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2021/0057 (NLE)

Proposal for a

COUNCIL DECISION

**on the position to be taken by the European Union in the International Tropical Timber
Council on the extension of the International Tropical Timber Agreement, 2006**

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision by the Council establishing the position to be taken by the European Union in the International Tropical Timber Council (hereafter ITTC), in connection with the proposed extension of the International Tropical Timber Agreement, 2006 (hereafter ITTA, 2006 or “the Agreement”).

2. CONTEXT OF THE PROPOSAL

2.1. The International Tropical Timber Agreement, 2006

The ITTA, 2006 aims to promote the expansion and diversification of international trade in tropical timber from sustainably managed and legally harvested forests and to promote the sustainable management of tropical timber producing forests. The European Union is party to ITTA, 2006¹.

The ITTA, 2006 superseded the ITTA, 1994, while the first ITTA was adopted in 1983 (ITTA, 1983).

ITTA, 2006 (adopted in 2006) entered into force on 7 December 2011 for a period of ten years. Therefore, it will expire on 6 December 2021 unless the ITTC decides to, by special vote, to extend, renegotiate or terminate it, pursuant to Article 44(1) of the ITTA, 2006. ITTA, 2006 can be extended for an initial period of five years and an additional one of three years, pursuant to Article 44(2).

2.2. The International Tropical Timber Council

As per Article 6(1) of the ITTA, 2006, the ITTC is the highest authority of the International Tropical Timber Organisation² (ITTO). The ITTO represents about 80% of the world’s tropical forests and over 90% of trade in timber and timber products. The ITTC consists of all the members of the ITTO. ITTO has two categories of membership: producer and consumer. Pursuant to Article 44(1) the ITTC may decide, by special vote, to extend, renegotiate or terminate the ITTA, 2006, while -pursuant to Article 44(2) - the Agreement can be extended for an initial period of five years and an additional one of three years. Pursuant to Article 12(1), the ITTC shall endeavour to take all decisions and to make all recommendations by consensus. If consensus cannot be reached, then the ITTC shall take a decision on ITTA, 2006 by special vote, pursuant to Article 44(1). Pursuant to Article 2(8), “Special vote” means a vote requiring at least two thirds of the votes cast by producer members present and voting and at least 60 % of the votes cast by consumer members present and voting, counted separately, on condition that these votes are cast by at least half of the producer members present and voting and at least half of the consumer members present and voting. Pursuant to Article 7(a), the ITTC can also take decisions without meeting.

Members to the ITTC hold 2000 votes in total (producers and consumers hold 1000 votes each). Annual contributions and votes are distributed equally between these two caucuses. Within each caucus, the dues and votes of individual members are calculated based on

¹ 2007/648/EC : Council Decision of 26 September 2007 on the signing, on behalf of the European Community, and provisional application of the International Tropical Timber Agreement, 2006 (OJ L262 of 09/10/2007, p.6-7)

² ITTO was established with ITTA, 1983

tropical timber trade and, in the case of producers on the extent of tropical forests within the country. The EU pays the biggest assessed share of contributions (paid by the Commission for all MS) to the administrative budget of the ITTO; and has the highest number of votes (and the highest number of consumer members) and could have a blocking minority in the case of special vote.

2.3. The envisaged extension of the ITTA, 2006

The ITTO experienced serious financial problems, linked to bad investments of funds by a former management team of the Secretariat, which resulted in the loss of \$ 18 million, during the period 2012-2015.

ITTO is in financial recovery even though still in the early stages, addressing the financial and managerial shortfall of projects and activities and has started a reform of its financial architecture. The pilot phase of the new financial architecture will run until 2022.

Extending the ITTA, 2006 will give the appropriate time to the ITTO and its Members to continue work on reforming the organisation's financial architecture and for ITTO to fully stabilise financially and to determine whether the ITTA, 2006 would need to undergo a substantial revision in the future.

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

The envisaged act is a Council Decision regarding the position to be taken on the Union's behalf, based on Article 218(9) of the Treaty on the Functioning of the European Union (TFEU).

The purpose of this proposal is to seek the Council's authorisation to the Commission to give consent or vote, on behalf of the Union, in favour of the extension of the ITTA, 2006 within the ITTC.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the 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'³.

4.1.2. Application to the present case

The act which the ITTC may decide to adopt constitutes an act having legal effects.

³ 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.

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.

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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 International Tropical Timber Agreement, 2006 (ITTA, 2006) was concluded by the Union by Council Decision 2011/731/EU⁴ and entered into force on 7 December 2011.
- (2) Pursuant to Article 44(1) of ITTA, 2006, the Agreement will remain in force for a period of ten years, after its entry into force - until 6 December 2021 - unless the International Tropical Timber Council, by special vote in accordance with Article 12, decides to extend, renegotiate or terminate it in accordance with the provisions of that Article.
- (3) The International Tropical Timber Council - as the highest authority of the International Tropical Timber Organisation (ITTO) - pursuant to Article 6 of ITTA, 2006, consisting of all members of ITTO- may decide to extend the ITTA, 2006 for two periods, an initial period of five years and an additional one of three, pursuant to Article 44(2).
- (4) The International Tropical Timber Council will take a decision on the extension of the ITTA, 2006 either at its 57th Session to be held in November 2021 or intersessionally through a process for taking a decision without meeting.
- (5) The extension of the ITTA, 2006 for an initial period of five years is in the interest of the European Union, as the ITTO is still in the early stages of a financial recovery and in the process of reforming its financial architecture.
- (6) The Union's position in the International Tropical Timber Council should be established.

⁴ Council Decision 2011/731/EU of 8 November 2011 on the conclusion on behalf of the European Union, of the 2006 International Tropical Timber Agreement 2007 (OJ L 294, 12.11.2011, p. 1)

HAS ADOPTED THIS DECISION:

Article 1

The European Union's position within the International Tropical Timber Council shall be to give consent or vote in favour of extending the International Tropical Timber Agreement 2006, for an initial period of five years.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*