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2022/0359 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Committee on Customs established under the Free Trade Agreement between the European Union and the Republic of Singapore, as regards the amendment of Protocol 1 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 the Union's behalf in the Committee on Customs established by the Free Trade Agreement between the European Union and the Republic of Singapore in connection with the envisaged adoption of a Decision of the Committee on Customs amending Protocol 1 of the FTA concerning the definition of the concept of 'originating products' and methods of administrative cooperation

2. CONTEXT OF THE PROPOSAL

2.1. The Free Trade Agreement between the European Union and the Republic of Singapore

The Free Trade Agreement between the European Union and the Republic of Singapore ('the Agreement') was signed on 19 October 2018. The European Parliament gave its consent to the agreement on 13 February 2019.

EU Member States endorsed the trade agreement on 8 November 2019. It entered into force on 21 November 2019.

2.2. The Committee on Customs

The Committee on Customs is established pursuant to Article 16.2 (Specialised Committees) of the Agreement and shall consist of representatives of the customs and other competent authorities of the Parties. The Committee on Customs shall ensure the proper functioning of Chapter 6 on Customs and Trade Facilitation, Protocol 1 and any additional provisions relating to customs that the Parties may agree on.

Article 34 ('Amendments to this Protocol') of Protocol 1 provides that 'The Parties, by decision in the Committee on Customs established pursuant to Article 16.2 (Specialised Committees), may amend the provisions of this Protocol.'

2.3. The envisaged act of the Decision of the Committee on Customs amending Protocol 1 of the FTA concerning the definition of 'originating products' and methods of administrative cooperation

During its first meeting, the Committee on Customs is to adopt a Decision amending Protocol 1 of the FTA concerning the definition of 'originating products' and methods of administrative cooperation, and its annexes.

The purpose of the envisaged act is to amend Protocol 1 on the following elements:

- Updating Protocol 1 to the latest version of the nomenclature governed by the Convention on the Harmonized Commodity Description and Coding System the Harmonized System;
- Replacing, for EU exporters, the system of self-certification of origin of goods by approved exporters with a system of self-certification of origin of goods by registered exporters (the 'REX system');
- Expanding the scope of the following 3 origin quota applicable for products originating in Singapore imported in the EU: canned luncheon meat, curry fish balls, cuttlefish balls.

The envisaged act will become binding on the parties in accordance with Article 34 of Protocol 1 of the Agreement, and with the JOINT DECLARATION CONCERNING THE REVISION OF THE RULES OF ORIGIN CONTAINED IN PROTOCOL 1 of Protocol 1. .

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

The position to be taken on the Union's behalf in the Committee on Customs shall be based on the draft Decision of the Committee on Customs 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 Committee on Customs is a body set up by an agreement, namely the Free Trade Agreement between the European Union and the Republic of Singapore.

The act which the Committee on Customs is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 34 of Protocol 1 of the Free Trade Agreement between the European Union and the Republic of Singapore.

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

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.

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) TFEU, in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the Committee on Customs will amend Protocol 1, and its annexes, of the Free Trade Agreement between the European Union and the Republic of Singapore, 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) The Free Trade Agreement between the European Union and the Republic of Singapore (‘the Agreement’) was concluded by the Union by Council Decision (EU) 2019/1875² and entered into force on 21 November 2019.
- (2) Pursuant to Article 34 of Protocol 1 to the Agreement, the Committee on Customs may adopt Decisions to amend the provisions of Protocol 1.
- (3) The Committee on Customs, during its first meeting, is to adopt a Decision amending Protocol 1 and its annexes.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the Committee on Customs, as the Decision will be binding on the Union.
- (5) Amendments were introduced on 1 January 2012, on 1 January 2017 and on 1 January 2022 in relation to the nomenclature governed by the Convention on the Harmonized Commodity Description and Coding System (‘HS’). The Decision is needed to update Protocol 1 and its annexes to reflect the latest version of the HS.
- (6) The scope of the annual quotas set out in Annex B(a) for canned luncheon meat, curry fish balls and cuttlefish balls should be expanded in order to allow Singaporean exporters to use them.
- (7) To provide equal treatment of the economic operators in both Parties as regard the certification of the origin, Protocol 1 should be amended so that each Party may decide, according to its laws and regulations, which exporter may self-certify the origin of its originating goods. This will allow in the Union that the origin of the goods is certified by registered exporters instead of by approved exporters, similarly to the system applied by Singapore in the context of the Agreement.

² OJ L 294, 14.11.2019, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

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

Minor technical changes to the Decision may be agreed by the representatives of the Union in the Committee on Customs.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*