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2022/0287 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, within the Trade Committee established by the Free Trade Agreement between the European Union and the Republic of Singapore as regards the adoption of the Rules of Procedure for the Trade Committee

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Trade Committee established by the Free Trade Agreement between the European Union and the Republic of Singapore in connection with the envisaged adoption of the Rules of Procedure of the Trade Committee.

2. CONTEXT OF THE PROPOSAL

2.1. The Free Trade Agreement between the European Union and the republic of Singapore

The Free Trade Agreement between the European Union and the Republic of Singapore ('the Agreement') aims to liberalize and facilitate trade and investment between the Parties. The Agreement entered into force on 21 November 2019.

2.2. The Trade Committee

The Trade Committee shall ensure that the Agreement operates properly, supervise and facilitate the implementation and application of this Agreement, further its general aims, supervise the work of all specialised committees, working groups and other bodies established under this Agreement, consider ways to further enhance trade relations between the Parties, seek to solve problems which might arise in areas covered by this Agreement and consider any other matter of interest relating to an area covered by this Agreement. The Trade Committee shall meet alternately in the Union or Singapore every two years or without undue delay at the request of either Party. The Trade Committee shall be co-chaired by the Member of the European Commission responsible for Trade and the Minister for Trade and Industry of Singapore, or their respective delegates. Decisions are taken unanimously. The Union and its Member States are continuously informed about the functioning of the Agreement through the Trade Policy Committee and Trade Committee decisions are subject to 218(9) TFEU procedure.

2.3. The envisaged act of the Trade Committee

Pursuant to the Article 16.1 paragraph 4, point (f) of the Agreement the Trade Committee is to adopt the decision on its Rules of Procedure ('the envisaged act').

Consultations on the draft Rules of Procedure have taken a long time to reach consensus, and were not finalised yet by the time of the first Trade Committee meeting that was held on 7 December 2021.

The purpose of the envisaged act is to formalise the functioning of the Trade Committee.

The envisaged act will become binding on the parties in accordance with Article 16.4, paragraph 1 of the Agreement, which provides: that the Parties may take decisions in the Trade Committee or in a specialised committee, where provided for in the Agreement. The decisions taken in such a committee shall be binding on the Parties, which shall take the measures necessary to implement those decisions.

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

The position to be adopted on behalf of the Union should aim at adopting the Rules of Procedure of the Trade Committee, as provided for by 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’*¹.

4.1.2. Application to the present case

The Trade Committee is a body set up by an agreement, namely the Free Trade Agreement between the European Union and the Republic of Singapore.

The act which the Trade 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 16.4, paragraph 1 of the Free Trade Agreement between the European Union and the Republic of Singapore.

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(4) TFEU.

4.3. Conclusion

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

5. PUBLICATION OF THE ENVISAGED ACT

It is envisaged to publish the Decision of the Trade Committee once adopted.

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 Articles 91(1) and 100(2) 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 Free Trade Agreement between the European Union and the Republic of Singapore ('the Agreement') was concluded by the Union by Council Decision 2019/1875² and entered into force on 21 November 2019.
- (2) Pursuant to point (f) of paragraph 4 of Article 16.1 of the Agreement, the Trade Committee established by the Agreement (the 'Trade Committee') may adopt its own Rules of Procedure.
- (3) It is therefore appropriate to establish the position to be adopted on the Union's behalf within the Trade Committee with regard to the adoption of the Rules of Procedure for the Trade Committee in order to ensure the effective implementation of the Agreement.
- (4) The position of the Union within the Trade Committee should be based on the draft decision of the Trade Committee,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on the Union's behalf, within the Trade Committee established by the Free Trade Agreement between the European Union and the Republic of Singapore, as regards the adoption of the Rules of Procedure for the Trade Committee, shall be based on the draft decision of the Trade Committee attached to this Decision.

² OJ L 294, 14.11.2019, p. 3-755.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*