EUROPEAN
COMMISSION

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2019/0191 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the General Council of the World Trade Organization on the adoption of a decision to extend a WTO waiver permitting developing country Members to provide preferential tariff treatment to products of least developed countries

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 General Council of the World Trade Organization ('WTO') in connection with the envisaged adoption of a decision to extend a WTO waiver permitting developing country Members to provide preferential tariff treatment for least developing countries.

2. CONTEXT OF THE PROPOSAL

2.1. The Marrakesh Agreement establishing the World Trade Organization

The Marrakesh Agreement establishing the World Trade Organization ('WTO Agreement') entered into force on 1 January 1995.

The European Union is a party to the Agreement.

2.2. Ministerial Conference and General Council of the World Trade Organization

Pursuant to paragraph 1 of Article IV of the WTO Agreement, the Ministerial Conference has the authority to take decisions on all matters under any of the Multilateral Trade Agreements.

Pursuant to paragraph 2 of Article IV of the WTO Agreement, in the intervals between meetings of the Ministerial Conference, its functions are conducted by the General Council.

Pursuant to paragraph 1 of Article IX, the WTO usually takes the decisions by consensus.

2.3. The envisaged act of the General Council of the WTO

Pursuant to paragraph 3 of Article IX of the WTO Agreement, an obligation imposed on a member may be waived in exceptional circumstances.

Further to a request by Chile, China, India, Thailand and Turkey (the 'co-sponsors'), the General Council of the WTO is to adopt a decision to extend the existing WTO waiver permitting developing country Members to provide preferential tariff treatment for least developing countries (LDCs), pursuant to paragraphs 3 and 4 of Article IX of the WTO Agreement (the 'envisaged act').

The existing waiver for least developing countries expired on 30 June 2019. Therefore, the purpose of the envisaged act is to extend the waiver from 1 July 2019 until 30 June 2029.

The envisaged act will become binding on the Members of the WTO in accordance with paragraph 3 of Article IX, as well as paragraph 2 of Article II of the WTO Agreement, which provides: 'The agreements and associated legal instruments included in Annexes 1, 2 and 3 <…> are integral parts of this Agreement, binding on all Members'.

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

The co-sponsors requested to extend the existing WTO waiver of obligations under paragraph 1 of Article I of the GATT 1994 allowing developing country Members to provide preferential tariff treatment to products of LDCs, designated as such by the United Nations, without being required to extend the same tariff rates to like products of any other Member from 1 July 2019 until 30 June 2029.

The co-sponsors submitted the request pursuant to paragraphs 3 and 4 of Article IX of the WTO Agreement. They justify the request with the particular vulnerability of LDCs and the special structural difficulties these countries face in the global economy, as well as the

importance of improving their effective participation in the multilateral trading system by granting them meaningful market access to support the diversification of their production and export base.

This will be the second extension of the waiver for preferential tariff treatment for LDCs, initially granted on 15 June 1999 until 30 June 2009[1], and extended on 27 May 2009 until 30 June 2019[2].

The extension of the waiver would not affect negatively either the economy of the Union or the trade relations with the beneficiaries of this waiver. The Union provides full duty and quota free access to LDCs through its Everything But Arms initiative and is supportive of the efforts of other WTO Members, including developing countries, to provide preferential tariff treatment to LDCs, too. The Union further considers that a legal instrument is necessary to enable developing countries to provide such preferences, given that the WTO Enabling Clause only enables developed Members to do so. Therefore, the position to be taken by the Union within the General Council should be to support the waiver extension.

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 General Council of the WTO is a body set up by an agreement, namely the WTO Agreement.

The act which the General Council is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with paragraph 2 of Article II and paragraph 3 of Article IX of the WTO Agreement.

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

[1] WT/L/304.
[2] WT/L/759.
[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.

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 the first subparagraph of Article 207(4).

4.3. Conclusion

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

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the General Council of the WTO will implement the WTO Agreement provisions with respect to waivers, it is appropriate to publish it in the Official Journal of the European Union after its adoption.

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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 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 Marrakesh Agreement establishing the World Trade Organization ('WTO Agreement') entered into force on 1 January 1995.

(2) Pursuant to paragraph 2 of Article II of the WTO Agreement, 'the agreements and associated legal instruments included in Annexes 1, 2 and 3 ('Multilateral Trade Agreements') are integral parts of this Agreement, binding on all Members.'

(3) In accordance with paragraph 3 of Article IX, in exceptional circumstances, the Ministerial Conference may decide to waive an obligation imposed on a Member by the WTO Agreement or any of the Multilateral Trade Agreements.

(4) Paragraphs 3 and 4 of Article IX of the WTO Agreement set out the procedures for the granting of waivers concerning the Multilateral Trade Agreements in Annex 1A or 1B or 1C to the WTO Agreement and their annexes.

(5) Pursuant to paragraph 1 of Article IV of the WTO Agreement, the Ministerial Conference shall have the authority to take decisions on all matters under any of the Multilateral Trade Agreements.

(6) Pursuant to paragraph 2 of Article IV of the WTO Agreement, in the intervals between meetings of the Ministerial Conference of the World Trade Organization ('WTO'), the General Council of the WTO shall conduct its functions. Pursuant to paragraph 1 of Article IX, the WTO usually takes the decisions by consensus.

(7) On 15 June 1999, WTO Members granted a waiver of obligations under paragraph 1 of Article I of the GATT 1994 to the extent necessary to allow developing country Members to provide preferential tariff treatment to products of least developed countries, designated as such by the United Nations, without being required to extend the same tariff rates to like products of any other Member until 30 June 2009. On 27 May 2009, WTO Members extended the waiver from 1 July 2009 until 30 June 2019.

(8) Pursuant to paragraphs 3 and 4 of Article IX of the WTO Agreement, Chile, China, India, Thailand and Turkey (the 'co-sponsors') submitted a request for the General Council to take a decision to extend the existing WTO waiver to permit developing

country Members to provide preferential tariff treatment to products of least developed countries from 1 July 2019 until 30 June 2029.

(9) The co-sponsors justify the request with the particular vulnerability of the least developed countries and the special structural difficulties they face in the global economy, as well as the importance of improving their effective participation in the multilateral trading system by granting them meaningful market access to support the diversification of their production and export base.

(10) The extension of the waiver would not affect negatively either the economy of the Union or the Union's trade relations with the beneficiaries of this waiver. Moreover, the Union provides duty free and quota-free market access to least developed countries under the Everything But Arms scheme and is supportive of other WTO Members also providing trade preferences for least developed countries.

(11) It is appropriate to establish the position to be taken by the European Commission on the Union's behalf in the General Council of the WTO to support the co-sponsors' request to extend the waiver, in accordance with Article 218(9) TFEU, as the extension of the waiver will be binding on Members of the WTO,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the European Commission on the Union's behalf in the General Council of the World Trade Organization shall be to support the extension of a WTO waiver permitting developing country Members to provide preferential tariff treatment to products originating in least developed countries from 1 July 2019 until 30 June 2029.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President