EUROPEAN
COMMISSION

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2024/0165 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Partnership Council regarding modifications to Annex 3 to the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a Council Decision establishing the position to be taken on behalf of the European Union in the Partnership Council established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (the 'TCA')[1] regarding modifications to Annex 3 thereof.

The decision will update the list of working or processing required to be carried out on non-originating materials in order for the product manufactured to obtain originating status ('product specific rules') to the Harmonised System of 2022.

2. CONTEXT OF THE PROPOSAL

2.1. The EU – UK Trade and Cooperation Agreement

The Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (the 'TCA') was concluded by the Union by means of Council Decision (EU) 2021/689 of 29 April 2021 and entered into force on 1 May 2021.

2.2. The Partnership Council

Pursuant to Articles 7 and 68 of the Agreement, the Partnership Council may amend Chapter 2 "Rules of origin" of Title I "Trade in Goods" of Part 2 "Trade, transport, fisheries and other arrangements", and its annexes such as Annex 3 in the advancement of achieving the objectives of the Trade and Cooperation Agreement. By application of the Article 8 (3c) of the Trade and Cooperation Agreement the EU-UK Trade Specialised Committee on Customs Cooperation and Rules of Origin, which concluded preparatory work in this matter in its 3rd meeting on 27 September 2023, submits proposals for modifications to Annex 3 to the Partnership Council.

On 21 December 2023, the Partnership Council adopted its Decision 1/2023 according to which Annex 3 of the EU-UK TCA shall not be amended in respect of categories of products (namely, those listed in Annex 5 of the TCA) until 1 January 2032. Article 1 of said Decision 1/2023 however foresees one exception to this: when the amendment is due to an update of the Harmonized System. In addition, in this case no amendments are foreseen with regard to products listed in Annex 5 of the TCA.

The Partnership Council is to adopt one act:

On 1 January 2022, amendments were made to the Nomenclature governed by the Harmonized Commodity Description and Coding System ("HS") Convention[2].

The Parties to the Agreement have agreed that in order to reflect the HS 2022 adjustments, it is necessary to update the description of the HS chapters, headings or subheadings and the product specific rules of origin contained in Annex 3 of the Trade and Cooperation Agreement.

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[1] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (OJ L 149, 30.04.2021, p. 10)

[2] World Customs Organization "International Convention on the Harmonized Commodity Description and Coding System", 1983.

The purpose of the envisaged act is to amend Annex 3 of the Trade and Cooperation Agreement to update it to the 2022 version of the Harmonised Commodity Description and Coding System (HS) as regards the description of the HS headings and the product specific rules of origin.

Therefore, Annex 3 to the Trade and Cooperation Agreement should be amended. These amendments do not introduce substantial changes to the negotiated rules of origin.

The envisaged act will become binding in accordance with Articles 7 (4c) and 68 of the Trade and Cooperation Agreement, which provides that the Partnership Council can modify Annexes such as Annex 3.

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

This proposed action covers the product specific rules covered in Annex 3. They are now outdated because of the entry into force of the HS 2022 on 1 January 2022. Accordingly, the EU – UK Trade Specialized Committee on Customs Cooperation and Rules of Origin has agreed at its 3rd meeting of 27 September 2023 on updating Annex 3 to reflect the HS 2022.

Update of the Annex 3

The list of working or processing required to be carried out on non-originating materials in order for the product manufactured to obtain originating status is set out in Annex 3. The update for Annex 3 covers changes brought by the HS 2022 in the wording of certain HS chapters, headings or sub-headings, as well as the adaptation of certain product specific rules.

The proposed Council Decision on the position to be taken on behalf of the European Union within the Partnership Council concerns the amendments of Annex 3 of the Trade and Cooperation Agreement.

Updating the 'product specific' rules of origin in line with the updates every five years in the Harmonised System, is best practice of the European Union.

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*'[3].

4.1.2. Application to the present case

The Partnership Council is a body set up by an agreement, namely the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part.

[3] 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.

The act, in this case a Decision, which the Partnership Council is called upon to adopt, in accordance with Articles 7 and 68 of the Trade and Cooperation Agreement, constitutes an act having legal effects.

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. 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 proposal relates to the implementation of a preferential trade agreement concluded as part of the common commercial policy, which is an area in which the Union has exclusive competence.

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

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

4.3. Conclusion

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

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the Partnership Council will amend Annex 3 of the Trade and Cooperation Agreement, which provides the Product Specific Rules of Origin, which are important to numerous external stakeholders, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

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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 Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (the 'TCA') was concluded by the Union by means of Council Decision (EU) 2021/689 of 29 April 2021 and entered into force on 1 May 2021.

(2) Chapter 2 of Title 1 of Part 2 of the Agreement and Annexes 2 to 9 to the Agreement lay down provisions on the definition of originating products and methods of administrative cooperation.

(3) Pursuant to Articles 7 (4)(c) and 68 of the Agreement, the Partnership Council established under the TCA may amend Chapter 2 "Rules of origin" of Title I "Trade in Goods" of Part 2 "Trade, transport, fisheries and other arrangements", and its annexes such as Annex 3, which establishes the Product Specific Rules of Origin, i.e. the respective working or processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status and which is currently based on the Harmonised System ('HS') 2017 version.

(4) The Partnership Council is to adopt a Decision modifying Annex 3 to align the wording of certain chapters, headings or sub-headings and to adapt the product specific rules of origin with the HS 2022 version. For reasons of clarity the Annex should be replaced in its entirety, taking into account the number of amendments that need to be made in the Annex.

(5) In its Decision 1/2023, the Partnership Council provided that Annex 3 of the TCA should not be amended for products listed in Annex 5 of the TCA, except when the amendment is due to updates of the Harmonized System. In this case also no amendments are foreseen with regard to products listed in Annex 5 of the TCA. The Partnership Council Decision annexed to this Decision is therefore in any event compliant to Decision 1/2023 of the Partnership Council.

(6) The adoption of the Decision by the Partnership Council is expected to take place in the third quarter of 2024.

(7) It is appropriate to establish the position to be taken on the Union's behalf in the Partnership Council, as the Decision will have legal effect in the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf within the Partnership Council shall be based on the draft decision of the Partnership Council attached as Annex 1 to this Decision,

Article 2

Once adopted, the Decision of the Partnership Council referred to in Article 1 shall be published in the *Official Journal of the European Union*.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President