



EUROPEAN
COMMISSION

Brussels, 21.6.2021
COM(2021) 314 final

2021/0147 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, in the Trade Committee established by the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam as regards the adoption of the Rules of Procedure for the Trade Committee

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 Trade Committee established by the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam ('the Agreement'), in connection with the envisaged adoption of the Rules of Procedure of the Trade Committee.

2. CONTEXT OF THE PROPOSAL

2.1. The Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam

The Agreement establishes a free trade area between the Union and Viet Nam. Its objectives are to liberalize and facilitate trade and investment between the Parties. These objectives are part of the Parties' broader determination to strengthen their economic, trade and investment relations, in accordance with the objective of sustainable development and to promote trade and investment under the Agreement in a manner mindful of high levels of environmental and labour protection and relevant internationally recognised standards and agreements. The Agreement entered into force on 1 August 2020.

2.2. The Trade Committee

Article 17.1 of the Agreement establishes the Trade Committee. Article 17.2 of the Agreement establishes five specialised committees: the Committee on Trade in Goods, the Committee on Customs, the Committee on Sanitary and Phyto-Sanitary measures, the Committee on Investment, Trade in Services, Electronic Commerce and Government Procurement and the Committee on Trade and Sustainable Development. Article 17.3 also establishes two working groups: on intellectual property rights, including GIs, and on motor vehicles and parts.

The Trade Committee is composed of representatives of the Parties and meets once a year, unless otherwise decided by the Committee, or in urgent cases at the request of a Party. The Trade Committee shall be co-chaired by the Minister of Industry and Trade of Viet Nam and the Member of the European Commission responsible for Trade.

The Trade Committee, the specialised committees and the working groups are responsible for the implementation and application of the Agreement in their respective areas.

2.3. The envisaged act of the Trade Committee

The Trade Committee may adopt its Rules of Procedure (the 'envisaged act'), in accordance with Article 17.1, paragraph 4, point (f) of the Agreement.

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

The position to be adopted on behalf of the Union should aim at adopting the Rules of Procedure of the Trade Committee, as provided for by 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’*¹.

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 the Socialist Republic of Viet Nam.

The decision, which the Trade Committee is called upon to adopt, constitutes an act having legal effects.

The envisaged act is binding and 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 main objective and content of the envisaged act relate to the common commercial policy and to international transport.

Therefore, the substantive legal basis of the proposed decision is the Treaty of the Functioning of the European Union, and in particular its Articles 91(1), 100(2) and 207(4), first subparagraph.

4.3. Conclusion

The legal basis of the proposed decision should be Articles 91(1), 100(2) and 207(4), first subparagraph, TFEU in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

It is envisaged to publish the Decision of the Trade Committee once adopted.

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.

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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 Articles 91(1), 100(2) and 207(4), first subparagraph, 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 the Socialist Republic of Viet Nam ('the Agreement') was concluded by the Union by Council Decision (EU) 2020/753² and entered into force on 1 August 2020.
- (2) Pursuant to Article 17.1, paragraph 4, point (f) of the Agreement, the Trade Committee may adopt its own rules of procedure.
- (3) The Trade Committee, during its first meeting, is to adopt its own rules of procedure, as provided for by the Agreement.
- (4) It is therefore appropriate to establish the position to be taken on the Union's behalf in the Trade Committee on the basis of the attached draft decision of the Trade Committee on its Rules of Procedure in order to ensure the effective implementation of the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the Union, in the first meeting of the Trade Committee established by the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam, as regards the adoption of rules of procedure for the Trade Committee, shall be based on the draft decision of the Trade Committee attached to this Decision.

Article 2

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

² OJ L 186, 12.6.2020, p. 1.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*