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PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 22 July 2019

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: COM(2019) 341 final

Subject: Proposal for a COUNCIL DECISION on the position to be taken on behalf
of the European Union in the EPA Committee established under the
stepping stone Economic Partnership Agreement between Ghana, of the
one part, and the European Community and its Member States, of the
other part, as regards the adoption of Protocol 1 concerning the definition
of the concept of 'originating products' and methods of administrative
cooperation

Delegations will find attached document COM(2019) 341 final.

Encl.: COM(2019) 341 final



Brussels, 22.7.2019
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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the EPA Committee established under the stepping stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part, as regards the adoption of Protocol 1 concerning the definition of the concept of 'originating products' and methods of administrative cooperation

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on behalf of the European Union in the EPA Committee established by the stepping stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part, as regard the envisaged adoption of Protocol 1 to the Agreement concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation.

2. CONTEXT OF THE PROPOSAL

2.1. The Stepping Stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part.

The Stepping Stone Economic Partnership Agreement (EPA) between Ghana, of the one part, and the European Community and its Member States, of the other part (‘the Agreement’) was signed by the European Union (the ‘EU’) on 28 July 2016¹ and it has been provisionally applied since 15 December 2016.

The Agreement aims to (a) enable the Ghanaian Party to benefit from the enhanced market access offered by the EU; (b) promote sustainable economic development in Ghana and enhance its progressive integration into the world economy; (c) establish a free trade area between the European Union and Ghana based on common interest, through the progressive liberalisation of trade in a manner compliant with applicable World Trade Organisation rules and the principle of asymmetry, taking account of the specific needs and capacity constraints of Ghana, in terms of levels and timing for commitments; (d) set up the appropriate dispute settlement arrangements; and (e) set up the appropriate institutional arrangements.

2.2. The EPA Committee

The EPA Committee is a body set up in accordance with Article 73 of the Agreement. It is composed of representatives of the EU and of Ghana (the Parties) and co-chaired by a representative of each of the Parties. The EPA Committee adopts its rules of procedure.

The EPA Committee deals with all matters necessary for the implementation of the Agreement, including development cooperation. In the performance of its functions, the EPA 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; (d) take decisions or make recommendations in cases provided for in the Agreement; and (e) adopt amendments to this Agreement.

The EPA Committee may review the Agreement, its implementation, operation and performance where necessary and make appropriate suggestions to the Parties for its amendment.

¹ Council Decision (EU) 2016/1850 of 21 November 2016 on the signature and provisional application of the stepping stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Members States, of the other part (OJ L 287, 21.10.2016, p. 1).

2.3. The envisaged act of the Committee

At the next meeting to be held in 2019, the EPA Committee is to adopt a Decision regarding the adoption of Protocol 1 to the Agreement concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation, as agreed by the Parties, at technical level, in March 2019 (‘the envisaged act’).

The purpose of the envisaged act is to establish a common and reciprocal regime governing the rules of origin.

The Agreement entered into force without a common and reciprocal regime governing the rules of origin. Article 14 of the Agreement requires the Parties to establish such regime "based on the rules of origin as defined by the Cotonou Agreement and providing for the improvement while taking into account the development objectives of Ghana". This new regime shall be incorporated into the Agreement itself by decision of the EPA Committee. In the absence of such regime, the provisions concerning rules of origin contained in Annex II to Regulation (EU) 2016/1076² (“the Market Access Regulation”) are applicable to the exports from Ghana to the European Union.

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

On March 2019, the Parties have agreed, at technical level, the text of a Protocol 1 to the Agreement concerning the definition of the concept of ‘originating products’ and methods for administrative cooperation. The agreed Protocol 1 builds on the concluded, although not yet in force, Protocol 1 to the Economic Partnership Agreement between the West African States, the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (UEMOA), of the one part, and the European Union and its Member States, of the other part³, which is based on the Cotonou Agreement. The agreed Protocol 1 incorporates a number of modifications to reflect the latest developments on rules of origin, including those included in the most recently concluded protocols on rules of origin under EPAs with the African, Caribbean and Pacific Group of States (ACP).

The main substantial modifications introduced are:

- Replacement of Article 15 “Direct transport” by a "Non-alteration", in order to allow for more flexibility for economic operators regarding the evidences that shall be supplied to customs authorities of the importing country when trans-shipment or customs warehousing of originating goods takes place in a third country;
- Introduction of more flexibility for economic operators to comply with proofs of origin by allowing registered exporters to issue origin declarations on commercial documents (“self-declaration”) (Articles 17 and “new” 21). Ghana will benefit from a 3-years transition period to implement self-certification.
- Deletion of outdated provisions:
 - Article 3(2)(d) and 3(3) concerning crew requirements for the definition of “their vessels” and “their factory ships”;
 - Articles 7(4), 21, 40, 41(5) and Annex IX to Protocol;

² Regulation (EU) 2016/1076 of the European Parliament and of the Council of 8 June 2016 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, economic partnership agreements (OJ L 185, 8.7.2016, p.1-191).

³ ST 13370 2014 ADD 1, of 3 December 2014

- Allowing regional cumulation of origin with other West Africa countries which benefit from duty-free and quota-free access to the EU;
- Derogation for canned-tuna and tuna loins granted for 1 year (Art 41.9);
- Updates to Annex II: introduction of HS heading 293980 alkaloids of non-vegetal origin; more flexible rules for HS 2402 tobacco cigar and ex 2403 smoking tobacco; update description of HS ex 3002.

The proposed Protocol 1 on rules of origin provides for further simplification and flexibility of certain rules of origin and it also favours sustainable economic development of the Ghanaian Party and regional integration due to favourable rules on cumulation.

The envisaged act would allow the replacement of the current rules of origin applicable to exports from Ghana to the European Union, as defined in the Market Access Regulation, by a more favourable and reciprocal regime.

The proposed decision fulfils the EU's obligations under the provisions of 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) 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'*⁴.

4.1.2. Application to the present case

The act which the Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Articles 14 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 Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, paragraphs 61 to 64.

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.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the EPA Committee will adopt a Protocol 1 concerning the definition of the concept of ‘originating products’ and methods for administrative cooperation to the stepping stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the EPA Committee established under the stepping stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part, as regards the adoption of Protocol 1 concerning the definition of the concept of 'originating products' and methods of administrative cooperation

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 (4), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Stepping Stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part ('the Agreement') was signed on behalf of the Union on 28 July 2016 pursuant to Council Decision 2016/1850⁵ and has been applied on a provisional basis since 15 December 2016.
- (2) Pursuant to Article 14 of the Agreement, the Parties will establish a common and reciprocal regime governing rules of origin. This new regime will become an integral part of the Agreement by decision of the EPA Committee.
- (3) The EPA Committee, at its annual meeting in 2019, is to adopt a decision as regards Protocol 1 to the Agreement concerning the definition of the concept of 'originating products' and the methods of administrative cooperation.
- (4) It is appropriate to establish the position to be taken on behalf of the Union at the next meeting of the EPA Committee, as that decision will be binding on the Union.
- (5) The agreed Protocol takes into account the most recent developments to provide more flexible and simpler rules of origin aiming at facilitating trade for economic operators and optimising the utilisation rate of the preferential treatment provided for in the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the European Union in the 2019 annual meeting of the EPA Committee set up by the stepping stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part,

⁵ Council Decision (EU) 2016/1850 of 21 November 2016 on the signature and provisional application of the stepping stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part (OJ L 287, 21.10.2016, p. 1).

as regards the adoption of a decision of the EPA Committee on Protocol 1 concerning the definition of the concept of 'originating products' and methods of administrative cooperation, shall be based on the draft decision of the EPA Committee attached to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*