



EUROPEAN COMMISSION

Brussels, 5.1.2012
COM(2011) 937 final

2011/0463 (NLE)

Proposal for a

COUNCIL DECISION

**on a Union position within the EU-U.S. Joint Customs Cooperation Committee
regarding mutual recognition of the Authorised Economic Operator Programme of the
European Union and the Customs-Trade Partnership Against Terrorism Program of the
United States**

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- (1) EU legislation on the Authorised Economic Operator (AEO) was introduced by an amendment to the European Union's Community Customs Code (Regulation 648/2005 adopted in April 2005). The objective of trade partnership programmes such as the AEO is to provide facilitation to traders which demonstrate compliant efforts to secure their part of the international supply chain.
- (2) The AEO legislation came into force in January 2008. By October 2011 more than 4300 EU companies had been certified for security.
- (3) Mutual recognition of trade partnership programmes enhances end-to-end supply chain security and facilitates trade. It consolidates internationally the approach agreed in the World Customs Organization (WCO) Framework of Standards to Secure and Facilitate Trade ('SAFE Framework'). It also addresses the concerns of the business community to avoid proliferation of requirements and to standardise customs security procedures.
- (4) EU-U.S. relations in the area of customs are based on the Agreement on Customs Cooperation and Mutual Assistance in Customs Matters ('CMAA'), signed on 28 May 1997. According to the CMAA, the respective customs authorities undertake to develop customs cooperation covering all matters relating to the application of customs legislation.
- (5) Customs cooperation under the CMAA was expanded by the Agreement on intensifying and broadening the CMAA to include cooperation on container security and related matters, signed on 28 April 2004. Two expert working groups were then formed to focus on furthering joint efforts in security standards and comparing trade partnership programmes, respectively.
- (6) In 2006, the EU and U.S. agreed to assess the feasibility of establishing mutual recognition of their respective trade partnership programs.
- (7) In 2007 an in-depth comparison of both the U.S. and EU trade partnership programmes, namely the EU AEO and the U.S. Customs-Trade Partnership Against Terrorism (C-TPAT) programmes, was completed. A pilot program was launched in which the U.S. Customs and Border Protection (CBP) observed security components of the EU's AEO audit process.
- (8) Following the in-depth comparison of the EU and U.S. trade partnership programmes, a Roadmap towards mutual recognition was adopted in March 2008, setting key performance-based stages required to reach mutual recognition. In January 2009, an abridged version of the Roadmap was made public.
- (9) On 25 June 2010, the Commission's DG Taxation and Customs Union ('DG TAXUD') and the U.S. CBP agreed on the Final Steps Towards the Implementation of Mutual Recognition Between the United States and the European Union, setting down the steps necessary and the timetable for completing mutual recognition.

- (10) A work programme was established in September 2010, and amended in September 2011, covering the process of joint validation and data exchange. A total of twenty seven joint validation visits in the EU and four joint validation visits in the U.S. were completed by 4 November 2011.
- (11) Mutual recognition of the EU and U.S. trade partnership programmes has been highlighted as a key cooperation project by the Transatlantic Economic Council; at its meeting of 29 November 2011, the Transatlantic Economic Council welcomed that the EU and the U.S. have completed the preparatory work on mutual recognition of their trade partnership programmes.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

- (1) Member States were consulted in the framework of the Working Party on Customs Union of the Council of the European Union.
- (2) There is no need for an impact assessment insofar as the decision of the EU-U.S. Joint Customs Cooperation Committee ('JCCC') implements the CMAA and does not modify its substance.

3. LEGAL ELEMENTS OF THE PROPOSAL

- (1) The Council is asked to adopt a Union position on a draft decision of the JCCC based on Article 207(4) first subparagraph, in conjunction with Article 218(9) of the Treaty on the Functioning of the European Union ('TFEU').
- (2) The legal basis for the draft decision of the JCCC is laid down in Article 22 (2) point (c) of the CMAA.
- (3) The proposal falls under the common commercial policy, exclusive competence of the Union. The subsidiarity principle therefore does not apply.

4. BUDGETARY IMPLICATION

- (1) The proposal has no direct implication for the Union budget.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4) first subparagraph, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Having consulted the European Data Protection Supervisor,

Whereas:

- (1) Article 6 of the Agreement between the European Community and the United States of America on customs cooperation and mutual assistance in customs matters ('CMAA') calls on the customs authorities to develop customs cooperation of the widest possible scope whereas Article 7 recalls the Contracting Parties' commitment to trade facilitation.
- (2) Mutual recognition of trade partnership programmes, namely the Authorised Economic Operator Programme of the European Union and the Customs-Trade Partnership Against Terrorism of the United States, enhances supply chain security and safety as well as facilitates international trade.
- (3) It is therefore appropriate to establish mutual recognition of the trade partnership programmes.
- (4) Mutual recognition is to be established by a decision of the Joint Customs Cooperation Committee ('JCCC') which was set up under Article 22 of the CMAA.
- (5) The Union should therefore take position in the JCCC as set out in the attached draft decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the Union within the Joint Customs Cooperation Committee, established by the Agreement between the European Community and the United States of

America on customs cooperation and mutual assistance in customs matters, with regard to the mutual recognition of the Authorised Economic Operator Programme of the European Union and the Customs-Trade Partnership Against Terrorism Program of the United States, is that set out in the attached draft decision of the Joint Customs Cooperation Committee.

Article 2

The decision of the Joint Customs Cooperation Committee shall be published in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council
The President*

ANNEX

Proposal for a

DECISION OF THE U.S.-EU JOINT CUSTOMS COOPERATION COMMITTEE

REGARDING MUTUAL RECOGNITION OF

THE CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM PROGRAM IN THE UNITED STATES AND THE AUTHORIZED ECONOMIC OPERATORS PROGRAMME OF THE EUROPEAN UNION

The U.S.-EU Joint Customs Cooperation Committee (hereinafter referred to as the “JCCC”),

Having regard for the Agreement between the European Community and the United States of America on Customs Cooperation and Mutual Assistance in Customs Matters of 28 May 1997 (hereinafter referred to as the “CMAA”), and in particular Article 22 (2) point (c) thereof;

Considering the Agreement between the European Community and the United States of America on intensifying and broadening the CMAA to include cooperation on container security and related matters concluded on 28 April 2004;

Considering the need to further develop transatlantic cooperation and secure trade, particularly in accordance with the World Customs Organisation 2011 Framework of Standards to Secure and Facilitate Global Trade (hereinafter referred to as the “SAFE Framework”), as it may be amended with the concurrence of the European Union and the United States;

Recognizing that the United States of America (hereinafter referred to as the “U.S.”) and the European Union (hereinafter referred to as the “EU”) consider that customs security and safety, and the facilitation of the international trade supply chain, can be significantly enhanced through mutual recognition of their respective Trade Partnership Programmes (hereinafter referred to as the “Trade Partnership Programmes”); the Customs-Trade Partnership against Terrorism (hereinafter referred to as the “C-TPAT”) and Authorised Economic Operator (hereinafter referred to as the “AEO”);

Affirming that the C-TPAT and AEO programmes operate within the context of the SAFE Framework;

Acknowledging that mutual recognition allows the U.S. and the EU to facilitate trade of operators who have invested in supply chain security and have been granted membership in either C-TPAT or AEO;

Recognizing that examination of the C-TPAT and AEO programmes revealed that their qualification standards for membership are compatible;

Affirming that this Decision does not constitute a precedent for any future agreements or arrangements between the U.S. and the EU, particularly with regard to the processing or use and transfer of personal data or information or data protection or privacy,

HAS DECIDED AS FOLLOWS:

Section I.

Mutual Recognition and Responsibility for Implementation

- (1) The Trade Partnership Programmes of the EU and the U.S. are mutually recognised to be compatible and members of each programme are treated in a manner consistent with Section III.
- (2) The customs authorities defined in Article 1 (b) of the CMAA (hereinafter referred to as “Customs Authorities”) are responsible for the implementation of this Decision.
- (3) The Trade Partnership Programmes concerned are:
 - (a) the European Union Authorised Economic Operator (security and safety or customs simplifications/security and safety)
(Regulation (EC) No 2913/92 and Regulation (EC) No 2454/93, as amended by Regulation (EC) No 648/2005 and Title IIA of Regulation (EC) No 1875/2006); and
 - (b) the U.S. Customs-Trade Partnership Against Terrorism (Tier two and Tier three levels) (Security and Accountability for Every ("SAFE") Ports Act of 2006).
- (4) This Decision, as it relates to compatibility, reflects the current structure and territorial application of the C-TPAT program and the AEO programme. This Decision does not take into consideration future modifications of each programme and expansion of their respective territorial application. The Customs Authorities understand that any such programme modifications or expansion of territorial application may necessitate the successful completion of additional joint validations to the satisfaction of both Customs Authorities.

Section II.

Compatibility

The Customs Authorities cooperate to maintain compatibility of the standards applied to each programme with respect to the following matters:

- (a) application process for granting membership to operators;
- (b) assessment of applications; and
- (c) granting of membership and monitoring of membership status.

The Customs Authorities have completed a work programme setting out a process of joint validations.

Section III.

Treatment of Members

- (1) Each Customs Authority treats operators holding a membership status under the other Customs Authority's Programme in a manner comparable to the way it treats members in its own Trade Partnership Programme, to the extent practicable and possible and consistent with applicable law and policy. This treatment includes, in particular, taking favourably into account in its risk assessment, for the purpose of the conduct of inspections or controls, the respective membership status of an operator authorised by the other Customs Authority in order to facilitate EU-U.S. trade and encourage the adoption of effective security-related measures.
- (2) Each Customs Authority may suspend treatment consistent with Section III (1) to members of the other Customs Authority's Programme under this Decision. Such suspension of treatment by one Customs Authority is to be promptly communicated to the other Customs Authority providing any additional information regarding the basis for suspension as appropriate.
- (3) Each Customs Authority promptly informs the other Customs Authority in case it identifies any irregularity committed by a member authorised by the other Customs Authority to allow it to take an informed decision on the possible revocation or suspension of the membership of the operator concerned.

Section IV.

Exchange of Information and Communication

- (1) The Customs Authorities enhance communication in order to implement this Decision effectively. They exchange information and foster communication on their Trade Partnership Programmes in particular by:
 - (a) providing updates on operation and development of their programmes in a timely manner;
 - (b) engaging in mutually beneficial exchanges of information regarding supply chain security; and
 - (c) facilitating effective inter-agency communication between the European Commission Directorate-General for Taxation and Customs Union and U.S. Customs and Border Protection to enhance risk management practices with respect to supply chain security on the part of the members of the Trade Partnership Programmes.
- (2) Exchanges of information are to be conducted in electronic format and in accordance with the CMAA, in particular Article 17 thereof.
- (3) Data to be exchanged regarding members of the Trade Partnership Programmes, where such exchanges are otherwise authorised, include:
 - (a) name;

- (b) address;
 - (c) status of membership;
 - (d) validation or authorisation date;
 - (e) suspensions and revocations;
 - (f) the unique authorization or identification number (in a form mutually determined by the Customs Authorities); and
 - (g) details that may be mutually determined between the Customs Authorities, subject, where applicable, to any necessary safeguards.
- (4) The exchange of data is expected to commence when the Customs Authorities implement mutual recognition of membership status as described in paragraph 1 of Section III of this Decision.

Section V.

Treatment of Data

- (1) Consistent with the CMAA, in particular Article 17, the data obtained by the receiving Customs Authority under this Decision are to be used and processed for the purposes of implementing this Decision.
- (2) The Customs Authorities strive to ensure that the information exchanged is accurate and regularly updated, and that appropriate deletion procedures are in place. In the event a Customs Authority determines that information provided under this Decision should be amended, the Customs Authority providing this information is to promptly advise the receiving Customs Authority of such amendments. Once notified of such amendments, the receiving Customs Authority is to promptly record such amendment. Information may not be processed and kept longer than necessary for the purpose for which it is transferred.
- (3) In the event information with personal data is exchanged pursuant to Section IV (3) a) to g), the Customs Authorities also take appropriate measures to ensure data protection, security, confidentiality and integrity. The Customs Authorities ensure in particular that:
 - security safeguards are in place (including electronic safeguards) which control, on a need-to-know basis, access to such information obtained from the other Customs Authority under this Decision and that it is used only for the purposes of this Decision.
 - such information obtained from the other Customs Authority under this Decision is protected from unauthorized access, dissemination, and alteration, deletion or destruction, except to the extent appropriate to implement the provisions of paragraph 2) above.
 - information obtained from the other Customs Authority under this Decision is not transmitted to any other country or international body without the prior

consent of the Customs Authority that has provided this information and only in accordance with the conditions specified by the latter.

- any such information may be used within the Contracting Parties to the CMAA to protect public security interests and supply chain security relevant to this Decision, and for customs, import/export safety and trade facilitation and enforcement, provided it is subject to safeguards equivalent or comparable to those set forth in this section.
 - such information obtained from the other Customs Authority under this Decision is stored at all times in secure electronic and/or paper storage systems. Logs or documentation are kept on all access, as well as processing and use of such information obtained from the other Customs Authority.
- (4) With respect to any personal data which may be exchanged pursuant to Section IV (3) a) to g), a programme member may request access to and/or amendment of such data relating to him or her that are processed by a Customs Authority. Each Customs Authority is to advise its programme members to make requests for access and/or amendment in the first instance via their own Trade Partnership Programme. Where appropriate, and in accordance with its domestic legislation, the Customs Authority is to correct any such inaccurate or incomplete data. Each Customs Authority also informs programme members of the options for seeking administrative and/or judicial redress.
- (5) At the request of the supplying Customs Authority, the receiving Customs Authority is to update, correct, block, or delete information received under this Decision that is inaccurate or incomplete or if its collection or further processing contravenes this Decision or the CMAA. Each Customs Authority is to notify the other if it becomes aware that material information it has transmitted to the other Customs Authority or received from the other Customs Authority under this Decision is inaccurate or unreliable or is subject to significant doubt. Where a Customs Authority determines that information it has received from the other Customs Authority under this Decision is inaccurate, it is to take all measures it deems appropriate to safeguard against erroneous reliance on such information, including supplementation, deletion, or correction of such information.
- (6) Compliance with provisions in this Section by each Customs Authority is subject to the independent oversight and review by their respective relevant authority (for the U.S. side, the Department of Homeland Security's Chief Privacy Officer; for the EU, the European Data Protection Supervisor and the EU Member States data protection authorities). These authorities have effective powers of oversight, investigation, intervention and review, and have power to refer violations of law for prosecution or disciplinary action, where appropriate. They ensure that complaints relating to non-compliance are received, investigated, responded to, and appropriately redressed.

Section VI.

Review

The JCCC reviews the implementation of this Decision regularly. The review includes, in particular:

- (a) joint validations to identify strengths and weaknesses in implementing this Decision;
- (b) exchanges of views on data to be shared and treatment of operators, consistent with this Decision; and
- (c) exchanges of views on security provisions such as procedures to be followed during and after a serious security incident or when conditions merit suspension of mutual recognition.

Section VII.

General Acknowledgements

- (1) This Decision aims to implement provisions of the CMAA and of the Agreement between the European Community and the United States of America on intensifying and broadening the CMAA to include cooperation on container security and related matters of 28 April 2004.
- (2) This Decision is to be implemented consistent with the respective applicable laws, regulations, and international agreements to which the EU or the U.S. is a party.
- (3) This Decision does not create or confer any rights, privileges, or benefits upon any third party, person, or entity, private or public.
- (4) Each Customs Authority is to be responsible for its own costs resulting from the implementation of this Decision.

Section VIII.

Commencement, Suspension and Discontinuation

- (1) The cooperation under this Decision commences upon signature by the JCCC Chairpersons.
- (2) Implementation of Mutual Recognition between the U.S. and EU takes place consistent with Section III, paragraph 1. Either Customs Authority may suspend or discontinue cooperation under this Decision at any time, but should provide at least thirty (30) days written notice thereof. Such notice is provided to or by U.S. Customs and Border Protection and the European Commission Directorate-General for Taxation and Customs Union, respectively.

Signed at,

For the EU-US Joint Customs Cooperation Committee

(The two chairpersons)