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2019/0134 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the Trade Committee established by the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, as regards the amendment of Appendices 2-C-2 and 2-C-3 of Annex 2-C of the Agreement

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the position to be adopted on behalf of the Union within the Trade Committee established by Article 15.1 of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea on the other part, as regards the amendment of Appendices 2-C-2 and 2-C-3 of Annex 2-C of the Agreement.

2. CONTEXT OF THE PROPOSAL

2.1. The EU-Republic of Korea Free Trade Agreement

The Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea on the other part ("The Parties" and "the FTA" or "the Agreement") is the European Union's first new generation trade agreement and also the first concluded with an Asian country. The aim of the Agreement is to boost bilateral trade and economic growth in both the EU and Korea.

The Agreement, which was concluded by the Union on 1 October 2015¹, has been applied since 1 July 2011².

2.2. The Trade Committee

The Trade Committee established under Article 15.1 of the Agreement may decide to amend Appendices 2-C- 2 and 2- C-3 of Annex 2-C of the Agreement pursuant Article 15.5.2 of the Agreement.

2.3. The envisaged act of the Trade Committee

Article 3(d) of Annex 2-C of the Agreement mandates the Parties to review Appendices 2-C-2 and 2-C-3 of Annex 2-C no less than every three years from the entry into force of the Agreement with a view to furthering the acceptance of products as set out in subparagraph (a) of the same Article, taking into account any regulatory developments that may have occurred internationally or in the Parties. It further specifies that any modifications to Appendices 2-C-2 and 2-C-3 shall be decided upon by the Trade Committee.

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

The Treaties bestow on the Union an exclusive competence for the common commercial policy, which includes the Union's autonomous trade policy as well as the conclusion of international trade agreements. Considering that the envisaged act leads to the satisfactory functioning and the efficient implementation of the FTA, the adoption of the envisaged act fits the objectives of the Union trade policy.

¹ Council Decision (EU) 2015/2169 of 1 October 2015 on the conclusion of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (OJ L 307, 25.11.2015, p. 2).

² Free trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (OJ L 127, 14.5.2011, p. 6).

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.

4.1.2. Application to the present case

The Trade Committee is a body set up by an agreement, namely the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea on the other part.

The act which the Trade 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 15.5.2 of the FTA.

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 envisaged act pursues objectives and has components in the area of the common commercial policy. These elements of the envisaged act are inseparably linked without one being incidental to the other.

Therefore, the substantive legal basis of the proposed decision comprises the following provisions: 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 Trade Committee will amend Appendices 2-C-2 and 2-C-3 of Annex 2-C of the Agreement, 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(3) and 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 Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea on the other part ("The Parties" and "the FTA" or "the Agreement") signed on 6 October 2010, was concluded by the Union by Council Decision (EU) 2015/2169 of 1 October 2015. It has been applied as of 1 July 2011³.
- (2) Article 15.1 of the Agreement establishes a Trade Committee, which may, inter alia, consider amendments to the Agreement or amend provisions of the Agreement in cases specifically provided for in the Agreement. Article 15.5.2 of the Agreement establishes that the Trade Committee may decide to amend the Annexes, Appendices, Protocols and Notes to the Agreement through a decision subject to the Parties' respective applicable legal requirements and procedures.
- (3) Article 3(d) of Annex 2-C of the Agreement mandates the Parties to review Appendices 2-C-2 and 2-C-3 of Annex 2-C no less than every three years from the entry into force of the Agreement with a view to furthering the acceptance of products as set out in subparagraph (a) of the same Article, taking into account any regulatory developments that may have occurred internationally or in the Parties. It further specifies that any modifications to Appendices 2-C-2 and 2-C-3 shall be decided upon by the Trade Committee.
- (4) Since the FTA began to apply in September 2010, the technical regulations mentioned in Appendices 2-C-2 and 2-C-3 of Annex 2-C of the Agreement have changed as well as some of the product coverage. In order to take into account these developments, EU and Korea have modified the technical regulations while at the same time maintaining the same degree of market access covered by Article 1.2 of Annex 2-C of the Agreement.

³ Notice concerning the provisional application of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, OJ L 168, 28.6.2011, p. 1.

- (5) It is therefore appropriate to determine the Union position in relation to the amendment of Appendices 2-C-2 and 2-C-3 of Annex 2-C of the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on behalf of the Union within the Trade Committee established by Article 15.1 of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea on the other part, as regards the amendment of Appendices 2-C-2 and 2-C-3 of Annex 2-C of the Agreement shall be based on the draft decision 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