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Delegations will find attached document COM(2018) 576 final.

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EUROPEAN
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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the EU-CTC Joint Committee established by the Convention of 20 May 1987 on the simplification of formalities in trade in goods and in the EU-CTC Joint Committee established by the Convention of 20 May 1987 on a common transit procedure as regards an invitation to the United Kingdom to accede to those Conventions

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 EU-CTC¹ Joint Committee established by the Convention of 20 May 1987 on the simplification of formalities in trade in goods and in the EU-CTC Joint Committee established by the Convention of 20 May 1987 on common transit ("the Joint Committees") in connection with the envisaged adoption by each of the Joint Committees of a decision as regards the invitation to the United Kingdom of Great Britain and Northern Ireland ("the United Kingdom") to accede to, respectively, the Convention on the simplification of formalities in trade in goods and to the Convention on a common transit procedure ("the Conventions").

2. CONTEXT OF THE PROPOSAL

2.1. The Conventions

The Conventions aim to facilitate the movement of goods between the European Union and other countries which are Contracting Parties to the Conventions. They entered into force on 1 January 1988.

The European Union is a Contracting Party to the Conventions.

Countries which are Contracting Parties of the Conventions, but not members of the Union are referred to in the Conventions as common transit countries.

2.2. The Joint Committees

The task of the Joint Committees is to administer the Conventions and to ensure their proper implementation. The Joint Committees invite, by means of decisions, third countries to accede to the Conventions.

The Joint Committees' decisions are adopted by mutual agreement by the Contracting Parties.

2.3. • The envisaged acts of the Joint Committees

• Choice of the instrument

The Communication of 2001 from the European Commission to the European Parliament and the Council on a Strategy to prepare the candidate countries for accession to the 1987 EC-EFTA Conventions on a common transit procedure and on the simplification of formalities in trade in goods², followed by the Communication of 2010 from the European Commission to the European Parliament and the Council on a Strategy to prepare certain neighbouring countries for the accession to both Conventions³ and the Council Conclusions of 14 April 2011 confirming the approach adopted in the two Communications envisage support for a number of countries in their efforts to join the Conventions.

¹ Common Transit Countries

² COM(2001)289 final

³ CIM(2010)668 final

The United Kingdom, being a Member State of the European Union, has applied the Conventions since their entry into force in 1988. Thus, it has sufficient experience in applying the provisions of the Conventions and fulfils as a Member State of the Union the technical criteria set out by the Communications of 2001 and 2010.

When the United Kingdom withdraws from the European Union, the Conventions will automatically cease to apply to the United Kingdom as only the Union (and not its Member States) is a Contracting Party. The accession of the United Kingdom as an individual Contracting Party to the Conventions will facilitate significantly the movement of goods between the Union, the United Kingdom and other common transit countries.

Should the transitional arrangements agreed between the EU and United Kingdom negotiators enter into force as part of the withdrawal agreement currently being negotiated pursuant to Article 50 of the Treaty on European Union, the international agreements to which the Union is party, including the Conventions, will apply to and in the United Kingdom from the date of withdrawal until 31 December 2020. The United Kingdom's accession to the Conventions should therefore be effective only in such situation as from the date when Union law (including these Conventions) no longer apply to and in the United Kingdom.

The Commission is invited to adopt the present draft proposal for a Decision and to transmit it to the Council.

The Joint Committees' decisions inviting the United Kingdom to accede to the Conventions will become binding on the Contracting Parties in accordance with Article 2 of each of those Decisions, which provide for their entry into force on the day of adoption "This Decision shall enter into force on the day of its adoption".

In accordance with Article 11(3) of the Convention of the simplification of formalities in trade in goods and Article 15(3) of the Convention on a common transit procedure, decisions with regard to invitations to third countries to accede to the Conventions are to be put into effect by the Contracting Parties in accordance with their own legislation.

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

The proposed position is to adopt a decision to invite the United Kingdom to accede to the Conventions in order for them to apply as soon the United Kingdom withdraws from the Union or, should the transitional arrangements agreed between the EU and United Kingdom negotiators enter into force as part of the withdrawal agreement currently being negotiated pursuant to Article 50 of the Treaty on European Union, as from the date when Union law (including these Conventions) no longer applies to and in the United Kingdom.

The aim of the proposed position is to facilitate trade between the Union, the United Kingdom and current common transit countries. The accession of the United Kingdom to the Conventions is expected to result in substantial and tangible benefits for traders and for customs administrations by simplifying transit formalities and facilitating the movement of goods.

The proposed position is consistent with the common commercial policy.

4. LEGAL BASIS

4.1. Procedural legal aspects

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."

Article 11(3) of the Convention on the simplification of formalities in trade in goods and Article 15(3) of the Convention on a common transit procedure stipulate that the Joint Committees by decision invite a third country within the meaning of, respectively, Article 1(2) and Article 3(1)(c), to accede to the Conventions

4.1.2. Application to the present case

The Joint Committees are bodies set up by an agreement, namely the Convention on the simplification of formalities in trade in goods (Article 10) and the Convention on a common transit procedure (Article 14).

The decisions which the Joint Committees are called upon to adopt constitute acts having legal effect. Those decisions will be binding under international law in accordance with Article 15 of the Convention on the simplification of formalities in trade in goods and Article 20 of the Convention on a common transit procedure.

While the United Kingdom will not be a third country when the Joint Committees decide on the invitation it is however in the interest of the Union to ensure that it accedes to the Conventions as a separate contracting party as from the date Union law (including these Conventions) no longer applies to and in the United Kingdom. It is therefore necessary to prepare the adoption by the Joint Committees of the invitation to accede to these Conventions so that once the United Kingdom becomes a third country it becomes a separate Contracting Party without delay.

The envisaged acts do not supplement or amend the institutional framework of the Conventions.

Therefore, the procedural legal basis for the proposed decisions is Article 218(9) TFEU.

4.2. Substantive legal basis

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.

The simplifications achieved through the invitation of the United Kingdom to the Conventions concern efficient border crossing procedures. The main objective and content of the envisaged acts relate therefore to the common commercial policy.

Therefore, the substantive legal basis of the proposed decisions is Article 207 TFEU.

4.3. Conclusions

The legal basis for the proposed decisions should be Article 207 TFEU, in conjunction with Article 218(9) TFEU.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the EU-CTC Joint Committee established by the Convention of 20 May 1987 on the simplification of formalities in trade in goods and in the EU-CTC Joint Committee established by the Convention of 20 May 1987 on a common transit procedure as regards an invitation to the United Kingdom to accede to those Conventions

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 Convention of 20 May 1987 on the simplification of formalities in trade in goods⁴ and the Convention of 20 May 1987 on a common transit procedure⁵ ("the Conventions") were concluded between the European Economic Community, the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Kingdom of Norway, the Kingdom of Sweden and the Swiss Confederation on 20 May 1987 and entered into force on 1 January 1988.
- (2) The United Kingdom of Great Britain and Northern Ireland ("the United Kingdom") has expressed its wish to accede to the Conventions as a separate Contracting Party from the date the Conventions no longer applies to and in the United Kingdom.
- (3) Pursuant to Article 11(3) of the Convention on the simplification of formalities in trade in goods, the Joint Committee set up by that Convention may adopt, by decision, invitations to third countries to accede to that Convention.
- (4) Pursuant to Article 15(3) of the Convention on a common transit procedure, the Joint Committee set up by that Convention may adopt, by decision, invitations to third countries to accede to that Convention.
- (5) It is appropriate to establish the position to be taken on the Union's behalf in those Joint Committees, as the Decisions to invite the United Kingdom to accede to the Conventions as a separate Contracting Party will be binding on the Union.
- (6) These Conventions ensure efficient border crossing procedures for trade between contracting parties.

⁴ OJ L 134, 22.5.1987, p. 2

⁵ OJ L 226, 13.8.1987, p. 2

- (7) While the United Kingdom will, not be a third country when the Joint Committees decide on the invitations, it is however in the interest of the Union to ensure that it accedes to the Conventions as a separate contracting party as from the date Union law (including these Conventions) no longer applies to and in the United Kingdom.
- (8) Both Conventions provide that a third country invited to become a contracting party shall do so by lodging an instrument of accession and that the accession shall become effective on the first day of the second month following the lodging of the instrument of accession.
- (9) Considering this timeline and in order for the United Kingdom to accede to these Conventions without delay once it becomes a third country, it is necessary to prepare the adoption by the Joint Committees of the invitations to accede to these Conventions.
- (10) The accession of the United Kingdom to the Conventions should be effective only from the date the United Kingdom is no longer covered by the Conventions as a Member State of the European Union or, should the European Union and the United Kingdom agree on transitional arrangements whereby the Conventions would apply to and in the United Kingdom, as from the date these transitional arrangements cease to apply,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the EU-CTC Joint Committee set up by the Convention of 20 May 1987 on the simplification of formalities in trade in goods as regards an invitation to the United Kingdom to accede to that Convention shall be based on the draft act of that Joint Committee attached to this Decision.

Article 2

The position to be taken on the Union's behalf in the EU-CTC Joint Committee set up by the Convention of 20 May 1987 on a common transit procedure as regards an invitation to the United Kingdom to accede to that Convention shall be based on the draft act of that Joint Committee attached to this Decision.

Article 3

Once the technical conditions for accession to the Conventions have been fulfilled by the United Kingdom or once convincing assurance has been provided that these technical conditions will be fulfilled on time before the effective date of the application of the Convention to the United Kingdom as a Contracting Party, the Union representative in the Joint Committees referred to in Articles 1 and 2 respectively shall propose the Decisions to invite the United Kingdom to accede to the Conventions and vote on those Decisions in line with Article 1 and 2 of this Decision.

Article 4

After its adoption, the Decision of the EU-CTC Joint Committee on the simplification of formalities in trade in goods and the Decision of the EU-CTC Joint Committee on common transit shall be published in the Official Journal of the European Union.

Article 5

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*