



EUROPEAN COMMISSION

Brussels, 28.3.2012
COM(2012) 143 final

2012/0072 (NLE)

Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, of the Agreement between the European Union and Canada on customs cooperation with respect to matters related to supply chain security

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The customs relations between the EU and Canada are based on the Agreement on customs cooperation and mutual assistance in customs matters¹ (CMAA) that entered into force on 1 January 1998.

In December 2005, the Canada Border Services Agency (CBSA) signalled its interest to move forward with closer cooperation between the EU and Canada on supply chain security. Following a series of exchanges of views, an agreement was found between the Commission and the CBSA on the possible scope of the new agreement expanding the EU-Canada customs cooperation.

On 26 November 2009, the Council adopted a decision authorising the Commission to open negotiations with Canada. The negotiations were launched in May 2011.

The negotiations have resulted in the draft Agreement between the European Union and Canada on customs cooperation with respect to matters related to supply chain security (the draft Agreement) which builds on and expands the CMAA. The draft Agreement will establish a legal basis for EU-Canada customs cooperation on matters of supply chain security and risk management, including reinforcing the customs related aspects for securing the logistics chain of international trade while at the same time facilitating legitimate trade; establishing minimum standards, to the extent practicable, for risk management techniques and related requirements and programmes; working towards and, where appropriate, establishing mutual recognition of risk management techniques, risk standards, security controls, container security and trade partnership programmes including equivalent trade facilitation measures; exchanging information for supply chain security and risk management subject to the confidentiality of information and personal data protection requirements set out in Article 16 of the CMAA and in the relevant legislation of the Contracting Parties; establishing contact points for this purpose; introducing, where appropriate, an interface for data exchange, including for pre-arrival or pre-departure data; developing a strategy that allows the customs authorities to partner cooperatively in the area of cargo inspection; collaborating, to the extent practicable, in any multilateral fora where issues related to supply chain security may be appropriately raised and discussed.

The draft Agreement constitutes an expansion of the CMAA in line with Article 23 of the CMAA, which sets down that the Contracting Parties may expand the CMAA with a view to increasing the levels of customs cooperation and supplementing them by means of agreements on specific sectors or matters. The CMAA will remain the overall umbrella for customs cooperation between the Contracting Parties and the institutional set-up of the CMAA is proposed to be extended also to cover the draft Agreement. In practice, the EU-Canada Joint Customs Cooperation Committee (JCCC), established under Article 20 of the CMAA, will administer both agreements and will be empowered to adopt the necessary implementing decisions in accordance

¹ OJ L 7 of 13.01.98, p. 38

with the respective domestic legislation of the Contracting Parties², e.g. on mutual recognition of risk management techniques, risk standards, security controls and trade partnership programmes.

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

Member States were consulted in the framework of the Council Working Party on Customs Union.

There is no need for an impact assessment.

3. LEGAL ELEMENTS OF THE PROPOSAL

The Council is asked to adopt a decision authorising the signing of the draft Agreement based on Article 207(4) first subparagraph, in conjuncture with Article 218(5) of the Treaty on the Functioning of the European Union.

The proposal falls under the common commercial policy, exclusive competence of the Union. The subsidiarity principle therefore does not apply.

4. BUDGETARY IMPLICATIONS

The proposal has no budgetary implications for the Union budget.

5. OTHER

The draft Agreement is consistent with the objectives and actions identified by the Commission for the implementation of the EU Internal Security Strategy.³

A proposal for a Council decision on the conclusion of the draft Agreement is submitted in parallel to this proposal for a Council decision on the signing, on behalf of the Union, of the draft Agreement.

² The EU position for legally binding JCCC decisions is established by the Council acting on a proposal from the Commission.

³ See in particular Objective 4, Action 3 (Common risk management for movement of goods across external borders) of the Communication from the Commission to the European Parliament and the Council – The EU Internal Security Strategy in Action: Five steps towards a more secure Europe; COM(2010)673 final.

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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(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The European Union and Canada should expand their customs cooperation to cover matters of supply chain security and related risk management with a view to increasing end-to-end supply chain security and at the same time facilitating legitimate trade.
- (2) For this purpose, on 26 November 2009 the Council authorised the Commission to open negotiations with Canada. The Commission has negotiated, on behalf of the Union, an Agreement on customs cooperation on matters of supply chain security and related risk management.
- (3) The Agreement should be signed on behalf of the Union, subject to its conclusion at a later date,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Agreement between the European Union and Canada on customs cooperation with respect to matters related to supply chain security is hereby approved on behalf of the Union, subject to the conclusion of the said Agreement.

The text of the Agreement to be signed is attached to this Decision.

Article 2

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the negotiator of the Agreement.

Article 3

This Decision shall enter into force on [...].

Done at Brussels,

*For the Council
The President*

ANNEX

DRAFT

Agreement between the European Union and Canada on customs cooperation with respect to matters related to supply-chain security

THE EUROPEAN UNION and CANADA, ("the Contracting Parties"),

Recognizing the need to increase end-to-end supply chain security for Canada and the European Union and at the same time facilitate legitimate trade;

Acknowledging the long-standing, close and productive relations between the Customs Authorities of Canada and of the European Union;

Recognizing that these relations can be improved by closer cooperation on container security and other matters related to supply-chain security based, to the greatest extent practicable, on mutual recognition of risk management techniques, risk standards, security controls and trade partnership programmes;

Aiming to provide a framework to explore future cooperative means to enhance supply chain security practices that would increase customs related efficiencies to ensure end-to-end supply chain security and to facilitate legitimate trade for the benefit of their respective trade communities;

Aiming to develop a strategy that allows Canada and the European Union to cooperate in the area of cargo inspection;

Building upon the core elements of the World Customs Organization's SAFE Framework of Standards to Secure and Facilitate Global Trade;

Referring to the Agreement between Canada and the European Community on Customs Cooperation and Mutual Assistance in Customs Matters, which entered into force on 01 January 1998 ("the CMAA"), and desiring to expand the scope of that Agreement by means of an agreement on a specific matter, in accordance with Article 23 of the CMAA;

Acknowledging that a Joint Customs Cooperation Committee (JCCC) was established under Article 20 of the CMAA to see to the proper functioning of the CMAA and, inter alia, take the measures necessary for customs cooperation in accordance with the objectives of the CMAA and for the expansion of the CMAA with a view to increasing the level of customs cooperation and supplementing it on specific sectors or matters;

HAVE AGREED ON THE FOLLOWING:

Article 1

For the purpose of this Agreement, "Customs Authority" means:

- in the European Union: the competent services of the European Commission and the customs authorities of the Member States of the European Union;
- in Canada: the governmental administration designated by Canada as responsible for administering its customs laws.

Article 2

The Contracting Parties shall cooperate on matters of supply-chain security and related risk management.

Article 3

The Contracting Parties shall manage this cooperation through their respective Customs Authorities.

Article 4

The Contracting Parties shall cooperate by:

- (a) reinforcing the customs-related aspects of securing the logistics chain of international trade while at the same time facilitating legitimate trade;
- (b) establishing minimum standards, to the extent practicable, for risk management techniques and related requirements and programmes;
- (c) working towards and, where appropriate, establishing mutual recognition of risk management techniques, risk standards, security controls, container security and trade partnership programmes including equivalent trade facilitation measures;
- (d) exchanging information for supply-chain security and risk management; any exchange of information under this Agreement shall be subject to the confidentiality of information and personal data protection requirements set out in Article 16 of the CMAA as well as any confidentiality and privacy requirements set out in the legislation of the Contracting Parties;
- (e) establishing contact points for exchanging information for supply-chain security;
- (f) introducing, where appropriate, an interface for data exchange, including for pre-arrival or pre-departure data;
- (g) developing a strategy that allows the customs authorities to cooperate in the area of cargo inspection;
- (h) collaborating, to the extent practicable, in any multilateral fora where issues related to supply chain security may be appropriately raised and discussed.

Article 5

The JCCC, established under Article 20 of the CMAA, shall see to the proper functioning of this Agreement and shall examine all issues arising from its application. It shall be empowered to adopt decisions to implement this Agreement in accordance with the respective domestic legislation of the Contracting Parties, on aspects, such as data transmission and mutually agreed benefits, of: mutual recognition of risk management techniques, risk standards, security controls and trade partnership programmes.

Article 6

The JCCC shall set up the appropriate working mechanisms, including working groups, to support its work to implement this Agreement and to address in particular the following aspects:

- a) identifying any regulatory or legislative changes required to implement this Agreement;
- b) identifying and establishing measures to enhance information exchange mechanisms;
- c) identifying and establishing best practices, including best practices for the harmonisation of advance electronic cargo information requirements with international standards on inbound, outbound and transit shipments;
- d) defining and establishing risk analysis standards for the information required to identify high-risk shipments imported into, transhipped through, or transiting Canada and the European Union;
- e) defining and establishing measures to harmonize risk assessment standards;
- f) defining minimum control standards and methods by which those standards may be met;
- g) improving and establishing standards for trade partnership programmes designed to improve supply-chain security and facilitate the movement of legitimate trade;
- h) defining and carrying out concrete steps to establish mutual recognition of risk management techniques, risk standards, security controls and trade partnership programmes including equivalent trade facilitation measures.

Article 7

1. If difficulties or disputes arise between the Contracting Parties regarding the implementation of this Agreement, the Customs Authorities of the Contracting Parties shall endeavour to resolve the matter through consultation and discussion.

2. The Contracting Parties may also consent to other forms of dispute resolution.

Article 8

1. This Agreement may be amended by agreement in writing of the Contracting Parties.

2. An amendment shall enter into force 90 days after the date on which the second notification is sent, through an exchange of notes through diplomatic channels, indicating that the Contracting Parties have completed their respective internal procedures required for its entry into force.

Article 9

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 to bring the Agreement into force.

Article 10

1. This Agreement shall remain in force for an unlimited period of time.
2. Either Contracting Party may terminate this Agreement by serving a notice of termination through diplomatic channels on the other Contracting Party.
3. This termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Contracting Party.
4. If this Agreement is terminated, any decisions of the JCCC will remain in effect, unless the Contracting Parties decide otherwise.

In Witness whereof, the undersigned, being duly authorized, have signed this Agreement.

Done at , in two original copies, this day of 201 , in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish and Swedish languages, each version being equally authentic.

FOR THE EUROPEAN UNION FOR CANADA