EUROPEAN
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2023/0110 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Committee on Trade in Civil Aircraft concerning the accession of Brazil to the Agreement on Trade in Civil Aircraft

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 Committee on Trade in Civil Aircraft ('the Committee') in connection with the envisaged adoption of a decision of that Committee on the accession of Brazil to the Agreement on Trade in Civil Aircraft.

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement on Trade in Civil Aircraft

The Agreement on Trade in Civil Aircraft ('the Agreement') is a plurilateral agreement within the framework of the WTO which aims to eliminate import duties on all aircraft, other than military aircraft, as well as civil aircraft engines and their parts and components, all components and sub-assemblies of civil aircraft, and flight simulators and their parts and components. The Agreement entered into force on 1 January 1980.

The European Union ('EU)' is a party to the Agreement[1]. Nineteen EU Member States are also parties to the Agreement in their own right.[2] Because the common commercial policy is a matter of EU exclusive competence and the EU's WTO membership covers the territories to which the common commercial policy applies (i.e. the EU Member States), the Commission will express the position in the Committee on behalf of the Union and its Member States.

Brazil submitted to the Committee its application for accession to the Agreement on 14 June 2022, together with its proposed tariff commitments.

The Committee discussed on 10 October 2022 the process for reviewing Brazil's application to join the Agreement, which is the first accession request to be reviewed by WTO members in this Committee.

The envisaged Council decision which is the subject of this proposal enables the Commission to express the position on behalf of the European Union on the accession of Brazil within the Committee.

2.2. The Committee on Trade in Civil Aircraft

The task of the Committee is to review the implementation of the Agreement and consult on developments in the civil aircraft industry to determine whether amendments are required to ensure continuance of free and undistorted trade.

The Committee's decisions are adopted by consensus. Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting.

2.3. The envisaged act of the Committee

While no specific date has been agreed at the current moment in time, the Committee is to adopt in the near future a decision regarding the accession of Brazil to the Agreement ('the envisaged act').

The envisaged act would be adopted by the Committee on the basis of Article 9.1.3 of the Agreement and point 5 of the Guidance Note on the Implementation of Article 9.1.3 of the

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[1] Council Decision of 10 December 1979 concerning the conclusion of the Multilateral Agreements resulting from the 1973 to 1979 trade negotiations, OJ L 71, 17.3.1980, p. 1-2.

[2] Austria, Belgium, Bulgaria, Denmark, Estonia, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Spain and Sweden.

Agreement. The latter provides that "[u]pon a decision by the Committee agreeing to the terms of accession, the applicant government shall take all necessary steps to comply with the terms of its accession and, with the consent of the Committee, the applicant government can deposit with the Director-General of the WTO an instrument of accession, which states the terms so agreed".

The purpose of the envisaged act is to let Brazil accede to the Agreement and enhance free and undistorted trade in the civil aircraft sector.

The envisaged act will become binding on the parties in accordance with Article 9.3.1 of the Agreement, which provides that '[the]Agreement shall enter into force […] for each other government […] on the thirtieth day following the date of its acceptance or accession to this Agreement.'

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

General Notes

The objective of this proposal is to allow the EU to join a possible consensus in the Committee on the envisaged act.

While it is not yet fully clear when the Signatories will be able to reach consensus, the EU position has to be established in advance by the Council pursuant to Article 218(9) TFEU.

The proposed position of the Union is to support the accession of Brazil to the Agreement. The Commission recommends this for the following reasons:

Brazil's offer

Customs duties and other charges

Brazil offers tariff commitments under the obligations of Article 2.1 of the Agreement to the Committee. Once the discussions relating to Brazil's tariff commitments are concluded within the Committee and the list of tariff lines reflecting these obligations is settled, Brazil would be ready to incorporate in due course the duty-free treatment to the referred products in its GATT Schedule. After Brazil's accession procedure is completed, the Agreement will be integrated in Brazil's legal order.

Brazil already applies duty-free treatment to all the products listed in Brazil's proposed tariff commitments, when for use in civil aircraft. Concerning the obligations under Article 2.1.2, Brazil's current legislation already grants duty-free treatment to products used for repairing aircrafts. Regarding the commitments of Article 2.2 of the Agreement, Brazil already has an end-use system of customs administration that provides duty-free treatment comparable to the treatment provided by other signatories to the Agreement which is not an impediment to trade nor inconsistent with applicable provisions of the GATT and other multilateral agreements negotiated under the auspices of the GATT.

Technical barriers to trade

Concerning the obligations under Article 3, regarding Technical Barriers to Trade, Brazil participates actively in the discussions of the Technical Barriers to Trade Committee in the WTO and does not adopt any policy contrary to the Technical Barriers to Trade Agreement.

Government-directed procurement, mandatory sub-contracts and inducements

Brazil's procurement practices, guidelines and procedures are already in line with the requirements of the Agreement. As a general principle, several provisions of the Brazilian national Public Procurement Law - Law 14,133/2021 - prohibit different treatment between

national and foreign suppliers. As the current law already promotes this alignment, operational changes provided by the Secretariat of Management of the Ministry of Economy through Normative Instruction No. 10, of February 2020 ensured that even foreign companies not established in Brazil could access procurement opportunities.

Trade restrictions

Brazil does not apply quantitative restrictions or import licensing requirements to restrict imports of civil aircraft in a manner inconsistent with applicable provisions of the GATT and under other multilateral agreements negotiated under the auspices of the GATT. Similarly, there are no quantitative restrictions or export licensing requirements aimed at restricting, for commercial or competitive reasons, exports of civil aircraft to other Signatories in a manner inconsistent with applicable provisions of the GATT and under other multilateral agreements negotiated under the auspices of the GATT.

Government support, export credits, and aircraft marketing

In 2007, Brazil became a Participant to the "Sector Understanding on Export Credits for Civil Aircraft" (ASU), which is an annex to the Arrangement of Officially Supported Export Credits of the Organization for Cooperation and Economic Development (OECD). Therefore, the Brazilian official export credit support programs strictly follow the ASU guidelines, meaning that they do not provide officially supported export credits in more favourable terms and conditions than those set out on the ASU.

Regional and local governments

According to the Brazilian constitution, the President of the Republic has the exclusive power to conclude international treaties, ad referendum of the National Congress. Additionally, as previously mentioned, the adoption of legislation with the terms of the Agreement by the Federal Government in Brazil after the international ratification or accession means this Agreement is a binding legal instrument in the country.

Recommendation

Brazil's accession to the Agreement is expected to make a positive contribution to further international opening of civil aircraft markets, by enlarging the number of parties to the Agreement and thus encouraging other countries to accede to it. The Commission recommends that the offer by Brazil is accepted.

Accordingly, it is proposed that the Commission be authorised to express within the Committee on Civil Aircraft the position of the Union in favour of Brazil's accession to the Agreement.

The initiative is fully consistent with existing policy. Similar decisions were adopted for e.g. accessions of Australia or New Zealand to another WTO specific agreement, i.e. the Agreement on Government Procurement.

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 Committee is a body set up by Article 8.1 of the Agreement.

The act which the 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 9.3.1 of the Agreement on Trade in Civil Aircraft.

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 is Article 207 TFEU.

4.3. Conclusion

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

[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.

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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 Article 207(4), first subparagraph, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Agreement on Trade in Civil Aircraft ('the Agreement') was concluded by the Union by Council Decision 80/271/EEC[4] and entered into force on 1 January 1980.

(2) Brazil submitted its application to the Committee on Trade to Civil Aircraft ('the Committee') for accession to the Agreement on 14 June 2022, together with its proposed tariff commitments.

(3) In view of those commitments, Brazil's application for accession to the Agreement meets the requirements set out in the Agreement.

(4) Brazil's accession to the Agreement is expected to make a positive contribution to the free and undistorted trade in the civil aircraft sector.

(5) Pursuant to Article 9.1.3 of the Agreement and point 5 of the Guidance Note on the Implementation of Article 9.1.3 of the Agreement, the Committee has the power to take a decision agreeing to the terms of accession.

(6) Accordingly, it is necessary to establish the position to be taken on the Union's behalf within the Committee in relation to the accession of Brazil to the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Committee on Trade in Civil Aircraft shall be to agree to the accession of Brazil to the Agreement on Trade in Civil Aircraft.

[4] OJ L 71, 17.3.1980, p. 1-2.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President