERATION
AND MUTUAL ADMINISTRATIVE ASSISTANCE
IN CUSTOMS MATTERS

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THE REPUBLIC OF KOREA and THE EUROPEAN COMMUNITY, (hereinafter referred to as the Contracting Parties).

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

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 customs authorities;

HAVING regard to obligations imposed under international conventions already accepted by 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:

TITLE I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Agreement:

a) "customs legislation" shall mean provisions adopted by the Republic of Korea or the European Community governing the importation, exportation, transit of goods and any other customs procedure, including measures of prohibition, restriction and control;

b) "customs authority" shall mean, in the Republic of Korea, the Korean Customs Service and, 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.

c) "applicant customs authority" shall mean a competent customs authority of a Contracting Party which makes a request for assistance in customs matters;

d) "requested customs authority" shall mean a competent customs authority of a Contracting Party which receives a request for assistance in customs matters;

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 of the customs legislation as well as any attempted violation of such legislation.

Article 2

Obligations imposed under international conventions

The provisions of this Agreement shall not prejudice the obligations imposed under international conventions accepted by the Contracting Parties to this Agreement.

TITLE II

CUSTOMS COOPERATION

Article 3

Scope of the customs cooperation

1. The Contracting Parties through their customs authorities shall, in accordance with the provisions of this Agreement:

   a) endeavour to cooperate, within the limits of available resources, in the research, development and testing of new customs procedures, in the training and exchange of personnel and in other matters that may require their joint efforts; and

   b) strive for simplification, harmonization and computerization in customs procedures, taking into account the work done in this connection by international organisations.

2. The customs cooperation will include:

   a) exchange of professional, scientific and technical data relating to customs legislation;

   b) exchange of information on actions undertaken with third countries in relation to technical assistance, with the aim of improving these actions.

TITLE III

MUTUAL ASSISTANCE

Article 4

Scope of the assistance

1. The Contracting Parties through their customs authorities shall, in accordance with the provisions of this Agreement:

   a) assist each other in order to ensure that customs legislation is properly implemented, in particular, by the prevention, detection and investigation of operations in breach of this legislation;

   b) assist each other by providing information, upon request, to be used in administering and enforcing the customs legislation.

2. Assistance in customs matters, as provided for in this Agreement, shall not prejudice the rules governing mutual assistance in criminal matters. Nor shall it cover information obtained under powers exercised at the request of the judicial authority, unless this authority so agrees.

3. The assistance will also include:

   a) exchange of information and experience in the use of the interdiction and detection equipment;

   b) enforcement techniques that might be useful in suppressing breaches of customs legislation and, in particular, any technical aids found to be helpful in combating such breaches; and

   c) observations and findings resulting from the application of new enforcement techniques.

Article 5

Assistance on Request

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

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

3. At the request of the applicant customs authority, the requested customs authority shall take the necessary steps to ensure that a surveillance is kept on:

   a) natural or legal persons who it may reasonably be believed are or have been in breach of customs legislation;

   b) places where goods are stored in a way that gives grounds to suspect that they are intended to supply operations in breach of customs legislation;

   c) movements of goods notified as possibly constituting operations in breach of customs legislation; and

   d) means of transport which it may reasonably be believed have been, are or may be used to commit operations in breach of customs legislation.

Article 6

Spontaneous Assistance

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

   a) operations which have been, are or appear to be in breach of such legislation and which may be of interest to the other Contracting Party;

b) new means or methods used in committing such operations; and

c) goods known to be the subject of operations in breach of customs legislation.

Article 7

Delivery/Notification

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

- to deliver all documents,
- to notify all decisions,

falling within the scope of this Agreement to an addressee, residing or established in its territory. In such a case, the provisions of Article 8 (3) shall be applied.

Article 8

Form and Substance of Requests for Assistance

1. Requests pursuant to this Agreement shall be made in writing. Documents necessary for the execution of such requests shall accompany the request. When required because of the urgency of the situation, oral requests may be accepted, but must be confirmed in writing immediately.

2. Request pursuant to paragraph 1 of this Article shall include the following information:

   a) the applicant customs authority making the request;
   b) the measure requested;
   c) the object of and the reason for the request;
   d) the laws, rules and other legal elements involved;
   e) indications as exact and comprehensive as possible on the natural or legal persons being the target of the investigations; and
   f) a summary of the relevant facts and the enquiries already carried out, excepted in cases provided for in Article 7.

3. Requests shall be submitted in an official language of the requested customs authority or in a language acceptable to such authority.

4. If a request does not meet the formal requirements, its correction or completion may be demanded; the ordering of precautionary measures may, however, take place.

Article 9

Execution of Requests

1. In order to comply with a request for assistance, the requested customs authority, in cooperation with other administrative departments when the former cannot act on its own, shall proceed, within the limits of its competence and available resources, 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, rules and other legal instruments of the requested Contracting Party.

3. Duly authorised officials of a Contracting Party may, with the agreement of the other Contracting Party involved and within the conditions laid down by the latter, obtain from the offices of the requested customs authority or other authority for which the requested customs authority is responsible, information relating to the operations in breach of customs legislation which the applicant customs authority needs for the purposes of this Agreement.

4. Officials of a Contracting Party may, with the agreement of the other Contracting Party and within the conditions laid down by the latter, be present at enquiries carried out in the latter's territory.

Article 10

Form of Information to be Communicated

1. The requested customs authority shall communicate results of enquiries to the applicant customs authority in the form of documents, certified copies of documents, reports or in the other appropriate forms for the execution of the request.

2. The documents provided for in paragraph 1 may be replaced by computerized information produced in any form for the same purpose.

Article 11

Exceptions to Assistance

1. The Contracting Parties may refuse, in whole or in part, to give assistance as provided for in this Agreement, where to do so would:

   a) be likely to prejudice the sovereignty of the Republic of Korea or of a Member State of the European Community when asked to provide assistance pursuant to this Agreement; or
   b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to under Article 12 (2) ; or
   c) involve currency or tax regulations other than customs legislation ; or
   d) violate an industrial, commercial or professional secret.

2. Where the applicant customs authority asks for assistance which it would itself be unable to provide if so asked by the customs authority of the other Contracting Party, it shall draw attention to that fact in its request. It shall then be left to the requested customs authority to decide how to respond to such a request.

3. Before refusing to provide assistance, the requested customs authority shall consider whether assistance may be provided subject to such conditions or requirements as it deems necessary. If the applicant customs authority accepts assistance subject to these conditions or requirements, it shall comply with them.

4. If a request for assistance cannot be complied with, the applicant customs authority shall be notified without delay and shall be informed of the reasons for the refusal to provide assistance.

Article 12

Exchange of information 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 like information under the relevant laws of the Contracting Party which received it and the corresponding provisions applying to the Community institutions.

2. Personal data may be exchanged only where the receiving Contracting Party undertakes to protect such data in a way which is at least equivalent to the one applicable to that particular case in the supplying Contracting Party.

3. Information obtained shall be used solely for the purposes of this Agreement. Where one of the Contracting Parties requests the use of such information for other purposes, it shall ask for the prior written consent of the customs authority which furnished the information. Such use shall then be subject to any restrictions laid down by that authority.

4. Paragraph 3 shall not impede the use of information in any judicial or administrative proceedings subsequently instituted for failure to comply with customs legislation. The competent authority which supplied that information shall be notified of such use.

5. The Contracting 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 Agreement.

Article 13

Experts and Witnesses

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

Article 14

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

TITLE IV

FINAL PROVISIONS

Article 15

Joint Customs Cooperation Committee

1. A Joint Customs Cooperation Committee shall be established, consisting of representatives of the Republic of Korea and of the European Community. It shall meet alternately in Seoul and Brussels, as mutually agreed and on a date and with an agenda fixed by mutual agreement.

2. The Joint Customs Cooperation 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 cooperation in accordance with this Agreement and identify new areas and specific sectors for further customs cooperation;

   (b) exchange views on any points of common interest regarding customs cooperation, 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 Cooperation Committee shall adopt its internal rules of procedure.

Article 16

Implementation

1. The management of this Agreement shall be entrusted to the Korea Customs Service of the Republic of Korea on the one hand and the competent services of the Commission of the European Communities and, where appropriate, the customs authorities of the Member States of the European Community on the other. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration rules in the field of data protection.

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 17

Revision or Amendments

The Contracting Parties may, at any time, revise or amend this Agreement by mutual consent.

Article 18

Territorial application

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

Article 19

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. This Agreement is concluded for a period of five years. It shall be tacitly renewed on a yearly basis unless one of the Parties denounces it in writing six months before the date of expiry.

Article 20

Authentic Texts

This Agreement is drawn up in duplicate in the Korean, Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, and Swedish languages, each text being equally authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Agreement.

Done in duplicate at .... on the ....

For the Republic of Korea

For the European Community

ISSN 0254-1475

COM(96) 461 final

DOCUMENTS

EN 11

Catalogue number : CB-CO-96-472-EN-C

ISBN 92-78-09069-7

Office for Official Publications of the European Communities

L-2985 Luxembourg