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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	18 April 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 110/2008 as regards nominal quantities for placing on the Union market of single distilled shochu produced by pot still and bottled in Japan
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Delegations will find attached document COM(2018) 199 final.

Encl.: COM(2018) 199 final



Brussels, 18.4.2018
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2018/0097 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 110/2008 as regards nominal quantities for placing on the Union market of single distilled *shochu* produced by pot still and bottled in Japan

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

On 29 November 2012, the Council authorised the Commission to enter into negotiations for a Free Trade Agreement (FTA) with Japan.

On the basis of the negotiating directives adopted by the Council in 2012¹ the Commission has negotiated with Japan an ambitious and comprehensive Economic Partnership Agreement (EPA) with a view to creating new opportunities and legal certainty for trade and investment between both partners to develop. The agreed texts after the end of the negotiations have been made public and can be found on the following link:

<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1684>

This proposal is made in parallel with the following proposals:

- Proposal for a Council Decision on the signing, on behalf of the European Union, of the Economic Partnership Agreement between the European Union and Japan;
- Proposal for a Council Decision on the conclusion of the Economic Partnership Agreement between the European Union and Japan;
- Proposal for a safeguard regulation that will cover safeguards foreseen in the EU-Japan EPA.

This Commission proposal aims at implementing provisions of the EU-Japan EPA as regards the export from Japan into the Union of single distilled *shochu*, a spirit drink produced by pot still and bottled in Japan, which is to be exported into the Union in traditional bottles of four go (合) or one sho (升)².

- **Consistency with existing policy provisions in the policy area**

The EU-Japan EPA is fully consistent with Union policies and will not require the EU to amend its rules, regulations or standards in any regulated area (e.g. technical rules and product standards, sanitary or phytosanitary rules, regulations on food and safety, health and safety standards, rules on GMO's, environmental protection, consumer protection, etc.) with the exception of the need for the introduction of a derogation to facilitate Japanese exports of single distilled *shochu*, a spirit drink produced by pot still and bottled in Japan, which Japan exports in traditional bottles of four go (合) or one sho (升).

This Commission proposal aims at introducing a derogation from Union rules concerning bottle sizes, for single distilled *shochu*, a spirit drink produced by pot still and bottled in Japan

¹ Directives for the negotiation of a Free Trade Agreement with Japan are available at http://trade.ec.europa.eu/doclib/docs/2017/september/tradoc_156051.en12.pdf

² 1 sho (升) is equal to 1800ml and 1 go (合) is equal to 180ml.

that is traditionally sold in bottles of sizes of four go (合) or one sho (升) that correspond to nominal quantities of 720 ml (one go corresponds to 180 ml) and 1800 ml, respectively, and that are currently not among the nominal quantities permitted in the Union under Directive 2007/45/EC laying down rules on nominal quantities of prepacked products.

- **Consistency with other Union policies**

The EU-Japan EPA is fully consistent with Union policies and will not require the EU to amend its rules, regulations or standards in any regulated area (e.g. technical rules and product standards, sanitary or phytosanitary rules, regulations on food and safety, health and safety standards, rules on GMO's, environmental protection, consumer protection, etc.).

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 114(1) of the Treaty on the Functioning of the European Union, as this proposal is an amendment to Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (OJ L39, 13.2.2008, p.16).

- **Subsidiarity (for non-exclusive competence)**

In accordance with Article 3 of the TFEU, the common commercial policy, under which EU-Japan EPA is to be signed, is an exclusive Union competence.

This proposal implements a provision of the EU-Japan EPA, consisting of derogation for single distilled *shochu* from the current Union rules on nominal quantities of spirit drinks that can be placed on the market (Directive 2007/45/EC). Such derogation can only be introduced by Union legislation.

- **Proportionality**

The EU-Japan EPA is in line with the vision of the Europe 2020 strategy and contributes to the EU's trade and development objectives. This proposal aims at implementing a provision of the EU-Japan EPA in the Union legal order.

- **Choice of the instrument**

The derogation that is proposed to implement the EU-Japan EPA can only be introduced by means of a Regulation as it needs to apply in all Member States simultaneously upon entry into force of the EU-Japan EPA.

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

- **Stakeholder consultations**
- **Collection and use of expertise**
- **Impact assessment**

Stakeholder consultations and evaluations were done as a part of the process leading to the conclusion of the EU-Japan EPA. The details about those consultations and evaluations are provided in the Commission proposal for a Council Decision on the signing on behalf of the European Union, of the Economic Partnership Agreement between the European Union and Japan.

A Trade Sustainability Impact Assessment of the EPA between the EU and Japan was carried out by the external contractor “London School of Economics Enterprises”. The details of it are provided in Commission proposal for a Council Decision on the signing on behalf of the European Union, of the Economic Partnership Agreement between the European Union and Japan.

The EU-Japan EPA is not subject to REFIT procedures. This proposal is also not subject to REFIT procedures.

- **Fundamental rights**

The proposal does not affect the protection of fundamental rights in the Union.

4. BUDGETARY IMPLICATIONS

This proposal will have no budgetary implications for the Union.

The EU-Japan EPA will have a financial impact on the EU budget on the side of the **revenues**. It is estimated that foregone duties could reach an amount of €1.6 billion upon full implementation of the agreement.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

No specific implementation plans and reporting arrangements are foreseen for this proposal.

- **Explanatory documents (for directives)**

Not relevant.

- **Detailed explanation of the specific provisions of the proposal**

The proposal introduces a specific derogation from the nominal quantities for spirit drinks set out in Article 3 and Section 1 of the Annex to Directive 2007/45/EC for single distilled *shochu*, a spirit drink produced by pot still and bottled in Japan, so that it can be placed on the

market in the Union in traditional bottle sizes of four go (合) and one sho (升), corresponding to nominal quantities of 720 ml and 1 800 ml, respectively, provided that it meets other Union requirements for such spirit drinks.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 110/2008 as regards nominal quantities for placing on the Union market of single distilled *shochu* produced by pot still and bottled in Japan

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) By Decision adopted on 29 November 2012 the Council authorised the Commission to open negotiations with Japan for a free trade agreement.
- (2) The negotiations for an Economic Partnership Agreement between the European Union and Japan (hereinafter “the Agreement”) have been successfully concluded.
- (3) Annex 2-D to the Agreement provides that single distilled *shochu*, as defined in subparagraph 10 of Article 3 of Liquor Tax Law (Law No 6 of 1953) of Japan, produced by pot still and bottled in Japan, shall be allowed to be placed on the market of the European Union in traditional bottles of sizes of four go (合) and one sho (升), corresponding to nominal quantities of 720 ml and of 1800 ml, respectively, provided that other applicable legal requirements of the European Union are fulfilled.
- (4) Article 3 of Directive 2007/45/EC of the European Parliament and of the Council⁴ provides that spirit drinks put up in pre-packages may only be placed on the Union market if they are prepacked in the nominal quantities listed in section 1 of the Annex to that Directive. For spirit drinks, section 1 of the Annex to Directive 2007/45/EC refers to nine nominal quantities on the interval from 100 ml to 2000 ml. These nominal quantities do not include 720 ml and 1800 ml, the nominal quantities in which single distilled *shochu* produced by pot still is bottled and marketed in Japan.

³ OJ C , , p. .

⁴ Directive 2007/45/EC of the European Parliament and of the Council of 5 September 2007 laying down rules on nominal quantities for prepacked products, repealing Council Directives 75/106/EEC and 80/232/EEC, and amending Council Directive 76/211/EEC (OJ L 247, 21.9.2007, p. 17).

- (5) A derogation from the nominal quantities set out in the Annex to Directive 2007/45/EC for spirit drinks is therefore necessary to ensure that single distilled *shochu* produced by pot still and bottled in Japan may be placed on the Union market, as set out in the Agreement, in traditional bottle sizes in nominal quantities of 720 ml and of 1800 ml that correspond to Japanese bottle sizes four go (合) and one sho (升) , respectively.
- (6) This derogation needs to be introduced by an amendment to Regulation (EC) No 110/2008 of the European Parliament and of the Council⁵ to ensure that single distilled *shochu* produced by pot still and bottled in Japan may be placed on the market in all Member States simultaneously upon the entry into force of the Agreement.
- (7) Regulation (EC) No 110/2008 should therefore be amended.
- (8) To ensure implementation of the Agreement as regards the placing on the Union market of the single distilled *shochu* produced by pot still and bottled in Japan, this Regulation should apply from the day of entry into force of the Agreement,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 110/2008 is amended as follows:

In Chapter IV, the following Article 24a is inserted:

'Article 24a

Derogation from Directive 2007/45/EC

By way of derogation from Article 3 of Directive 2007/45/EC of the European Parliament and of the Council* and from the sixth row of section 1 of the Annex to that Directive, single distilled *shochu*** produced by pot still and bottled in Japan, may be placed on the Union market in nominal quantities of 720 ml and 1800 ml.

* Directive 2007/45/EC of the European Parliament and of the Council of 5 September 2007 laying down rules on nominal quantities for prepacked products, repealing Council Directives 75/106/EEC and 80/232/EEC, and amending Council Directive 76/211/EEC (OJ L 247, 21.9.2007, p. 17).

** As referred to in Annex 2-D to the Economic Partnership Agreement between the European Union and Japan.'

⁵ Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (OJ L 39, 13.2.2008, p. 16).

Article 2

This Regulation shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the day of entry into force of the Economic Partnership Agreement between the European Union and Japan.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President