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WORKING PAPER

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From:	BG delegation
To:	Working Party on Technical Harmonisation (Goods package)
Subject:	BG comments on Article 35 (following the WP meeting on 21 January)

16 January 2019

ARTICLE 35				
409	Article 35 International cooperation	Article 35 International cooperation	Article 35 International cooperation	Article 35 International cooperation
ARTICLE 35 - PARAGRAPH 1				
410	1. The Commission may exchange confidential market surveillance related information with regulatory authorities of third countries or international organisations where it has concluded confidentiality arrangements based on reciprocity with those authorities or organisations.	1. <i>In order to improve the efficiency of market surveillance in the Union</i> , the Commission may exchange confidential market surveillance related information with regulatory authorities of third countries or international organisations where it has concluded confidentiality arrangements based on reciprocity with those authorities or organisations. AM 199	1. <i>In order to improve the efficiency of market surveillance in the Union</i> , the Commission may exchange confidential market surveillance related information with regulatory authorities of third countries or international organisations where it has concluded confidentiality arrangements based on reciprocity with those authorities or organisations a framework for cooperation and information exchange of selected information has been established in accordance with paragraph 1a.	1. <i>In order to improve the efficiency of market surveillance in the Union</i> , the Commission may exchange confidential market surveillance related information with regulatory authorities of third countries or international organisations where it has concluded confidentiality arrangements based on reciprocity with those authorities or organisations. AM 199
ARTICLE 35 - PARAGRAPH 1 a (new)				
410A				1a. <i>The Commission</i>

Commented [A1]: Too much redrafting on that Article which is too problematic by nature.

Commented [A2]: BG is against row 410 in that wording! Considered very problematic for us!

		<i>1a. The Commission shall ensure that any exchange of information under paragraph 1 is in accordance with applicable Union legislation.</i>		<i>shall ensure that any exchange of information under paragraph 1 is in accordance with applicable Union legislation.</i> <i>AM 200</i>
ARTICLE 35 - PARAGRAPH 2				
411	The Commission may set up a framework for cooperation and exchange of selected information contained in the information exchange system provided for in Article 12 of Directive 2001/95/EC, with applicant countries, third countries or international organisations. The cooperation or exchange of information may relate, inter alia, to the following:	The Commission may set up a framework for cooperation and exchange of selected information contained in the information exchange system provided for in Article 12 of Directive 2001/95/EC, with applicant countries, third countries or international organisations. The cooperation or exchange of information may relate, inter alia, to the following:	The Commission may set up a framework for cooperation and exchange of selected information contained in the information exchange system provided for in Article 12 of Directive 2001/95/EC, with applicant countries, third countries or international organisations. The cooperation or exchange of information may relate, inter alia, to the following:	The Commission may set up a framework for cooperation and exchange of selected information contained in the information exchange system provided for in Article 12 of Directive 2001/95/EC, with applicant countries, third countries or international organisations. The cooperation or exchange of information may relate, inter alia, to the following:
ARTICLE 35 - PARAGRAPH 2 - POINT a				
412	(a) risk assessment	(a) risk assessment	(a) risk assessment methods	(a) risk assessment

Commented [A3]: In principle BG is against leaving the framework for cooperation to an implementing act, as in Council text.

	methods used and the results of product-testing;	methods used and the results of product-testing;	used and the results of product-testing;	methods used and the results of product-testing;
ARTICLE 35 - PARAGRAPH 2 - POINT b				
413	(b) coordinated product recalls or other similar actions;	(b) coordinated product recalls or other similar actions;	(b) coordinated product recalls or other similar actions;	(b) coordinated product recalls or other similar actions;
ARTICLE 35 - PARAGRAPH 2 - POINT c				
414	(c) the measures taken by market surveillance authorities under Article 15.	(c) the measures taken by market surveillance authorities under Article 15.	(c) the measures taken by market surveillance authorities under Article 15.	(c) the measures taken by market surveillance authorities under Article 15.
ARTICLE 35 - PARAGRAPH 2 a (new)				
414 A			<u>2a. The Commission shall adopt implementing acts in accordance with the examination procedure referred to in Article 63(3) in order to establish each framework for cooperation and information exchange.</u>	
ARTICLE 35 - PARAGRAPH 3				
415	The Commission may approve a specific system of product-related pre-export	The Commission may approve a specific system of product-related pre-export control carried out	The Commission may approve a specific system of product-related pre-export control carried out by a third	The Commission may approve a specific system of product-related pre-export control carried out

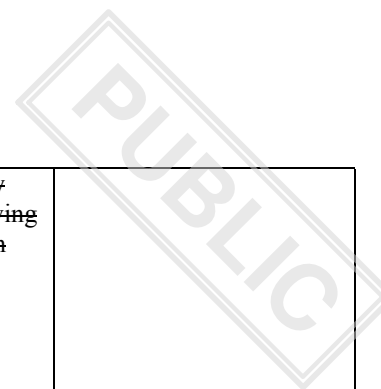
	control carried out by a third country on products immediately prior to their export into the Union in order to verify that those products satisfy the requirements of the Union harmonisation legislation applicable to them. The approval may be granted in respect of one or more products, in respect of one or more categories of product or in respect of products or categories of product manufactured by certain manufacturers.	by a third country on products immediately prior to their export into the Union in order to verify that those products satisfy the requirements of the Union harmonisation legislation applicable to them. The approval may be granted in respect of one or more products, in respect of one or more categories of product or in respect of products or categories of product manufactured by certain manufacturers.	country on products immediately prior to their export into the Union in order to verify that those products satisfy the requirements of the Union harmonisation legislation applicable to them. The approval may be granted in respect of one or more products, in respect of one or more categories of product or in respect of products or categories of product manufactured by certain manufacturers.	by a third country on products immediately prior to their export into the Union in order to verify that those products satisfy the requirements of the Union harmonisation legislation applicable to them. The approval may be granted in respect of one or more products, in respect of one or more categories of product or in respect of products or categories of product manufactured by certain manufacturers.
ARTICLE 35 - PARAGRAPH 3 a (new)				
415 A			<u>3a. The Commission shall produce and maintain a list of those products or categories of products with regard to which approval has been granted as referred to in paragraph 3 and shall make this list available to the public.</u>	<u>3a. The Commission shall produce and maintain a list of those products or categories of products with regard to which approval has been granted as referred to in paragraph 3 and shall make this list available to the public.</u>
ARTICLE 35 - PARAGRAPH 3 b (new)				
415				<u>3b. Approval may only</u>

B			<u>3b. Approval may only be granted to a third country under paragraph 3 if following conditions are satisfied:</u>	<u>be granted to a third country under paragraph 3 if following conditions are satisfied:</u>
ARTICLE 35 - PARAGRAPH 3 b POINT A (new)				
415 C			<u>(a) the third country possesses an efficient verification system of the compliance of products exported to the Union and the controls carried out in that third country are sufficiently effective and efficient to replace or reduce import controls;</u>	<u>(a) the third country possesses an efficient verification system of the compliance of products exported to the Union and the controls carried out in that third country are sufficiently effective and efficient to replace or reduce import controls ;</u>
ARTICLE 35 - PARAGRAPH 3 b POINT B (new)				
415 D			<u>(b) audits within the Union demonstrate that products exported to the Union from that third country satisfy the requirements set out in Union harmonisation legislation.</u>	<u>(b) audits within the Union and, if relevant, in the third country demonstrate that products exported to the Union from that third country satisfy the requirements set out in Union harmonisation legislation.</u>

Commented [A4]: Clarification is needed in both aspects!

ARTICLE 35 - PARAGRAPH 4				
416	Where such an approval has been granted, the number and frequency of import controls for those products or categories of product entering the Union market, referred to in paragraph 3, may be reduced.	Where such an approval has been granted, the number and frequency of import controls for those products or categories of product entering the Union market, referred to in paragraph 3, may be reduced.	Where such an approval has been granted, the number and frequency of <u>risk assessment applied</u> to import controls for those products or categories of product entering the Union market, referred to in paragraph 3, may be reduced <u>will include the granted approvals.</u>	Where such an approval has been granted, the number and frequency of <u>risk assessment applied</u> to import controls for those products or categories of product entering the Union market, referred to in paragraph 3, may be reduced <u>shall include the granted approvals.</u>
ARTICLE 35 - PARAGRAPH 4				
417	Customs authorities may however carry out controls those products or categories of product entering the Union market, in order to ensure that the pre-export controls carried out by the third country are effective to determine compliance with Union harmonisation legislation.	Customs authorities may however carry out controls those products or categories of product entering the Union market, in order to ensure that the pre-export controls carried out by the third country are effective to determine compliance with Union harmonisation legislation.	Customs Authorities <u>designated under Article 26(1)</u> may however carry out controls of on those products or categories of product entering the Union market, <u>including</u> in order to ensure that the pre-export controls carried out by the third country are effective to determine compliance with Union harmonisation legislation.	Customs Authorities <u>designated under Article 26(1)</u> may however carry out controls of on those products or categories of product entering the Union market, <u>including</u> in order to ensure that the pre-export controls carried out by the third country are effective to determine compliance with Union harmonisation legislation.
ARTICLE 35 - PARAGRAPH 5				
418	5. Approval may only be	5. Approval may only be	5. Approval may only be	

Commented [A5]: Wording should be customs authorities!



	granted to a third country under paragraph 3 following an audit within the Union demonstrating that the following conditions are satisfied:	granted to a third country under paragraph 3 following an audit audits within the relevant third country and Union demonstrating that the following conditions are satisfied: AM 201	granted to a third country under paragraph 3 following an audit within the Union demonstrating that the following conditions are satisfied:	
ARTICLE 35 - PARAGRAPH 5 - POINT a				
419	(a) products exported to the Union from that third country satisfy the requirements set out in Union harmonisation legislation;	(a) products exported to the Union from that third country satisfy the requirements set out in Union harmonisation legislation;	(a) products exported to the Union from that third country satisfy the requirements set out in Union harmonisation legislation;	
ARTICLE 35 - PARAGRAPH 5 - POINT -a (new)				
419A		<i>(-a) the third country possesses an efficient verification system of the compliance of the products exported to the Union;</i> AM 202		
ARTICLE 35 - PARAGRAPH 5 - POINT b				
420				

	(b) the controls carried out in that third country are sufficiently effective and efficient to replace or reduce the documentary and physical controls laid down in such legislation.	(b) the controls carried out in that third country are sufficiently effective and efficient to replace or reduce the documentary and physical controls laid down in such legislation.	(b) the controls carried out in that third country are sufficiently effective and efficient to replace or reduce the documentary and physical controls laid down in such legislation.	
ARTICLE 35 - PARAGRAPH 6				
421	6. The approval referred to in paragraph 3 shall specify the competent authority of the third country under whose responsibility the pre-export controls are to be performed and that competent authority shall be the counterpart for all contacts with the Union.	6. The approval referred to in paragraph 3 shall specify the competent authority of the third country under whose responsibility the pre-export controls are to be performed and that competent authority shall be the counterpart for all contacts with the Union.	6. The approval referred to in paragraph 3 shall specify the competent authority of the third country under whose responsibility the pre-export controls are to be performed and that competent authority shall be the counterpart for all contacts with the Union.	6. The approval referred to in paragraph 3 shall specify the competent authority of the third country under whose responsibility the pre-export controls are to be performed and that competent authority shall be the counterpart for all contacts with the Union.
ARTICLE 35 - PARAGRAPH 7				
422	7. The competent authority, referred to in paragraph 6, shall ensure the official verification of the products prior to their entry into the Union.	7. The competent authority, referred to in paragraph 6, shall ensure the official verification of the products prior to their entry into the Union.	7. The competent authority, referred to in paragraph 6, shall ensure the official verification of the products prior to their entry into the Union.	7. The competent authority, referred to in paragraph 6, shall ensure the official verification of the products prior to their entry into the Union.

ARTICLE 35 - PARAGRAPH 8				
423	8. Where controls on products entering the Union market referred to in paragraph 3 reveal significant non-compliance, the market surveillance authorities shall notify immediately the Commission through the system referred to in Article 34 and increase the number of controls on such products.	8. Where controls on products entering the Union market referred to in paragraph 3 reveal significant non-compliance, the market surveillance authorities shall notify immediately the Commission through the system referred to in Article 34 and increase the number of controls on such products.	8. Where controls on products entering the Union market referred to in paragraph 3 reveal significant non-compliance, the market surveillance authorities shall notify immediately the Commission through the system referred to in Article 34 and increase the number adapt the level of controls on such products.	8. Where controls on products entering the Union market referred to in paragraph 3 reveal significant non-compliance, the market surveillance authorities shall notify immediately the Commission through the system referred to in Article 34 and increase the number of controls on such products.
ARTICLE 35 - PARAGRAPH 8 a (new)				
423 A			8a. The Commission shall adopt implementing acts for the implementation of the to approve each specific system of product-related pre-export controls, referred to in paragraph 3, for specifying a model for the certificates of compliance or verification to be used. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 63(3).	8a. The Commission shall adopt implementing acts for the implementation of the to approve each specific system of product-related pre-export controls, referred to in paragraph 3, for specifying a model for the certificates of compliance or verification to be used. Those implementing acts shall be adopted in accordance with the examination procedure

Commented [A6]: Reservation!

			(moved from (10))	referred to in Article 63(3).
ARTICLE 35 - PARAGRAPH 9				
424	9. The Commission shall withdraw an approval granted under paragraph 3 where it is revealed that the products entering the Union market do not comply with Union harmonisation legislation in a significant number of instances.	9. The Commission <i>shall regularly monitor the correct functioning of the approval and</i> shall withdraw an approval granted under paragraph 3 where it is revealed that the products entering the Union market do not comply with Union harmonisation legislation in a significant number of instances. <i>The Commission shall immediately inform Member States and the affected third country.</i> AM 203	9. The Commission shall <u>by means of an implementing act</u> withdraw an approval granted under paragraph 3 where it is revealed that the products entering the Union market do not comply with Union harmonisation legislation in a significant number of instances. <u>Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 63(3). The Commission shall inform the affected third country of the outcome of the decision of the committee accordingly.</u>	9. The Commission <i>shall regularly monitor the correct functioning of the approval and, by means of an implementing act</i> shall withdraw an approval granted under paragraph 3 where it is revealed that the products entering the Union market do not comply with Union harmonisation legislation in a significant number of instances. <u>Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 63(3). The Commission shall immediately inform the affected third country of the outcome of the decision of the committee accordingly.</u>
ARTICLE 35 - PARAGRAPH 10				
425				

Commented [A7]: We don't see the need of this addition, even if it is a requirement for the Commission.

Commented [A8]: No need of inclusion of immediately.

	10. The Commission shall adopt implementing acts for the implementation of the system of product-related pre-export controls, referred to in paragraph 3, for specifying a model for the certificates of compliance or verification to be used. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 63.	10. The Commission shall adopt implementing acts for the implementation of the system of product-related pre-export controls, referred to in paragraph 3, for specifying a model for the certificates of compliance or verification to be used. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 63.	10. The Commission shall adopt implementing acts for the implementation of the system of product-related pre-export controls, referred to in paragraph 3, for specifying a model for the certificates of compliance or verification to be used. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 63.	10. The Commission shall adopt implementing acts for the implementation of the system of product-related pre-export controls, referred to in paragraph 3, for specifying a model for the certificates of compliance or verification to be used. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 63.
ARTICLE 35 - PARAGRAPH 11 (new)				
425 A			<u>11. The system of product-related pre-export control shall be evaluated in accordance with Article 62(4) in this Regulation.</u>	<u>11. The system of product-related pre-export control shall be evaluated in accordance with Article 62(4) in this Regulation.</u>