



Council of the
European Union

Brussels, 12 April 2021
(OR. en)

7764/21

**Interinstitutional File:
2021/0092(NLE)**

**WTO 95
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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	12 April 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.:	COM(2021) 173 final
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Subject:	Proposal for a COUNCIL DECISION on the position to be taken, on behalf of the European Union, in the Trade Committee of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru and Ecuador, of the other part, as regards the amendments to Decisions No 1/2014, No 2/2014, No 3/2014, No 4/2014 and No 5/2014 of the Trade Committee to take account of the accession of Ecuador to the Trade Agreement and to update the lists of arbitrators and of experts in Trade and Sustainable Development
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Delegations will find attached document COM(2021) 173 final.

Encl.: COM(2021) 173 final



Brussels, 12.4.2021
COM(2021) 173 final

2021/0092 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken, on behalf of the European Union, in the Trade Committee of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru and Ecuador, of the other part, as regards the amendments to Decisions No 1/2014, No 2/2014, No 3/2014, No 4/2014 and No 5/2014 of the Trade Committee to take account of the accession of Ecuador to the Trade Agreement and to update the lists of arbitrators and of experts in Trade and Sustainable Development

EXPLANATORY MEMORANDUM

1. SUBJECT-MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be adopted, on behalf of the European Union, in the Trade Committee of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru and Ecuador of the other part (hereinafter ‘the Trade Agreement’), to modify the Decisions of the Trade Committee to take into account the accession of Ecuador to the Agreement and to update the list of arbitrators and experts in Trade and Sustainable Development contained therein.

2. CONTEXT OF THE PROPOSAL

2.1. The Trade Agreement

The Trade Agreement between the European Union and its Member States of the one part and Colombia and Peru of the other part, was signed in Brussels on 26 June 2012. In accordance with Council Decision 2012/735/EU¹, the Trade Agreement has been provisionally applied with Peru from 1 March 2013² and with Colombia from 1 August 2013³.

The Agreement was amended by the Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, to take account of the accession of Ecuador, signed in Brussels on 11 November 2016⁴. The Trade Agreement is provisionally applied between the European Union and its Member States, of the one part, and Ecuador, of the other part, from 1 January 2017⁵.

Article 12 of the Trade Agreement establishes the Trade Committee, that comprises representatives of the EU Party and representatives of each signatory Andean Country, at the level of Ministers or the representatives that such levels may designate. The Trade Committee supervises and facilitates the operation of the Trade Agreement and the correct application of its provisions, and considers other ways to attain its general objectives. It evaluates and adopts decisions as envisaged in the Trade Agreement regarding any subject matter which is referred to it by the specialised bodies established according to the Trade Agreement. The Trade Committee adopts its decisions by consensus.

The Trade Committee has adopted decisions that need to be amended to take into account the accession of Ecuador to the Agreement.

Title XII of the Trade Agreement covers all disputes concerning the interpretation or application of the provisions of the Trade Agreement, except as otherwise provided in the Trade Agreement.

Pursuant the Accession of Ecuador, the Trade Committee is to update the Rules of Procedure of the Trade Committee, the Rules of Procedure and Code of Conduct for arbitrators, the list of arbitrators, the Rules of Procedure for the Group of Experts in Trade and Sustainable Development and the Group of Experts on issues covered by the Title on Trade and Sustainable Development.

¹ OJ L 354, 21.12.2012, p. 1-2.

² OJ L 56, 28.2.2013, p. 1.

³ OJ L 201, 26.7.2013, p. 7.

⁴ OJ L 356, 24.12.2016, p. 3.

⁵ OJ L 358, 29.12.2016, p. 1

2.2. The Trade Committee

The Trade Committee established by Article 12 of the Trade Agreement supervises and facilitates the operation of the Trade Agreement and the correct application of its provisions; evaluates the results from the application of the Trade Agreement, in particular the evolution of the trade and economic relations between the Parties; supervises the work of all specialised bodies established under the Trade Agreement and recommends any necessary action; evaluates and adopts decisions regarding any subject matter which is referred to it by the specialised bodies; and adopts its own rules of procedure, as well as its meeting schedule and the agenda for its meetings. The Trade Committee adopts its decisions by consensus. The decisions adopted are binding upon the Parties, which take all necessary measures to implement them. In the cases referred to in Article 12 paragraph 4 of the Trade Agreement, any decision shall be adopted by the EU Party and the signatory Andean Country concerned and shall have effect only between those Parties, provided that such decisions do not affect the rights and obligations of another signatory Andean Country (Article 14 paragraph 3).

3. POSITION TO BE ADOPTED ON BEHALF OF THE UNION

This proposal for a Council Decision establishes the position to be adopted, on behalf of the European Union, in the Trade Committee of the Trade Agreement between the European Union and its Member States of the one part and Colombia, Ecuador and Peru of the other part, to modify the Decisions of the Trade Committee to take into account the accession of Ecuador to the Trade Agreement and to update the list of arbitrators and experts in Trade and Sustainable Development contained therein.

The decision establishing this list of arbitrators from Ecuador should have been taken at the first meeting of the Trade Committee, and must now be taken as soon as possible to fully implement Title XII of the Trade Agreement on Dispute Settlement.

The Parties to the Trade Agreement discussed the envisaged Decision of the Trade Committee and agreed that, subject to the Union's decision-making procedures, the Trade Committee should adopt this Decision in the second half of 2020.

The Decision is essential for completing the institutional framework of the Trade Agreement and hence for ensuring a smooth implementation of the Trade Agreement.

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 notion 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'*.⁶

⁶ Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64.

4.1.2. Application to the present case

The Trade Committee is a body set up by an agreement, namely the Trade Agreement between the European Union and its Member States of the one part and Colombia and Peru of the other part.

The decision which the Trade Committee is called upon to adopt constitutes an act having binding legal effects, in accordance with Article 14 paragraph 2 of the Trade Agreement. The envisaged act does not supplement or amend the institutional framework of the Trade Agreement.

The procedural legal basis for the proposed decision is, therefore, 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 adopted on behalf of the Union. 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, i.e. amend Decisions No 1/2014, No 2/2014, No 3/2014, No 4/2014 and No 5/2014 of the Trade Committee to inter alia update the lists of arbitrators and of experts in Trade and Sustainable Development contained therein, fall under the common commercial policy.

The substantive legal basis of the proposed decision is, therefore, Article 207 TFEU and in particular its paragraph 4.

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) thereof.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the Council will amend Decisions No 1/2014, No 2/2014, No 3/2014, No 4/2014 and No 5/2014 of the Trade Committee, 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 of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru and Ecuador, of the other part, as regards the amendments to Decisions No 1/2014, No 2/2014, No 3/2014, No 4/2014 and No 5/2014 of the Trade Committee to take account of the accession of Ecuador to the Trade Agreement and to update the lists of arbitrators and of experts in Trade and Sustainable Development

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 Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part ('the Trade Agreement') was signed in Brussels on 26 June 2012. In accordance with Council Decision 2012/735/EU⁷, the Trade Agreement has been provisionally applied between the Union and its Member States and Peru from 1 March 2013, and Colombia from 1 August 2013.
- (2) The Trade Agreement was amended by the Protocol of Accession to take account of the accession of Ecuador, signed in Brussels on 11 November 2016⁸. In accordance with Council Decision 2012/735/EU⁹, the Trade Agreement has been provisionally applied between the Union and its Member States and Ecuador from 1 January 2017.
- (3) In accordance with Article 13(2), point (g)(vi), of the Trade Agreement, the Trade Committee may advance in the achievement of the objectives of the Trade Agreement by means of modifications provided for therein, of other provisions subject to modifications by the Trade Committee pursuant to an explicit provision of the Trade Agreement.
- (4) Pursuant to Article 13(5) of the Trade Agreement, in the exercise of any of the functions set out in that Article 13, the Trade Committee may adopt any decision as envisaged in the Trade Agreement.

⁷ Council Decision 2012/735/EU of 31 May 2012 on the signing, on behalf of the Union, and provisional application of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part (OJ L 354, 21.12.2012, p. 1).

⁸ OJ L 356, 24.12.2016, p. 3.

⁹ Council Decision (EU) 2016/2369 of 11 November 2016 on the signing, on behalf of the Union, and provisional application of the Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, to take account of the accession of Ecuador (OJ L 356, 24.12.2016, p. 1).

- (5) The Trade Committee is to adopt, by written procedure, a decision to amend its Decisions No 1/2014, No 2/2014, No 3/2014, No 4/2014 and No 5/2014.
- (6) It is appropriate to establish the position to be taken on the Union's behalf in the Trade Committee, as the decision will be binding on the Union.
- (7) Decision No 1/2014 of the Trade Committee provided for the adoption of its Rules of Procedure pursuant to Article 13(1), point (j), of the Trade Agreement.
- (8) Decision No 2/2014 of the Trade Committee provided for the adoption of the Rules of Procedure and Code of Conduct for arbitrators pursuant to Article 13(1), point (h), and Article 315 of the Trade Agreement.
- (9) Decision No 3/2014 of the Trade Committee provided for the establishment of the lists of arbitrators pursuant to Article 304(1) and (4) of the Trade Agreement.
- (10) Decision No 4/2014 of the Trade Committee provided for the adoption of the Rules of Procedure for the Group of Experts in Trade and Sustainable Development pursuant to Article 284(6) of the Trade Agreement.
- (11) Decision No 5/2014 of the Trade Committee provided for the establishment of a Group of Experts in issues covered by the Title on Trade and Sustainable Development pursuant to Article 284(3) of the Trade Agreement.
- (12) In order to take account of the accession of Ecuador to the Trade Agreement and of the need to update the lists of arbitrators and of experts in Trade and Sustainable Development, Decisions No 1/2014, No 2/2014, No 3/2014, No 4/2014 and No 5/2014 of the Trade Committee should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Trade Committee of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru and Ecuador, of the other part, as regards the amendments to Decisions No 1/2014, No 2/2014, No 3/2014, No 4/2014 and No 5/2014 of the Trade Committee 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 is addressed to the Commission.

Done at Brussels,

For the Council
The President