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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	8 July 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2019) 326 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union within the Joint Committee on Agriculture set up by the Agreement between the European Community and the Swiss Confederation on trade in agricultural products, as regards the amendment of Annexes 1 and 2 to the Decision

Delegations will find attached document COM(2019) 326 final.

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Proposal for a

COUNCIL DECISION

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EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

The current proposal concerns the decision on the position to be taken on behalf of the Union within the Joint Committee on Agriculture set up by the Agreement between the European Community and the Swiss Confederation on trade in agricultural products, as regards the amendment of Annexes 1 and 2 to the Agreement.

2. CONTEXT OF THE PROPOSAL

2.1. Agreement between the European Community and the Swiss Confederation

Trade in agricultural products, in force since 1 June 2002 (OJ L 114, 30.4.2002, p. 132).

2.2. Joint Committee on Agriculture

Under Article 6 of the Agreement, the Committee shall be responsible for the administration of this Agreement and shall ensure its good functioning. In accordance with Article 11 of the Agreement, the Committee may decide to amend the Annexes to the Agreement.

2.3. The act envisaged by the Joint Committee on Agriculture

The purpose of the envisaged act is to amend Annexes 1 and 2 to the Agreement concerning agricultural concessions made by both parties to the Agreement.

3. POSITION TO BE TAKEN ON BEHALF OF THE UNION

The act envisaged aims to (i) update the numeric codes of the Agreement following the latest review of the Harmonised System, (ii) correct an error made in the latest adaptation of Annex 1 concerning the tariff concession for boneless hams, and (iii) incorporate into Annex 1 to the Agreement the tariff concessions granted by Switzerland in 1996 for dog and cat food intended for sale.

The act seeks to consolidate existing concessions that currently are not referred to explicitly in the Agreement and to correct errors in the text of the Agreement. It is therefore a desirable act.

The text of the Joint Committee Decision has been drawn up in cooperation with the Swiss authorities.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) 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 covers 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 on Agriculture is a body set up by an agreement, namely the Agreement between the European Community and the Swiss Confederation on trade in agricultural products.

The act which the Joint Committee on Agriculture is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 16 of the Agreement between the European Community and the Swiss Confederation on trade in agricultural products.

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 agriculture and the common trade policy.

Therefore the substantive legal basis of the proposed Decision is Article 207(4) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 207(4), 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.

5. PUBLICATION OF THE ENVISAGED ACT

Since the act of the Joint Committee on Agriculture will amend the Agreement between the European Community and the Swiss Confederation on trade in agricultural products, it should be published in the *Official Journal of the European Union*, as an attachment to the Council 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 Article 207, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement between the European Community and the Swiss Confederation on trade in agricultural products ('the Agreement') entered into force on 1 June 2002.
- (2) Article 6 of the Agreement sets up a Joint Committee on Agriculture ('the Committee'), which is responsible for the administration of the Agreement and ensures its good functioning.
- (3) In accordance with Article 11 of the Agreement, the Committee may decide to amend the Annexes to the Agreement.
- (4) The Committee must adopt a decision amending Annexes 1 and 2 to the Agreement in order to update the numeric codes of the Agreement following the latest review of the Harmonised System, correct an error made in the latest adaptation of Annex 1 concerning the tariff concession for boneless hams, and incorporate into Annex 1 to the Agreement the tariff concessions granted by Switzerland in 1996 for dog and cat food intended for sale.
- (5) It is appropriate to establish the position to be taken on the Union's behalf in the Committee, as the envisaged decision will be binding on the Union.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union within the Joint Committee on Agriculture set up by Article 6 of the Agreement between the European Community and the Swiss

Confederation on trade in agricultural products shall be based on the draft Decision of the Joint Committee on Agriculture attached to this Decision.

Article 2

After its adoption, the Decision of the Joint Committee on Agriculture 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*