



Brussels, 17.5.2016
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Proposal for a

COUNCIL DECISION

on the position to be adopted on behalf of the European Union within the EU-Central America Association Council regarding the replacement of Appendix 2 to Annex II to the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America, on the other, was signed in Tegucigalpa, Honduras on 29 June 2012 and has been provisionally applied from 2013. One of its aims is to progressively liberalise trade in goods between the Parties through eliminating customs duties.

To achieve this aim it is necessary to determine the goods originating in each Party. Annex II to the Association Agreement sets out the definition of the concept of "originating products" and methods of administrative cooperation. 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 is set out in Appendix 2 to Annex II. These product-specific rules are based on a Harmonised System (HS) 2007 of classification of goods which is now outdated.

Central America and the European Union have agreed to update the product-specific rules by aligning them to the HS 2012, this being the most up-to-date classification. The aim is to ensure that the product-specific rules remain unchanged for those products that have been reclassified within the HS 2012. This means that in cases where products move to a different chapter or heading the product-specific rules need updating if the rules in the new chapter or heading are different from that of the old chapter or heading.

Updating the product specific rules for products moving to headings 2852 and 9619 in the HS 2012 would become unnecessarily complicated while the effects of not applying the changes minimal. In these cases the changes have not been implemented.

The opportunity is taken to correct an error in the product specific rules in the footnote to heading 3920 in the Spanish version only. The footnote to the Spanish version incorrectly refers to heading "ex 3920" while it should make reference to heading "3920".

Corrections are made for the product specific rules in chapter 84 and for heading 8522. For chapter 84 there should be an alternative rule based on the value of all non-originating materials used not exceeding 30 % of the ex-works price of the product. This is now added. For heading 8522 reference to products in "headings 8519 to 8521" is replaced by "headings 8519 and 8521" since heading 8520 has been deleted.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

As the proposal relates to the commercial policy of the European Union the appropriate legal basis is Article 207(4) first subparagraph in conjunction with Article 218(9) of the Treaty on the Functioning of the European Union.

- **Subsidiarity (for non-exclusive competence)**

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

- **Proportionality**

The proposal does not go beyond what is necessary or appropriate to achieve the expected objectives.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

Not relevant. This proposal introduces amendments to update a previous text.

- **Collection and use of expertise**

External expertise from trade bodies was only sought for products moving to headings 2852 and 9619 under the HS 2012 where the product specific rules for those products would change. The benefits of maintaining simplified product specific rules outweigh any minimal effects on preferential rules of origin.

- **Impact assessment**

This proposal introduces amendments to an existing bilateral trade agreement. There are no other options to be considered.

4. BUDGETARY IMPLICATIONS

The proposal has no implication for the Union budget.

5. OTHER ELEMENTS

None

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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 an Association between the European Union and its Member States, on the one hand, and Central America on the other¹ (the "Agreement"), was initialled on 22 March 2011 and signed on 29 June 2012. Pursuant to Article 353(4) of the Agreement, Part IV thereof has been applied provisionally since 1 August 2013 between the Union, Nicaragua, Honduras and Panama, since 1 October 2013 between those parties and El Salvador and Costa Rica, and since 1 December 2013 between the Union, Nicaragua, Honduras, Panama, El Salvador and Costa Rica on the one side and Guatemala on the other.
- (2) In accordance with Article 36 of Annex II to the Agreement, the EU-Central America Association Council ('the Association Council') may decide to modify the Appendixes to Annex II.
- (3) Appendix 2 to Annex II to the Agreement is based on the Harmonised Commodity Description and Coding System (HS) 2007.
- (4) The HS is updated every five years, the last update being in 2012. Since the product specific rules in the Agreement are based on an outdated version of the HS, namely the HS 2007, they should be updated to reflect the HS 2012.
- (5) The Sub-Committee on Customs, Trade Facilitation and Rules of Origin, referred to in Article 123 of the Agreement, has agreed the amendments to Appendix 2 to Annex II to the Agreement, setting out 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 ('the product specific rules'), in order to bring that Appendix into line with the latest version of the HS.
- (6) The product specific rules should remain unchanged for those products that have been reclassified within the HS 2012. In cases where products are moved to a different chapter or heading, the product specific rules should be added to the list rules in the new chapter or heading where the list rules in the new chapter or heading are different from those laid down in the old chapter or heading.

¹ OJ L 346, 15.12.2012, p. 3.

- (7) The changes to the product specific rules in headings 2852 and 9619 resulting from the HS 2012 would become complicated to apply because of the large number of products moving to these headings each with a different rule for determining origin. The current rules could be kept unchanged because the effects of not applying the changes would not substantially alter the determination of the origin of the products.
- (8) In the case of the majority of products moving to heading 9619, they have an alternative rule providing that the value of all non-originating materials used does not exceed a certain percentage of the ex-work price of the product. This alternative rule should be added with the value of non-originating materials set at a maximum of 50%.
- (9) The opportunity should be taken to correct a mistake in the product specific rules for the footnote in heading 3920 in the Spanish version only.
- (10) Corrections to the list rules are needed for chapter 84 and heading 8522. The opportunity should be taken to correct these by including the changes in the new appendix.
- (11) For reasons of clarity, taking into account the number of amendments that need to be made in Appendix 2 to Annex II to the Agreement, that Appendix should be replaced in its entirety.
- (12) The position to be adopted on the Union's behalf within the Association Council should be based on the attached draft decision,

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be adopted on the Union's behalf within the Association Council regarding the replacement of Appendix 2 to Annex II to the Agreement, setting out the product specific rules, shall be based on the draft Decision of the Association Council attached to this Decision.

2. Minor changes to the draft Decision of the Association Council may be agreed to by the representatives of the Union in the Association Council without further decision of the Council.

Article 2

After its adoption, the Decision of the Association Council shall be published in the Official Journal of the European Union.

Article 3

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

Done at Brussels,

*For the Council
The President*