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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	25 August 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union within the EU-Central America Association Council regarding modifications to Appendix 2 and Explanatory Notes to Articles 15, 16, 19, 20 and 30 of Annex II of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other

Delegations will find attached document COM(2020) 429 final.

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2020/0202 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the EU-Central America Association Council regarding modifications to Appendix 2 and Explanatory Notes to Articles 15, 16, 19, 20 and 30 of Annex II of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other

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 EU-Central America Association Council in connection with the envisaged adoption of two decisions of the Association Council set up by the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other ('the Agreement').

Those decisions will concern, on one hand, an update for the Harmonised System 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'), contained in Appendix 2 of Annex II, of the Agreement, concerning the definition of the concept of 'originating products' and methods of administrative cooperation ("Annex II") and, on the other hand, Explanatory Notes pertaining to the provisions laid down in that Annex II.

2. CONTEXT OF THE PROPOSAL

2.1. The EU-Central America Association Agreement

The Agreement aims to increase bilateral trade between the EU and Central America and through this to strengthen the process of regional integration between the region's countries. The Agreement has been provisionally applied since 1 August 2013 with Honduras, Nicaragua and Panama, since 1 October 2013 with Costa Rica and El Salvador, and since 1 December 2013 with Guatemala.

2.2. The Association Council

The Association Council shall oversee the fulfilment of the objectives of the Agreement and supervise its implementation. It shall examine any major issue arising within the framework of the Agreement, as well as any other bilateral, multilateral or international question of common interest, and also examine proposals and recommendations from the Parties for the improvement of the relations established under the Agreement. The Association Council shall adopt decisions and recommendations by mutual agreement between the Parties. The Sub-Committee on Customs, Trade Facilitation and Rules of Origin, which concluded preparatory work, recommends approval by the Association Council.

2.3. The envisaged acts of the Association Council

The Association Council is to adopt two acts:

Decision replacing Appendix 2 of Annex II

The amendment to Appendix 2 of Annex II will aim at updating the 'product specific' rules of origin to the 2012 and 2017 versions of the Harmonised Commodity Description and Coding System (HS)[1].

Decision regarding Explanatory Notes to Articles 15, 16, 19, 20 and 30 of Annex II

Those Explanatory Notes will cover the filling in of the proof of origin, known as the movement certificate EUR.1, as well as the treatment of mistakes and errors with this certificate. Guidance is provided too on invoice declarations by which an approved exporter self-certifies the proof of origin, the authorisation and monitoring of approved exporters, and the value limit below which any exporter can make out an invoice declaration.

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

This proposed action covers two aspects of Annex II.

Update of the product specific rules of origin for the HS 2012 and 2017

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. These product-specific rules are based on the Harmonised System (HS) 2007 of the classification of goods which is now outdated because of updates in 2012 and 2017. This action covers those updates.

Central America and the European Union provisionally agreed to update the product specific rules by aligning them to the HS 2012. By Council Decision (EU) 2016/1336 of 18 July 2016 the EU position to be taken on these updates in the Association Council was agreed. As the Council Decision was adopted after the Association Committee of 23 June 2016 and with the update required for the HS 2017 imminent it was agreed to work instead towards reaching agreement to adopt changes for both the HS 2012 and 2017.

Following the EU-Central America Sub-Committee on Customs, Trade Facilitation and Rules of Origin meeting on 18-19 June 2019 in Guatemala, and subsequent correspondence, agreement has been reached on updating the product specific rules of origin for the HS 2012 and 2017.

Explanatory Notes

Article 37 of Annex II states that the Parties shall agree "Explanatory Notes" regarding the interpretation, application and administration of Annex II within the Sub-Committee on Customs, Trade Facilitation and Rules of Origin in order to recommend its approval by the Association Council. This action covers adopting Explanatory Notes.

The EU-Central America Sub-Committee on Customs, Trade Facilitation and Rules of Origin met on 1-2 June 2015 in Brussels and agreed Explanatory Notes. These cover guidance for Article 15 of Annex II for the issue and completion of movement certificates EUR.1, which can be used as the proof of origin. By Council Decision (EU) 2016/1001 of 20 June 2016 the EU position of these Explanatory Notes in the Association Council was agreed.

[1] World Customs Organization "International Convention on the Harmonized Commodity Description and Coding System", 1983.

However, the Association Committee, which met on 23 June 2016 in Honduras, was unable to reach agreement without the inclusion of further guidance, principally on the rejection of movement certificates EUR.1. Further work was carried out in the EU-Central America Sub-Committee on Customs, Trade Facilitation and Rules of Origin in the following meetings held in 2017, 2018 and 2019 to now reach agreement on updated Explanatory Notes.

The Explanatory Notes now include guidance on the technical reasons for refusal of the movement certificate EUR.1 and for refusal of preferential treatment without verification. There is guidance provided as regards to the application of the provisions concerning the invoice declaration, the basis of applying the value limit for any exporter to make out an invoice declaration, and for the authorisation and monitoring of approved exporters.

A single Council Decision on the position to be taken on behalf of the European Union

The proposed Council Decision on the position to be taken on behalf of the European Union within the EU-Central America Association Council, regarding both the modifications to Appendix 2 and the Explanatory Notes of Annex II, will repeal and replace respectively Council Decision (EU) 2016/1336 of 18 July 2016 and Council Decision (EU) 2016/1001 of 20 June 2016, which have become obsolete.

Updating the product specific rules of origin for the updates every five years in the Harmonised System is EU best practice. The Explanatory Notes are consistent with other Explanatory Notes agreed in the Free Trade Agreements between the European Union and Chile, and Mexico, as well as those in the Pan-Euro-Mediterranean protocols on the rules of origin.

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*'[2].

[2] 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 Association Council is a body set up by an agreement, namely the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other.

The act, in this case a Decision, which the Association Council is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 6 of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other.

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 ACTS

As the acts of the Association Council will modify Appendix 2 and serve the implementation of Annex II of the Agreement, it is appropriate to publish them in the *Official Journal of the European Union* after their 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 Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other ('the Agreement') was concluded by the Union by Council Decision (2012/734/EU) of 25 June 2012[3] and has been applied provisionally since 1 August 2013 between the Union, Nicaragua, Honduras and Panama, since 1 October 2013 between those parties and El Salvador and Costa Rica, and since 1 December 2013 between the Union, Nicaragua, Honduras, Panama, El Salvador and Costa Rica on the one side and Guatemala on the other.

(2) Pursuant to Article 36 of Annex II of the Agreement, concerning the definition of the concept of 'originating products' and methods of administrative cooperation, the Association Council may modify the provisions of the Appendixes of Annex II. Pursuant to Article 37 of Annex II of the Agreement, the Association Council may approve Explanatory Notes regarding the interpretation, application and administration of Annex II.

(3) The Association Council is to adopt a Decision on modifying 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) of Annex II, which is based on the Harmonised System (HS) 2007, to align the product specific rules of origin with the updated Harmonized System as applicable from 2017. Such alignement includes the changes introduced by HS 2012, and non-substantive changes for the HS 2017, to the products speficic rules of Appendix 2.

(4) The Association Council is also to adopt a Decision on introducing Explanatory Notes to Articles 15, 16, 19, 20 and 30 of Annex II of the Agreement to ensure transparency

[3] OJ L 346, 15.12.2012, p.1

and uniformity in the application of the rules of origin regarding the Movement Certificate EUR.1, invoice declarations, approved exporters and verification of proofs of origin.

(5) It is appropriate to establish the position to be taken on the Union's behalf in the Association Council, as the two Decisions will have legal effect in the Union. It is also appropriate to repeal Council Decision (EU) 2016/1001 of 20 June 2016[4] and Council Decision (EU) 2016/1336 of 18 July 2016[5], which establish positions to be taken on the Union's behalf on acts no longer to be adopted by the Association Council,

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on the Union's behalf in the Association Council shall be based on the two draft decisions attached as Annexes 1 and 2 to this Decision.

2. Council Decisions (EU) 2016/1336 of 18 July 2016 and 2016/1001 of 20 June 2016 are repealed.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President

[4] OJ L 212, 5.8.2016, p. 8–106
[5] OJ L 164, 22.6.2016, p. 15–21