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2024/0043 (NLE)

Proposal for a

COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the International
Tropical Timber Council by decision without meeting on the extension of the
International Tropical Timber Agreement 2006**

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 International Tropical Timber Council (hereafter ITTC) in connection with the proposed extension of the International Tropical Timber Agreement, adopted in 2006 (hereafter “ITTA 2006” or “the Agreement”).

2. CONTEXT OF THE PROPOSAL

2.1. The International Tropical Timber Agreement 2006

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The ITTA 2006 (adopted in 2006) superseded the ITTA 1994, while the first ITTA was adopted in 1983 (ITTA 1983).

ITTA 2006 entered into force on 07 December 2011 for a period of ten years. It was extended by ITTC decision 4(LVII) and the respective EU position established by Council decision (EU) 2021/837 of 6 May 2021² for a period of five years with effect from 7 December 2021 until 6 December 2026. Therefore, it will expire on 6 December 2026 unless it is decided to extend, renegotiate or terminate it, pursuant to Article 44(1) of the ITTA 2006. After the initial extension period of five years ITTA 2006 can be extended for additional three years pursuant to Article 44(2) with effect from 7 December 2026 until 6 December 2029. No extension is possible beyond that date. Continuation of the International Tropical Timber Organisation (ITTO) in whatever form would require a new Agreement to enter into force.

The decision on extension of the Agreement is a prerogative of the ITTC, which is the highest authority of the ITTO, as per Article 6(1) of the ITTA 2006. The ITTO members represent 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 12(1) of ITTA 2006, 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.

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 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 (as well

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 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32021D0837>

as the highest number of consumer members) and could have a blocking minority in the case of special vote.

Pursuant to Article 7(a), the ITTC can also take decisions without meeting.

At the 59th session of ITTC in November 2023 (ITTC59), ITTC decided to take a decision without meeting by 1 June 2024 on whether the ITTA 2006 be extended for a period for three years with effect from 7 December 2026 until 6 December 2029, with this decision fulfilling the requirements under Rules of Procedure 35 and 36(d)(i) and requested members to refer to the decision without meeting, as referred to in the above paragraph, which is to be circulated to members at the earliest opportunity and submit their votes no later than 27 May 2024.

2.2. The envisaged extension of the ITTA 2006

There are important questions that need to be answered around the future of ITTO, including the financing architecture, the programmatic approach, and related resource mobilization. At the same time, the organisation has to respond to new horizontal policies and new forest related international agreements like the Kunming-Montreal Global Biodiversity Framework. Therefore, ITTO has to find solutions to structural and constitutional issues. These issues need to be responded by members, which could lead to a more fundamental revision of the Agreement. It is expected that such a thorough discussion would not be completed within the current time span of ITTA 2006. Further extending the ITTA 2006 will therefore be necessary for preparing any subsequent agreement.

To this end, ITTC59 established an open-ended Preparatory Working Group (PWG) and requested the PWG to advance the identification of elements to consider for future renegotiation. ITTC59 further requested the PWG to submit a report to the ITTC60 in 2024 on the modalities for the ITTA 2006 review process.

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 for an additional period of three years by decision without meeting.

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*’³.

4.1.2. Application to the present case

The act which the ITTC is called upon to adopt by decision without meeting constitutes an act having legal effects.

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.

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.

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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 (ITTC), 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 ITTC - 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) ITTA 2006 was extended by ITTC decision 4(LVII) and the respective EU position established by Council decision (EU) 2021/837 of 6 May 2021⁵ for a period of five years with effect from 7 December 2021 until 6 December 2026.
- (5) At the 59th session of ITTC in November 2023 ITTC decided to take a decision without meeting by 1 June 2024 on whether the ITTA 2006 be extended for a period for three years with effect from 7 December 2026 until 6 December 2029.
- (6) The additional extension of the ITTA 2006 for the period of three years is in the interest of the European Union, as the ITTO needs adequate time and resources for preparing any subsequent agreement.
- (7) The Union's position in the ITTC should be established.

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011D0731>

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021D0837>

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 additional period of three years.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*