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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the Joint Committee established by the Regional Convention on pan-Euro-Mediterranean preferential rules of origin as regards the amendment of the Convention

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

The Joint Committee of the Regional Convention on pan-Euro Mediterranean preferential rules of origin ('PEM Joint Committee') intends to adopt a decision to amend the Convention. This proposal for a Council decision concerns the position to be taken on the Union's behalf in the Committee

2. CONTEXT OF THE PROPOSAL

2.1. The Regional Convention on pan-Euro Mediterranean preferential rules of origin

The Regional Convention on pan-Euro-Mediterranean¹ preferential rules of origin lays down provisions on the origin of goods traded under relevant agreements concluded between the Contracting Parties.

The system of pan-Euro-Mediterranean cumulation of origin allows for the application of diagonal cumulation between the Convention's 25 Contracting Parties: the European Union, Iceland, Liechtenstein, Norway, Switzerland, Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine², Syria, Tunisia, Türkiye, Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, Serbia, Kosovo*, the Faroe Islands, the Republic of Moldova, Georgia and Ukraine. It lays down a multilateral framework of rules of origin for a network of free trade agreements and applies without prejudice to the principles laid down in those agreements. The Convention entered into force in relation to the Union on 1 May 2012.

2.2. The PEM Joint Committee

The PEM Joint Committee established by Article 3(1) of the Convention adopts amendments to the Convention and its annexes, administers it and ensures its proper implementation in accordance with Article 4 of the Convention. In accordance with Article 12 of the Rules of Procedure of the PEM Joint Committee, decisions of the Joint Committee are adopted by unanimous vote of the Contracting Parties for which the Convention has entered into force, present or represented at the meeting of the PEM Joint Committee.

The Contracting Parties for which the Convention has entered into force have voting rights. Each Contracting Party has one vote.

2.3. The envisaged act of the PEM Joint Committee

The process of amending the Convention started in 2012 and has been carried out in the PEM Working Group meeting at least twice per year. During this process, Member States have been kept regularly involved through different forums (the Customs Experts Group – Origin Section, the Council's Customs Union Working Party, the Trade Policy Committee).

The envisaged act will conclude the revision of the rules of origin of the PEM Convention. After a first attempt during its 9th meeting on 27 November 2019, the PEM Joint Committee decided to postpone a vote to obtain unanimity at a later stage in the light of the reservations expressed by some of the Contracting Parties. The EU will continue to address these

¹ OJ L 54, 26.2.2013, p. 4.

² This designation shall not be construed as recognition of a State of Palestine and is without prejudice to the individual positions of the Member States on this issue.

* This designation is without prejudice to positions on status and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

reservations on bilateral basis and will reach an agreement before the entry into force of the revised Convention. These reservations are grounded on the possibility to benefit from some limited derogations from the rules of origin.

In parallel, other PEM Contracting Parties introduced the content of the revision of the rules of origin in their bilateral protocols on rules of origin on a transitional basis, waiting for the adoption of new rules of origin of the PEM Convention.

On 29 November 2023, during its 15th meeting, the PEM Joint Committee is to adopt a decision regarding the amendment of the Convention ('the envisaged act').

The purpose of the envisaged act is to amend the rules of origin in order to better correspond to the economic reality. The envisaged act will become binding on the Contracting Parties in accordance with Article 4(3)(a) states: 'The Joint Committee shall adopt by decision amendments to this Convention including amendments to the Appendixes'. Furthermore, Article 4(3)(a), last sentence, states: 'Decisions referred to in this paragraph shall be put into effect by the Contracting Parties in accordance with their own legislation.'

The amendments to the Convention should enter into force on 1 January 2025.

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

The proposed amendments of the Convention provide for several additional flexibilities and elements of modernisation. These amendments are consistent with those already agreed by the Union in other recent free trade agreements (EU-UK Trade and Cooperation Agreement, EU-New Zealand Free Trade Agreement, EU-Japan Economic Partnership Agreement, EU-Southern African Development Community Economic Partnership Agreement or preferential schemes (GSP)). The improvements consist in the introduction of generally more flexible, updated and simplified rules that will make it easier for EU industry to meet the origin requirements and therefore improve their export competitiveness. The amended text does not alter the institutional provisions of the current Convention.

3.1. Details of the amended rules of origin

(a) Derogations

The amended Convention codifies and introduces more transparency into the current practice under which Contracting Parties can agree bilaterally on rules that derogate from the Convention's common rules, by requiring notification of such derogations (new Article 1 paragraph 3 of the revised PEM Convention). The derogations already existing would remain in force and would not be affected by the obligation to notify (new Article 1 paragraph 2 of the revised PEM Convention).

(b) Wholly obtained products - 'vessels' conditions

The 'vessels' conditions contained in the amended set of rules are simpler and provide for more flexibility (Article 3 paragraph 2). Compared to the current text, certain conditions have been deleted (e.g. specific crew requirements) while others have been amended in order to provide for more relaxation (e.g. ownership).

(c) Sufficient working or processing – average basis

The amended set of rules offers the exporter the flexibility to ask the customs authorities for an authorisation to calculate the ex-works price of a product and the value of non-originating materials used on an average basis in order to take account of fluctuations in costs and

currency rates (Article 4 paragraphs 3-6). This should provide exporters with more predictability.

(d) Tolerance

The current tolerance is set at 10% in value of the ex-works price of the product (Article 5).

The proposed text provides for agricultural products a tolerance of 15% of the net weight of the product and for industrial products a tolerance of 15% in value of the ex-works price of the product (Article 5).

The tolerance in weight introduces a more objective criterion and a 15% threshold should provide a sufficient level of leniency. It ensures also that the international price fluctuation of the commodities do not have an impact on the origin of the agricultural products.

(e) Cumulation

The proposed text (Article 7) maintains the existing diagonal cumulation on originating materials for all products.

In addition, it provides for a generalised diagonal full cumulation for all products except textiles and clothing in Chapters 50-63 of the Harmonised System (HS).

For products in HS Chapters 50-63, the proposed text provides only for bilateral full cumulation. Finally, the Contracting Parties will have the option to agree to extend the generalised diagonal full cumulation to products in HS Chapters 50-63.

(f) Accounting segregation

Under the current rules (Article 20), customs authorities may authorise accounting segregation where ‘considerable cost or material difficulties arise in keeping separate stocks’. The amended rule (Article 12) stipulates that customs authorities may authorise accounting segregation ‘if originating and non-originating fungible materials are used’.

An exporter requesting authorisation for accounting segregation will no longer have to provide justification that keeping separate stocks has a considerable cost or gives rise to material difficulties; it will be sufficient to indicate that fungible materials are used.

Originating and non-originating stocks of sugar will no longer have to be kept physically separated, regardless of whether the sugar is a material or a final product.

(g) Principle of territoriality

The current rules (Article 11) allow for certain working or processing to be done outside the territory under certain conditions, with the exception of products in HS Chapters 50 to 63. The proposed rules (Article 13) no longer contain the exclusion for textiles.

(h) Non-alteration

The proposed non-alteration rule (Article 14) substitutes the provisions on direct transport. It also allows more leniency in the movement of originating products between Contracting Parties. It should avoid situations where products for which there is no doubt about their originating status, are excluded from the preferential rate at importation because the formal requirements of the direct transport provision are not met.

(i) Prohibition of drawback of, or exemption from, customs duties

Under the current rules (Article 14) the general principle of the prohibition of drawback applies to materials used in the manufacture of any product. Under the amended rules (Article 16) the prohibition is eliminated for all products, with the exception of materials used in the manufacture of products falling within the scope of HS Chapters 50 to 63 (textiles and

clothing). Nevertheless, the text also provides for some exceptions to the prohibition of duty drawback on these products.

(j) Proof of origin

The amended rules (Article 17 paragraph 1) introduce a single type of proof of origin (EUR.1 or origin declaration), instead of the current double approach of EUR.1 and EUR-MED. This substantially simplifies the system. It should also improve economic operators' compliance by avoiding mistakes due to complex rules and facilitate management by the customs authorities. At the same time, it should not affect the capacity to verify proofs of origin, which remains the same.

The amended rules (Article 17 paragraph 3) also include the option to agree on the application of a system of registered exporters (REX). These exporters, registered in a common database, will be responsible for making out themselves statements on origin without going through the approved exporter procedure. The statement on origin will have the same legal value as the origin declaration or the movement certificate EUR.1. The amended rules also provide for a future possibility to apply electronically issued certificates of origin (Article 17 paragraph 4).

(k) Validity of a proof of origin

It is proposed that the validity period of a proof of origin to be extended from 4 to 10 months (Article 23). It also allows more leniency in the movement of originating products between the Parties.

3.2. Details of the amended list rules

3.2.1. Agricultural products

(a) Value and weight

The limit of non-originating materials was expressed only in value. The new thresholds are expressed in weight in order to avoid price and currency fluctuation (e.g. ex-chapters 19, 20, 2105, 2106), and certain limits for non-originating sugar (e.g. chapter 8 or HS 2202) are deleted.

The amended set of rules raise the threshold of maximum weight of non-originating materials (from 20% to 40%) and introduce the possibility in some headings for operators to opt for either value or weight thresholds. The HS chapters and headings concerned by the change are in particular: ex-1302, 1704 (alternative rule weight or value), 1806 (alternative rule weight or value) and 1901.

(b) Adaptation to sourcing patterns

Other agricultural products (i.e. vegetable oils, nuts, tobacco) are covered by more flexible rules adapted to the economic reality notably for HS Chapters 14, 15, 20 (including heading 2008), 23 and 24. The amended set of rules strike a balance between regional and global sourcing (HS Chapters 9 and 12). The rules have also been simplified (reduction of exceptions) in HS Chapters 4, 5, 6, 8, 11 and ex-13.

3.2.2. Industrial products (except textiles)

The proposed compromise contains considerable changes compared to the current PEM rules to align them with recent EU Free Trade Agreements:

- The current Chapter rule contains a double cumulative condition for a number of products. This is changed to a single condition (HS Chapters 74, 75, 76, 78 and 79).

- A large number of specific rules derogating from the Chapter rule have been deleted (HS Chapters 28, 35, 37, 38 and 83). This more horizontal approach will result in a simpler panorama for operators and customs.
- Most rules have been made more flexible allowing more non-originating input to reflect new economic realities and progressive integration of industry of the PEM countries with the global value chains, while ensuring that a significant processing is conducted in the PEM area. Generally, in case of industrial products, manufacturers can source now up to 50% of non-originating materials expressed as a percentage of the ex-works price of the product in comparison to 25-40% allowed under the current PEM Convention. The threshold of non-originating materials for cars has been relaxed from 40 to 45 %.
- In addition, whenever relevant, alternative rules have been included, generally a change of classification rule and, in the case of chemical products, processing rules. As a result, origin is conferred through fulfilling one or two or more alternative criteria thereby offering the exporter more choices on how to meet the origin criterion (Chapters 27, 28 to 40, 42, 44, 70 and 83, 84 and 85).

All these changes result in updated and more flexible list rules which will in general facilitate compliance with rules of origin for economic operators, particularly small and medium-sized enterprises. In addition, the above-mentioned possibility to use an average basis over a period of time could provide further simplification for exporters.

3.2.3. *Textiles*

For textiles and garments, the new rules maintain the existing possibilities to obtain originating status, owever they have been redrafted to reflect specific operations. New options have been introduced regarding outward processing and tolerances. New origin conferring processes have also been introduced for these products, especially for fabric, which would become more easily available. Finally, full bilateral cumulation will apply also to these products. Such cumulation will allow processing carried out on textile materials (i.e. weaving, spinning etc.) to be taken into account in the production process in the cumulation zone.

3.3 Entry into force

The amendments to the Convention will enter into force on 1 January 2025 or on the date to be agreed by the PEM Joint Committee)

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’³.

³ 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.

4.1.2. Application to the present case

The PEM Joint Committee is a body set up by an agreement, namely the Regional Convention on pan-Euro Mediterranean preferential rules of origin.

The act which the PEM Joint 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 4(3) of the Regional Convention on pan-Euro Mediterranean preferential rules of origin.

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.

4.2.2. Application to the present case

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

Therefore, the substantive legal basis of the proposed decision is Article 207(3) and the first subparagraph of Article 207(4) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 207(3) and the first subparagraph of Article 207(4), in conjunction with Article 218(9) TFEU.

5. BUDGETARY IMPLICATIONS

The amendments of the PEM Convention are based on a principle of modernisation of the rules of origin to align them with the new trends set by the recent free trade agreements. The amended rules in the PEM Convention mostly contain elements of simplification of customs procedures and elements of modernisation, such as:

- Sufficient working or processing – average basis: because the ex-works price and the value of non-originating materials will be calculated on an average basis taking into account market fluctuations, exporters will have more predictability;
- Proof of origin: this will be simplified as only one type of certificate of origin will be used – EUR.1;
- Validity of a proof of origin: this allows more leniency in the movement of originating products, by increasing the validity from 4 to 10 months.

These amendments to the PEM Convention have no measurable impact on the EU budget since their scope mainly concerns trade facilitation and consolidation of modern practices by customs authorities. They provide for optional facilitation in areas which remain under the authorities' competence without impacting the rules' substance (accounting segregation, proofs of origin, averaging). Some aspects of simplification (such as reduction of the vessels criteria) provide for greater predictability by removing conditions which are currently difficult

to control by customs authorities. Others, such as non-alteration, refer to logistics without affecting the substance of the rules.

Although the provisions on duty drawback are amended, the prohibition of duty drawback is maintained in the textiles and clothing sector, which remains one of the main sectors of trade in the PEM zone. The amended rules codify the status quo by maintaining the prohibition currently applied by some Contracting Parties. The proposed generalisation of full cumulation in the PEM zone aims at strengthening the existing trade patterns within the zone and their complementarity. It should not affect in a meaningful way the EU customs duties collected since products subject to cumulation will have to comply with their own requirement of value added in the zone in order to benefit from preferences, as is currently the case.

The amendments to the list rules in the sector of agricultural and processed agricultural goods mainly consist of an adapted methodology without affecting the rules' substance. The existing thresholds expressed currently in value will be expressed in weight. This criterion is more objective and easier for customs authorities to control. Simplifying the product-specific rules for industrial products should have a limited impact on custom duty revenues. This is because in many instances they may result more in sourcing changes than in increases of preferential imports from PEM countries replacing imports previously subject to import duties. The impact on import duty revenue of those changes is therefore not quantifiable.

In terms of trade and its impact on the use of preferences, the relaxations in the new rules put emphasis on economic integration in the entire zone, for example in the textile sector where the use of preferences is already very high. The improved rules on textiles and cumulation are mainly intended to enhance already existing regional integration and availability of materials within the zone, rather than to allow more non-originating materials to be imported from outside.

6. PUBLICATION OF THE ENVISAGED ACT

As the act of the PEM Joint Committee will amend the Convention, it is appropriate to publish it in the Official Journal of the European Union after its adoption.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the Joint Committee established by the Regional Convention on pan-Euro-Mediterranean preferential rules of origin as regards the amendment of the Convention

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 Regional Convention on pan-Euro-Mediterranean preferential rules of origin ('the Convention') was concluded by the Union by Council Decision 2013/93/EU¹ and entered into force in relation to the Union on 1 May 2012.
- (2) The system of pan-Euro-Mediterranean cumulation of origin allows for the application of diagonal cumulation between the 25 Contracting Parties of the Convention: the European Union, Iceland, Liechtenstein, Norway, Switzerland, Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine², Syria, Tunisia, Türkiye, Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, Serbia, Kosovo*, the Faroe Islands, Republic of Moldova, Georgia and Ukraine.
- (3) The Convention envisages that the rules of origin will need to be amended in order to better respond to the economic reality and establishes procedures for its own amendment. In accordance with Article 4 of the Convention, amendments to the Convention are to be adopted by a decision of the Joint Committee established by Article 3(1) of the Convention ("the Joint Committee").
- (4) The process of amending the Convention started in 2012 and resulted in a new set of modernised and more flexible rules of origin, consistent with those which have already been agreed by the Union in certain other recent agreements (EU-Canada Comprehensive Economic and Trade Agreement (CETA), EU-Vietnam Free Trade Agreement, EU-Japan Economic Partnership Agreement, EU-Southern African Development Community Economic Partnership Agreement) or preferential schemes (GSP).
- (5) On 27 November 2019 the European Commission, acting as the Secretariat of the PEM Convention, chaired the 9th meeting of the PEM Joint Committee, to invite all

¹ OJ L 54, 26.2.2013, p. 3–158

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the Contracting Parties to express their position on the formal adoption of the revised rules of origin of the PEM Convention. However, the revised rules could not be adopted in the Joint Committee in the light of the reservations expressed by some of the Contracting Parties. On 14 June 2023 at the 14th meeting of the PEM Joint Committee, all Contracting Parties expressed their support with the reservation that bilateral issues will be subject to technical discussions to be finalised before the entry into application of the new rules.

- (6) The Joint Committee is expected to adopt a Decision on the amendment of the Convention during its meeting on 29 November 2023 or at a later date.
- (7) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee, as the Decision will be binding on the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on behalf of the European Union within the Joint Committee established by the Regional Convention on pan-Euro-Mediterranean preferential rules of origin shall be based on the draft Decision of the Joint Committee attached to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President