



Brussels, 14.2.2020
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2020/0025 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Customs Cooperation Committee established under the Agreement between the European Union and New Zealand on cooperation and mutual administrative assistance in customs matters as regards the adoption of the internal rules of procedure of the Joint Customs Cooperation 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 European Union-New Zealand Joint Customs Cooperation Committee in connection with the envisaged decision to adopt its rules of procedure

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement between the European Union and New Zealand on cooperation and mutual administrative assistance in customs matters

The Agreement between the European Union and New Zealand on cooperation and mutual administrative assistance in customs matters ('the Agreement') aims to benefit legitimate trade between the two parties by creating a more secure and trade-friendly environment as the respective customs authorities will exchange more information to ensure the proper application of customs legislation under the Agreement. The Agreement entered into force on 1 May 2018.

2.2. Joint Customs Cooperation Committee

The Joint Customs Cooperation Committee ('JCCC'), established under Article 20.1 of the Agreement, is to see to the proper functioning and implementation of the Agreement. For that purpose the JCCC can take actions and adopt decisions on matters defined in Article 20 of the Agreement. Article 20.2(e) of the Agreement empowers the JCCC to adopt its rules of procedure.

2.3. The envisaged act of the Joint Customs Cooperation Committee

During its second meeting scheduled to take place in the first week of March 2020, and subject to the EU's decision making process, the JCCC is to adopt a decision regarding its rules of procedure ('the envisaged act').

The purpose of the envisaged act is to set out the working arrangements of the JCCC in terms of its operation for the implementation of the Agreement in accordance with Article 20 of the Agreement. The substance of the Rules of Procedure of the Joint Committee in Annex to this decision is very similar to that adopted by the Joint Committees established under other customs cooperation and trade agreements. The adoption of this document is essential for the smooth functioning and implementation of the Agreement.

The Commission informally consulted the Customs Expert Group – International Customs Matters Section on the envisaged act between 17 December 2019 and 8 January 2020. The Commission took into account comments received.

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 JCCC set up by the Agreement with regard to the adoption of the rules of procedure of the JCCC.

The Parties to the Agreement agreed to adopt the draft of the document in Annex to the Decision.

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 JCCC is a body set up by an agreement, namely the Agreement between the European Union and New Zealand on cooperation and mutual administrative assistance in customs matters.

The act that 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 20.2(e) of the Agreement since the rules of procedures will influence the way decisions are made within the JCCC.

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, 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 New Zealand on cooperation and mutual administrative assistance in customs matters ('the Agreement') was concluded by the Union by Council Decision² and entered into force on 1 May 2018.
- (2) Pursuant to Article 20(2)(e) of the Agreement, the Joint Customs Cooperation Committee established under Article 20(1) of the Agreement is to adopt its internal rules of procedure.
- (3) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Customs Cooperation Committee, as the decision will be binding on the Union.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Joint Customs Cooperation Committee established under the Agreement between the European Union and New Zealand on cooperation and mutual administrative assistance in customs matters as regards the adoption of its internal rules of procedure shall be based on the draft decision of the Joint Customs Cooperation Committee attached to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President

² OJ L 101, 20.4.2018, p. 5.