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2019/0234 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the Joint Committee established by the Regional Convention on pan-Euro-Mediterranean preferential rules of origin as regards the amendment of the Convention

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 Joint Committee of the Regional Convention on pan-Euro Mediterranean preferential rules of origin ('PEM Joint Committee') in connection with the envisaged adoption of a PEM Joint Committee Decision to amend the Convention

2. CONTEXT OF THE PROPOSAL

2.1. The Regional Convention on pan-Euro Mediterranean preferential rules of origin

The Regional Convention on pan-Euro-Mediterranean preferential rules of origin lays down provisions on the origin of goods traded under relevant Agreements concluded between the Contracting Parties.

The system of pan-Euro-Mediterranean cumulation of origin allows for the application of diagonal cumulation between the 26 Contracting Parties of the Convention: the European Union, Iceland, Liechtenstein, Norway, Switzerland, Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine[1], Syria, Tunisia, Turkey, Albania, Bosnia and Herzegovina, Croatia, North Macedonia, Montenegro, Serbia, Kosovo[2], the Faroe Islands, Republic of Moldova, Georgia and Ukraine. It lays down a multilateral framework of rules of origin for a network of Free Trade Agreements, and applies without prejudice to the principles laid down in those agreements. The Convention entered into force in relation to the Union on 1 May 2012.

The European Union is a party to the Convention[3].

2.2. The PEM Joint Committee

The PEM Joint Committee established by Article 3(1) of the Convention adopts amendments to the Convention, administers it and insures its proper implementation. In accordance with Article 12 of the Rules of Procedure of the PEM Joint Committee, Decisions of the Joint Committee are adopted by unanimous vote of the Contracting Parties for which the Convention has entered into force, present or represented at the meeting of the PEM Joint Committee.

The Contracting Parties for which the Convention has entered into force have voting rights. Each Contracting Party has one vote.

2.3. The envisaged act of the PEM Joint Committee

The process of amending the Convention started in 2012 and has been carried out within a Working Group which has been meeting at least twice per year. During this process, Member States have been kept regularly involved through different fora (the Customs Experts Group – Origin Section, the Council's Customs Union Working Party, the Trade Policy Committee).

On the 27th of November 2019, during its 9th meeting, the PEM Joint Committee is to adopt a decisionregarding the amendment of the Convention ('the envisaged act').

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1 This designation shall not be construed as recognition of a State of Palestine and is without prejudice to the individual positions of the Member States on this issue.

2 This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

3 OJ L 54, 26.2.2013, p. 4.

The purpose of the envisaged act is to amend the rules of origin in order to better correspond to the economic reality. The envisaged act will become binding on the parties in accordance with Article 4(3)(a) which provides: 'The Joint Committee shall adopt by decision amendments to this Convention including amendments to the Appendixes'. Article 4(3)(a), last sentence, provides: 'Decisions referred to in this paragraph shall be put into effect by the Contracting Parties in accordance with their own legislation.'

The amendments to the Convention should become applicable on 1 January 2021. However, the date of the effective implementation of the amendments may have to be modified in order to take into account the necessary internal procedures to be followed by other Contracting Parties before this date.

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

The proposed amendments of the Convention provide for several additional flexibilities and elements of modernisation, which are consistent with those which have already been agreed by the Union in other recent agreements (EU-Canada Comprehensive Economic and Trade Agreement (CETA), EU-Vietnam Free Trade Agreement, EU-Japan Economic Partnership Agreement, EU-South African Development Community Economic Partnership Agreement) or preferential schemes (GSP). The improvements consist in the introduction of generally more flexible and simplified rules that will make it easier for EU industry to meet them and therefore improve their export competitiveness. The amended text does not alter the institutional provisions of the current Convention.

3.1. Details of the amended rules of origin

(a) Derogations

The amended Convention codifies and introduces more transparency into the current practice under which Contracting Parties can agree bilaterally on rules that derogate from the common rules under the Convention, by requiring notification of such derogations (Article 1 paragraph 3). The derogations already existing would remain in force and would not be affected by the obligation to notify (Article 1 paragraph 2).

(b) Wholly obtained products - 'vessels' conditions

The so-called vessel conditions contained in the amended set of rules are simpler and provide for more flexibility (Article 3 paragraph 2). Compared to the current text certain conditions have been deleted (i.e. specific crew requirements); others have been amended in order to provide for more relaxation (i.e. ownership).

(c) Sufficient working or processing – Average basis

The amended set of rules offers the exporter the flexibility to ask the customs authorities an authorisation to calculate the ex-works price and the value of non-originating materials on an average basis in order to take account of fluctuations in costs and currency rates (Article 4 paragraphs 3-6). This should provide exporters with more predictability.

(d) Tolerance

The current tolerance is set at 10% in value of the ex-works price of the product (Article 5).

The proposed text provides for agricultural products a tolerance of 15% of the net weight of the product and for industrial products a tolerance of 15% in value of the ex-works price of the product (Article 5).

The tolerance in weight introduces a more objective criterion and a 15% threshold should provide a sufficient level of leniency. It ensures also that the international price fluctuation of the commodities have an impact on the origin of the agricultural products.

(e) Cumulation

The proposed text (Article 7) maintains diagonal cumulation for all products. In addition, it provides for a generalised full cumulation for all products except textiles and clothing of Chapters 50-63 of the Harmonised System (HS).

Moreover, for products of HS Chapters 50-63, it provides for bilateral full cumulation. Finally, the Contracting Parties will have the option to agree to extend the generalised full cumulation also to products of HS Chapters 50-63.

(f) Accounting segregation

Under the current rules (Article 20), customs authorities may authorise accounting segregation where "considerable cost or material difficulties arise in keeping separate stocks". The amended rule (Article 12) stipulates that customs authorities may authorise accounting segregation "if originating and non-originating fungible materials are used".

An exporter will no longer have to justify when requesting an authorisation for accounting segregation that keeping separate stocks has a considerable cost or gives rise to material difficulties; it will be sufficient to indicate that fungible materials are used.

In the case of sugar, being a material or a final product, originating and non-originating stocks will no longer have to be kept physically separated.

(g) Principle of territoriality

The current rules (Article 11) allow for certain working or processing to be done outside the territory under certain conditions, with the exception of products of HS Chapters 50 to 63. The proposed rules (Article 13) no longer contain the exclusion for textiles.

(h) Non-alteration

The proposed non-alteration rule (Article 14) provides for more leniencies for the movement of originating products between Contracting Parties. It should avoid situations whereby products, for which there is no doubt about their originating status, are excluded from the benefit of the preferential rate at importation because the formal requirements of the direct transport provision are not met.

(i) Prohibition of drawback of, or exemption from, customs duties

Under the current rules (Article 14) the general principle of the prohibition of drawback applies to materials used in the manufacture of any product. Under the amended rules (Article 16) the prohibition is eliminated for all products, with the exception of materials used in the manufacture of products falling within the scope of HS Chapters 50 to 63 (textiles and clothing). Nevertheless, the text also provides for some exceptions to the prohibition of duty drawback to these products.

(j) Proof of origin

The amended rules (Article 17 paragraph 1) introduce a single type of proof of origin (EUR.1 or origin declaration), instead of the current double approach of EUR1 and EUR-MED, which substantially simplifies the system. This should improve compliance by economic operators by avoiding mistakes due to complex rules as well facilitate the management by the customs authorities. Moreover, it should not affect the capacity of verification of proofs of origin, which remains the same.

The amended rules (Article 17 paragraph 3) also include the option to agree on the application of a system of registered exporters (REX). These exporters registered in a common database will be responsible for making out themselves statements on origin without going through the approved exporter procedure. The statement on origin will have the same legal value as the origin declaration or the movement certificate EUR.1. The amended rules also provide for a future possibility to apply electronically issued certificates of origin (Article 17 paragraph 4).

(k) Validity of a proof of origin

It is proposed to prolong the period of validity of a proof of origin from 4 to 10 months (Article 23). It should also provide for more leniencies for the movement of originating products between the Parties.

3.2. Details of the amended list rules

3.2.1. Agricultural products

(a) value and weight

The limit of non-originating materials was expressed only in value. The new thresholds are expressed in weight in order to avoid price fluctuation and currency fluctuation (e.g. ex-chapters 19, 20, 2105, 2106) together with a deletion of certain limit for sugar (e.g. chapter 8 or HS 2202).

The amended set of rules raised the threshold of weight (from 20% to 40%) and the possibility for some headings to use an alternative choice value or weight. The HS chapters and headings concerned by the change are notably: ex-1302, 1704 (alternative rule weight or value), 18 (1806: alternative rule weight or value), 1901.

(b) Adaptation to sourcing patterns

Other agricultural products (i.e. vegetable oils, nuts, tobacco) contain more flexible rules adapted to the economic reality notably for HS Chapters 14, 15, 20 (including heading 2008), 23, 24. The amended set of rules strike the balance between regional and global sourcing (HS Chapters 9 and 12). The rules have also been simplified (reduction of exceptions) in HS Chapters 4, 5, 6, 8, 11, and ex-13.

3.2.2. Industrial products (except textiles)

The proposed compromise contains considerable changes compared to the current rules:

- regarding a number of products the current Chapter rule contains a double cumulative condition. This is brought to a single condition (HS Chapters 74, 75, 76, 78 and 79);

- a large number of specific rules that are derogating from the Chapter rule have been deleted (HS Chapters 28, 35, 37, 38 and 83). This more horizontal approach implies a simpler panorama for operators and customs;

- the inclusion in the current Chapter rule of an alternative rule thereby offering to the exporter more choices to meet the origin criterion (Chapters 27, 40, 42, 44, 70 and 83, 84 and 85).

All these changes result in updated and modernised list rules which in general make it easier to meet the criterion for obtaining the originating status of a product. In addition, the above-mentioned possibility of using an average basis over a period of time could provide for further simplification for exporters.

3.2.3. Textiles

In relation to textiles and garments, new options have been introduced regarding outward processing and tolerances. New origin conferring processes have also been introduced for these products, especially for fabric which would become more easily available. Finally, full bilateral cumulation will apply also to these products. Such cumulation will allow processing carried out on textile materials (i.e. weaving, spinning etc.) to be taken into account in the production process in the cumulation zone.

The amendments to the Convention will become applicable on 1 January 2021 (or on the date to be agreed by the PEM Joint Committee) among those Contracting Parties that will have effectively introduced these amendments to the Convention, or the reference to them, in their protocols on rules of origin.

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*'[4].

4.1.2. Application to the present case

The PEM Joint Committee is a body set up by an agreement, namely the Regional Convention on pan-Euro Mediterranean preferential rules of origin.

The act which the PEM Joint Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 4 of the Regional Convention on pan-Euro Mediterranean preferential rules of origin.

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

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.

4.2.2. Application to the present case

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

[4] 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.

Therefore, the substantive legal basis of the proposed decision is Article 207(3) and first subparagraph of Article 207(4) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 207(3) and first subparagraph of Article 207(4), in conjunction with Article 218(9) TFEU.

5. BUDGETARY IMPLICATIONS

The amendments of the PEM Convention are based on a principle of modernization of the rules of origin to align them to the new trends set by the recent Free Trade Agreements. The amended rules in the PEM Convention contain mostly elements of simplification of customs procedures and elements of modernisation, such as:

- Sufficient working or processing – Average basis: by calculating the ex-works price and the value of non-originating materials on an average basis taking into account the fluctuations of the market, provides exporters with more predictability,
- Proof of origin: it is subject to simplification since only one type certificate of origin will be used – EUR1,
- Validity of a proof of origin: provides for more leniencies for the movement of originating products, by increasing the validity from 4 to 10 months).

These amendments to the PEM Convention have no measurable impact on the EU budget since their scope mainly concerns trade facilitation and consolidation of modern practices by customs authorities. They provide for optional facilitation in the areas which remain under competence of the authorities without impacting the substance of the rules (accounting segregation, proofs of origin, averaging). Some aspects of simplification (such as reduction of the vessels criteria) provide for greater predictability by removing conditions which are currently difficult to control by customs authorities whereas others (non-alteration) refer to logistics without affecting the substance of the rules.

Although the provisions on duty drawback are amended, the prohibition of duty drawback is maintained in the sector of textiles and clothing, which remains one of the main sectors of trade in the PEM zone. The amended rules codify the *status quo* by maintaining the prohibition currently applied with some Contracting Parties. The proposed generalisation of full cumulation in the PEM zone aims at strengthening the existing trade patterns within the zone and their complementarity, but should not affect in a meaningful way the EU customs duties collected since products subject to cumulation will have to comply with their own requirement of value added in the zone in order to benefit from preferences, as it is currently the case.

The amendments to the list rules in the sector of agricultural and processed agricultural goods mainly consist of adapted methodology without affecting the substance of the rules. The existing thresholds expressed currently in value will be expressed in weight. This criterion is more objective and more easy to be controlled by customs authorities. The simplification of the product-specific rules for industrial products should have a limited impact on custom duty revenues, as in many instances they may result more in sourcing changes than in increases of preferential imports from PEM countries replacing imports that were previously subject to import duties. The impact on import duty revenue of those changes is therefore not quantifiable.

In terms of trade and its impact on the use of preferences, the relaxations provided in the new rules put emphasis on economic integration in the entire zone, for example in the textile sector where the use of preferences is already very high. The improved rules on textiles and cumulation are mainly intended to enhance already existing regional integration and availability of materials within the zone, rather than to allow more non-originating materials to be imported from outside the zone.

6. PUBLICATION OF THE ENVISAGED ACT

As the act of the PEM Joint Committee will amend the Convention, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

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on the position to be taken on behalf of the European Union within the Joint Committee established by the Regional Convention on pan-Euro-Mediterranean preferential rules of origin as regards the amendment of the Convention

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(3) and 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 Regional Convention on pan-Euro-Mediterranean preferential rules of origin ('the Convention') was concluded by the Union by Council Decision 2013/93/EU[5] and entered into force in relation to the Union on 1 May 2012.

(2) The system of pan-Euro-Mediterranean cumulation of origin allows for the application of diagonal cumulation between the 26 Contracting Parties of the Convention: the European Union, Iceland, Liechtenstein, Norway, Switzerland, Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine[6], Syria, Tunisia, Turkey, Albania, Bosnia and Herzegovina, Croatia, North Macedonia, Montenegro, Serbia, Kosovo[7], the Faroe Islands, Moldova, Georgia and Ukraine.

(3) The Convention envisages that the rules of origin will need to be amended in order to better respond to the economic reality, and establishes procedures for its own amendment. Amendments to the Convention are to be adopted by unanimous decision of the Joint Committee established by Article 3(1) of the Convention ("the Joint Committee").

(4) The process of amending the Convention started in 2012 and resulted in a new set of modernised and more flexible rules of origin, consistent with those which have already been agreed by the Union in certain other recent agreements (EU-Canada Comprehensive Economic and Trade Agreement (CETA), EU-Vietnam Free Trade Agreement, EU-Japan Economic Partnership Agreement, EU-South African Development Community Economic Partnership Agreement) or preferential schemes (GSP).

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5 Council Decision 2013/93/EU of 14 April 2011 on the signing, on behalf of the European Union, of the Regional Convention on pan-Euro-Mediterranean preferential rules of origin (OJ L 54, 26.2.2013, p. 4).

6 This designation shall not be construed as recognition of a State of Palestine and is without prejudice to the individual positions of the Member States on this issue.

7 This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

(5) The Joint Committee is expected to adopt a Decision on the amendment of the Convention during its meeting on 27 November 2019 or at a later date.

(6) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee, as the Decision will be binding on the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on behalf of the European Union within the Joint Committee established by the Regional Convention on pan-Euro-Mediterranean preferential rules of origin shall be based on the draft Decision of the Joint Committee attached to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President