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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	1 July 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 273 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken, on behalf of the European Union, in the Trade Committee established under the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part, as regards the amendment to be made to the Agreement to take account of the accession of the Independent State of Samoa

Delegations will find attached document COM(2020) 273 final.

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EUROPEAN
COMMISSION

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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 under the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part, as regards the amendment to be made to the Agreement to take account of the accession of the Independent State of Samoa

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 under the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part, as regards the amendment to the Agreement to take account of the accession of the Independent State of Samoa to the Agreement.

2. CONTEXT OF THE PROPOSAL

2.1. Reasons for and objectives of the proposal

On 12 June 2002, the Council authorised the Commission to open negotiations for Economic Partnership Agreements (EPAs) with ACP countries.

On 30 July 2009 the Union signed the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part (the 'Agreement'), which establishes a framework for an Economic Partnership Agreement.¹ The Agreement aims to:

- (a) enable Pacific States to benefit from the improved market access offered by the EU;
- (b) promote sustainable development and the gradual integration of Pacific States into the world economy;
- (c) establish a free trade area between the Parties based on the common interest, through the progressive liberalisation of trade in a manner compliant with applicable WTO rules and the principle of asymmetry, taking account of the specific needs and capacity constraints of the Pacific States, in terms of levels and timing for commitments;
- (d) set up the appropriate dispute settlement arrangements; and
- (e) set up the appropriate institutional arrangements.

Papua New Guinea and the Republic of Fiji are provisionally applying the Agreement since 20 December 2009 and 28 July 2014, respectively.

Article 80 of the Agreement provides that other Pacific Islands can accede to the Agreement on the basis of the submission of a GATT 1994 Article XXIV compliant market access offer. Accordingly, the Independent State of Samoa acceded to the Agreement on 21 December 2018² and has provisionally applied it since 31 December 2018. The Parties' procedures are underway for the accessions of Solomon Islands and the Kingdom of Tonga which have indicated their interests to accede to the Agreement.

¹ Council Decision of 13 July 2009 on the signature and provisional application of the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part (OJ L 272, 16.10.2009, p. 1).

² OJEU L333, 28.12.2018, p. 1.

Following the accession of the Independent State of Samoa to the Agreement, it is necessary to introduce technical modifications to the Agreement to add its market access offer to Annex II to the Agreement.

2.2. The EPA Trade Committee

Article 68 of the EPA establishes a Trade Committee that is composed of representatives of the Parties (the EU and the Pacific States).

The Trade Committee shall deal with all matters necessary for the implementation of the Agreement. In the performance of its functions, the Trade Committee may:

- (f) set up and oversee any special committees or bodies necessary for the implementation of the Agreement;
- (g) meet at any time agreed by the Parties;
- (h) consider any issues under the Agreement and take appropriate action in the exercise of its functions; and
- (i) take decisions or make recommendations in cases provided for in the Agreement.

2.3. The envisaged decision of the EPA Trade Committee

On 3-4 October 2019, during its seventh meeting, the EPA Trade Committee adopted a recommendation to the Parties to the Agreement, among others, recommending to amend the Agreement to take account of the accession of the Independent State of Samoa. The required changes include adding Samoa's market access offer to Annex II to the Agreement.

Article 13 of the Agreement provides that the Trade Committee by agreement may modify Annex II to the Agreement in any manner deemed appropriate.

Accordingly, on XX XX XX, during its eight meeting, the EPA Trade Committee is to adopt its decision to make the necessary technical amendment to the Agreement in order to take account of the accession of the Independent State of Samoa.

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

The proposed Council decision establishes the position to take on behalf of the Union concerning the adoption of the suggested amendment to the Agreement, to take account of the recent accession of the Independent State of Samoa.

Such position shall be based on the draft decision of the Trade Committee on the amendment to the Agreement attached to the draft Council Decision.

The subject matter of the envisaged recommendation concerns trade policy, an area for which the Union has an exclusive external competence by virtue of Article 3(2) of the TFEU.

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’*.

4.1.2. Application to the present case

The Trade Committee is a body set up by the Economic Partnership Agreement.

The amendment to be adopted by the Trade Committee shall have legal effects. Once adopted, the envisaged amendment will be binding under international law in accordance with Article 13 of the Agreement.

The envisaged amendment do 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 recommendation in respect of which a position is taken on the Union's behalf. If the envisaged recommendation 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 objective and content of the envisaged recommendation relates to the common commercial policy.

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

5. PUBLICATION OF THE ENVISAGED RECOMMENDATION

As the decision of the Trade Committee will amend the Economic Partnership 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 Trade Committee established under the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part, as regards the amendment to be made to the Agreement to take account of the accession of the Independent State of Samoa

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) On 30 July 2009, the Union signed the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part³ (the 'Agreement'), which establishes a framework for an Economic Partnership Agreement. The Agreement has been provisionally applied by Papua New Guinea and by the Republic of Fiji since 20 December 2009 and 28 July 2014, respectively.
- (2) Article 80 of the Agreement provides that other Pacific Islands can accede to the Agreement on the basis of the submission of a GATT 1994 Article XXIV compliant market access offer. Accordingly, the Independent State of Samoa acceded to the Agreement on 21 December 2018⁴ and has provisionally applied it since 31 December 2018.
- (3) Article 68 of the Agreement provides that the Trade Committee is to deal with all matters necessary for the implementation of the Agreement.
- (4) On 3-4 October 2019, during its seventh meeting, the EPA Trade Committee adopted a recommendation to the Parties to the Agreement, among other things, recommending to amend the Agreement in order to take account of the accession of the Independent State of Samoa. The required changes include adding Samoa's market access offer to Annex II to the Agreement.
- (5) Article 13 of the Agreement provides that the Trade Committee by agreement may modify Annex II to the Agreement in any manner deemed appropriate.

³ Council Decision 2009/729/EC of 13 July 2009 on the signature and provisional application of the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part (OJ L 272, 16.10.2009, p. 1).

⁴ OJ L 333, 28.12.2018, p. 1.

- (6) The eight meeting of the Trade Committee is to be held on XX XX 2020, where the Trade Committee will be able, pursuant to Articles 13 of the Agreement to introduce the technical amendment to the Agreement in order to take account of the accession of the Independent State of Samoa.
- (7) The Union should determine the position to be taken within the eight meeting of the Trade Committee as regards the envisaged decision.
- (8) The position of the Union within the eight meeting of the Trade Committee should therefore be based on the attached draft decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken, on behalf of the Union, in the Trade Committee at its eight meeting as regards the the amendment to the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part to take account of the accession of the Independent State of Samoa 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*.

Article 3

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

Done at Brussels,

For the Council
The President