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2024/0229 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Trade Committee of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru and Ecuador of the other part, regarding modifications to Appendixes 2, 2A and 5 to Annex II to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru, and Ecuador 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 the Union's behalf in the Trade Committee set up by the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru and Ecuador of the other part ('the Agreement')[1] in connection with the envisaged adoption of a decision of the Trade Committee of the Agreement ("the Trade Committee").

The decision will update to the Harmonized System of 2022 the list of working or processing required to be carried out on non-originating materials in order for the manufactured product to obtain originating status ('product specific rules') and the addendum to this list, contained respectively in Appendix 2 "List of working or processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status" ('Appendix 2'), Appendix 2A "Addendum to the list of working or processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status" ('Appendix 2A') and Appendix 5 "Products to which subparagraph (b) of the Declaration of the European Union concerning Article 5 in relation to originating products from Colombia, Peru and Ecuador applies" ('Appendix 5') to Annex II to the Agreement, concerning the definition of the concept of 'originating products' and methods of administrative cooperation ('Annex II').

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement

The Agreement aims to increase bilateral trade between the EU and Colombia, Peru and Ecuador and has been provisionally applied with Peru since 1 March 2013, with Colombia since 1 August 2013 and with Ecuador since 1 January 2017.

2.2. The Trade Committee

The Trade Committee may in the advancement of achieving the objectives of the Agreement make modifications to the specific rules of origin established in Annex II to the Agreement. Any decisions it adopts shall be by consensus of the representatives of the EU and the signatory Andean countries (Colombia, Peru and Ecuador). By application of Article 68(2)(e) of the Agreement, the Sub-Committee on Customs, Trade Facilitation and Rules of Origin, which concluded preparatory work, submits to the Trade Committee proposals for modifications to Annex II. In line with Article 13, subparagraph 2(g)(iii) of the Agreement, the Trade Committee can modify the specific rules of origin established in Annex II.

2.3. The envisaged act of the Trade Committee

The Trade Committee is to adopt one act:

On January 1 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:

[1] Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru and Ecuador, of the other part (OJ L 354, 21.12.2012, p. 3)

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

– update the description of the HS chapters, headings or subheadings and the product specific rules of origin contained in Appendix 2 to Annex II

– adjust Appendix 2A to Annex II regarding the description of the HS headings

– adjust Appendix 5 to Annex II regarding the tariff codes within the annual quotas for products originating in Peru

The purpose of the envisaged act is to amend Appendixes 2, 2A and 5 to Annex II to update them to the 2022 version of the Harmonized Commodity Description and Coding System (HS) as regards the description of the HS headings and the product specific rules of origin, on the one hand, and the annual quotas, on the other hand.

Therefore, Appendix 2, Note 2 of Appendix 2A and Appendix 5 to Annex II to the Agreement should be amended. These amendments do not introduce substantial changes to the negotiated rules of origin.

The envisaged act will become binding on the parties in accordance with paragraph 2 of Article 14 of the Agreement, which provides that "decisions adopted by the Trade Committee shall be binding upon the Parties, which shall take all necessary measures to implement them", and in accordance with Article 13, subparagraph 2(g)(iii) of the Agreement, which provides that the Trade Committee can modify Annex II.

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

This proposed action covers the product specific rules covered in Appendixes 2, 2A and 5 of Annex II. These product-specific rules of origin were updated by Decision No 3/2021 of the Trade Committee of 3 December 2021, to reflect the HS 2012 and 2017. They are now outdated because of the entry into force of the HS 2022 on 1 January 2022. Accordingly, the 9th Sub-Committee on Customs, Trade Facilitation and Rules of Origin of the Agreement has agreed at its meeting of 14 October 2022 on updating Appendixes 2, 2A and 5 to reflect the HS 2022.

Update of Appendix 2

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 Appendix 2 to Annex II. The update for Appendix 2 covers changes brought by HS 2022 in the wording of certain HS chapters, headings or sub-headings, corrections of minor errors for spelling mistakes and incorrect drafting styles, as well as the adaptation of certain product specific rules.

Update of Appendix 2A

In Appendix 2A to Annex II, Note 2 should be adjusted to reflect the changes introduced by the HS 2022 in the descriptions of certain headings listed under Note 2.

Update of Appendix 5

Certain originating sea fish products from Peru which are exported to the European Union are subject to annual quotas, the details of which are set out in Appendix 5 to Annex II. The Parties to the Agreement have agreed that in order to reflect the HS 2022 adjustments, it is necessary to adjust the codes of certain products under headings 0303, 0307 and 1605 to the latest version of the EU Combined Nomenclature and TARIC codes.

A single Council Decision on the position to be taken on behalf of the European Union

The proposed Council Decision on the position to be taken on behalf of the European Union within the Trade Committee concerns the amendment of Appendixes 2, 2A and 5 to Annex II to the Trade Agreement.

Updating the 'product specific' rules of origin in line with the updates every five years in the Harmonized 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 Trade Committee is a body set up by an agreement, namely the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru and Ecuador, of the other part.

The act, in this case a Decision, which the Trade Committee is called upon to adopt, in accordance with Article 13, subparagraph 2(g)(iii) of the Agreement, constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 14(2) of the Trade Agreement between the European Union and its Member States of the one part, and Colombia, Peru and Ecuador, of the other part.

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.

[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 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 Trade Committee will amend Appendixes 2, 2A and 5 to Annex II to the Agreement and serve the implementation of Annex II to the Agreement, 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 Agreement establishing a Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru and Ecuador, of the other part ('the Agreement') was signed on 26 June 2012 by the Union in accordance with Council Decision 2012/735/EU as regards Colombia and Peru and was signed on 11 November 2016 by the Union in accordance with Council Decision 2016/2369/EU as regards Ecuador. Pursuant to Article 330(3) of the Agreement, it has been applied provisionally since 1 March 2013 between the Union and Peru, since 1 August 2013 between the Union and Colombia, and since 1 January 2017 between the Union and Ecuador.

(2) Pursuant to Article 13, subparagraph 2(g)(iii) of the Agreement, the Trade Committee of the Agreement ("the Trade Committee") may modify the provisions of Annex II to the Agreement, which concerns the definition of the concept of 'originating products' and methods of administrative cooperation. Appendix 2 "List of working or processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status", Appendix 2A "Addendum to the list of working or processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status" and Appendix 5 "Products to which subparagraph (b) of the Declaration of the European Union concerning Article 5 in relation to originating products from Colombia, Peru and Ecuador applies" of Annex II are currently based on the Harmonized System ('HS') 2012 and 2017 versions.

(3) The Trade Committee, by written procedure, is to adopt a Decision modifying Appendixes 2, 2A and 5 to Annex II 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, taking into account the number of amendments that need to be made in the Appendixes, the Appendixes should be replaced in their entirety.

(4) The adoption of the Decision by the Trade Committee is expected to take place in fourth quarter 2024.

(5) It is appropriate to establish the position to be taken on the Union's behalf in the Trade Committee, 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 Trade Committee shall be based on the draft decision of the Trade Committee attached as Annex 1 to this Decision,

Article 2

Once adopted, the Decision of the Trade Committee 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