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2020/0294 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the EU-Canada Joint Customs Cooperation Committee as regards the adoption of the decision concerning the mutual recognition of the Partners in Protection Programme of Canada and the Authorised Economic Operators Programme of the European Union

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the EU-Canada Joint Customs Cooperation Committee in connection with the envisaged adoption of a decision concerning the mutual recognition of the Partners in Protection Programme of Canada and the Authorised Economic Operator Programme of the European Union.

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement between the European Union and Canada on Customs Cooperation and Mutual Assistance in Customs Matters and the Agreement between the European Union and Canada on customs cooperation with respect to matters related to supply-chain security

The Agreement between the European Community and Canada on Customs Cooperation and Mutual Assistance in Customs Matters ('CMAA') aims to develop bilateral customs cooperation covering all matters relating to the application of customs legislation and to provide legal basis for mutual administrative assistance. The CMAA entered into force in 1998.

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

The Agreement between the European Union and Canada on customs cooperation with respect to matters related to supply-chain security ('SCSA') aims to enhance supply-chain security practices that would increase customs related efficiencies to ensure end-to-end supply-chain security and facilitate legitimate bilateral trade. The SCSA entered into force in 2014.

2.3. The Joint Customs Cooperation Committee

The Joint Customs Cooperation Committee ('JCCC'), established under Article 20 of the CMAA, consists of representatives of the customs authorities of the EU and Canada. Under Article 5 of the SCSA, the JCCC is empowered to adopt decisions on mutual recognition of risk management techniques, risk standards, security controls and trade partnership programmes.

2.4. The envisaged act of the Joint Customs Cooperation Committee

During its fifth meeting, which is foreseen in the fall of 2020, the JCCC is to adopt a decision concerning the mutual recognition of the Partners in Protection Programme of Canada and the Authorised Economic Operator Programme of the European Union ('the envisaged act').

The purpose of the envisaged act is to strengthen end-to-end security of international supply chains by allowing customs authorities to implement more effective border controls while facilitating legitimate trade.

The envisaged act will become binding on the parties in accordance with Article 5 of the SCSA in conjunction with Article 20 of the CMAA.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

EU legislation on the Authorised Economic Operator (AEO) was introduced by an amendment to the European Union's Community Customs Code (Regulation 648/2005 adopted in April 2005). The current legal framework for the AEO Programme is contained in the Union Customs Code and its Implementing Provisions (Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013; Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015; Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015) and it is supplemented by AEO Guidelines that have been adopted and are regularly updated within the Customs Expert Group. The objective of trade partnership programmes such as the AEO is to provide facilitation to traders, which demonstrate compliant efforts to secure their part of the international supply chain. According to the Database of EU Authorised Economic Operators, by the end of 2019 more than 9000 EU companies received AEO authorisations for security and safety.

Mutual recognition of trade partnership programmes enhances end-to-end supply chain security and facilitates trade. It consolidates the approach agreed in the World Customs Organization (WCO) Framework of Standards to Secure and Facilitate Trade ('SAFE Framework'). It addresses the demand of the business community in the EU and around the world that standards be implemented in the same way and to avoid proliferation of country-specific requirements and practices.

The mutual recognition of the EU and Canadian trade partnership programmes is a longstanding bilateral customs cooperation project, which is supported by EU companies involved in transatlantic trade with Canada as well as by EU Member States and Canada. The work on the mutual recognition was launched by the Commission and the Canadian Border Services Agency (CBSA) in 2014 with the entry into force of the SCSA. An in-depth comparison of both the Partners in Protection Programme of Canada and the Authorised Economic Operator Programme of the European Union was carried out including several joint validation visits in the EU and in Canada. The assessment of the equivalence of Canada's partners in Protection Programme to the EU's Authorised Economic Operator programme was completed in 2015 and the conclusions about the equivalence of the programmes were re-confirmed in 2019 when both sides updated each other about recent developments in their trade partnership programmes.

The EU-Canada Summit Joint Declaration of 17-18 July 2019 stated that the EU and Canada were pleased with the progress of negotiations towards the mutual recognition of our Authorised Economic Operator programmes, that they were committed to concluding mutual recognition expeditiously. It further stated that the mutual recognition would simplify border processes and enhance the security of the supply chain for registered Canadian and European businesses and will work hand-in-hand with the EU-Canada Comprehensive Economic and Trade Agreement to further facilitate two-way trade across the Atlantic.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing *'the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.'*

The concept of ‘*acts having legal effects*’ includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are ‘*capable of decisively influencing the content of the legislation adopted by the EU legislature*’¹.

4.1.2. Application to the present case

The JCCC is a body set up by an agreement, namely the CMAA.

The act which the JCCC is called upon to adopt constitutes an act having legal effects.

The envisaged act will be binding under international law in accordance with Article 5 of the SCSA in conjunction with Article 20 of the CMAA.

The envisaged act does not supplement or amend the institutional framework of the CMAA.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to the common commercial policy.

Therefore, the substantive legal basis of the proposed decision is Article 207 TFEU, in particular the first subparagraph of Article 207(4).

4.3. Conclusion

The legal basis of the proposed decision should be Article 207 TFEU, in particular the first subparagraph of Article 207(4), in conjunction with Article 218(9) TFEU.

¹ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

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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 the first subparagraph of Article 207(4), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement between the European Community and Canada on Customs Cooperation and Mutual Assistance in Customs Matters ('CMAA') was concluded by the Union by Council Decision 98/18/EC of 27 November 1997² and entered into force on 1 January 1998.
- (2) Article 2 of the CMAA calls on customs authorities to develop customs cooperation of the widest possible scope.
- (3) Pursuant to Article 20 of the CMAA, the Joint Customs Cooperation Committee ('JCCC') is established and may take the measures necessary for customs cooperation.
- (4) The Agreement between the European Union and Canada on customs cooperation with respect to matters related to supply-chain security ('SCSA') was concluded by the Union by Council Decision 2014/941/EU of 27 June 2013 and entered into force in 2014.
- (5) Pursuant to Article 5 of the SCSA, the JCCC is empowered to adopt decisions on mutual recognition of risk management techniques, risk standards, security controls and trade partnership programmes.
- (6) It is proposed that the JCCC, should adopt the decision concerning the mutual recognition of the Partners in Protection Programme of Canada and the Authorised Economic Operators Programme of the European Union during its fifth meeting.
- (7) It is appropriate to establish the position to be taken on the Union's behalf in the JCCC, as the decision concerning the mutual recognition of the Partners in Protection Programme of Canada and the Authorised Economic Operators Programme of the European Union will have legal effects,

² OJ L 7, 13.1.1998, p. 37.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the meeting of the Joint Customs Cooperation Committee established by the Agreement between the European Community and Canada on Customs Cooperation and Mutual Assistance in Customs Matters with regard to the mutual recognition of the Partners in Protection Programme of Canada and the Authorised Economic Operators Programme of the European Union shall be based on the attached draft decision of the Joint Customs Cooperation Committee.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*