



Brussels, 14.8.2020
COM(2020) 376 final

2020/0177 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Customs Committee established under 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 a recommendation on the application of the Article 27 of the Protocol concerning the definition 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 Customs 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 a recommendation on the application of the Article 27 of the Protocol concerning the definition of ‘originating products’ and methods of administrative cooperation.

Article 27 lays down provisions on the verification of proofs of origin.

2. CONTEXT OF THE PROPOSAL

2.1. 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.

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 entered into provisional application on 1 July 2011, and entered into force from 13 December 2015.

2.2. The Customs Committee

The Customs Committee is a body set up in accordance with Articles 6.15 and 15.2(1)(c) of the Agreement. It is composed of representatives of the EU and of the Republic of Korea. The Customs Committee adopts its rules of procedure, and it is co-chaired by a representative of the EU and a representative from the Republic of Korea.

The Customs Committee is empowered by Article 6.16(5) of the Agreement to formulate recommendations, which it considers necessary for the attainment of the common objectives and sound functioning of the mechanisms established in the Protocol.

2.3. The envisaged act of the Committee

The European Union and the Republic of Korea (hereinafter, ‘the Parties’) have identified the need for a common understanding of the main characteristics of the verification procedure laid down in Article 27 of the Protocol concerning the definition of ‘originating products’ and methods of administrative cooperation, as well as of the different steps in that procedure. Such common understanding should be in the interest of the customs authorities in charge of ensuring compliance with rules of origin, and of the economic operators subject to verification of proofs of origin, in each Party.

The Parties have therefore considered appropriate that the Customs Committee formulates a recommendation to this end, in accordance with Article 6.16(5) of the Agreement..

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

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

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*’¹.

4.1.2. Application to the present case

The envisaged act will be binding under international law in accordance with Article 6.16(5) of the Agreement. It will be published in the Official Journal of the European Union.

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 main objective and content of the envisaged recommendation relate to the common commercial policy.

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

The recommendation formulated by the Customs Committee will be published in the *Official Journal of the European Union, C series*.

¹ 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.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Customs Committee established under 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 a recommendation on the application of the Article 27 of the Protocol concerning the definition of ‘originating products’ and methods of administrative cooperation

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 Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea of the other part was concluded by the Union by Council Decision 2011/265/EU of 16 September 2010, entered into provisional application on 1 July 2011², and entered into force from 13 December 2015.
- (2) The Customs Committee is empowered by Article 6.16(5) of the Agreement to formulate recommendations, which it considers necessary for the attainment of the common objectives and sound functioning of the mechanisms established in the Protocol.
- (3) Article 27 of the Protocol of the Agreement, concerning the definition of ‘originating products’ and methods of administrative cooperation (hereinafter “the Protocol”), lays down the procedure for the verification of proofs of origin and in particular the tasks and responsibilities of the customs authorities of the importing and exporting Party therein.
- (4) The European Union and the Republic of Korea have identified the need for a common understanding of the main characteristics of the verification procedure laid down in Article 27 of the Protocol and of the different steps in that procedure. Such common understanding should be in the interest of the customs authorities in charge of ensuring compliance with rules of origin and of the economic operators subject to verification, in each Party.
- (5) The European Union and the Republic of Korea have considered appropriate that the Customs Committee formulates such a recommendation for a common understanding and sound implementation of the provisions laid down in Article 27 of the Protocol.
- (6) It is appropriate to establish the position to be taken on the Union's behalf in the Customs Committee, as the envisaged recommendation will have legal effects in the Union,

² OJ L 127, 14.5.2011, p. 1–1426

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Customs 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 shall be based on the draft recommendation attached to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*