EUROPEAN COMMISSION

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2010/0086 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken by the European Union within the Association Council established by the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part, as regards the amendment of Article 15(7) of Protocol No 6 to that Agreement, concerning the definition of the concept of "originating products" and methods of administrative cooperation

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The prohibition of drawback of customs duties is stipulated in Article 15 of Protocol No 6 annexed to the EC-Algeria Association Agreement. Paragraph 7 of that article provides for a transitional period prior to the full application of the prohibition of drawback of duties by Algeria and allows the country to grant duty drawback to its exporters or economic operators during this period.

The transitional period expired on 31 December 2009. However, Article 15(7) provides for the possibility of re-examining this provision by mutual agreement.

Algeria has requested in writing that the period in which the provision on drawback applies be extended and that the rates of customs charges be revised.

In accordance with Article 39 of Protocol No 6, the provisions of the Protocol may be amended by decision of the Association Council.

The text of the decision will replace the existing provision laid down in Article 15(7).

It includes both the change to the application period of the provision on drawback and the revision of the rates of customs charges to be retained.

The parties have agreed to extend by three years the application period of Article 15(7), with effect from 1 January 2010 in order to provide clarity, long-term economic predictability and legal certainty for economic operators.

The parties have also decided to adjust the rates of customs charges currently applicable in Algeria to bring them into line with those that apply in the European Union.

Pending formal adoption of the present decision, it was agreed, in an exchange of correspondence between the European Commission and the relevant Algerian authorities, that this decision will apply from 1 January 2010.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

The parties concerned have been consulted in the Pan-Euro-Med working group and the Customs Code Committee's Origin Section.

No recourse to external expertise has been necessary.

It has not been necessary to conduct an impact assessment, since the proposed amendments are technical in nature and do not affect the substance of the protocol on rules of origin currently in effect.

3. LEGAL ELEMENTS OF THE PROPOSAL

Given the nature of the changes to be made to Article 15(7) of Protocol No 6 and in the interest of legal certainty, the whole paragraph should be replaced.

The amended provision on drawback of duties should apply retroactively from 1 January 2010.

The legal basis for the amendment of this provision is the first subparagraph of Article 207(4) in conjunction with Article 218(9) of the Treaty on the Functioning of the European Union.

The proposal falls under the exclusive competence of the Union. The principle of subsidiarity does not therefore apply.

Proposed instrument: Council decision

4. BUDGETARY IMPLICATIONS

This proposal has no financial implications for the Union budget.

5. ADDITIONAL INFORMATION

The proposal does not include any review, revision or sunset clause.

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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) Protocol No 6[1] to the Euro-Mediterranean Agreement between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part, hereafter "the Agreement", as amended by Decision No 2/2007 of the EU-Algeria Association Council of 16 October 2007[2], concerns the definition of the concept of "originating products" and methods of administrative cooperation.

(2) Article 15 of Protocol No 6 contains a general prohibition of drawback of, or exemption from, customs duties for non-originating materials used in the manufacture of originating products. However, paragraph 7 of this article stipulates that a drawback or exemption may be applied until 31 December 2009 subject to certain conditions.

(3) In order to provide clarity, long-term economic predictability and legal certainty for economic operators, the parties have agreed to extend by three years the application period of Article 15(7), with effect from 1 January 2010.

(4) Moreover, the rates of customs charges currently applicable in Algeria should be adjusted to bring them into line with those that apply in the European Union.

(5) In accordance with Article 39 of Protocol No 6, the Association Council established by the Agreement should decide to amend the Protocol accordingly.

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[1] OJ L 265, 10.10.2005, p. 2.
[2] OJ L 297, 15.11.2007, p. 1.

(6) The European Union should therefore adopt the position set out in the attached draft decision within the Association Council,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted by the European Union within the Association Council established by the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part, as regards the amendment of Article 15(7) of Protocol No 6 to that Agreement, concerning the definition of the concept of "originating products" and methods of administrative cooperation, with a view to extending the application period of that provision, is set out in the attached draft decision of the Association Council.

Article 2

The decision of the Association Council shall be published in the Official Journal of the European Union.

Done at Brussels,

For the Council
The President

Draft

DECISION No […] OF THE EU-ALGERIA ASSOCIATION COUNCIL

of […]

amending Article 15(7) of Protocol No 6 to the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part, regarding the definition of the concept of "originating products" and methods of administrative cooperation

THE ASSOCIATION COUNCIL,

Having regard to the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part, and in particular Article 39 of Protocol No 6 thereto,

Whereas:

(1) Article 15(7) of Protocol No 6 to the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part, hereafter "the Agreement", allows drawback of, or exemption from, customs duties or charges with equivalent effect, subject to certain conditions, until 31 December 2009.

(2) In order to provide clarity, long-term economic predictability and legal certainty for economic operators, the parties have agreed to extend by three years the application period of Article 15(7), with effect from 1 January 2010.

(3) Moreover, the rates of customs charges currently applicable in Algeria should be adjusted to bring them into line with those that apply in the European Union.

(4) Protocol No 6 to the Agreement should therefore be amended accordingly.

(5) Since Article 15(7) no longer applies as of 31 December 2009, this Decision should apply from 1 January 2010,

HAS DECIDED AS FOLLOWS:

Article 1

Article 15(7) of Protocol No 6 to the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part, regarding the definition of the

concept of "originating products" and methods of administrative cooperation, is replaced by the following text:

"7. Notwithstanding paragraph 1, Algeria may, except for products falling within Chapters 1 to 24 of the Harmonised System, apply arrangements for drawback of, or exemption from, customs duties or charges having an equivalent effect, applicable to non-originating materials used in the manufacture of originating products, subject to the following provisions:

(a) a 4% rate of customs charge shall be retained in respect of products falling within Chapters 25 to 49 and 64 to 97 of the Harmonised System, or such lower rate as is in force in Algeria.

(b) an 8% rate of customs charge shall be retained in respect of products falling within Chapters 50 to 63 of the Harmonised System, or such lower rate as is in force in Algeria.

The provisions of this paragraph shall apply until 31 December 2012 and may be reviewed by common accord."

Article 2

This Decision shall enter into force on the day of its adoption.

It shall apply from 1 January 2010.

Done at

For the Association Council
The President