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2019/0029 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the EPA Committee established under the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part, as regard the amendment of certain provisions of Protocol 1 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 EPA Committee established by the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part, as regard the envisaged adoption of the decision amending certain provisions of the Protocol 1 to the Agreement.

2. CONTEXT OF THE PROPOSAL

2.1. The Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part.

The Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part ('the Agreement') aims to (a) enable ESA 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 ESA States into the world economy; (c) establish a free trade areas between the European Union and the Eastern and Southern Africa ('the ESA') 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 ESA 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 Agreement¹, which has been provisionally applied by Madagascar, Mauritius, Seychelles and Zimbabwe since 14 May 2012.

2.2. The EPA Committee

The EPA Committee is a body set up in accordance with Article 64 of the Agreement. It is composed of representatives of the EU and of the ESA States (Madagascar, Mauritius, Seychelles and Zimbabwe). The EPA Committee adopts its rules of procedure, and it is co-chaired by a representative of the EU and a representative from the ESA States.

The EPA Committee deals with all matters necessary for the implementation of the Agreement, including development cooperation. In the performance of its functions, the EPA 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, (d) take decisions or make recommendations in cases provided for in the Agreement, and (e) adopt amendments to the Agreement, including the list of Signatory ESA States listed in Annex II and the provisions of Protocol 1.

¹ Council Decision of 13 July 2009 on the signing and provisional application of the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Members Stats, on the other part (OJ L 111, 24.4.2012, p. 1–1172)

The EPA Committee may review the Agreement, its implementation, operation and performance where necessary and make appropriate suggestions to the Parties for its amendment.

2.3. The envisaged act of the Committee

On May/June 2019, during its eight meeting, the EPA Committee is to adopt a Decision regarding the amendment of certain provisions of Protocol 1 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:

- Corrigendum on paragraph 2 of article 6 of Protocol 1 to the Agreement concerning the definition of the terms 'their vessels' and 'their factory ships';
- Introduction of a new Article 13 titled "Accounting segregation" in Title III of Protocol 1 to the Agreement, in order to allow economic operators to save costs by using this method of managing stocks;
- Replacement of Article 14 “Direct transport” by a new Article 15 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 trans-shipment or customs warehousing of originating goods takes place in a third country;
- Introduction of a new Article 17 in Title III of Protocol 1 to the Agreement, in order to allow economic operators to ship sugar of different origins without keeping the sugar in separate stores;
- Amendment of Article 16 of Title IV of Protocol 1 to the Agreement, which is renumbered now as Article 18, in order to allow for more flexibility for economic operators to comply with the proofs of origin requirements;
- Amendments to Annex II to the Protocol 1 to reflect the updates introduced as from 1 January 2012 and 1 January 2017 into the Nomenclature governed by the Convention on the Harmonised Commodity Description and Coding System (Harmonised System) of the World Customs Organisation. Those modifications do not change the rules of origin. HS headings modified or updated: ex Chapter 12, ex1211, ex121190, ex3002, 4104 to 4106, 4107, 4109 (deleted), ex4114, 8485 (deleted), ex8486 and 8487;
- Following the accession of Croatia to the EU, it is necessary to make changes in Annex IV to Protocol 1 to introduce the Croatian version of the statement of Annex IV on it;
- Amendment of Annex IX to Protocol 1 to the Agreement, which lists the overseas countries and territories of the EU, to reflect the changes in the list of overseas countries and territories in line with Annex II of the TFEU, taking into account the recent change of status of some of the territories in the list; thus facilitating the application of the provisions on the cumulation of origin.

In view of the number of changes to be made in Protocol 1 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

The Protocol 1 concerning the definition of the concept of ‘originating products’ and methods for administrative cooperation was concluded in 2007. Certain provisions of the original Protocol 1 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 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 ESA 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 1 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.

Last, Annex IX to Protocol 1 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 Annex II of the Treaty on the Functioning of the European Union. The list should be updated to take account of the recent change of status of some of the overseas countries and territories.

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 Committee is called upon to adopt constitutes an act having legal effects and it will be binding under international law in accordance with Articles 13, 64 and 68 of the Agreement. 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.

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.

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 of the TFEU.

4.3. Conclusion

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

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the EPA Committee will amend the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on 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 Article 207, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part ('the Agreement') was concluded by the Union by Council Decision 2012/196/EC of 13 July 2009³ and entered into provisional application on 14 May 2012.
- (2) Pursuant to Articles 13 and 68 of the Agreement and Article 44 of the Protocol 1 to the Agreement, the EPA Committee may adopt amendments to the provisions of Protocol 1 to the Agreement.
- (3) The Committee, during its eight session/meeting on *May/June 2019*, is to adopt a decision amending certain provisions of the Protocol 1 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 EPA Committee, as the envisaged decision will be binding on the Union.
- (5) The Protocol 1 concerning the definition of the concept of 'originating products' and methods for administrative cooperation concluded in 2007 requires the amendment of certain provisions to update the rules of origin to the most recent developments 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 1 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.
- (7) Annex IX to Protocol 1 to the Agreement lists the overseas countries and territories of the EU. Within the meaning of the Protocol 'overseas countries and territories' shall

³ OJ L 111, 24.4.2012, p. 1

mean the countries and territories referred to in Annex II of the Treaty on the Functioning of the European Union. The list should be updated to take account of the recent change of status of some of the overseas countries and territories,

HAS ADOPTED THIS DECISION:

Article 1

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

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President