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2020/0175 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, in the Trade Committee established under the Interim Partnership Agreement between the European Community, on the one part, and the Pacific States, on the other part, as regard the establishment of the Rules of Procedure of the Trade Committee and the Rules of Procedure of the Special Committees

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 EU-Pacific Trade Committee established by the Interim Partnership Agreement between the European Community, on the one part, and the Pacific States, on the other part, concerning the adoption of the Rules of Procedure of the Trade Committee and the Rules of Procedure of the Special Committees.

2. CONTEXT OF THE PROPOSAL

2.1. The Interim Partnership Agreement between the European Community, on the one part, and the Pacific States, on the other part

On 30 July 2009 the EU signed the Interim Partnership Agreement¹, which establishes a framework for an Economic Partnership Agreement (hereinafter the ‘Agreement’) between the European Community, of the one part, and the Pacific States, of the other part.

The Agreement has been provisionally applied by Papua New Guinea (PNG) since 20 December 2009, Fiji since 28 July 2014, Samoa since 31 December 2018 and Solomon Islands since 17 May 2020.

The Agreement aims to:

- (a) enable Pacific States to benefit from the improved market access offered by the EU
- (b) promote sustainable development and the gradual integration of Pacific States into the world economy;
- (c) establish a free trade area between the Parties based on the 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 Pacific States, in terms of levels and timing for commitments;
- (d) set up the appropriate dispute settlement arrangements; and
- (e) set up the appropriate institutional arrangements.

2.2. The EU-Pacific Trade Committee

Composed of representatives of the EU and the Pacific States (Fiji, PNG, Samoa and Solomon Islands), the Trade Committee shall establish its rules of procedure and be co-chaired by a representative of the EU Party and a representative of the Pacific States. The two co-chairs shall alternate in presiding the meetings. The person presiding a meeting is considered ‘presiding co-chair’ for the purposes of the Agreement until the moment in time when the next meeting commences and the role of a presiding co-chair is assumed by the other Party.

The Trade Committee deals with all matters necessary for the implementation of the Agreement. In the performance of its functions, the Trade 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

¹ Council Decision of 13 July 2009 on the signature and provisional application of the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part (OJ L 272, 16.10.2009, p. 1).

take appropriate action in the exercise of its functions, and (d) take decisions or make recommendations in cases provided for in the Agreement.

The EU-Pacific Trade Committee will delegate specific implementing decision-making powers to the special committees as provided for in the relevant provisions of the Agreement, in particular the Special Committee on Customs Cooperation and Rules of Origin.

2.3. The envisaged act of the EU-Pacific Trade Committee

In the last quarter of 2020, during its eighth meeting, the EU-Pacific Trade Committee is to adopt a Decision establishing the Rules of Procedure of the EU-Pacific Trade Committee and of the Special Committees ('the envisaged act').

The purpose of the envisaged act is to lay down the rules, binding on the Parties, governing the organisation and functioning of the EU-Pacific Trade Committee and related sub-structures as specified under the provisions of the Agreement (Article 68).

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

Article 68 provides that the EU-Pacific Trade Committee shall establish its rules of procedure.

The proposed Council Decision establishes the Union position to be taken regarding the adoption of the Rules of Procedure of the EU-Pacific Trade Committee and of the Special Committees, thus fulfilling the EU's obligations under the provisions of the interim Agreement.

Such position shall be based on the Draft Decision of the EU-Pacific Trade Committee attached to the draft Council Decision. The Annex to the EU-Pacific Trade Committee Decision lays down the requirements for the role and name of the EU-Pacific Trade Committee, the composition and chair, the secretariat, the meetings, the delegations, the documents, the correspondence, the agenda for the meetings, the invitation of experts, the minutes, the decisions and recommendations, the transparency, the languages, the expenses, the special Committees or bodies and the amendments of the Rules of Procedure.

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*'.

4.1.2. Application to the present case

The Trade Committee is a body set up by the Economic Partnership Agreement.

The act that the EU-Pacific 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 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.

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 substantive legal basis for the EU's decision of 15 February 2011 to conclude the Agreement is Article 207 TFEU. Moreover, the main objective and content of the envisaged act relate to the common commercial policy. Hence, the subject matter of the envisaged act concerns an area for which the Union has an exclusive external competence by virtue of Article 3(2) of the TFEU.

Therefore, the substantive legal basis of the proposed decision is the first subparagraph of Article 207(4) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be the first subparagraph of Article 207(4), in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the EU-Pacific Trade Committee will implement the Economic Partnership 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 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) On 30 July 2009 the Union signed the Interim Partnership Agreement, which establishes a framework for an Economic Partnership Agreement (hereinafter the 'Agreement') between the European Community, of the one part, and the Pacific States, of the other part¹. The Agreement has been provisionally applied by Papua New Guinea since 20 December 2009, Fiji since 28 July 2014, Samoa since 31 December 2018 and Solomon Islands since 17 May 2020.
- (2) Article 68 of the Agreement establishes a EU-Pacific Trade Committee, which shall deal with all matters necessary for the implementation of the Agreement.
- (3) Article 68 provides that the EU-Pacific Trade Committee shall establish its rules of procedure, and will delegate specific implementing decision-making powers to the Special Committees as provided for in the relevant provisions of the Agreement.
- (4) The EU-Pacific Trade Committee, during its eighth meeting, will adopt its rules of procedure and those of the Special Committees.
- (5) The European Union should determine the position to be taken regarding the adoption of such rules of procedure,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union in the eighth meeting of the EU-Pacific Trade Committee as regard the Rules of Procedure of the EU-Pacific Trade Committee and of the Special Committees shall be based on the draft Decision of the EU-Pacific Trade Committee attached to this Decision.

¹ OJ L 272, 16.10.2009, p. 1.

Article 2

After its adoption, the Decision of the EU-Pacific Trade Committee 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