Council of the European Union

Brussels, 31 July 2024
(OR. en)

12627/24

Interinstitutional File: 2024/0203(NLE)

UD 159
CH 16
AELE 83

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	30 July 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2024) 344 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Joint Committee established by the Agreement between European Economic Community and the Swiss Confederation, as regards the amendment of Protocol 3 to that Agreement concerning the definition of the concept of 'originating products' and methods of administrative cooperation concerning the permeability between the Regional Convention on pan-Euro-Mediterranean preferential rules of origin and the Transitional rules of origin

Delegations will find attached document COM(2024) 344 final.

Encl.: COM(2024) 344 final

EUROPEAN
COMMISSION

Brussels, 30.7.2024
COM(2024) 344 final

2024/0203 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Committee established by the Agreement between European Economic Community and the Swiss Confederation, as regards the amendment of Protocol 3 to that Agreement concerning the definition of the concept of 'originating products' and methods of administrative cooperation concerning the permeability between the Regional Convention on pan-Euro-Mediterranean preferential rules of origin and the Transitional rules of origin

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 Joint Committee of the EU-Switzerland Agreement in connection with the envisaged adoption of a Decision amending Protocol 3 of the EU-Switzerland Agreement.

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement between the European Economic Community and the Swiss Confederation

The Agreement between the European Economic Community and the Swiss Confederation[1] (the Agreement) aims to promote through the expansion of reciprocal trade the harmonious development of economic relations between the parties. The Agreement entered into force on 1 April 1973.

2.2. The Joint Committee

The Joint Committee established according to the provisions of Article 29 of the Agreement, may decide to amend the provisions of Protocol 3 concerning the definition of the concept of 'originating products' and methods of administrative cooperation according to Article 4 of Protocol 3. The Joint Committee draws up its decisions and recommendations by agreement between the two Parties.

2.3. The envisaged act of the Joint Committee

In its next meeting or by exchange of letters, the Joint Committee is to adopt a Decision regarding the amendment of the provisions of Protocol 3 concerning the definition of the concept of 'originating products' and methods of administrative cooperation (the envisaged act).

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

During the first technical meeting on Transitional rules of origin held in Brussels on 5 February 2020, the majority of the Contracting Parties to the Regional Convention on pan-Euro-Mediterranean preferential rules of origin (the Convention)[2] agreed to implement the revised rules of the Convention (the Transitional rules of origin[3]) in parallel with the rules of the Convention, on a transitional bilateral basis, pending the adoption of the revised rules of the Convention.

Since 1 September 2021, a network of bilateral protocols on rules of origin among Contracting Parties to the Convention entered into force rendering the Transitional rules applicable including between the EU and Switzerland.

The objective of the Transitional rules of origin is to introduce more relaxed rules in order to facilitate the qualification of the preferential originating status for goods. As the Transitional rules of origin are in general more relaxed than those of the Convention, goods fulfilling these latter could also qualify as originating under the Transitional rules of origin, with the

1 OJ L 300, 31.12.1972, p.189.
2 OJ L 54, 26.2.2013, p. 4.
3 OJ L 404, 15.11.2021, p. 1–83.

exception of some agricultural products classified under Chapters 2, 4 to 15 and 16 (except for processed fishery products) and Chapters 17 to 24 of the Harmonised System, as for these products the Transitional rules of origin are different or more strict than those of the Convention.

The Transitional rules of origin are applicable in parallel with the rules of origin of the Convention creating two distinctive zones of cumulation.

The Transitional rules foresee the permeability between the two sets of rules of origin, by allowing the issuance of a retrospective proof of origin on the basis of a proof issued according to the rules of the Convention, with the fulfilment of the condition that the products in case meet the requirements of both sets of rules.

The current provision in the Transitional rules concerning permeability between the two sets of rules of origin (Article 21(1), point (d) of Appendix A to the Protocol on rules of origin) generated a cumbersome customs procedure that prevents the economic operators from fully benefitting from the advantages of applying the Transitional rules in parallel with the Convention.

The parties have agreed to apply the Transitional rules in advance, in order to adapt the trade flows and customs practices to the upcoming entry into force of the amendment of the Convention (on which the Transitional rules are based). It is therefore appropriate to facilitate the application of permeability for the remaining time of application of the Transitional rules, pending the entry into force of the amendment to the Convention.

Therefore, Article 8 of Appendix A to Protocol 3 should be amended to facilitate the application of existing permeability between the Convention and the Transitional rules of origin.

The position to be taken by the EU within the Joint Committee should be established by the Council.

The proposed amendment is technical in nature and relates to the currently applicable Transitional rules of origin between the Parties and does not affect the substance of the protocol on rules of origin. Therefore, it does not require an impact assessment.

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].

[4] 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 Joint Committee is a body set up by an agreement, namely the Agreement between the European Economic Community and the Swiss Confederation.
The act which the Joint Committee is called upon to adopt constitutes an act having legal effects.
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 subparagraph of Article 207(4) TFEU.

4.3. Conclusion

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

5. BUDGETARY IMPLICATION

The simplification concerning permeability between the Convention and the Transitional rules of origin has no measurable impact on the EU budget since its scope mainly concerns trade facilitation and consolidation of modern practices of customs authorities. The simplification targets the areas which remain under competence of the authorities without impacting the substance of the rules from which goods acquire preferential originating status and facilitate the application of the existing principle of permeability.

6. PUBLICATION OF THE ENVISAGED ACT

As the act of the Joint Committee will amend Protocol 3 to the Agreement, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

2024/0203 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Committee established by the Agreement between European Economic Community and the Swiss Confederation, as regards the amendment of Protocol 3 to that Agreement concerning the definition of the concept of 'originating products' and methods of administrative cooperation concerning the permeability between the Regional Convention on pan-Euro-Mediterranean preferential rules of origin and the Transitional rules of origin

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 Agreement between the European Economic Community and the Swiss Confederation (the Agreement) was concluded by the Union by Council Regulation (EEC) No 2840/72[1] and entered into force on 1 January 1973.

(2) Pursuant to Article 29 of the Agreement, the Joint Committee may adopt decisions. Pursuant to Article 4 of Protocol 3 to the Agreement, the Joint Committee established by Article 29 of that Agreement (Joint Committee) may decide to amend the provisions of that Protocol.

(3) The Joint Committee, during its next meeting, is to adopt a decision amending Protocol 3 to the Agreement.

(4) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee as the Decision of the Joint Committee will be binding on the Union.

(5) During the first technical meeting on Transitional rules of origin held in Brussels on 5 February 2020, the majority of the Contracting Parties to the Regional Convention on pan-Euro-Mediterranean preferential rules of origin[2] (the Convention) agreed to implement the revised rules of the Convention[3] (the Transitional rules of origin[4]) in

---

1 Council Regulation of 19 December 1972 concluding an Agreement between the European Economic Community and the Swiss Confederation and adopting provisions for its implementation and concluding an additional Agreement concerning the validity, for the Principality of Liechtenstein of the Agreement between the European Economic Community and the Swiss Confederation of 22 July 1972 (OJ L 300, 31.12.1972, p. 188).

2 OJ L 54, 26.2.2013, p. 4.

3 Council Decision (EU) 2019/2198 of 25 November 2019 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 (OJ L 339, 30.12.2019, p. 1.

4 OJ L 404, 15.11.2021, p. 1.

parallel with the rules of the Convention, on a transitional bilateral basis, pending the adoption of the revised rules of the Convention.

(6) The application of the Transitional rules of origin ensures the adaptation of the trade flows and customs practices pending the entry into force on 1 January 2025 of the revised rules of the Convention, on which the Transitional rules of origin are based.

(7) A network of bilateral protocols on rules of origin among Contracting Parties to the Convention[5] entered into force rendering the Transitional rules of origin applicable[6] since 1 September 2021.

(8) The objective of the Transitional rules of origin is to introduce more relaxed rules to facilitate the qualification of the preferential originating status for goods. As the Transitional rules of origin are in general more relaxed than those of the Convention, goods fulfilling the rules of origin of the Convention could also qualify as originating under the Transitional rules of origin, with the exception of certain agricultural products classified under Chapters 2, 4 to 15 and 16 (except for processed fishery products) and Chapters 17 to 24 of the Harmonised System. The Transitional rules of origin are applicable in parallel with the rules of origin of the Convention creating two distinctive zones of cumulation. Therefore, to facilitate the application of permeability between the Convention and the Transitional rules of origin as provided for by Article 21(1), point (d) of Appendix A to Protocol 3 to the Agreement, Article 8 of Appendix A to Protocol 3 to the Agreement should be amended,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Joint Committee established by the Agreement between European Economic Community and the Swiss Confederation, as regards the amendment of Protocol 3 to that Agreement, 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

[5] EU, Iceland, Switzerland (including Liechtenstein), Norway, Faroe Islands, Israel, Jordan, Palestine (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), Albania, Bosnia and Herzegovina, Kosovo (this designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence), North Macedonia, Serbia, Montenegro, Georgia, Republic of Moldova and Ukraine

[6] OJ C, C/2024/1637, 20.2.2024.