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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	16 May 2022
To:	General Secretariat of the Council
No. Cion doc.:	COM(2022) 215 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Trade Specialised Committee on customs cooperation and rules of origin regarding the consultation laid down in Article 63(3) of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part

Delegations will find attached document COM(2022) 215 final.

Encl.: COM(2022) 215 final



Brussels, 16.5.2022
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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Trade Specialised Committee on customs cooperation and rules of origin regarding the consultation laid down in Article 63(3) of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

The Trade Specialised Committee (TSC) on customs cooperation and rules of origin plans to adopt a decision on consultations under Article 63(3) of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part. This proposal concerns the decision establishing the position to be taken on this matter on the EU's behalf in the TSC on customs cooperation and rules of origin.

2. CONTEXT OF THE PROPOSAL

2.1. The EU-UK Trade and Cooperation Agreement

The Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part ('the Agreement'), grants duty-and quota-free access to imports in a party to the Agreement originating in the other party if they fulfil the rules of origin requirements. Article 63 of the Agreement sets out a procedure to verify the origin of the products. It also states that the parties must hold consultations if a party denies preferential treatment to a product of the other party even though the exporting party has provided a positive opinion confirming the origin of the product.

2.2. The TSC on customs cooperation and rules of origin

According to Article 8(1)(c) of the Agreement, the TSC's remit covers matters of:

- Chapters 2 and 5 of Title I of Heading One of Part Two of the Agreement;
- the Protocol on mutual administrative assistance in customs matters; and
- the provisions on customs enforcement of intellectual property rights, fees and charges, customs valuation and repaired goods.

According to Article 121(2)(d) of the Agreement, the TSC on customs cooperation and rules of origin may adopt decisions or recommendations on the procedures for consultations under Article 63. It may also adopt decisions or recommendations on any technical or administrative matters relating to the implementation of Chapter 2 of Title I. This includes interpretative notes aimed at ensuring the uniform application of the rules of origin.

2.3. The envisaged act of the TSC on customs cooperation and rules of origin

The envisaged act aims to set out the rules for consultations between the parties if a party denies preferential treatment to a product of the other party even though the exporting party has provided a positive opinion on the origin of the product.

The envisaged act will become binding on the parties under Article 10 and Article 121(2)(d) of the Agreement. It will implement Article 63(3) of the Agreement. Under this article, the TSC on customs cooperation and rules of origin must set out a consultation procedure, for consultations the parties must hold if they disagree on the application of the rules of origin. Specifically, this is the case when a party denies preferential treatment to a product of the other party even though the exporting party has provided a positive opinion confirming the origin of the product after a verification procedure. Under the proposed rules, the parties must hold consultations in a flexible manner, aiding communication between the two parties and justifying the denial of preferential treatment.

Rule 1 sets out how a party may request to hold consultations with the other party. It also appoints the TSC secretariat as the contact point.

Rule 2 sets the deadlines for convening and concluding consultation sessions. It also proposes several possibilities for how they may be held.

Rule 3 requires the parties to announce the intended composition of their respective delegations before each session.

Rule 4 lays down the language arrangements for the consultations and the relevant documents to be distributed beforehand.

Rule 5 sets out the drafting arrangements and deadlines for the minutes of the sessions.

Rule 6 requires the parties to attempt to reach a mutually satisfactory solution. It also clarifies when the consultation period will be considered to have expired, stating that it will not be considered to have expired if the consultation did not take place due to causes attributable to one of the parties.

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

The Council should establish the position that the EU must take in the TSC on customs cooperation and rules of origin on adopting the rules of procedure for consultations under Article 63(3) of the Agreement. This will result in better regulation and greater transparency.

The proposed procedure does not affect the substance of the rules of origin under the 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) enables 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 because of the rules of international law governing the body in question.

4.1.2. Application to the present case

The Agreement has established the TSC on customs cooperation and rules of origin. Therefore, it is a body set up by an agreement.

The act the TSC on customs cooperation and rules of origin is called upon to adopt is an act that has legal effects. It will be binding on the parties pursuant Article 10 and Article 121(2)(d) 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.

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 on which a position is taken on the EU's behalf. The envisaged act can have two aims or two components, one of which can be identified as the main one and the other as merely incidental. In this case, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely the one for the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act is the establishment of a procedure for consultations if a party denies preferential treatment to a product of the other party under Article 63(3) of the Agreement.

4.3. Conclusion

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

Proposal for a

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on the position to be taken on behalf of the European Union in the Trade Specialised Committee on customs cooperation and rules of origin regarding the consultation laid down in Article 63(3) of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part

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 Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Trade and Cooperation Agreement establishing the relationship between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part ('the Agreement'), was concluded by Council Decision 2020/2252 of 29 December 2020 and entered into force on 1 May 2021.
- (2) The Agreement includes a consultation procedure in case of denial of preferences in Article 63(3). Pursuant to 121(2)(d) of the TCA, the Trade Specialised Committee on customs cooperation and rules of origin ("the Committee") established by Article 8(1)(c) of the Agreement may adopt decisions or recommendations on the procedures for the consultation established in Article 63 (3) of the TCA. Pursuant to Article 10 TCA, decisions of the Committee are binding on the parties.
- (3) It is appropriate to establish by a council decision the position to be taken on the EU's behalf within the Committee as the decision of the Committee on the rules of consultations established in Article 63 (3) of the TCA will have legal effects.
- (4) Establishing rules for the consultation procedure provided for in Article 63(3) TCA will bring clarity and ensure transparency in case a party decides to deny the preferential tariff treatment to a product of the other party against the positive opinion of the latter confirming its originating status.
- (5) The position of the Union within the Committee should therefore be based on the draft decision of the Committee in Annex to this Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf within the Trade Specialised Committee on customs cooperation and rules of origin established by the Agreement shall be based on the draft decision of this Committee attached to this Decision.

Article 2

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

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*