



Council of the
European Union

018202/EU XXVI. GP
Eingelangt am 18/04/18

Brussels, 18 April 2018
(OR. en)

7967/18
ADD 13

Interinstitutional File:
2018/0093 (NLE)

WTO 71
SERVICES 20
COASI 88

PROPOSAL

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

date of receipt: 18 April 2018

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: COM(2018) 196 final - ANNEX 11

Subject: ANNEX to the Proposal for a Council Decision on the conclusion of the
Free Trade Agreement between the European Union and the Republic of
Singapore

Delegations will find attached document COM(2018) 196 final - ANNEX 11.

Encl.: COM(2018) 196 final - ANNEX 11

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EUROPEAN
COMMISSION

Brussels, 18.4.2018
COM(2018) 196 final

ANNEX 11

ANNEX

to the

Proposal for a Council Decision

**on the conclusion of the Free Trade Agreement between the European Union and the
Republic of Singapore**

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ANNEX XI

UNDERSTANDINGS 1 TO 5 AND JOINT DECLARATION CONCERNING CUSTOMS UNIONS

UNDERSTANDING 1

IN RELATION TO ARTICLE 16.6 (TAXATION)

The Parties share an understanding that the term "the provisions of this Agreement" referred to in paragraph 1 of Article 16.6 (Taxation) means the provisions that:

- (a) accord non-discriminatory treatment to goods in the manner and to the extent provided for in Chapter Two (National Treatment and Market Access for Goods);
- (b) prevent the maintenance or institution of customs duty or tax in respect of goods in the manner and to the extent provided for in Chapter Two (National Treatment and Market Access for Goods); and
- (c) accord non-discriminatory treatment to service suppliers and investors in the manner and to the extent provided for in Section A (General Provisions), Section B (Cross-border Supply of Services), Section C (Establishment) and Sub-section 6 (Financial Services) of Section E (Regulatory Framework) of Chapter Eight (Services, Establishment and E-Commerce).

UNDERSTANDING 2

IN RELATION TO THE REMUNERATION OF ARBITRATORS

With respect to Rule 10 of Annex 14-A, both Parties confirm their following understanding:

1. The remuneration and expenses to be paid to the arbitrators shall be based on standards of comparable international dispute resolution mechanisms in bilateral or multilateral agreements.
2. The exact amount of the remuneration and expenses shall be agreed by the Parties in advance of the meeting of the Parties with the arbitration panel under Rule 10 of Annex 14-A.
3. Both Parties shall apply this understanding in good faith with a view to facilitating the operation of the arbitration panel.

UNDERSTANDING 3

ADDITIONAL CUSTOMS-RELATED PROVISIONS

ARTICLE 1

Definitions

For the purposes of this Understanding:

- (a) "customs legislation" shall mean any legal or regulatory provisions applicable in the territories of the Parties governing the import, export and transit of goods and their placing under any other customs regime or procedure;
- (b) "applicant authority" shall mean a competent customs authority which has been designated by a Party for this purpose and which makes a request for assistance on the basis of this Understanding;
- (c) "requested authority" shall mean a competent customs authority which has been designated by a Party for this purpose and which receives a request for assistance on the basis of this Understanding;
- (d) "personal data" shall mean all information relating to an identified or identifiable individual;
- (e) "operation in breach of customs legislation" shall mean any violation or attempted violation of customs legislation; and

- (f) "customs authority" shall mean, as appropriate, the customs authorities of Singapore, the customs authorities of the Member States and/or the competent services of the European Commission.

ARTICLE 2

Scope

1. The Parties shall assist each other, through their customs authorities, in trade-related customs matters, in the manner and under the conditions laid down in this Understanding, to ensure the correct application of customs legislation, in particular by preventing, investigating and combating operations in breach of customs legislation of:
 - (a) goods declared, on importation into the requesting Party, as having been exported or re-exported from the other Party and not as originating in that Party;
 - (b) goods declared, on importation into the requesting Party, as originating in the other Party other than for the purposes of applying tariff preferences under this Agreement.
2. Assistance in trade-related customs matters, as provided for in this Understanding shall be complementary to that provided for in Article 29 (Administrative Enquiries) of Protocol 1 (Concerning the Definition of the Concept of 'Originating Products' and Methods of Administrative Cooperation).

3. Notwithstanding paragraph 2, assistance in trade-related customs matters relating to goods transiting or transhipped through the territory of a Party and destined for the territory of the other Party shall, for the first three years after the entry into force of this Agreement, be provided only in the manner and to the extent provided for by Article 27 (Cooperation between Competent Authorities), Article 28 (Verification of Origin Declarations) and Article 29 (Administrative Enquiries) of Protocol 1 (Concerning the Definition of the Concept of 'Originating Products' and Methods of Administrative Cooperation). The Parties will review the modalities of assistance in relation to goods transiting or transhipped through the territory of a Party and destined for the territory of the other Party within two years of the entry into force of this Agreement.
4. Assistance in trade-related customs matters shall be without prejudice to the rules governing mutual assistance in criminal matters and it shall not cover information obtained under powers exercised at the request of a judicial authority, except where communication of such information is authorised by that authority.
5. Assistance to recover duties, taxes or fines is not covered by this Understanding.
6. Any assistance to be provided pursuant to this Understanding shall only pertain to trade transactions relevant to an operation in breach of customs legislation that took place not more than three years before the date of the request for assistance.
7. The Parties shall not be required to modify their customs regime or procedure in order to fulfil their obligations under this Understanding.

ARTICLE 3

Assistance on Request

1. Upon the request of the applicant authority, based on a reasonable suspicion of an operation in breach of customs legislation of any category of goods referred to in paragraph 1 of Article 2 (Scope), the requested authority shall provide the applicant authority with one or more of the following types of information which may enable the applicant authority to ensure that customs legislation is correctly applied:
 - (a) the name and address of the exporter or agent;
 - (b) shipping information relating to container number, size, name of vessel and carrier, the country of origin, place of export and cargo description;
 - (c) classification number, quantity and declared value; and
 - (d) any other information which the Parties agree is necessary for determining whether an operation in breach of customs legislation has occurred.
2. Upon the request of the applicant authority, the requested authority shall provide the following information:
 - (a) whether goods exported from the territory of a Party have been properly imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods; or

- (b) whether goods imported into the territory of a Party have been properly exported from the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods.
3. The requested authority shall not be required to provide information which is not already available to it.
4. For the purposes of paragraph 1, a reasonable suspicion of an operation in breach of customs legislation means a suspicion based on one or more of the following types of relevant factual information obtained from public or private sources:
- (a) historical evidence that a specific importer, exporter, manufacturer, producer or other company involved in the movement of goods from the territory of a Party to the territory of the other Party has not complied with either Party's customs legislation;
 - (b) historical evidence that some or all of the enterprises involved in the movement from the territory of one Party to the territory of the other Party of goods within a specific product sector, where goods are moving from the territory of one Party to the territory of the other Party, has not complied with a Party's customs legislation; or
 - (c) other information that the customs authorities of the Parties agree is sufficient in the context of a particular request.

ARTICLE 4

Spontaneous Assistance

The Parties may assist each other, through their respective customs authorities, at their own initiative and in accordance with their legal or regulatory provisions, 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 customs authorities of the other 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) natural or legal persons in respect of whom there are reasonable grounds for believing that they have been involved in operations in breach of customs legislation; or
- (e) means of transport in respect of which there are reasonable grounds for believing that they have been, or that they are, or that they may be used in operations in breach of customs legislation.

ARTICLE 5

Form and Substance of Requests for Assistance

1. Any request pursuant to this Understanding shall be made in writing. It shall be accompanied by the documents necessary to enable the requested authority to respond to the request. In case of an urgent situation, oral requests may be accepted, but they shall be confirmed in writing immediately thereafter.
2. Any request 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 legal or regulatory provisions and other legal elements involved;
 - (e) indications as exact and comprehensive as possible on the natural or legal persons who are the target of the investigations;
 - (f) a summary of the relevant facts and of the enquiries already carried out; and
 - (g) grounds for reasonable suspicion of an operation in breach of customs legislation.

3. Any request 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 requirements set out above, its correction or completion may be requested. In the meantime, precautionary measures may be ordered.

ARTICLE 6

Execution of Requests

1. In order to comply with a request for assistance, the requested authority shall proceed, within the limits of its competence, by supplying information already in its possession. The requested authority may, at its own discretion, provide for further assistance by carrying out appropriate enquiries or by arranging for them to be carried out.
2. Any request for assistance shall be executed in accordance with the legal or regulatory provisions of the requested Party.
3. Duly authorised officials of a Party may, with the agreement of the other 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 relevant 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 purposes of this Understanding.

4. Duly authorised officials of a Party may, with the agreement of the other Party and subject to the conditions laid down by that Party, be present at enquiries carried out in that Party's territory.

ARTICLE 7

Form in which Information is to be Communicated

1. The requested authority shall communicate results of enquiries to the applicant authority in writing and may provide relevant supporting documents or other items.
2. This information may be in computerised form.

ARTICLE 8

Exceptions to Obligations to Provide Assistance

1. Assistance may be refused or may be subject to the satisfaction of certain conditions or requirements in cases where the Party which has been requested to provide assistance under this Understanding is of the opinion that assistance would:
 - (a) be likely to prejudice its sovereignty;
 - (b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to in paragraph 2 of Article 9 (Information Exchange and Confidentiality); or

- (c) violate an industrial, commercial or professional secret.
- 2. Assistance may be postponed by the requested authority on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. 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 shall be communicated to the applicant authority without delay.

ARTICLE 9

Information Exchange and Confidentiality

- 1. Any information communicated in whatsoever form pursuant to this Understanding shall be of a confidential or restricted nature, depending on the rules applicable in each Party. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws of the Party that received it. The Party receiving the information shall maintain the confidentiality of the information.
- 2. Personal data may be exchanged only where the Party which may receive them undertakes to protect such data in a manner that is considered adequate by the Party that may supply them.

3. Each Party shall maintain procedures to ensure that confidential information, including information the disclosure of which could prejudice the competitive position of the person providing the information, submitted in connection with the Party's administration of its customs legislation is entitled to treatment as confidential information and protected from unauthorised disclosure.
4. The Party receiving the information shall use it solely for the purposes stated in the request. Where one Party wishes to use such information for other purposes, it shall obtain the prior written consent of the authority which provided the information.
5. The Party receiving the information may use the information in its administrative or judicial proceedings, as may be applicable, provided that any information that has been designated as sensitive by the Party providing the information shall not be used without the written consent of the Party providing the information.
6. Subject to paragraph 5, any information provided by a Party to the other Party shall not be disclosed to the mass media or to any other person or entity other than the customs authorities of the requesting Party, published or otherwise available to the public without the written consent of the Party providing the information.
7. Where the use of information obtained by a Party is subject to the consent of the Party providing the information under paragraphs 4, 5 and 6, such use shall be subject to any restrictions laid down by that Party.

ARTICLE 10

Assistance Expenses

1. The Party receiving the request shall assume all ordinary expenses incurred in executing the request. The Party making the request shall bear the expenses in relation to experts and witnesses, and interpreters and translators, where applicable.
2. If, during the execution of the request, it becomes apparent that expenses of an extraordinary or substantial nature are required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the execution of the request is to be effected or continued.

ARTICLE 11

Implementation

1. The implementation of this Understanding shall be undertaken by, in the case of Singapore, the customs authorities of Singapore and, in the case of the Union, the competent services of the European Commission and the customs authorities of the Member States as appropriate. They shall decide on all practical measures and arrangements necessary for their application, taking into consideration the rules in force, in particular in the field of data protection.
2. The Parties shall consult each other and subsequently keep each other informed of the detailed rules of implementation adopted in accordance with this Understanding.

3. The Parties agree that, in view of the limited resources of their customs authorities, requests should be kept to the barest minimum.

ARTICLE 12

Other Agreements

Taking into account the respective responsibilities of the Union and the Member States, this Understanding shall:

- (a) not affect the obligations of the Parties under any other international agreement or convention;
- (b) be deemed complementary to any agreement on mutual administrative assistance in customs matters which have been or may be concluded between individual Member States and Singapore, while taking precedence over any provisions of such agreements that are incompatible with this Understanding; and
- (c) not affect the Union's provisions governing the communication between the competent services of the European Commission and the customs authorities of the Member States of any information obtained under this Understanding which could be of interest to the Union.

ARTICLE 13

Consultations

1. In respect of questions relating to the applicability of this Understanding, the Parties shall, in the Committee on Customs established under Article 16.2 (Specialised Committees), consult each other to resolve the questions.

2. Chapter Fourteen (Dispute Settlement) and Chapter Fifteen (Mediation Mechanism) shall not apply to any matter arising under this Understanding.

UNDERSTANDING 4

MUTUAL RECOGNITION OF AUTHORISED ECONOMIC OPERATOR (AEO) PROGRAMMES

With reference to paragraph 2(d) of Article 6.3 (Customs Cooperation) and paragraph 2 of Article 6.17 (Committee on Customs), the Parties have reached the following understanding:

The Parties agree that it will be to their mutual benefit to collaborate with each other in enhancing the security of the supply chain and facilitating legitimate trade.

The Parties shall work towards mutual recognition of their respective Authorised Economic Operator (hereinafter referred as the "AEO") programmes. They shall agree, by a decision of the Committee on Customs established pursuant to Article 16.2 (Specialised Committees), on the mutual recognition of their respective AEO programmes.

The Parties agree to commence work leading to mutual recognition of their respective AEO programmes.

The Parties will make all reasonable efforts and aim to reach an agreement on mutual recognition of their respective AEO programmes ideally after one year, but no later than two years, from the entry into force of this Agreement.

JOINT DECLARATION

Concerning Customs Unions

1. The Union recalls that those countries which have concluded a customs union with the Union have the obligation to align themselves with the common customs tariff and, progressively, with the preferential customs regime of the Union, taking the necessary measures and negotiating agreements on a mutually advantageous basis with the third countries concerned. Consequently the Union had invited Singapore to enter into negotiations with those states which have established a customs union with the Union and whose products do not benefit from the tariff concessions under this Agreement, to conclude bilateral agreements establishing a free trade area in accordance with Article XXIV of the GATT 1994.
 2. Singapore has informed the Union that Singapore will enter into negotiations with countries relevant in this respect as at the date of signature of this Agreement to conclude bilateral agreements establishing a free trade area in accordance with Article XXIV of the GATT 1994.
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