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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	24 August 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 484 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Colombia, Ecuador, Peru, EU Trade Committee as regards modifications to Appendices 2, 2A and 5 to Annex II to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru, and Ecuador of the other part

Delegations will find attached document COM(2021) 484 final.

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Brussels, 24.8.2021
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2021/0277 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Colombia, Ecuador, Peru, EU Trade Committee as regards modifications to Appendices 2, 2A and 5 to Annex II to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru, and Ecuador of the other part

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a Council Decision establishing the position to be taken on the Union's behalf in the Colombia, Ecuador, Peru, EU Trade Committee in connection with the envisaged adoption of a decision of the Trade Committee set up by the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru and Ecuador of the other part ('the Trade Agreement')¹.

The decision concerns an update, to reflect the Harmonised System (HS)² of 2012 and 2017, of the list of working or processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status ('product specific rules'), as contained in Appendices 2, 2A and 5 to Annex II, to the Trade Agreement, concerning the definition of the concept of 'originating products' and methods of administrative cooperation ("Annex II").

2. CONTEXT OF THE PROPOSAL

2.1. The Colombia, Ecuador, Peru, EU Trade Agreement

The Trade Agreement aims to increase bilateral trade between the EU and Colombia, Ecuador and Peru. The Trade Agreement has been provisionally applied with Peru since 1 March 2013, with Colombia since 1 August 2013 and with Ecuador since 1 January 2017.

2.2. The Trade Committee

The Trade Committee may in the advancement of achieving the objectives of the Trade Agreement make modifications to the specific rules of origin established in Annex II to the Trade Agreement. Any decisions it adopts shall be by consensus of the representatives of the EU and the signatory Andean countries (Colombia, Ecuador and Peru).

2.3. The envisaged act of the Trade Committee

By written procedure, the Trade Committee is to adopt a decision regarding Appendices 2, 2A and 5 to Annex II to the Trade Agreement. The purpose of the envisaged act is to update the 'product specific' rules of origin in line with the 2012 and 2017 versions of the Harmonised Commodity Description and Coding System (HS).

The envisaged act will become binding on the parties in accordance with paragraph 2 of Article 14 of the Trade Agreement, which provides that "decisions adopted by the Trade Committee shall be binding upon the Parties, which shall take all necessary measures to implement them".

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

The envisaged act covers Appendices 2, 2A and 5 to Annex II to the Trade Agreement which regards the 'product specific' rules of origin. Following the 7th Colombia, Ecuador, Peru, EU Sub-Committee on Customs, Trade Facilitation and Rules of Origin meeting of 4-6 November 2019, and subsequent correspondence, it has been agreed to update the 'product specific' rules of origin so as to reflect the 2012 and 2017 versions of the Harmonised System (HS). Minor mistakes included in the Appendices also need to be corrected.

¹ Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru and Ecuador, of the other part (OJ L 354, 21.12.2012, p. 3)

² International Convention on the Harmonized Commodity Description and Coding System (HS Convention)

Appendix 2 and 2A to Annex II

The list of working or processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status is set out in Appendix 2 to Annex II. An addendum to this list is included in Appendix 2A to Annex II. These product-specific rules are based on the 2007 version of the Harmonised System (HS) which has become outdated because updates were made in 2012 and 2017. The envisaged act is aimed at reflecting those updates.

Appendix 5 to Annex II

Certain originating sea fish products from Peru which are exported to the European Union are subject to annual quotas, the details of which are set out in Appendix 5 to Annex II. As with Appendix 2 and 2A, this needs to be updated to reflect changes made to the Harmonised System (HS) in 2012 and 2017.

Updating the ‘product specific’ rules of origin in line with the updates of the Harmonised System (HS) is an EU best practice. While the Harmonised System (HS) 2022 will begin on 1 January 2022, it is still beneficial to reflect changes made to the Harmonised System (HS) in 2012 and 2017 in the ‘product specific’ rules of origin since exporters will be able to make easier correlations to the Harmonised System (HS) 2022.

The proposal relates to the implementation of a preferential trade agreement concluded as part of the common commercial policy, which is an area in which the Union has exclusive competence.

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.

4.1.2. Application to the present case

The Trade Committee is a body set up by an agreement, namely the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru and Ecuador, of the other part.

The act, in this case a Decision, 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 paragraph 2 of Article 14 of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru and Ecuador, of the other part.

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.

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 of the Union.

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 Trade Committee will amend appendices to Annex II to the Trade Agreement, 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 in the Colombia, Ecuador, Peru, EU Trade Committee as regards modifications to Appendices 2, 2A and 5 to Annex II to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru, and Ecuador of the other part

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 Agreement establishing a Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru and Ecuador, of the other part ('the Agreement') was signed on 26 June 2012 by the Union in accordance with Council Decision 2012/735/EU as regards Colombia and Peru, and was signed on 11 November 2016 by the Union in accordance with Council Decision 2016/2369/EU as regards Ecuador. Pursuant to Article 330(3) of the Agreement, it has been applied provisionally since 1 March 2013 between the Union and Peru, since 1 August 2013 between the Union and Colombia, and since 1 January 2017 between the Union and Ecuador.
- (2) Pursuant to Article 13, subparagraph 2(g)(iii) of the Agreement, the Trade Committee may modify the provisions of Annex II to the Agreement, which concerns the definition of the concept of 'originating products' and methods of administrative cooperation.
- (3) The Trade Committee, by written procedure, is to adopt a Decision modifying Appendices 2, 2A and 5 to Annex II. Appendix 2 (List of working or processing required to be carried out on non- originating materials in order that the product manufactured can obtain originating status), Appendix 2A (Addendum to the list of working or processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status) and Appendix 5 (Products to which subparagraph (b) of the Declaration of the European Union concerning Article 5 in relation to originating products from Colombia, Ecuador and Peru applies), which are based on the Harmonised System (HS) 2007, should be aligned to the product specific rules of origin with the updated HS as applicable from 2017. Such alignment includes the changes introduced by the HS 2012 and the HS 2017, to the product specific rules of Appendices 2, 2A and 5. For reasons of clarity, taking into account the number of amendments that need to be made in the Appendices, the Appendices should be replaced in their entirety.

- (4) The adoption of the Decision by the Trade Committee is expected to take place before the end of 2021.
- (5) It is appropriate to establish the position to be taken on the Union's behalf in the Trade Committee, as the Decision will have legal effect in the Union.
- (6) The position of the Union within the Trade Committee should therefore be based on the draft Decision of the Trade Committee,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf within the Trade Committee as regards the modifications to Appendices 2, 2A and 5 to Annex II to the Agreement shall be based on the draft Decision of the Trade Committee attached to this Decision.

Article 2

Once adopted, the Decision of the Trade Committee referred to in Article 1 shall be published in the Official Journal of the European Union.

Article 3

This Decision is addressed to the Commission.

It shall expire on 31 December 2021.

Done at Brussels,

*For the Council
The President*