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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	3 February 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 55 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 Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam, as regards the amendment of Protocol 1 concerning the definition of 'originating products' and methods of administrative cooperation

Delegations will find attached document COM(2023) 55 final.

Encl.: COM(2023) 55 final

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Brussels, 3.2.2023
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2023/0019 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Trade Committee established under the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam, as regards the amendment of Protocol 1 concerning the definition 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 the Union's behalf in the Trade Committee established by the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam[1] ('the Agreement') in connection with the envisaged adoption of a Decision of the Trade Committee amending Protocol 1 of the Agreement concerning the definition of the concept of 'originating products' and methods of administrative cooperation

2. CONTEXT OF THE PROPOSAL

2.1. The Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam

The Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam was signed on 30 June 2019. The Agreement was adopted by Council Decision (EU) 2020/753 of 30 March 2020 and entered into force on 1 August 2020.

2.2. The Trade Committee and the Committee on Customs

The Trade Committee is established pursuant to Article 17.1 ('Trade Committee') of the Agreement. Among other responsibilities, the Trade Committee shall supervise and coordinate the work of all specialised committees, working groups and other bodies established under this Agreement, recommend to those bodies any necessary action, and evaluate and adopt decisions, where provided for in this Agreement, regarding any subject matter referred to it by those bodies.

Article 36 ('Committee on Customs') of Protocol 1 of the Agreement provides that 'The Committee on Customs established pursuant to Article 17.2 (Specialised Committees) of this Agreement may review the provisions of this Protocol and submit a proposal for a decision to be adopted by the Trade Committee to amend it'.

2.3. The envisaged act of the Trade Committee amending Protocol 1 of the Agreement concerning the definition of 'originating products' and methods of administrative cooperation

In accordance with Article 36 of Protocol 1 of the Agreement, the Committee on Customs will make, by written procedure, a proposal to the Trade Committee for a decision amending Protocol 1 of the Agreement concerning the definition of 'originating products' and methods of administrative cooperation, and its annexes. The Trade Committee is to adopt that Decision by written procedure after its second meeting to be held on 25 October 2022.

The purpose of the envisaged act is to amend Protocol 1 of the Agreement on the following elements:

[1] OJ L 186, 12.6.2020, p. 3.

– updating Protocol 1 to reflect the latest version of the nomenclature governed by the Convention on the Harmonized Commodity Description and Coding System the Harmonized System;

– clarifying the word 'individual' in the rule for products classified in Chapter 19 of the Harmonized System;

– adding a rule for products classified in Chapter 41 of the Harmonized System;

– adding a rule for knitted or crocheted products of Heading 6212 of the Harmonized System;

– clarifying the application of tolerance for textile products classified in Chapter 62 of the Harmonized System.

The envisaged act will become binding on the parties in accordance with Article 17.1 of the Agreement.

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

The position to be taken on the Union's behalf in the Trade Committee shall be based on the draft Decision of the Trade Committee attached to this Decision.

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].

4.1.2. Application to the present case

The Trade Committee is a body set up by an agreement, namely the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam.

The act 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 Article 17.1 of the Agreement.

[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.

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 sub-paragraph of Article 207(4) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be the first sub-paragraph 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 Annex II to Protocol 1 of the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam, it is appropriate to publish it in the *Official Journal of the European Union* after its 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 Article 207(4), first subparagraph, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) he Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam ('the Agreement') was concluded by the Union by Council Decision (EU) 2020/753[3] of 30 March 2020 and entered into force on 1 August 2020.

(2) Pursuant to Article 36 of Protocol 1 to the Agreement, the Committee on Customs may submit a proposal for a Decision to review the provisions of Protocol 1, to be adopted by the Trade Committee.

(3) Pursuant to Article 17.1 (Trade Committee) of the Agreement, the Trade Committee shall evaluate and adopt decisions, where provided for in this Agreement, regarding any subject matter referred to it by the Committee on Customs.

(4) The Trade Committee is to adopt a Decision amending Annex II to Protocol 1.

(5) It is appropriate to establish the position to be taken on the Union's behalf in the Committee on Customs and in the Trade Committee, as the Decision of the Trade Committee will be binding on the Union.

(6) Amendments were introduced on 1 January 2017 and on 1 January 2022 in relation to the nomenclature governed by the Convention on the Harmonized Commodity Description and Coding System ('HS'). The Decision is needed to update Protocol 1 and its annexes to reflect the latest version of the HS.

(7) There is no condition in Annex II to Protocol 1 for considering knitted or crocheted products of Heading 6212 to be sufficiently worked or processed. The rule of Chapter 62 of Annex II to Protocol 1 may not be applied to those products, since it is limited to

[3] OJ L 186, 12.6.2020, p. 3.

products ‘not knitted or crocheted’. Therefore, a specific rule should be added for knitted or crocheted products of Heading 6212.

(8) The required working or processing for products classified in Chapter 41 is missing in the relevant column in Annex II to Protocol 1. It should be added.

(9) The word ‘individual’ in the third and fourth conditions of the required working or processing for products of Chapter 19 of Annex II to Protocol 1 may be interpreted in different ways as regards the content of materials of Chapter 4 and of sugar. To clarify the rule, the word ‘individual’ should be deleted in both instances.

(10) The tolerances for textile products of Chapter 62 of Annex II to Protocol 1 are not referred to in the different alternative rules of the required working or processing. This should be corrected,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Committee on Customs and in the Trade Committee shall be based on the draft Decision of the Trade Committee attached to the present Decision.

Minor technical changes to the Decision may be agreed by the representatives of the Union in the Committee on Customs and in the Trade Committee.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President