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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 26 February 2014

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

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Subject: Annex to the Proposal for a Council Decision on the position to be adopted, on
behalf of the European Union, in the EU-China Joint Customs Cooperation
Committee regarding mutual recognition of the Authorised Economic Operator
Programme in the European Union and the Measures on Classified
Management of Enterprises Program in the People's Republic of China

Delegations will find attached Commission document COM(2014) 106 final - ANNEX I.

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Brussels, 26.2.2014
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ANNEX 1

ANNEX

to the

Proposal for a Council Decision

**on the position to be adopted, on behalf of the European Union, in the EU-China Joint
Customs Cooperation Committee regarding mutual recognition of the Authorised
Economic Operator Programme in the European Union and the Measures on Classified
Management of Enterprises Program in the People's Republic of China**

ANNEX

DRAFT

DECISION OF THE JOINT CUSTOMS CO-OPERATION COMMITTEE

**ESTABLISHED UNDER THE AGREEMENT BETWEEN THE EUROPEAN
COMMUNITY AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF
CHINA ON CO-OPERATION AND MUTUAL ADMINISTRATIVE ASSISTANCE IN
CUSTOMS MATTERS**

**REGARDING MUTUAL RECOGNITION OF THE AUTHORISED ECONOMIC
OPERATOR PROGRAMME IN THE EUROPEAN UNION AND THE MEASURES
ON CLASSIFIED MANAGEMENT OF ENTERPRISES PROGRAM IN CHINA**

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 the People's Republic of China on Co-operation and Mutual Administrative Assistance in Customs Matters, signed on 8 December 2004 (hereinafter referred to as 'the CCMAAA'), and in particular Articles 21(2)(c) thereof;

Recognising that the European Union (hereinafter referred to as 'the Union') and the People's Republic of China (hereinafter referred to as 'China') are committed to strengthening their customs cooperation in accordance with the Strategic Framework for EU-China Customs Cooperation.

Affirming the commitment of the Union and China to facilitate trade and to simplify requirements and formalities in respect of the rapid release and clearance of goods.

Affirming that security and safety, and the facilitation of the international trade supply chain, can be significantly enhanced through mutual recognition of their respective Authorised Economic Operators (hereinafter referred to as 'AEO') programmes.

Affirming that the programmes are based on internationally recognised security standards advocated by the SAFE Framework of Standards adopted by the World Customs Organization (hereinafter referred to as 'the SAFE Framework').

Considering that the AEO programme in the Union and the Measures on Classified Management of Enterprises Program in China, hereinafter referred to as Programmes, are security and compliance initiatives and that a joint evaluation has revealed that their qualification standards for security and safety purposes are compatible and lead to equivalent results.

Considering that mutual recognition allows the Union and China to provide facilitative benefits to economic operators who have invested in compliance and supply chain security and have been certified under their respective Programmes.

Considering the need to adopt, for this purpose, practical arrangements pursuant to Article 17(5) of the CCMAAA.

HAS DECIDED AS FOLLOWS:

Article 1

Scope

(1) The Programmes concerned shall be:

(a) the Union Authorised Economic Operator programme (herein after referred to as AEO programme), covering the ‘security and safety’ AEO certificate, and the ‘customs simplifications, security and safety’ AEO certificate (Regulation (EC) No 2913/92 and Regulation (EC) No 2454/93, as amended by Regulation (EC) No 648/2005 and Regulation (EC) No 1875/2006); and

(b) the Measures of the General Administration of Customs of the People’s Republic of China on classified management of enterprises Decree (GACC) No.170, as amended by Decree (GACC) No.197, (hereinafter referred to as MCME programme) covering Class AA enterprises.

(2) Economic operators holding AEO status in the Union as described in Article 1(1)(a) and Enterprises holding class AA status under the MCME in China as described in Article 1(1)(b) shall hereinafter be referred to as “Programme Members”.

Article 2

Mutual Recognition and Responsibility for Implementation

(1) The Programmes of the Union and China shall hereby be mutually recognised to be compatible and equivalent. The corresponding Programme Member statuses granted shall be mutually accepted.

(2) The Customs Authorities defined in Article 1(b) of the CCMAAA (hereinafter referred to as ‘Customs Authorities’) shall be responsible for implementation of this Decision. They shall take measures to implement this Decision.

Article 3

Compatibility

(1) The Customs Authorities shall maintain the consistency between the Programmes. The standards applied to the Programmes shall remain compatible with respect to the following matters:

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

(2) The Customs Authorities shall ensure that the Programmes operate within the context of the SAFE Framework.

Article 4

Benefits

(1) Each Customs Authority shall provide comparable benefits to Programme Members under the other Customs Authority’s Programme.

The benefits shall include, in particular:

- (a) taking the status of a Programme Member authorised by the other Customs Authority into account favourably in its risk assessment to reduce inspections or controls and in other security and safety-related measures;
- (b) taking the status of a Programme Member authorised by the other Customs Authority into account with a view to treating the Programme Member as secure and safe partner when assessing the business partners requirements for applicants under its own Programme;

(c) taking the status of a Programme Member authorised by the other Customs Authority into account in ensuring priority treatment, expedited processing, simplified formalities and expedited release of the shipments where the Programme Member is involved;

(d) 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 related to Programme Members could be facilitated and expedited to the extent possible by the Customs Authorities.

(2) Following the review process referred to in Article 7(2) of this Decision, each Customs Authority may provide further facilitation benefits, including streamlining processes and increasing the predictability of cargo release, to the extent possible, in cooperation with other government authorities.

(3) Each Customs Authority shall retain 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 shall promptly be communicated and reasoned to the other Customs Authority for consultation and proper assessment.

(4) Each Customs Authority shall report irregularities involving Members of 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.

Article 5

Information Exchange and Communication

(1) The Customs Authorities shall enhance their communication in order to implement this Decision effectively. They shall exchange information and foster communication on their programmes by:

(a) providing each other with the details on their Programme Members;

(b) providing updates on operation and development of their Programmes in a timely manner;

(c) exchanging information regarding supply chain security policy and trends;

(d) ensuring effective inter-agency communication between the European Commission Directorate-General for Taxation and Customs Union and the General Administration of Customs of the People's Republic of China to enhance risk management practices with respect to supply chain security on the part of the members of the programmes.

(2) Article 17 CCMAAA shall apply for any exchange of information pursuant to this Decision.

(3) Information and related data shall be exchanged in a systematic manner by electronic means.

(4) Details to be exchanged on their Programme Members shall be limited to:

(a) the name of the Programme Member;

(b) the address of the Programme Member concerned;

(c) the status of the Programme Member 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 mutually determined between the Customs Authorities, subject, where applicable, to any necessary safeguards.

Article 6

Treatment of Data

(1) Any information, including any personal data, exchanged pursuant to this Decision shall be obtained, used and processed only by the Customs Authorities and for the sole purpose of implementing this Decision.

(2) Any information communicated in whatsoever form pursuant to this Decision shall be of a confidential or restricted nature, depending on the rules applicable in each of the Parties and shall be covered by the obligation of official secrecy.

(3) The Customs Authorities shall 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 shall promptly notify the receiving Customs Authority of such amendments. Once notified of such amendments, the receiving Customs Authority shall promptly record such amendment. Information may not be processed and kept longer than necessary for the purpose of implementing this Decision.

(4) In the event information with personal data is exchanged according to Article 4 and 5 of this Decision, the Customs Authorities shall also take appropriate measures to ensure data protection, security, confidentiality and integrity. The Customs Authorities shall ensure in particular that:

- security safeguards are in place (including electronic safeguards) which control, on a need-to-know basis, access to information obtained from the other Customs Authority under this Decision and that it is used only for the purposes of this Decision;
- information obtained from the other Customs Authority under this Decision is protected from unauthorized access, dissemination, alteration, deletion or destruction, except to the extent appropriate to implement the provisions of paragraph (3) above;
- information obtained from the other Customs Authorities under this Decision is not transmitted to any other party, to any third country or international body or to any other public authority of the receiving Party without the prior written consent of the Customs Authority which provided the information. Any information transmitted with prior written consent will be used in accordance with the conditions specified in this Decision and subject to any restrictions laid down by the Authority which provided the information.
- 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 information obtained from the other Customs Authority.

(5) With respect to any personal data which may be exchanged pursuant to this Decision, a Programme Member may request access to, rectification, blocking or erasure of any such data relating to him or her that are processed by a Customs Authority. Each Customs Authority shall advise its programme members as to how to request access, rectification, blocking or erasure in the first instance. The requested Customs Authority shall correct any inaccurate or incomplete data.

(6) With respect to any personal data which may be exchanged pursuant to this Decision, Programme Members shall have the right to effective administrative and judicial redress regardless of their nationality and country of residence. In this context, each Customs Authority shall also inform Programme Members of the options for seeking administrative and judicial redress.

(7) At the request of the supplying Customs Authority, the receiving Customs Authority shall update, correct, block, or erase information received under this Decision that is inaccurate or incomplete or if its collection or further processing contravenes this Decision or the CCMAAA.

(8) Each Customs Authority shall notify the other Customs Authority 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 shall take all measures it deems appropriate to safeguard against erroneous reliance on such information, including supplementation, erasure, or correction of such information.

(9) Compliance with the provisions in this Article by each Customs Authority shall be subject to oversight and review by their respective relevant authority (for the Union the European Data Protection Supervisor and the Union Member States data protection authorities; for China the General Administration of China Customs). These authorities shall have effective powers of oversight, investigation, intervention and review and have power to refer violations of law for legal action, where appropriate. They shall ensure that complaints relating to non-compliance are received, investigated, responded to, and appropriately redressed.

(10) The JCCC shall review the processing of personal data under this Decision. Such review shall take place at the request of either Customs Authority, at least every two years. Each Customs Authority shall provide the necessary information on measures taken to ensure compliance and provide access to relevant documentation, system and personnel and stop any processing that appear to be in breach of this Decision.

Article 7

Consultation and Review

(1) All issues related to implementation of this Decision shall be settled by consultations between the Customs Authorities in the framework of the JCCC.

(2) The JCCC shall review the 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 Article 4(2) 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) examination of the suspension of the benefits referred to in Article 4(3) of this Decision;

(e) review of the implementation of Article 6 of this Decision.

Article 8

Effect and Suspension

(1) The co-operation under this Decision shall take effect on upon signature.

(2) Either Customs Authority may suspend co-operation under this Decision at any time but shall provide at least thirty (30) days written notice thereof.

Done in XXX, on XXX.

For the EU-China Joint Customs Co-operation Committee:

(The two chairpersons)