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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	21 January 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	ANNEX Agreement between the European Union and New Zealand on cooperation and mutual administrative assistance in customs matters to the Proposal for a COUNCIL DECISION on the signing, on behalf of the European Union, of the Agreement between the European Union and New Zealand on cooperation and mutual administrative assistance in customs matters

Delegations will find attached document COM(2016) 9 final ANNEX 1.

Encl.: COM(2016) 9 final ANNEX 1



Brussels, 21.1.2016
COM(2016) 9 final

ANNEX 1

ANNEX

Agreement between the European Union and New Zealand on cooperation and mutual administrative assistance in customs matters

to the

Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, of the Agreement between the European Union and New Zealand on cooperation and mutual administrative assistance in customs matters

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THE EUROPEAN UNION (hereinafter referred to as “the Union”) and NEW ZEALAND, (hereinafter referred as the Contracting Parties)

CONSIDERING the importance of the commercial links between New Zealand and the Union and desirous of contributing, to the benefit of both Contracting Parties, to the harmonious development of those links;

RECOGNISING 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 customs authorities;

RECOGNISING the significant role of customs authorities and the importance of customs procedures in promoting trade facilitation and the protection of citizens;

AIMING to provide a framework to enhance cooperation with a view to further simplifying and harmonising customs procedures and promoting joint action in the context of relevant international initiatives including trade facilitation and enhanced supply chain security;

RECOGNISING the significance of the Trade Facilitation Agreement negotiated under the auspices of the WTO and highlighting the importance of its adoption and effective implementation;

BUILDING upon the core elements of the SAFE Framework of Standards to Secure and Facilitate Global Trade (hereinafter referred to as the SAFE Framework) of the World Customs Organization (hereinafter referred to as the WCO);

HAVING regard to the high level of commitment of both Contracting Parties to customs actions and cooperation in the fight against infringements of intellectual property rights;

HAVING regard to obligations imposed under international conventions already accepted by, or applied to the Contracting Parties, as well as customs-related activities undertaken by the World Trade Organisation (hereinafter referred to as the WTO); and

HAVING regard to the relevant instruments of the WCO, in particular the Recommendation concerning Mutual Administrative Assistance of December 5, 1953;

HAVE AGREED AS FOLLOWS:

TITLE I GENERAL PROVISIONS

Article 1 **Definitions**

1. For the purpose of this Agreement:

- (a) "customs legislation" shall mean any laws and regulations of the Union or New Zealand governing the import, export and transit of goods and their placing under any other customs regime or procedure, including measures of prohibition, restriction and control, and administered, applied or enforced by the customs authorities of the Contracting Parties in their respective territories;
- (b) "laws and regulations of the Contracting Party", "laws and regulations of that Contracting Party" and "laws and regulations of each Contracting Party" shall mean the laws and regulations applicable in the Union in the circumstances, or the laws and regulations applicable in New Zealand, as the context requires;
- (c) "customs authority" shall mean, in the Union, the competent services of the Commission of the European Union (hereinafter referred to as the Commission)

responsible for customs matters and the customs authorities of the Member States of the Union and, in New Zealand, the New Zealand Customs Service;

- (d) "applicant authority" shall mean a competent administrative authority which has been designated in a Contracting Party for this purpose and which makes a request for assistance on the basis of this Agreement;
- (e) "requested authority" shall mean a competent administrative authority which has been designated in a Contracting Party for this purpose and which receives a request for assistance on the basis of this Agreement;
- (f) "person" shall mean any natural person, any legal person, or any other entity without legal personality constituted or organised under the laws and regulations of each Contracting Party, carrying out importation, exportation, or transit of goods;
- (g) "information" shall mean data including personal data, documents, reports, and other communications in any format, including electronic copies thereof;
- (h) "personal data" shall mean all information relating to an identified or identifiable natural person; and
- (i) "operation in breach of customs legislation" shall mean any violation or attempted violation of the customs legislation.

Article 2

Territorial application

1. This Agreement shall apply, on the one hand, to the customs territory of the Union (as described in Article 3 of the Regulation 2913/92 laying down the Community Customs Code) and, on the other hand, to the territory of New Zealand (excluding Tokelau) in which its customs legislation is in force.

Article 3

Implementation

1. This Agreement shall be implemented in accordance with the laws and regulations of each Contracting Party including in the field of data protection, and within the available resources of their respective customs authorities.

2. Customs authorities of the Union and of New Zealand shall decide on all practical measures and arrangements necessary for the implementation of this Agreement.

Article 4

Relation to other international agreements

1. The provisions of this Agreement shall not affect the rights and obligations of either Contracting Party under any other international agreements to which either Contracting Party is a party.

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 of the Union and New Zealand, insofar as the provisions of these bilateral agreements are incompatible with those of this Agreement.

3. The provisions of this Agreement shall not affect the Union provisions governing the communication between the competent services of the Commission and the customs authorities of the Member States of the Union of any information obtained under this Agreement which could be of interest to the Union.

TITLE II

CUSTOMS COOPERATION

Article 5

Scope of the cooperation

1. Cooperation under this Agreement shall cover all matters relating to the application of customs legislation.

2. For the purpose of facilitating the legitimate trade and movement of goods, strengthening compliance of traders, protecting citizens and enforcing intellectual property rights, the customs authorities of the Union and New Zealand shall cooperate in order to:
 - (a) protect legitimate trade through effective enforcement of and compliance with legislative requirements;

 - (b) secure the supply chain to facilitate the safe movement of goods between the Union and New Zealand;

 - (c) maximise the contribution made by them to the work of the WCO, the WTO and other relevant international organisations in improving customs techniques and in resolving problems of customs procedures, customs enforcement and the facilitation of trade; in eliminating unnecessary burdens on economic operators; in providing for facilitation for operators with high levels of compliance; and in ensuring safeguards against fraud and illicit or damaging activities;

- (d) implement international instruments and standards, applicable in the area of customs and trade, which the respective Parties have accepted, including the substantive elements of the International Convention on the Simplification and Harmonisation of Customs Procedures (as revised), and the International Convention on the Harmonized Commodity Description and Coding System;
- (e) implement the WTO Trade Facilitation Agreement upon its entry into force;
- (f) cooperate in the research, development, testing and evaluation of new customs procedures, and in the training and exchange of personnel and provision of assistance;
- (g) exchange information concerning customs legislation, its implementation, and customs procedures; particularly in the areas of simplification and modernisation of customs procedures; and
- (h) develop joint initiatives relating to import, export and other customs procedures, as well as towards ensuring an effective service to the business community.

Article 6

Supply chain security and risk management

1. The Contracting Parties shall work together on the customs-related aspects of securing and facilitating the international trade supply chain in accordance with the SAFE Framework. In particular, they 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) establishing, where appropriate, mutual recognition of risk management techniques, risk standards, security controls, supply chain security and trade partnership programmes including equivalent trade facilitation measures;
- (d) exchanging information for supply chain security and risk management;
- (e) establishing contact points for exchanging information for supply chain security and risk management;
- (f) introducing, where appropriate, an interface for information exchange, including for pre-arrival or pre-departure data;
- (g) collaborating in multilateral fora where issues related to supply chain security and risk management may be appropriately raised and discussed.

TITLE III

MUTUAL ADMINISTRATIVE ASSISTANCE

Article 7

Scope of assistance

1. The customs authorities of the Union and New Zealand shall assist each other in the prevention, identification, investigation and suppression of breaches of the customs legislation.
2. Assistance under this Agreement shall not prejudice the rights and obligations of either Contracting Party on mutual assistance in criminal matters under international Agreements or the laws and regulations of each Contracting Party. 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 8

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.
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; and
 - (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 laws and regulations applicable to the latter, 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; and
 - (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 9

Spontaneous assistance

The Contracting Parties shall assist each other, at their own initiative and in accordance with the laws and regulations of each Contracting Party, if they consider that to be necessary for the correct application of customs legislation, 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; and
- (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 10

Delivery, notification

1. At the request of the applicant authority, the requested authority shall, in accordance with laws and regulations applicable to the latter, take all necessary measures in order to:

- (a) deliver any documents; or
- (b) 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.

Article 11

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 promptly in writing.

2. Requests pursuant to paragraph 1 shall include the following information:

- (a) the applicant authority;
- (b) the measure requested;
- (c) the object of and the reason for the request;
- (d) the laws and regulations involved;

- (e) indications as exact and comprehensive as possible on the goods or persons who are the target of the investigations; and
- (f) a summary of the relevant facts 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 12

Execution of requests

1. In order to comply with a request for assistance, the requested authority shall proceed promptly, 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 paragraph 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 cannot act on its own.

2. Requests for assistance shall be executed in accordance with the laws and regulations of the Contracting Party which receives the request.

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 relating 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 territory.

Article 13

Form in which information is to be communicated

1. The requested authority shall communicate results of enquiries conducted pursuant to a request made under this Agreement to the applicant authority in writing together with relevant documents, certified copies of documents or other items.

2. The information communicated under paragraph 1 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 to the requested authority at the earliest opportunity.

Article 14

Exceptions to the obligation to provide assistance

1. Any form of assistance within the scope of this Agreement may be refused or may be subject to the satisfaction of certain conditions or requirements, in cases where a Contracting Party is of the opinion that assistance under this Agreement would:

- (a) be likely to prejudice the sovereignty of New Zealand or that of a Member State of the Union which has been requested to provide assistance under this Agreement;
- (b) be likely to prejudice public order, security or other essential interests;
- (c) violate a trade secret or prejudice legitimate commercial interests; or
- (d) be incompatible with applicable laws and regulations including, but not limited to, those protecting personal privacy or the financial affairs and accounts of individuals.

2. Assistance may be postponed by the requested authority on the ground that it will interfere with an on-going 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 15

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 16

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 in

respect of the appearance of experts and witnesses pursuant to Article 15, and expenses payable to interpreters and translators who are not public service employees.

TITLE IV INFORMATION EXCHANGE

Article 17

Confidentiality and protection of information

1. Any information communicated in whatsoever form pursuant to this Agreement shall be treated as either confidential or of a restricted nature depending on the rules applicable in each of the Contracting Parties,

2. A Contracting Party shall not use or disclose information obtained under this Agreement except for the purposes of this Agreement, or with the prior written consent of the providing Contracting Party and subject to such caveats and restrictions as the providing Contracting Party may require. However, if either Contracting Party is required by the laws and regulations of that Contracting Party to disclose information obtained pursuant to this Agreement it shall give notice of any such disclosure to the providing Contracting Party and wherever possible in advance of such disclosure.

3. Subject to any requirements applying to a Contracting Party by virtue of the laws and regulations of that Contracting Party, or express conditions, caveats, restrictions or handling instructions requiring greater protection, all information provided under this Agreement shall be afforded the same or higher level of security and privacy protection as indicated by the security classification or any other handling caveats attached to the requested authority's information.

4. Personal data shall be exchanged only where the Contracting Party which may receive it undertakes to protect such data in a manner that is considered adequate by the Contracting Party that may supply such personal data.

5. Each Contracting Party shall restrict access to information received under this Agreement to those persons who need to be aware of its content.

6. Each Contracting Party shall restrict, hold and transmit information received under this Agreement using recognised security mechanisms such as passwords, encryption, or other reasonable safeguards consistent with the security classification attached to the particular information.

7. Each Contracting Party shall notify the other of any accidental or unauthorised access, use, disclosure, modification or disposal of information received under this Agreement and shall furnish full details of the accidental or unauthorised access, use, disclosure, modification or disposal of the information.

8. Where information received under this Agreement has been accidentally disclosed or modified each Contracting Party shall do everything reasonably practicable to recover or, where recovery is not possible, ensure the destruction of the modified or disclosed information.

9. Either Contracting Party may request additional protections to be placed on highly sensitive information.

10. Information shall not be processed and kept longer than necessary for the purpose of implementing this Agreement and in accordance with the requirements of Each Contracting Party concerning privacy and the maintenance of public records. Each Contracting Party shall ensure the orderly disposal of information that has been received under this Agreement as provided for by the laws and regulations of that Contracting Party.

11. 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 Contracting Party which supplied that information or gave access to those documents shall be notified of such use.

TITLE V FINAL PROVISIONS

Article 18

Headings

The headings of the Titles and the Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

Article 19

Consultation

All questions or disputes related to the interpretation or implementation of this Agreement shall be settled by consultation between the Contracting Parties, leading where appropriate to a decision by the Joint Customs Cooperation Committee.

Article 20

Joint Customs Cooperation Committee

1. A Joint Customs Cooperation Committee (hereinafter referred to as the JCCC) is hereby established, consisting of representatives of the customs and other competent authorities of the Contracting Parties. It shall meet at a place, on a date and with an agenda, fixed by mutual consent.

2. The JCCC shall see to the proper functioning and implementation of this Agreement and shall examine all issues and disputes arising from its application. In doing so, the JCCC shall, *inter alia*:

- (a) take measures necessary for customs cooperation and assistance in accordance with the objectives of this Agreement, in particular by:
 - identifying any regulatory or legislative changes required to implement this Agreement;
 - identifying and establishing measures to enhance information exchange mechanisms;
 - 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;
 - defining and establishing risk analysis standards for the information required to identify high-risk shipments imported into, transhipped through, or transiting New Zealand and the Union;
 - defining and establishing measures to harmonise risk assessment standards;
 - defining minimum control standards and methods by which those standards may be met;
 - improving and establishing standards for trade partnership programmes designed to increase supply-chain security and facilitate the movement of legitimate trade; and
 - 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;
- (b) act as the competent body to address any issues arising in relation to the implementation of Title III of this Agreement;
- (c) be empowered to adopt decisions to implement this Agreement including on data transmission and mutually agreed benefits of mutual recognition of risk management techniques, risk standards, security controls and trade partnership programmes as well as other trade facilitation measures;
- (c) exchange views on any points of common interest regarding customs cooperation, including future measures and the resources for them; and
- (d) adopt its internal rules of procedure.

3. The JCCC shall set up the appropriate working mechanisms, including working groups, to support its work to implement this Agreement.

Article 21

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 through diplomatic notes exchanged between them.

2. This Agreement may be amended by mutual consent of the Contracting Parties through diplomatic notes exchanged between them. Amendments shall enter into force within the same conditions as mentioned in paragraph 1, except as otherwise agreed by the Contracting Parties.

3. Each Contracting Party may terminate this Agreement by giving notice to the other in writing. The termination shall take effect three months from the date 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 22

Authentic texts

This Agreement shall be drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic. In the event of any divergence between the texts of this Agreement the Parties shall refer the matter to the JCCC.