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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	15 March 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2019) 141 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Joint Committee established under the Agreement between the European Union and Japan for an Economic Partnership as regards the adoption of the Rules of Procedure of the Joint Committee, the Rules of Procedure of a Panel, the Mediation Procedure and the Code of Conduct for Arbitrators

Delegations will find attached document COM(2019) 141 final.

Encl.: COM(2019) 141 final



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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Committee established under the Agreement between the European Union and Japan for an Economic Partnership as regards the adoption of the Rules of Procedure of the Joint Committee, the Rules of Procedure of a Panel, the Mediation Procedure and the Code of Conduct for Arbitrators

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the position to be taken on the Union's behalf in the Joint Committee set up by the Agreement between the European Union and Japan for an Economic Partnership, in connection with the envisaged adoption of the Rules of Procedure of the Joint Committee, the Rules of Procedure of a Panel, the Mediation Procedure and the Code of Conduct for Arbitrators.

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement between the European Union and Japan for an Economic Partnership

The Agreement between the European Union and Japan for an Economic Partnership ('the Agreement') aims to liberalise and facilitate trade and investment, as well as to promote a closer economic relationship between the Parties.

The Agreement was concluded by the Council of the European Union on 20 December 2018 after consent was granted by the European Parliament on 12 December 2018. The Agreement entered into force on 1 February 2019.

2.2. The Joint Committee

Article 22.1 (1) of the Agreement establishes the Joint Committee comprising representatives of both Parties. Article 22.1 (4) provides that in order to ensure that the Agreement operates properly and effectively, "the Joint Committee shall:

- (a) adopt at its first meeting its rules of procedure; and
- (b) adopt at its first meeting the Rules of Procedure of a Panel and the Code of Conduct for Arbitrators as referred to in Article 21.30, as well as the Mediation Procedure as referred to in paragraph 2 of Article 21.6."

All decisions and recommendations of the Joint Committee will be taken by consensus.

2.3. The envisaged act of the Joint Committee

During its first meeting, the Joint Committee is to adopt its Rules of Procedure, the Rules of Procedure of a Panel, the Mediation Procedure and the Code of Conduct for Arbitrators ('the envisaged act').

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

This proposal for a Council Decision establishes the position to be taken on the Union's behalf in the Joint Committee set up by the Agreement between the European Union and Japan for an Economic Partnership with regard to the adoption of the Rules of Procedure of the Joint Committee, the Rules of Procedure of a Panel, the Mediation Procedure and the Code of Conduct for Arbitrators.

The Parties to the Agreement agreed on the drafts of the respective documents. Subject to the EU's decision making procedures, they should be adopted at the first meeting of the Joint Committee which, in accordance with Article 22.1(2) is to be held within three months of the date of entry into force of the Agreement, i.e. at the latest by May 2019.

The substance of the attached Rules of Procedure of the Joint Committee, Rules of Procedure of a Panel, Mediation Procedure and Code of Conduct for Arbitrators is very similar to those

adopted by the Joint Committees established by other Economic Partnership Agreements or other trade agreements.

The adoption of these documents is essential for rendering the Agreement's provisions operational, and more specifically, for implementing the provisions in Chapter 21 (Dispute Settlement) and Chapter 22 (Institutional Provisions).

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’¹.

4.1.2. Application to the present case

The Joint Committee is a body set up by an agreement, namely the Agreement between the European Union and Japan for an Economic Partnership.

The act which the Joint 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 22.2 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 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 Article 207 TFEU.

4.3. Conclusion

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

¹ 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.

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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(3) and 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 Agreement between the European Union and Japan for an Economic Partnership ('the Agreement') was approved on behalf of the Union on 20 December 2018.
- (2) Pursuant to Article 22.1(4)(e) and (f) of the Agreement, during its first meeting the Joint Committee is to adopt its Rules of Procedure, the Rules of Procedure of a Panel and the Code of Conduct for Arbitrators as referred to in Article 21.30, as well as the Mediation Procedure as referred to in paragraph 2 of Article 21.6 of the Agreement.
- (3) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee, as the envisaged decision of the Joint Committee will be binding on the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the first meeting of the Joint Committee established under the Agreement between the European Union and Japan for an Economic Partnership with regard to its Rules of Procedure, the Rules of Procedure of a Panel, the Code of Conduct for Arbitrators and the Mediation Procedure, shall be based on the draft decision of the Joint Committee, including its annexes, as attached to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*