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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Trade Committee established under the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part, as regards the amendment of certain provisions of Protocol II concerning the definition of the concept of 'originating products' and methods of administrative cooperation

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on behalf of the European Union in the Trade Committee established by the Interim Partnership Agreement between the European Community, of the one part, and Pacific States of the other part (the "Agreement"), as regard the envisaged adoption of the decision amending certain provisions of the Protocol II to the Agreement.

2. CONTEXT OF THE PROPOSAL

2.1. The Partnership Agreement between the European Community, of the one part, and the Pacific States of the other part.

The Partnership Agreement between the European Community, of the one part, and Pacific States of the other part ('the Agreement') aims to (a) enable Pacific States to benefit from the improved market access offered by the European Union ('the EU'); (b) promote sustainable economic development and the gradual integration of Pacific States into the world economy; (c) establish a free trade areas between the European Union and the Pacific States based on common interest, through the progressive liberalisation of trade in a manner compliant with applicable WTO rules and the principle of asymmetry, taking account of the specific needs and capacity constraints of the Pacific States, in terms of levels and timing for commitments; (d) set up the appropriate dispute settlement arrangements; and (e) to set up the appropriate institutional arrangements.

On 13 July 2009 the EU signed the Agreement[1], which has been provisionally applied by Papua New Guinea and the Republic of the Fiji Islands since 20 December 2009 and 28 July 2014, respectively. Following their accessions, the Independent State of Samoa and the Solomon Islands have also been provisionally applying the Agreement since 31 December 2018 and 17 May 2020 respectively.

2.2. The Trade Committee

The Trade Committee is a body set up in accordance with Article 68 of the Agreement. It is composed of representatives of the EU and of the Pacific States (Papua New Guinea, Fiji, Samoa and the Solomon Islands). The Trade Committee adopts its rules of procedure, and it is co-chaired by a representative of the EU and a representative from the Pacific States.

The Trade Committee deals with all matters necessary for the implementation of the Agreement, including development cooperation. In the performance of its functions, the Trade Committee may (a) set up and oversee any special committees or bodies necessary for the implementation of the Agreement, (b) meet at any time agreed by the Parties, (c) consider any issues under the Agreement and take appropriate action in the exercise of its functions, and (d) take decisions or make recommendations in cases provided for in the Agreement.

The Trade Committee will delegate specific implementing decision-making powers to the Special Committees as provided for in the relevant provisions of the agreement, in particular the special Committee on Customs Cooperation and Rules of Origin.

[1] Council Decision 2009/729/EC of 13 July 2009 on the signature and provisional application of the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part (OJ L 272, 16.10.2009, p. 1)

2.3. The envisaged act of the Trade Committee

On *September 2020*, during its eighth meeting, the Trade Committee is to adopt a Decision regarding the amendment of certain provisions of Protocol II concerning the definition of the concept of 'originating products" and methods of administrative cooperation ('the envisaged act').

The purpose of the envisaged act is:

– to update the provisions on rules of origin to the most recent developments and to provide the economic operators with simplified and more flexible rules of origin by adopting the following amendments:

  (a) delete the following provisions, which are no longer relevant:

    – paragraph 7 of Article 3: it is no longer relevant to specify that cumulation has started to apply after 1 January 2010 and 1 October 2015;

    – article 4 bis and Annex VIII A are no longer relevant since no neighbouring developing countries have been identified;

    – second sentence of paragraph 8 of Article 4, and Annex XII: it is no longer relvant to list the products originating in South Africa for which cumulation started to apply after 31 December 2009.

  (b) To make the title of Article 7 match the title shown in the index.

  (c) To introduce a new Article 12 titled "Accounting segregation" in Title II, which will allow economic operators to save costs by using this method of managing stocks.

  (d) To delete Article 13 of Title III, and to replace it with a new Article 14 titled "Non-alteration", in order to allow for more flexibility for economic operators regarding the evidences that shall be supplied to customs authorities of the importing country when tran-shipment or customs warehousing of originating goods takes place in a third country.

  (e) To delete Article 14 on "Exhibitions" and Article 38 on "Free zones", which are no longer needed following the introduction of the provision on "non-alteration".

  (f) To amend Article 15 of Title IV, in order to allow for more flexibility for economic operators to comply with the proofs of origin requirements.

  (g) To include a new Article 39 summarizing the functions and responsibilities of the Special Committee on Customs Cooperation and Rules of Origin, which are mentioned in different provisions of Protocol II, and to update accordingly Article 41.

– To update Annex II to Protocol II of the Agreement to align it with the 2017 version of the HS Nomenclature.

Annex II to Protocol II is based on the 2007 version of the Harmonized System (HS) Nomenclature annexed to the International Convention on the Harmonized Commodity Description and Coding System of the World Customs Organisation (WCO). The WCO has issued a new HS Nomenclature 2017, effective from 1 January 2017. However, the status quo regarding the rules of origin should be maintained because changes made to the HS Nomenclature are not intended to affect the rule of origin applicable to a given product.

– To amend the text of Annex IV to Protocol II of the Agreement in order to include the Croatian version of the invoice declaration.

  The Treaty concerning the accession of the Republic of Croatia to the European Union was signed on 9 December 2011 and applied since 1 July 2013. The Agreement applies, on the one hand, to the territories in which the Treaty on the Functioning of the European Union is applied and under the conditions laid down in that Treaty, and, on the other hand, to the territories of the Signatory Pacific States.

– To update the list of OCTs in Annex VIII to Protocol II of the Agreement in order to align the list with the Treaty on the Functioning of the European Union.

  Annex VIII to Protocol II of the Agreement lists the Overseas Countries and Territories (OCTs) of the European Union. The status of some of the territories has recently changed: Saint Barthélemy (FR) and Bermuda (UK) became OCTs associated with the Union on 1 January 2012 and 1 January 2014 respectively, and Mayotte (FR) became an Outermost Region (OR) of the Union on 1 January 2014.

– Following to the accession of Samoa and Solomon Islands to the Agreement, to remove both States from the meaning of "Other ACP States" referred to in Annex X of Protocol II.

In view of the number of changes to be made in Protocol II to the Agreement and its annexes, clarity requires the Protocol to be replaced in its entirety.

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

Protocol II concerning the definition of the concept of 'originating products' and methods for administrative cooperation was concluded in 2009. Certain provisions of the original Protocol II are not up to date to the most recent development on rules of origin resulting on impediments to benefit from the preferential treatment provided for the Agreement.

The proposed amendments will simplify, and provide more flexibility to fulfil the requirements and procedures of rules of origin. For example:

- accounting segregation will allow economic operators to save costs in managing their stocks;
- more flexibility is offered to economic operators regarding the evidences that shall be supplied to customs authorities of the importing country when transhipment or customs warehousing of originating goods takes place in a third country;
- the possibility for a registered exporter to exclusively use an invoice declaration as valid proof of origin will simplify the origin procedures and reduce the administrative costs linked to the issuing of movement certificates

EUR.1, which will allow operators to fully benefit from preferential tariff treatment which may positively impact trade.

This simplification will therefore facilitate trade and enhance economic development in the Pacific Region by allowing economic operators to fully benefit from the preferential treatment under the Interim Economic Partnership Agreement.

The amendments will simplify and provide flexibility to fulfil the requirements and procedures of rules of origin. This simplification will facilitate trade and optimise the utilisation of the preferential treatment for economic operators. In addition, the proposed amendments will encourage regional integration and economic development in the Pacific States by offering more opportunities to operators to fulfil the rules of origin.

Amendments to products (headings and descriptions) mentioned in Annex II to Protocol II to the Agreement are necessary to align to the updates made by the WCO on the HS Nomenclature 2012 and 2017 edition and keep consistency of products descriptions and HS classification with the harmonized system.

Annex VIII to Protocol II to the Agreement lists the overseas countries and territories of the EU. Within the meaning of the Protocol II, 'overseas countries and territories' shall mean the countries and territories referred to in Part four of the Treaty establishing the European Community. The list should be updated to take account of the recent change of status of some of the overseas countries and territories.

It should be noted that Council Decision (EU) 2019/2143 of 11 November 2019 has already established the position to be taken on behalf of the EU in the Trade Committee established under the Agreement between the European Community, of the one part, and the Pacific States, of the other part, as regards the amendment of Annexes II and VIII to Protocol II of the Agreement (OJEU L 331, 20.12.2019, p1). For clarity, the position is recast (unchanged) in the current initiative.

The proposed decision fulfils the EU's obligations under the provisions of the Agreement.

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*'[2].

4.1.2. Application to the present case

The act which the Trade Committee is called upon to adopt constitutes an act having legal effects and it will be binding under international law in accordance with Articles 8, 68 and 78 of the Agreement.

[2] 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 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 main objective and content of the envisaged act relate to the common commercial policy.

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

4.3. Conclusion

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

4.4. Publication of the envisaged act

As the act of the Trade Committee will amend the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part, 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 Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part[1] (the 'Agreement'),, which establishes a framework for an Economic Partnership Agreement has been provisionally applied by Papua New Guinea and the Republic of the Fiji Islands since 20 December 2009 and 28 July 2014, respectively. Following their accessions, the Independent State of Samoa and the Solomon Islands have also been provisionally applying the Agreement since 31 December 2018 and 17 May 2020 respectively.

(2) Pursuant to Articles 13 and 68 of the Agreement and Article 41of the Protocol II to the Agreement, the EPA Trade Committee may adopt amendments to the provisions of Protocol II to the Agreement.

(3) The Trade Committee, during its eighth meeting on *September 2020*, is to adopt a decision amending certain provisions of the Protocol II concerning the definition of the concept of 'originating products' and methods of administrative cooperation.

(4) It is appropriate to establish the position to be taken on the Union's behalf in the Trade Committee, as the envisaged decision will be binding on the Union.

(5) Protocol II concerning the definition of the concept of 'originating products' and methods for administrative cooperation concluded in 2009, requires the amendments of certain provisions to update the rules of origin to the most recent development on rules of origin, to provide more flexible and simpler rules of origin aiming at facilitating trade for economic operators and optimising the utilisation rate of the preferential treatment.

(6) Amendments to products (headings and descriptions) mentioned in Annex II to Protocol II to the Agreement are necessary to align them with the updates made by the WCO on the HS Nomenclature 2012 and 2017 edition and keep consistency of products descriptions and HS classification with the harmonized system.

[1] Council Decision 2009/729/EC of 13 July 2009, on the signature and provisional application of the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part (OJ L 272, 16.10.2009, p. 1)

(7) The Treaty concerning the accession of the Republic of Croatia to the European Union was signed on 9 December 2011 and applied since 1 July 2013. The Agreement applies, on the one hand, to the territories in which the Treaty on the Functioning of the European Union is applied and under the conditions laid down in that Treaty, and, on the other hand, to the territories of the Signatory Pacific States. The text of Annex IV to Protocol II of the Agreement should be amended accordingly in order to include the Croatian version of the invoice declaration.

(8) Annex VIII to Protocol II to the Agreement lists the overseas countries and territories of the EU. Within the meaning of the Protocol 'overseas countries and territories' shall mean the countries and territories referred to in Part four of the Treaty establishing the European Community. The list should be updated to take account of the recent change of status of some of the overseas countries and territories.

(9) Owing to the accession of Samoa and Solomon Islands to the Agreement, both States should be removed from the meaning of "Other ACP States" referred to in Annex X of Protocol II.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the eighth meeting of the Trade Committee shall be based on the draft act of the Trade Committee attached to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President