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ROZHODNUTÍ RADY
ze dne 30. března 2004
o uzavření Dohody mezi Evropským společenstvím a Indickou republikou o celní spolupráci a vzájemné správní pomoci v celních otázkách

(2004/633/ES)

RADA EVROPSKÉ UNIE,

s ohledem na Smlouvu o založení Evropského společenství, a zejména na článek 133 ve spojení s první větou prvního pododstavce čl. 300 odst. 2 této smlouvy,

s ohledem na návrh Komise,

vzhledem k těmto důvodům:

(1) Rada ve dnech 27. a 28. ledna 2003 zmocnila Komisi, aby jménem Společenství sjednala dohodu uvedenou v tomto rozhodnutí.

(2) Tato dohoda by měla být schválena,

ROZHODLA TAKTO:

Článek 1

Dohoda mezi Evropským společenstvím a Indií o celní spolupráci a vzájemné správní pomoci v celních otázkách se schvaluje jménem Společenství.

Znění dohody se připojuje k tomuto rozhodnutí.

Článek 2

Komise, jíž jsou nápomocni zástupci členských států, zastupuje Společenství ve Smíšeném výboru pro celní spolupráci zřízeném podle článku 21 dohody.

Článek 3

Předseda Rady je oprávněn jmenovat osobu nebo osoby zmocněné podepsat dohodu zavazující Společenství.

Článek 4

Předseda Rady provede jménem Společenství oznámení stanovené v článku 22 dohody. [1]

V Bruselu dne 30. března 2004.

Za Radu

předseda

M. McDOWELL

[1] Datum vstupu dohody v platnost zveřejní generální sekretariát Rady v Úředním věstníku Evropské unie.

AGREEMENT

between the European Community and the Republic of India on customs cooperation and mutual administrative assistance in customs matters

THE EUROPEAN COMMUNITY AND GOVERNMENT OF THE REPUBLIC OF INDIA (HEREINAFTER REFERRED TO AS THE CONTRACTING PARTIES)

CONSIDERING the importance of the commercial links between the European Community and India, 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, 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 cooperation between 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 recommendations of the Customs Cooperation Council (World Customs Organisation) on mutual administrative assistance of5 December 1953, as well as Customs related activities undertaken by the World Trade Organisation;

WHEREAS a Cooperation Agreement between the European Economic Community and the Republic of India on Partnership and Development was signed on20 December 1993;

HAVE AGREED AS FOLLOWS:

TITLE I

GENERAL PROVISIONS

Article 1

Definitions

For the purpose of this Agreement:

(a) „Customs legislation“ shall mean any laws, provisions or other legally binding instruments of the European Community or India, governing the imports, export and transit of goods and their placing under any other customs procedures, including measures of prohibitions, restrictions 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 India, the Central Board of Excise and Customs in the Department of Revenue, Ministry of Finance;

(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 individual;

(f) „operation in breach of customs legislation“ shall mean any violation or attempted violation of the customs legislation;

(g) „person“ shall mean any natural or legal person;

(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 territories where the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other hand, to India.

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 contracting parties undertake to develop customs cooperation. In particular, the Contracting Parties shall seek to cooperate in:

(a) establishing and maintaining channels of communications between their customs authorities to facilitate the secure and 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 also to develop trade facilitation actions in the field of customs in accordance with international standards.

3. 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 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 India;

(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 India, 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 COOPERATION

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 system with a view towards implementing that commitment in accordance with the provisions of this Agreement.

Article 8

Technical assistance

The customs authorities may provide technical assistance to each other and exchange personnel and expertise on measures to improve customs techniques and procedures and on computerised systems with a view towards achieving these objectives in accordance with the provisions of this Agreement.

Article 9

Discussions in international organisations

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 organisations.

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. In particular, upon request, the

Customs authority 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:

(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 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 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, in particular, in situations that could involve substantial damage to the economy, public health, public security, or similar vital interest of the other party, 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 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;

(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, an oral request may be accepted, but must be confirmed immediately in writing.

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 fact 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 requirement 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 can not 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 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 to obtain in the offices of the requested authority or any other concerned authority in accordance with paragraph 1, information related to activities that are or may be operations in breach of customs legislation which the applicant authority needs for the purpose of this Agreement.

4. 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.

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 computerised 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 India or those of a Member State of the European Community which has been requested to provide assistance under this Agreement;

(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 proceedings. 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 thereof 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 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 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 the authorisation 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 confidential 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

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

2. If during the execution of a request it becomes apparent that completion of the execution of the request will entail expenses of an extraordinary nature, the Customs authorities shall consult to determine the terms and conditions under which the execution may continue.

TITLE IV

FINAL PROVISIONS

Article 20

Implementation

1. The implementation of this Agreement shall be entrusted 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 on the one hand, and to the Central Board of Excise and Customs in Department of Revenue, Ministry of Finance, 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 European Community and of India. 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 attaining 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 report annually to the Joint Commission set up under Article 22 of the Cooperation agreement between the European Community and the Republic of India on Partnership and Development.

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 Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Hindi languages, each text being equally authentic.

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

Hecho en Bruselas, el veintiocho de abril de dos mil cuatro.

Udfardiget i Bruxelles den otteogtyvende april to tusind og fire.

Geschehen zu Brüssel am achtundzwanzigsten April zweitausendundvier.

Έγινε στην Βρυξέλλες, στις είκοσι οκτώ Απριλίου δύο χιλιάδες τέσσερα.

Done at Brussels on the twenty-eighth day of April in the year two thousand and four.

Fait a Bruxelles, le vingt-huit avril deux mille quatre.

Fatto a Bruxelles, addi ventotto aprile duemilaquattro.

Gedaan te Brussel, de achtentwintigste april tweeduizendvier.

Feito em Bruxelas, em vinte e oito de Abril de dois mil e quatro.

Tehty Brysselissä kahdentenakymmenentenäkahdeksantena päivänä huhtikuuta vuonna kaksituhattaneljä.

Som skedde i Bryssel den tjugoattonde april tjugohundrafyra.

Por la Comunidad Europea

For Det Europaiske Fallesskab

Für die Europäische Gemeinschaft

Για την Ευρωπαϊκή Κοινότητα

For the European Community

Pour la Communauté européenne.

Per la Comunita europea

Voor de Europese Gemeenschap

Pela Comunidade Europeia

Euroopan yhteisön puolesta

Pa Europeiska gemenskapens vägnar

यूरोपियन समुदाय के लिए



Por la República de la India

For Republikken Indien

Für die Republik Indien

Για τη Δημοκρατία της Ινδίας

For the Republic of India

Pour la République de l'Inde

Per la Repubblica d'India

Voor de Republiek India

Pela República da Índia

Intian tasavallan puolesta

För Republiken Indien

भारत गणराज्य के लिए

