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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Trade Committee established by the Free Trade Agreement between the European Union and New Zealand, as regards amendments to that Agreement concerning fundamental principles and rights at work

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 New Zealand¹ ('the Agreement') in connection with the envisaged adoption of a decision of the Trade Committee amending Article 19.3(3) and (5) of the Agreement. The proposed amendment of Article 19.3(3) foresees including a safe and healthy working environment to the list of fundamental principles and rights at work in accordance with Resolution I² adopted on 10 June 2022 by the General Conference of the International Labour Organization ('ILO'), meeting at its 110th Session ('the 110th International Labour Conference'). In addition, the proposed amendment envisages updating the reference to the ILO Declaration on Fundamental Principles and Rights at Work by referring to its latest amendment at the 110th International Labour Conference. Finally, following the latest amendment to the ILO Declaration on Fundamental Principles and Rights at Work and in connection with the amendments to Article 19.3(3), the proposed amendment also foresees deleting a footnote in Article 19.3(5).

2. CONTEXT OF THE PROPOSAL

2.1. The Free Trade Agreement between the European Union and New Zealand

The Agreement aims '*to liberalise and facilitate trade and investment, as well as to promote a closer economic relationship between the Parties*'. The Agreement entered into force on 1 May 2024.

Chapter 19 (Trade and sustainable development) of the Agreement aims to '*enhance the integration of sustainable development, notably its environmental and social dimensions (in particular the labour aspects), in the trade and investment relationship between the Parties, including through strengthening dialogue and cooperation*'.

2.2. The Trade Committee

The Trade Committee is established pursuant to Article 24.1 ('Trade Committee') of the Agreement. Article 27.1(3) of the Agreement provides that the Trade Committee may amend the Agreement where provided for in Article 24.3 of the Agreement. Article 24.3(j) provides that the Trade Committee may adopt decisions to amend Article 19.3(3) and (4) (Multilateral labour standards and agreements) of Chapter 19 (Trade and sustainable development).

Article 19.3(4) provides that the Trade Committee may adopt, no later than at its first meeting, a decision to amend Article 19.3(3) to add a safe and healthy working environment to the fundamental principles and rights at work.

2.3. The envisaged act of the Trade Committee

As provided in Article 19.3(4) of the Agreement, the Trade Committee is envisaged to adopt at its first meeting, a decision ('the envisaged act') to reflect in Article 19.3(3) the inclusion of a safe and healthy working environment in the ILO's framework of fundamental principles

¹ Free Trade Agreement between the European Union and New Zealand (OJ L, 2024/866, 25.03.2024, ELI: http://data.europa.eu/eli/agree_internation/2024/866/oj)

² Resolution on the inclusion of a safe and healthy working environment in the ILO's framework of fundamental principles and rights at work (ILC.110/Resolution I) https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40relconf/documents/meetingdocument/wcms_848632.pdf

and rights at work. The envisaged act should also modify the reference to the ILO Declaration on Fundamental Principles and Rights at Work to reflect its amendment at the 110th International Labour Conference. Finally, the act should amend Article 19.3(5) by deleting the footnote in that article.

The purpose of the envisaged act is to amend the Article 19.3(3) and (5) of the Agreement as follows:

- (1) a reference to the ILO Declaration on Fundamental Principles and Rights at Work should be updated by specifying its last amendment adopted at the 110th session of the International Labour Conference in 2022;
- (2) a safe and healthy working environment should be added to the fundamental principles and rights at work listed in Article 19.3(3); and
- (3) the obsolete footnote in Article 19.3(5) should be deleted.

The proposed amendment to Article 19.3(3) and (5) reflects Resolution I adopted on 10 June 2022, whereby the 110th International Labour Conference *inter alia*:

1. ‘Decides to amend paragraph 2 of the ILO Declaration on Fundamental Principles and Rights at Work to include, after the words “the elimination of discrimination in respect of employment and occupation”, the words “and (e) a safe and healthy working environment”, and to make the consequential amendments to the Annex to the ILO Declaration on Fundamental Principles and Rights at Work as well as to the ILO Declaration on Social Justice for a Fair Globalization and to the Global Jobs Pact, as specified in the Annex to the present resolution.’.

The envisaged act will become binding on the Parties in accordance with Article 24.5(1) of the Agreement, which provides: ‘*The decisions adopted by the Trade Committee, or, as the case may be, by a specialised committee, shall be binding on the Parties*’.

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

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

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 Trade Committee is a body set up by an agreement, namely the Free Trade Agreement between the European Union and New Zealand.

The act which the 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 24.5(1) 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 main objective and content of the envisaged act relate to the common commercial policy.

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

4.3. Conclusion

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

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the Trade Committee will amend the 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 Article 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 New Zealand ('the Agreement') was concluded by the Union by Council Decision (EU) 2024/244⁴ and entered into force on 1 May 2024.
- (2) Pursuant to Article 24.2(2)(i) of the Agreement, the Trade Committee, established by Article 24.1(1) of the Agreement, may adopt decisions to amend the Agreement. Pursuant to Article 24.3(j) of the Agreement, the Trade Committee may decide to amend Article 19.3(3) and (4) of the Agreement relating to multilateral labour standards and agreements.
- (3) Pursuant to Article 19.3(4) of the Agreement, the Trade Committee may, no later than at its first meeting, adopt a decision to amend Article 19.3(3) of the Agreement to reflect the addition of a safe and healthy working environment to the International Labour Organization's ('ILO') framework of fundamental principles and rights at work.
- (4) The Trade Committee, during its first meeting, is to adopt a decision to add a safe and healthy working environment to the list of fundamental principles and rights at work in Article 19.3(3) in accordance with Resolution I⁵ adopted on 10 June 2022 by the General Conference of the ILO, meeting at its 110th Session. The reference to the ILO Declaration on Fundamental Principles and Rights at Work in Article 19.3(3) should be updated for alignment with its most recent amendment.
- (5) Following the amendment to Article 19.3(3), the statement in the footnote of Article 19.3(5) that all Member States have ratified the fundamental conventions of the ILO

⁴ Council Decision (EU) 2024/244 of 27 November 2023 on the conclusion, on behalf of the Union, of the Free Trade Agreement between the European Union and New Zealand (OJ L, 2024/244, 28.02.2024, ELI: <http://data.europa.eu/eli/dec/2024/244/oj>)

⁵ Resolution on the inclusion of a safe and healthy working environment in the ILO's framework of fundamental principles and rights at work (ILC.110/Resolution I) https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40relconf/documents/meetingdocument/wcms_848632.pdf

has become obsolete. It therefore appears appropriate to delete the footnote in Article 19.3(5).

- (6) It is appropriate to establish the position to be taken on the Union's behalf in the Trade Committee, as the decision of the Trade Committee will be binding on the Union.
- (7) The latest amendment to the ILO Declaration on Fundamental Principles and Rights at Work is to be referenced in Article 19.3(3), a safe and healthy working environment is to be added to the fundamental principles and rights at work listed in Article 19.3(3) and an obsolete footnote is to be deleted in Article 19.3(5),

HAS ADOPTED THIS DECISION:

Article 1

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

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

*For the Council
The President*