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2010/0037 (NLE)

Proposal for a

COUNCIL DECISION

**on a Union position within the EU-Japan Joint Customs Cooperation Committee
concerning the mutual recognition of Authorised Economic Operator programmes in
the European Union and in Japan**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- (1) EU-Japan relations in the area of customs are based on the Agreement on Co-operation and Mutual Administrative Assistance in Customs Matters (CCMAAA)¹ that entered into force on 1 February 2008.
- (2) According to the CCMAAA, customs co-operation covers all matters relating to the application of customs legislation. The CCMAAA also calls for the Union and Japan to make co-operative efforts in order to develop trade facilitation actions in the field of customs in accordance with international standards².
- (3) Mutual recognition of Authorised Economic Operator (AEO) programmes and security measures both enhances end-to-end supply chain security, and facilitates trade. It consolidates internationally the approach agreed in the WCO SAFE Framework of Standards. It also addresses the concern of the business community in Europe and around the world to avoid proliferation of requirements and to standardise customs security procedures.
- (4) At the first meeting of the Joint Customs Cooperation Committee (JCCC), established by the CCMAAA, on 11 February 2008, the EU and Japan confirmed that such mutual recognition between the EU and Japan is a priority.
- (5) The second meeting of the JCCC, on 17 September 2009, confirmed that the AEO legislations in the EU and in Japan are equivalent and are implemented in a compatible manner. Agreement was also found on the initial benefits that can be provided via mutual recognition. Thus the JCCC invited the European Commission and Customs and Tariff Bureau of Japan to develop by early 2010 a proposal for a JCCC Decision which achieves this mutual recognition and provides equivalent benefits to each other's operators.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- (1) Member States were consulted in the framework of the EU-Japan Joint Customs Cooperation Committee, and the Customs Union Group (Legislation and Policy) of the Council of the European Union.
- (2) There is no need for an impact assessment insofar as the Decision implements the CCMAAA and does not modify its substance.

¹ OJ L 62 of 6 March 2008, page 24

² Article 4 of CCMAAA.

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.
- (2) The legal basis for the draft decision of the JCCC is laid down in Article 21 (2) (b) of the CCMAAA.
- (3) The proposal falls under the common commercial policy, exclusive competence of the Union. The subsidiarity principle therefore does not apply.

4. BUDGETARY IMPLICATION

The proposal has no direct implication for the Union budget.

5. DATA PROTECTION

- (1) The Japanese data protection regime is adequate in the sense of Article 9 of Regulation 45/2001/EC. This regime is spelt out in the Japanese Customs Law (article 108-2), in the Law for International Assistance in Investigation and other related matters (articles 1 and 3), the National Public Service Law (article 100), the Act on the Protection of Personal Information Held by Administrative Organs (article 8) and the Act on Access to Information Held by Administrative Organs (article 5).
- (2) The provisions in Section IV (5) and (6) of the draft JCCC decision serve to ensure undertakings to protect personal data by the receiving customs administration and to introduce a purpose-restriction.
- (3) Therefore processing personal data in exchanging information with Japan on AEOs under Section IV of the draft JCCC decision is in line with the basic principles in the sense of Article 25 of Directive 95/46/EC, according to which data must be fairly and lawfully processed; processed for limited and explicit purposes; adequate, relevant and not excessive; accurate; not kept longer than necessary; processed in accordance with the data subject's rights; secure; and not transferred to third parties without adequate precautions.

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**on a Union position within the EU-Japan Joint Customs Cooperation Committee
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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,

Whereas:

- (1) Article 4(3) of the Agreement on Co-operation and Mutual Administrative Assistance in Customs Matters between the European Community and Japan (CCMAAA)³ calls for developing customs co-operation in order to facilitate trade.
- (2) Mutual recognition of Authorised Economic Operator (AEO) programmes enhances end-to-end supply chain security and helps to increase international trade flows.
- (3) It is therefore appropriate, for the implementation of the Agreement and with a view to facilitating the work of economic operators and customs administrations, to establish this mutual recognition.
- (4) This mutual recognition is to be established by a decision of the Joint Customs Cooperation Committee (JCCC) established by the CCMAAA.
- (5) The Union should therefore take position in the Joint Customs Cooperation Committee 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 Government of Japan on cooperation and mutual administrative assistance in customs matters, with regard to the mutual recognition of Authorised Economic Operators programmes in the European Union and in Japan is that set out in the attached draft decision of the Joint Customs Cooperation Committee.

³ OJ L 62 of 6 March 2008, page 24.

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 JOINT CUSTOMS CO-OPERATION COMMITTEE

No..../2009

REGARDING MUTUAL RECOGNITION OF AUTHORISED ECONOMIC OPERATORS PROGRAMMES IN THE EUROPEAN UNION AND IN JAPAN

THE JOINT CUSTOMS CO-OPERATION COMMITTEE (hereinafter referred to as ‘the JCCC’),

Having regard to the Agreement between the European Community and the Government of Japan on Co-operation and Mutual Administrative Assistance in Customs Matters, signed on 30 January 2008 (hereinafter referred to as ‘the CCMAAA’), and in particular Article 21 thereof;

Considering that a joint evaluation has confirmed that Authorised Economic Operators (hereinafter referred to as ‘AEO’) programmes in the European Union (hereinafter referred to as ‘the Union’) and in Japan are security and compliance initiatives and has revealed that their qualification standards for membership are compatible and lead to equivalent results;

Considering that the programmes apply internationally recognised security standards advocated by the SAFE Framework of Standards adopted by the World Customs Organization (hereinafter referred to as ‘the SAFE Framework’);

Acknowledging the special nature of the legislation and management of each programme;

Considering that, in accordance with the CCMAAA, the Union and Japan are to develop customs co-operation to facilitate trade and that customs security and safety, and facilitation of the international trade supply chain, can be significantly enhanced by mutual recognition of their AEO programmes; and

Considering that mutual recognition allows the Union and Japan to provide facilitative benefits to operators who have invested in supply chain security and have been certified by their AEO programmes,

HAS DECIDED AS FOLLOWS:

I

Mutual Recognition and Responsibility for Implementation

- (1) The AEO programmes of the Union and Japan are hereby mutually recognised to be compatible and equivalent and the corresponding AEO statuses granted are mutually accepted.
- (2) The customs authorities defined in Article 1(c) of the CCMAAA (hereinafter referred to as ‘customs authorities’) are responsible for implementation of this Decision.

(3) The AEO programmes concerned are:

(a) the European Union Authorised Economic Operator programme (covering the ‘security and safety’ AEO certificate and the ‘customs simplifications, security and safety’ AEO certificates)

(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 Japanese Authorised Economic Operators programme (Customs Law).

II

Compatibility

(1) The customs authorities maintain the consistency between the programmes and ensure that standards applied to each programme remain compatible with respect to the following matters:

(a) application process for granting AEO status;

(b) assessment of applications; and

(c) granting and monitoring AEO status.

(2) The customs authorities ensure that the programmes operate within the SAFE Framework.

III

Benefits

(1) Each customs authority provides comparable benefits to economic operators holding AEO status under the other customs authority’s programme.

These include, in particular:

(a) taking the AEO status of an operator authorised by the other customs authority into account favourably in its risk assessment to reduce inspections or controls and in other security-related measures; and

(b) endeavouring to establish a joint business continuity mechanism to respond to disruptions in trade flows due to increases in security alert levels, border closures and/or natural disasters, hazardous emergencies or other major incidents, where priority cargos shipped by AEOs could be facilitated and expedited to the extent possible by the Customs Authorities.

(2) Each customs authority may also provide further benefits with a view to facilitating trade following the review process referred to in paragraph 2 of Part V of this Decision.

(3) Each customs authority retains the authority to suspend the benefits provided to members of the other customs authority’s programme under this Decision. Such suspension of benefits by one customs authority is promptly communicated and reasoned to the other customs authority for consultation.

(4) Each customs authority reports irregularities involving economic operators holding AEO status under the other customs authority's programme to the other customs authority in order to ensure immediate analysis of the appropriateness of the benefits and status granted by the other customs authority.

IV

Information Exchange and Communication

(1) The customs authorities enhance communication in order to implement this Decision effectively. They exchange information and foster communication on their 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) ensuring effective inter-agency communication between the European Commission Directorate-General for Taxation and Customs Union and the International Intelligence Office of the Customs Administration of Japan to enhance risk management practices with respect to supply chain security on the part of the members of the programmes.

(2) Exchanges of information are conducted in accordance with the CCMAAA in electronic format.

(3) Information and related data, notably on members of the programmes, are exchanged in a systematic manner by electronic means.

(4) Details to be exchanged on economic operators authorised by the AEO programmes include:

- (a) the name of the economic operator holding AEO status;
- (b) the address of the economic operator concerned;
- (c) the status of the economic operator concerned;
- (d) the validation or authorisation date;
- (e) suspensions and revocations;
- (f) the unique authorisation number (e.g. EORI or AEO numbers); and
- (g) other details that may be established between the customs authorities.

(5) The customs authorities guarantee data protection in accordance with the CCMAAA, in particular Article 16 thereof.

(6) The data exchanged are used strictly for the purposes of implementing this Decision.

V

Consultation and Review

- (1) All issues related to implementation of this Decision are to be settled by consultations between the customs authorities in the framework of the JCCC.
- (2) The JCCC reviews implementation of this Decision regularly. This review process may include, in particular:
 - (a) joint verifications to identify strengths and weaknesses in implementing mutual recognition;
 - (b) exchanges of views on details to be exchanged and benefits, including any future benefit, to be granted to operators in accordance with paragraph 2 of Part III of this Decision;
 - (c) exchanges of views on security provisions such as protocols to be followed during and after a serious security incident (business resumption) or when conditions merit suspension of mutual recognition;
 - (d) reviews of conditions for suspension of the benefits referred to in paragraph 3 of Part III of this Decision; and
 - (e) comprehensive reviews of this Decision.
- (3) This Decision may be modified by a decision of the JCCC.

VI

General Acknowledgments

- (1) This Decision implements the existing provisions of the CCMAAA and does not constitute a new international agreement.
- (2) All activities of each customs authority pursuant to this Decision are carried out in accordance with the respective laws and regulations of the Union and Japan and the applicable international agreements to which they are a party.
- (3) The contents of this Decision are without prejudice to customs authorities granting assistance to each other.

VII

Commencement, Suspension and Termination

- (1) The co-operation under this Decision commences on
- (2) Either customs authority may suspend co-operation under this Decision at any time but provides at least thirty (30) days written notice thereof.
- (3) The co-operation under this Decision may be terminated by a decision of the JCCC.

For the EU-Japan Joint Customs Co-operation Committee

(The two chairpersons)