Council of the European Union

Brussels, 22 June 2020
(OR. en)

9017/20

Interinstitutional File: 2020/0121(NLE)

ACP 54
WTO 105
COASI 69
RELEX 469

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	22 June 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 254 final
Subject:	Proposal for a COUNCIL DECISION on the conclusion of the agreement amending the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part, to take account of the accession of the Independent State of Samoa and of future accessions of other Pacific Island States

Delegations will find attached document COM(2020) 254 final.

Encl.: COM(2020) 254 final

EUROPEAN
COMMISSION

Brussels, 22.6.2020
COM(2020) 254 final

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Proposal for a

COUNCIL DECISION

on the conclusion of the agreement amending the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part, to take account of the accession of the Independent State of Samoa and of future accessions of other Pacific Island States

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Reasons for and objectives of the proposal

The attached proposal for a Council Decision constitutes the legal instrument for the conclusion of the agreement amending the Interim Partnership Agreement between the European Union, of the one part, and the Pacific States, of the other part, pursuant to Article 218(6) TFEU.

The Council authorised the Commission to open negotiations for Economic Partnership Agreements (EPAs) with ACP countries on 12 June 2002.

On 30 July 2009 the Union signed the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part (the 'Agreement'), which establishes a framework for an Economic Partnership Agreement.[1] The Agreement aims to:

(a) enable Pacific States to benefit from the improved market access offered by the EU;

(b) promote sustainable development and the gradual integration of Pacific States into the world economy;

(c) establish a free trade area between the Parties based on the common interest, through the progressive liberalisation of trade in a manner compliant with applicable WTO rules and the principle of asymmetry, taking account of the specific needs and capacity constraints of the Pacific States, in terms of levels and timing for commitments;

(d) set up the appropriate dispute settlement arrangements; and

(e) set up the appropriate institutional arrangements.

Papua New Guinea and the Republic of Fiji are provisionally applying the Agreement since 20 December 2009 and 28 July 2014, respectively.

Article 80 of the Agreement provides that other Pacific Islands can accede to the Agreement on the basis of the submission of a GATT 1994 Article XXIV compliant market access offer. Accordingly, the Independent State of Samoa acceded to the Agreement on 21 December 2018[2] and has provisionally applied it since 31 December 2018. The Parties' procedures are underway for the accessions of Solomon Islands and the Kingdom of Tonga which have indicated their interests to accede to the Agreement.

Following the accession of the Independent State of Samoa, it is necessary to modify the Agreement in order to list this country as a Party to the Agreement. Similar technical modifications will need to be made to the Agreement each time another Pacific Island State accedes to the Agreement.

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1 Council Decision of 13 July 2009 on the signature and provisional application of the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part (OJ L 272, 16.10.2009, p. 1).

2 OJ L333, 28.12.2018, p. 1.

1.2 The EPA Trade Committee

Article 68 of the Agreement establishes a Trade Committee that is composed of representatives of the Parties (the EU and the Pacific States).

The Trade Committee shall deal with all matters necessary for the implementation of the Agreement. In the performance of its functions, the Trade 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 functions; and

(d) take decisions or make recommendations in cases provided for in the Agreement.

Article 78 (revision clause) provides that the Trade Committee may review the Agreement, its implementation, operation and performance where necessary and make appropriate suggestions to the Parties for its amendment.

Outcome of the sixth and seventh Trade Committees

On 24 October 2018, the Parties to the Agreement (EU, PNG, Fiji), and the Independent State of Samoa, Solomon Islands and Tonga as observers, exchanged views on the **scope and procedure** for introducing the technical modifications to the Agreement, which are necessary following an accession.

The Parties mapped the **scope** of the modifications as being limited to listing an acceding Pacific State as a Party to the Agreement and adding its market access offer to Annex II (customs duties on products originating in the EU Party) of the Agreement. Concerning the **procedure**, the Parties noted that currently the Trade Committee does not have the power to introduce such modifications (the legal basis under the Agreement is not sufficient). The Parties exchanged views on the following three procedural options.

Option 1 – To consider that the modifications concerned are implicitly introduced in the Agreement by virtue of an accession (Article 80); therefore, there is no need to expressly introduce them through a specific procedure.

Option 2 – The Trade Committee could make a declaration about how to read the Agreement following an accession, with regard to the needed technical modifications. Article 68(4)(c) provides the legal basis for such declaration.

Option 3 – The Parties could amend Article 80 of the Agreement to confer power to the Trade Committee to adopt the necessary decisions in the light of a new accession.

The Trade Committee agreed that Option 3 would provide legal certainty, and undertook to recommend to the Parties to amend Article 80 accordingly. Further to its seventh meeting on 3-4 October 2019, the Trade Committee has adopted a recommendation to that end, following the position to be taken on behalf of the Union (Council Decision (EU) 2019/1707 of 17 June 2019, OJ L 260, 11.10.2019, p. 45).

1.3. Consistency with existing policy provisions in the policy area

The proposal implements the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part ('ACP-EU Partnership Agreement', or Cotonou Agreement)[3], which is the legal basis for the Interim Partnership Agreement.

The accession of other Pacific States to the Agreement reinforces the legal framework of the EU trade relations with partner countries, facilitates reciprocal trade and the insertion in the global economy. It also incorporates those States into the regime of joint rules and institutions established by the Agreement.

1.4. Consistency with other Union policies

The Agreement is a development-oriented trade agreement, which extends asymmetric market access to the newly acceding States and allows them to shield sensitive sectors from liberalisation, while providing a large number of safeguards and a clause for infant industry protection. The Agreement contains provisions on the rules of origin that facilitate their exports into the EU. It further contains provisions on sustainable development (Article 3), whereby the Parties reaffirm that the objective of sustainable development shall be an integral part of the provisions of this Agreement, consistent with the overarching objectives and principles set out in Cotonou Agreement, and especially the general commitment to reduce and eventually eradicate poverty in a way that is consistent with the objectives of sustainable development. These provisions contribute to the objective of Policy Coherence for Development and are consistent with Article 208(2) TFEU.

2. LEGAL ELEMENTS OF THE PROPOSAL

2.1. Legal basis

The legal basis for this Council decision is the Treaty on the Functioning of the European Union, in particular the first subparagraph of Article 207(4), in conjunction with Article 218(6)(a)(v), thereof.

2.2. Subsidiarity (for non-exclusive competence)

The common commercial policy, in accordance with Article 3 of the TFEU, is defined as an exclusive Union competence.

2.3. Proportionality

This proposal is necessary in order to implement the Union's international commitments, as set out in the ACP-EU Partnership Agreement, in particular to conclude new WTO compatible trading arrangements progressively removing barriers to trade between the Parties and enhancing cooperation in all areas relevant to trade with the Pacific States.

[3] OJ L 287, 4.11.2010, p. 3. Agreement as amended by the Agreement signed in Luxembourg on 25 June 2005 (OJ L 209, 11.8.2005, p. 27) and by the Agreement signed in Ouagadougou on 22 June 2010 (OJ L 287, 4.11.2010, p 3).

2.4. Choice of the instrument

There exists no other legal instrument that could be used in order to achieve the objective expressed in this proposal.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

3.1. Impact assessment

A Sustainability Impact Assessment (SIA) of the EU-ACP Economic Partnership Agreements was carried out between 2003 and 2007. The terms of reference for this project were published by the European Commission in 2002 under a competitive call for tender. As a result of this call for tender a five-year framework contract was awarded to PwC France in August 2002. A draft version of the SIA's final report was presented to stakeholders in Europe during the EU Civil Society Dialogue meeting organised by the European Commission on 23 March 2007 in Brussels, Belgium.

3.2. Regulatory fitness and simplification

The approval of the amendment of the Agreement is not subject to REFIT procedures; it does not imply any costs for the Union SMEs; and it does not raise any issues from the viewpoint of the digital environment.

3.3. Fundamental rights

The proposal does not have consequences for the protection of fundamental rights in the Union.

4. BUDGETARY IMPLICATIONS

The proposed Decision has no budgetary implications.

5. OTHER ELEMENTS

5.1. Detailed explanation of the specific provisions of the proposal

Articles 1 and 2 of the proposal authorise the conclusion and notification on behalf of the Union of the amendments to the Agreement listed in the annex to the decision

Article 3 specifies that the conclusion of the amendments to the Agreement must not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts or tribunals.

Article 4 establishes the date of the entry into force of the Decision.

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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 point (a)(v) of the second paragraph of Article 218(6) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

(1) On 12 June 2002, the Council authorised the Commission to open negotiations for Economic Partnership Agreements with the African, Caribbean and Pacific Group of States[1].

(2) The Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part[2] (the 'Agreement'), which establishes a framework for an Economic Partnership Agreement, signed in London on 30 July 2009, has been provisionally applied by Papua New Guinea and the Republic of Fiji since 20 December 2009 and 28 July 2014, respectively.

(3) Article 80 of the Agreement lays down the provisions regarding the accession of the other Pacific States. By Decision (EU) 2018/1908 of 6 December 2018[3], the Council approved the accession of the Independent State of Samoa to the Agreement. The Independent State of Samoa acceded to the Agreement on 21 December 2018 and has provisionally applied it since 31 December 2018.

(4) Following the accession of the Independent State of Samoa, for the sake of legal certainty it is necessary to modify the Agreement in order to list this country as a Party to the Agreement. Similar technical modifications will need to be made to the Agreement each time another Pacific Island State accedes to the Agreement.

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1 Council Directives for the negotiations of Economic Partnership Agreements with ACP countries and regions (9930/02 (DG E II) HH/sg).

2 OJ L 272, 16.10.2009, p. 2.

3 OJ L 333, 28.12.2018, p. 1.

(5) Article 68 of the Agreement establishes a Trade Committee that shall deal with all matters necessary for the implementation of the Agreement. It is necessary to empower the Trade Committee to decide on any technical modification to the Agreement that might be necessary following the accession of another Pacific Island State.

(6) The Agreement should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

1. The agreement amending the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part, to take account of the accession of the Independent State of Samoa and of future accessions of other Pacific Island States is hereby concluded.

2. The text of the amending agreement is attached to this Decision as Annex 1.

Article 2

The President of the Council shall, on behalf of the Union, notify the Parties to the Agreement of the conclusion, by the Union, of the agreement amending the Agreement.

Article 3

The amendments of the Agreement shall not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts or tribunals.

Article 4

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

For the Council
The President