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PROPOSAL

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 12 January 2024

To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

No. Cion doc.: COM(2024) 5 final

Subject: Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the EPA Committee established under the interim agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part, as regards the adoption of the Protocol concerning the definition of the concept of 'originating products' and methods of administrative cooperation

Delegations will find attached document COM(2024) 5 final.

Encl.: COM(2024) 5 final



Brussels, 12.1.2024
COM(2024) 5 final

2024/0003 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the EPA Committee established under the interim agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part, as regards the adoption of the Protocol concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on behalf of the Union in the EPA Committee established under the interim agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part, as regards the envisaged adoption of the Protocol to the Agreement concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation.

2. CONTEXT OF THE PROPOSAL

2.1. The interim agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part

The interim agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part (‘the Agreement’), was signed by Cameroon in Yaoundé on 15 January 2009 and by the European Union (‘the EU’) in Brussels on 22 January 2009¹ and it has been provisionally applied by Cameroon since 4 August 2014. The Republic of Cameroon is the only signatory country from the Central Africa Party. The Agreement is open to other countries in the Central African region interested in joining.

The Agreement aims to: (a) enable the Central Africa Party to benefit from the enhanced market access offered by the EU; (b) promote sustainable economic development in the Central Africa Party and enhance its progressive integration into the world economy; (c) establish a free trade area between the European Union and the Central Africa Party based on common interest, through the progressive liberalisation of trade in a manner compliant with applicable World Trade Organization rules and the principle of asymmetry, taking account of the specific needs and capacity constraints of the Central Africa Party, in terms of levels and timing for commitments; (d) set up the appropriate dispute settlement arrangements; and (e) set up the appropriate institutional arrangements.

2.2. The EPA Committee

The EPA Committee is a body set up in accordance with Article 92 of the Agreement. It is composed of representatives of the EU and of the Central Africa Party (‘the Parties’). It is co-chaired by a representative of each of the Parties. The EPA Committee adopts its rules of procedure.

The EPA Committee is responsible for the administration of all areas covered by this Agreement and for the completion of all tasks referred to in this Agreement.

¹ Council Decision 2009/152/EC of 20 November 2008 on the signature and provisional application of the interim agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part (OJ L 57, 28.2.2009, p. 1).

The EPA Committee deals with all matters necessary for the implementation of the Agreement, including development cooperation. In the performance of its duties, the EPA Committee may (a) set up and oversee any special committees or bodies necessary for the implementation of the Agreement; (b) meet at any time agreed by the Parties; (c) consider any issues under the Agreement and take appropriate action in the exercise of its duties; (d) take decisions or make recommendations in cases provided for in the Agreement; and (e) adopt amendments to this Agreement.

2.3. The envisaged act of the EPA Committee

At the next meeting to be held in 2024 or by written procedure, the EPA Committee is to adopt a decision regarding the adoption of the Protocol to the Agreement concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation, as agreed by the Parties in July 2023 (‘the envisaged act’).

The purpose of the envisaged act is to establish a common and reciprocal regime governing the rules of origin.

The Agreement entered into force without a common and reciprocal regime governing the rules of origin. Article 13(2) of the Agreement requires the Parties to establish ‘a reciprocal common regime governing the rules of origin [which] shall be annexed to this Agreement by the EPA Committee’. This new regime will be annexed to the Agreement by the EPA Committee.

In the absence of such a regime, the provisions concerning rules of origin contained in Annex II to Regulation (EU) 2016/1076² of 8 June 2016 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, economic partnership agreements (‘the Market Access Regulation’) are applicable to exports from Cameroon to the EU. For exports from the EU to Cameroon, the rules of origin defined in Decree No 2016/367 of 3 August 2016 adopted by Cameroon are applicable.

The Protocol will replace the applicable rules of origin as indicated in the previous paragraph by a more favourable and reciprocal regime. In accordance with Article 13(2) and Article 108 of the Agreement, the Protocol will be annexed to the Agreement and will form an integral part thereof.

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

The Parties concluded negotiations on the Protocol concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation in June 2022 at the 6th meeting of the EPA Committee and confirmed the final text of the Protocol in July 2023 at the 7th meeting of the EPA Committee. The agreed Protocol incorporates the latest developments on rules of origin, including those agreed in the most recent protocols on rules of origin under EPAs with the African, Caribbean and Pacific Group of States (ACP). The

² Regulation (EU) 2016/1076 of the European Parliament and of the Council of 8 June 2016 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, economic partnership agreements (OJ L 185, 8.7.2016, p.1).

rules of origin applied since the entry into force of the Agreement do not reflect the most recent developments on rules of origin, resulting in obstacles to benefiting from the preferential and reciprocal treatment provided for in the Agreement. The new, more favourable and reciprocal regime will lead to simplification and provide for a degree of flexibility for complying with the rules of origin requirements and procedures. This simplification will facilitate trade and optimise the use of preferential treatment for economic operators. In addition, the new rules of origin contained in the Protocol will promote regional integration and economic development in the Central African States by facilitating operators' compliance with the rules of origin.

It is necessary to adopt the Protocol to the Agreement, which contains, in Annex II, headings and descriptions of goods that are aligned with the HS Nomenclature and consistent with the Harmonized System (HS) of the World Customs Organization (WCO).

The proposed decision will fulfil the EU's obligations under the provisions of the Agreement. It is appropriate to establish the position to be taken on the Union's behalf in the EPA Committee, as that decision will be binding on the Union.

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 EPA Committee is a body set up by an agreement, namely the interim agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part.

The act which the EPA 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 13(2) 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.

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.

4.2. 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 Article 207(3) and 207(4), first paragraph, of the TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 207(3) and 207(4), first paragraph, of the TFEU, in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the EPA Committee will adopt a Protocol concerning the definition of the concept of 'originating products' and methods for administrative cooperation to the interim agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part, 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 EPA Committee established under the interim agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part, as regards the adoption of the Protocol concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(3) and 207(4), first paragraph, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The interim agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part (‘the Agreement’), was concluded by the Union pursuant to Council Decision 2009/152/EC⁴ and has been applied on a provisional basis by Cameroon since 4 August 2014.
- (2) Pursuant to Article 13(2) of the Agreement, the EPA Committee may adopt a reciprocal common regime governing the rules of origin.
- (3) In accordance with Article 13(2) and Article 108 of the Agreement, the reciprocal common regime governing the rules of origin will be annexed to the Agreement in the form of a Protocol concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation and will form an integral part thereof.
- (4) At its annual meeting in 2024 or by written procedure, the EPA Committee is to adopt a decision as regards the Protocol to the Agreement concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation.
- (5) The agreed Protocol takes into account the most recent developments in order to provide more flexible and simpler rules of origin, with a view to facilitating trade for economic operators and optimising the use of the preferential treatment provided for in the Agreement.

⁴ OJ L 57, 28.2.2009, p. 1.

- (6) It is appropriate to establish the position to be taken on the Union's behalf in the EPA Committee, as that decision will be binding on the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union in the next annual meeting of the EPA Committee established under the interim agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part, as regards the adoption of a decision of the EPA Committee on the Protocol concerning the definition of the concept of 'originating products' and methods of administrative cooperation, shall be based on the draft decision of the EPA Committee annexed to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*