EUROPEAN
COMMISSION

Brussels, 4.12.2023
COM(2023) 756 final

2023/0440 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the World Trade Organization's 13th Ministerial Conference

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the Council decision establishing the position to be taken on the Union's behalf in the 13th Ministerial Conference of the World Trade Organization in connection with the envisaged adoption of several decisions.

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement Establishing the World Trade Organization ("WTO Agreement")

The Agreement Establishing the World Trade Organization ('the WTO Agreement') aims to achieve the objectives mentioned in the preamble to the Agreement. The agreement entered into force on 1 January 1995.

The European Union (EU) is a party to the Agreement.[1] All 27 EU Member States are also parties to the Agreement. The WTO may take decisions in accordance with the procedures set out in the WTO Agreement.

2.2. The Ministerial Conference of the World Trade Organization

The Ministerial Conference is the highest decision-making body of the WTO and meets at least once every two years. As a matter of law and practice, decisions are taken by consensus.

The next meeting of the Ministerial Conference will take place in Abu Dhabi, United Arab Emirates on 26-29 February 2024.

2.3. The envisaged acts of the WTO Ministerial Conference

On 29 February 2024, the WTO's 13th Ministerial Conference ('MC13') may adopt decisions regarding:

1. Dispute settlement reform
2. Fisheries subsidies
3. Food security
4. Transparency improvements in agriculture
5. Public stockholding for food-security purposes
6. Domestic support in agriculture
7. Export restrictions in agriculture
8. Export competition in agriculture
9. Market access in agriculture
10. The special safeguard mechanism ('SSM') in agriculture
11. Cotton
12. TRIPS waiver
13. Special and differential treatment

[1] Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regard matters within its competence, of the agreements reached in the Uruguay Round of multilateral negotiations (1986-1994) OJ L 336 23.12.1994, p. 1.

14. Least-developed countries graduation proposal - “support measures” in a number of specified WTO agreements and decisions (“Annex 2”)

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

The objective of this proposal is to enable the EU to join a possible consensus in the WTO on the adoption by the Ministerial Conference of the envisaged acts.

While it is not yet clear if, and to what extent, WTO Members will be able to reach consensus on the envisaged acts, the EU position at MC13 has to be established in advance by the Council pursuant to Article 218(9) TFEU.[2]

It should be noted that the EU position to support the extension of the moratorium on customs duties on electronic transmissions and the extension of the moratorium on complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of the General Agreement on Tariffs and Trade 1994 (non-violation and situation complaints) will not be included in this proposal, as Council Decision (EU) 2015/2236 of 27 November 2015 provides that this can be done on an indefinite basis.

The current proposal covers the following issues on which decisions may be taken:

- **Dispute settlement reform:** At MC12 in Geneva in June 2022, WTO Members committed to conduct discussions with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024. These discussions are underway, and the Union is seeking to meaningfully reform the dispute settlement system in order to address the interests of Members, while preserving its core features which support the rules-based multilateral trading system. The Union should support an agreed outcome.
- **Fisheries subsidies:** The WTO is striving to reach a multilateral agreement on additonal provisions that would achieve a comprehensive agreement on fisheries subsidies in line with the UN Sustainable Development Goal 14 Target 6 ("SDG 14.6") agreed by Heads of States in 2015. The WTO Ministerial Decision of 17 June 2022 (WT/MIN(22)/33) adopted the Agreementon Fisheries Subsidies and at the same time called to achieve a comprehensive agreement on fisheries subsidies. Negotiations on additional provisions are underway and the EU should support an agreed outcome.
- **Food security:** WTO action is needed in response to the current food security challenges, aggravated by the consequences of Russia’s unprovoked and unjustified aggression in Ukraine, in a context of global environmental challenges. Food security is expected to be a strong element of outcomes at MC13. Moreover, the Ministers at MC12 endorsed a Declaration on the Emergency Response to Food Insecurity (WT/MIN(22)/28, WT/L/1139) which instructed the Committee on Agriculture to undertake a dedicated work programme to examine ways for the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed (LDCs) and Net Food-Importing Developing Countries (NFIDCs) (Marrakesh Decision) to be made more effective and operational. At the same time, the Members were instructed to consider the needs of LDCs and NFIDCs to increase

[2] To the extent that, contrary to the current expectations, the consensus was formalised in an international agreement amending the WTO Agreement or in a plurilateral international agreement among some WTO Members, the Commission would make the necessary proposals in accordance with Article 218(6) TFEU following the adoption of the texts and their opening for acceptance by the MC13 or by the WTO Members concerned during MC13.

their resilience in responding to acute food instability, including by considering the best possible use of flexibilities to bolster their agricultural production and enhance their domestic food security as needed in an emergency. Members have collectively set a timeline of end-November 2023 to conclude a work programme and arrive at some common recommendations. The EU should support an agreed outcome.

- **Transparency improvements in agriculture**: The EU believes that its submission (RD/AG/110) on better tools for sharing information on policies in agriculture could be a basis for a decision at MC13. This submission includes concrete ideas for transparency improvements in the areas of export restrictions and export competition. Transparency improvements could be an element of a comprehensive solution to the problems facing food and agricultural markets today and at the same time part of the solution the ongoing food security challenges. The EU should support an agreed outcome in this area.
- **Public stockholding for food security purposes:** Negotiations aim at agreeing on a 'permanent solution' fulfilling the goal set out in the Bali Ministerial Decision of 7 December 2013 on Public Stockholding for Food Security Purposes (WT/MIN(13)/38-WT/L/913), as interpreted by the subsequent General Council Decision of 27 November 2014 (WT/L/939). This goal was repeated in the Nairobi Ministerial Decision of 19 December 2015 (WT/MIN(15)/44-WT/L/979). The EU should support an agreed outcome in this area.
- **Domestic support in agriculture:** Negotiations on trade-distorting domestic support are embedded in Article 20 of the WTO Agreement on Agriculture and have been part of the Doha Development Agenda (DDA) mandate, as embodied in the Doha Ministerial Declaration of 14 November 2001 (WT/MIN(01)/DEC/1). The EU should support an agreed outcome in this area.
- **Export restrictions in agriculture:** Negotiations on export restrictions in agriculture have shown that a large part of the WTO Membership supports enhanced transparency and predictability of the export prohibitions and restrictions, as well as improving relevant disciplines. Given the importance of the issue, the EU should continue to support proposals for a Ministerial Decision on this matter, which could constitute an important element of a food security outcome at MC13. The EU should support an agreed outcome.
- **Export competition in agriculture:** There is the need to seek improvements to both transparency and disciplines in export competition. There is some chance of progress on transparency improvements for MC13. Indeed, the EU included several ideas in this respect in our submission (RD/AG/110) on better tools for sharing information on policies in agriculture. The Union should support an agreed outcome.
- **Market access in agriculture:** Discussions on comprehensive market access negotiations in agriculture have confirmed there is limited appetite or realistic chance for any revival of substantial tariff reduction negotiations at the WTO any time soon. Market access is still however part of the balance in relation to other areas, in particular domestic support. The EU should support an agreed outcome.
- **Special safeguard mechanism (SSM) in agriculture:** Discussions on the Special Safeguard Mechanism (SSM) in agriculture have continued pursuant to the proposals on the table and the Nairobi Ministerial Decision (WT/MIN(15)/43 - WT/L/978). The EU has an interest to ensure that SSM is not negotiated as a stand-alone element,

but rather as part of the wider market access negotiations. The EU should support an agreed outcome.

- **Cotton:** Discussions on cotton have continued in the framework set up in paragraphs 5, 6 and 7 of the Bali Ministerial Decision on Cotton (WT/MIN(13)/41 - WT/L/916) and in paragraph 14 of the Nairobi Ministerial Decision on Cotton (WT/MIN(15)/46 - WT/L/981). The EU should support an agreed outcome in this area.

- **TRIPS waiver:** The negotiations are part of the ongoing discussions in the WTO on how the trade system can enhance global access to COVID-19 medical vaccines, diagnostics and therapeutics. MC12 adopted the Ministerial Decision regarding the possibility for the eligible WTO Members to authorise their manufacturers to produce COVID-19 vaccines without the consent of patent owners. The product scope of the TRIPS Decision covers COVID-19 vaccines as well as the ingredients and processes necessary for their manufacture. At the time of the adoption of the TRIPS Decision, there was no consensus among the WTO Members to cover also COVID-19 diagnostics and therapeutics. As a part of the compromise, the TRIPS Decision stipulates that no later than six months from the date of the TRIPS Decision, Members will decide on its extension to cover the production and supply of COVID-19 diagnostics and therapeutics. Despite discussions ongoing between July and December 2022, no consensus was found among WTO Members. The WTO General Council in December 2022 agreed to continue the discussion but without deciding on the deadline for finalising the negotiations. It is expected that the decision on whether to extend the scope of the TRIPS Decision to COVID-19 diagnostics and therapeutics is taken at MC13.

  Given the importance of this issue, the EU should join a possible consensus in the WTO on the adoption by MC13 of the envisaged act. At the same time, the outcome of the discussions among the WTO Members should strike a right balance between addressing the public health emergency caused by the COVID-19 pandemic and maintaining incentives for innovation in the area of health.

- **Special and differential treatment (SDT):** Negotiations on SDT provisions including in the context of discussions of some proposals by the G-90 (African, Caribbean and Pacific Group of States) on sanitary and phytosanitary measures (SPS) and technical barriers to trade (TBT) and the policy space proposals by the African Group in areas such as subsidies, trade-related investment measures (TRIMS) and transfer of technology within trade-related aspects of intellectual property rights (TRIPS) may result in a ministerial outcome at MC13 for example by clarifying existing provisions or granting additional SDT for Least-Developed Countries (LDCs) and certain developing countries. Given the divergence of positions in the negotiations, the EU sees as a possible outcome that these topics become part of a post-MC13 work programme or other outcomes that would not imply changing the WTO agreements.

- **Least-developed countries graduation proposal - "support measures" in a number of specified WTO agreements and decisions ("Annex 2"):** Negotiations are ongoing on proposals by the LDC Group, listed in Annex 2, on the following support measures for a smoother transition for WTO members graduating from the LDC category: i) extend for an appropriate time-period SDT provisions in a number of specified WTO agreements and decisions; ii) exempt these specified agreements and decisions from actions under the WTO dispute settlement mechanism for an appropriate time-period; and iii) ensure continued access to all LDC-specific

technical assistance and capacity building programs and facilities provided under the WTO system for an appropriate time-period. Should a ministerial outcome be necessary, the EU should support an agreed outcome. Such an outcome could extend certain LDC provisions to recently graduated countries for a strictly limited period of time.

Since negotiations are currently ongoing on all elements above, the Commission expects that the Council will take its decision on the EU position on the outcome of the negotiations once the situation regarding the relevant texts becomes clear during the Ministerial Conference itself.

The initiative is fully consistent with existing policy provisions. Similar decisions were prepared for previous WTO Ministerial Conferences, including most recently for the 12th WTO Ministerial Conference in 2022.

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 WTO Ministerial Conference is a body set up by an agreement, namely the WTO Agreement, which according to Article IV:1 of the WTO Agreement has the authority to take decisions on all matters covered under any of the multilateral trade agreements, including decisions having legal effects.

The envisaged acts mentioned above constitute acts having legal effects, as they may affect the rights and obligations of the Union by virtue of international law.

The envisaged acts do 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

[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.

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 acts relate to the common commercial policy.

The substantive legal basis of the proposed decision, therefore, 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.

2023/0440 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the World Trade Organization's 13th Ministerial Conference

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4), first subparagraph, 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 ('the WTO Agreement') was concluded by the Union by Council Decision 94/800/EC of 22 December 1994[4] and entered into force on 1 January 1995.

(2) Pursuant to Articles IV:1 and IX:1 of the WTO Agreement, the Ministerial Conference of the World Trade Organization ('WTO') may adopt decisions by consensus.

(3) The WTO Ministerial Conference, during its 13th meeting on 26-29 February 2024, may adopt decisions on dispute settlement reform, fisheries subsidies, trade and food security, transparency improvements in agriculture, public stockholding for food security purposes, domestic support in agriculture, export restrictions in agriculture, export competition in agriculture, market access in agriculture, special safeguard mechanism (SSM) in agriculture, cotton, TRIPS waiver, and special and differential treatment, least-developed countries graduation proposal - Annex 2.

(4) It is appropriate to establish the position to be taken on the Union's behalf in the WTO Ministerial Conference, as the decisions are binding on the Union.

(5) Discussions on dispute settlement reform have taken place pusuant to the commitment of Members at MC12 "to conduct discussions with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024." (WT/MIN(22)/W/16). These discussions are underway, and the Union is seeking to meaningfully reform the dispute settlement system in order to address the interests of Members, while preserving its core features which support the rules-based multilateral trading system. The Union should support an agreed outcome.

(6) The WTO is striving to reach a multilateral agreement on additonal provisions that would achieve a comprehensive agreement on fisheries subsidies in line with the UN Sustainable Development Goal 14 Target 6 ("SDG 14.6") agreed by Heads of States in 2015. The WTO Ministerial Decision of 17 June 2022 (WT/MIN(22)/33) adopted the Agreementon Fisheries Subsidies and at the same time called to achieve a comprehensive agreement on fisheries subsidies. Negotiations on additional provisions are underway and the EU should support an agreed outcome.

[4] OJ L 336, 23.12.1994, p. 1.

(7) WTO action is needed in response to the current food security challenges, aggravated by the consequences of Russia's unprovoked and unjustified aggression in Ukraine, in a context of global environmental challenges, climate change and related natural disasters, loss of biodiversity and pollution. Food security is expected to be a strong element of outcomes at MC13. Moreover, the Ministers at MC12 endorsed a Declaration on the Emergency Response to Food Insecurity (WT/MIN(22)/28, WT/L/1139) which instructed the Committee on Agriculture to undertake a dedicated work programme to examine ways for the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed (LDCs) and Net Food-Importing Developing Countries (NFIDCs) (Marrakesh Decision) to be made more effective and operational. At the same time, the Members were instructed to consider the needs of LDCs and NFIDCs to increase their resilience in responding to acute food instability, including by considering the best possible use of flexibilities to bolster their agricultural production and enhance their domestic food security as needed in an emergency. Members have collectively set a timeline of end-November 2023 to conclude a work programme and arrive at some common recommendations. The Union should support an agreed outcome.

(8) The Union's submission (RD/AG/110) on better tools for sharing information on policies in agriculture is a basis for a decision at MC13. This submission includes concrete ideas for transparency improvements in the areas of export restrictions and export competition. Transparency improvements could be an element of a comprehensive solution to the problems facing food and agricultural markets today and at the same time part of the solution to the ongoing food security challenges. The Union should support an agreed outcome in this area.

(9) Negotiations on public stockholding for food security purposes aim at agreeing on a 'permanent solution' fulfilling the goal set out in the Bali Ministerial Decision of 7 December 2013 on Public Stockholding for Food Security Purposes (WT/MIN(13)/38-WT/L/913), as interpreted by the subsequent General Council Decision of 27 November 2014 (WT/L/939). This goal was repeated in the Nairobi Ministerial Decision of 19 December 2015 (WT/MIN(15)/44-WT/L/979). The Union should support an agreed outcome.

(10) Negotiations on trade-distorting domestic support are embedded in Article 20 of the WTO Agreement on Agriculture and have been part of the Doha Development Agenda (DDA) mandate, as embodied in the Doha Ministerial Declaration of 14 November 2001 (WT/MIN(01)/DEC/1). The Union should support an agreed outcome in this area.

(11) Negotiations on export restrictions in agriculture have shown that a large part of the WTO Membership supports enhanced transparency and predictability of the export prohibitions and restrictions, as well as improving relevant disciplines. Given the importance of the issue, the Union should continue to support proposals for a Ministerial Decision on this matter, which could constitute an important element of a food security outcome at MC13. The Union should support an agreed outcome.

(12) There is the need to seek improvements to both transparency and disciplines in export competition. There is some chance of progress on transparency improvements for MC13. Indeed, the Union included several ideas in this respect in its submission (RD/AG/110) on better tools for sharing information on policies in agriculture. The Union should support an agreed outcome.

(13) Discussions on comprehensive market access negotiations in agriculture have confirmed there is a limited realistic chance for any resumption of substantial tariff reduction negotiations at the WTO any time soon. Market access is still however part of the balance in relation to other areas, in particular domestic support. The Union should support an agreed outcome.

(14) Discussions on the Special Safeguard Mechanism (SSM) in agriculture have continued pursuant to the proposals on the table and the Nairobi Ministerial Decision (WT/MIN(15)/43 - WT/L/978). The Union has an interest to ensure that SSM is not negotiated as a stand-alone element, but rather as part of the wider market access negotiations. The Union should support an agreed outcome.

(15) Discussions on cotton have continued in the framework set up in paragraphs 5, 6 and 7 of the Bali Ministerial Decision on Cotton (WT/MIN(13)/41 - WT/L/916) and in paragraph 14 of the Nairobi Ministerial Decision on Cotton (WT/MIN(15)/46 - WT/L/981). The Union should support an agreed outcome in this area.

(16) The negotiations are part of the ongoing discussions in the WTO on how the trade system can enhance global access to COVID-19 medical vaccines, diagnostics and therapeutics. MC12 adopted the Ministerial Decision regarding the possibility for the eligible WTO Members to authorise their manufacturers to produce COVID-19 vaccines without the consent of patent owners. The product scope of the TRIPS Decision covers COVID-19 vaccines as well as the ingredients and processes necessary for their manufacture. At the time of the adoption of the TRIPS Decision, there was no consensus among the WTO Members to cover also COVID-19 diagnostics and therapeutics. As a part of the compromise, the TRIPS Decision stipulates that no later than six months from the date of the TRIPS Decision, Members will decide on its extension to cover the production and supply of COVID-19 diagnostics and therapeutics. Despite discussions ongoing between July and December 2022, no consensus was found among WTO Members. The WTO General Council in December 2022 agreed to continue the discussion but without deciding on the deadline for finalising the negotiations. It is expected that the decision on whether to extend the scope of the TRIPS Decision to COVID-19 diagnostics and therapeutics is taken at MC13. Given the importance of this issue, the EU should join a possible consensus in the WTO on the adoption by MC13 of the envisaged act. At the same time, the outcome of the discussions among the WTO Members should strike a right balance between addressing the public health emergency caused by the COVID-19 pandemic and maintaining incentives for innovation in the area of health.

(17) Negotiations on special and differential treatment (SDT) provisions including in the context of discussions of some proposals by the G-90 (African, Caribbean and Pacific Group of States) on sanitary and phytosanitary measures (SPS) and technical barriers to trade (TBT) and the policy space proposals by the African Group in areas such as subsidies, trade-related investment measures (TRIMS) and transfer of technology within trade-related aspects of intellectual property rights (TRIPS) may result in a ministerial outcome at MC13 for example by clarifying existing provisions or granting additional SDT for Least-Developed Countries (LDCs) and certain developing countries. Given the divergence of positions in the negotiations, the EU sees as a possible outcome that these topics become part of a post-MC13 work programme or other outcomes that would not imply changing the WTO agreements.

(18) Negotiations are ongoing on proposals by the LDC Group, listed in Annex 2, on the following support measures for a smoother transition for WTO members graduating

from the LDC category: i) extend for an appropriate time-period SDT provisions in a number of specified WTO agreements and decisions; ii) exempt these specified agreements and decisions from actions under the WTO dispute settlement mechanism for an appropriate time-period; and iii) ensure continued access to all LDC-specific technical assistance and capacity building programs and facilities provided under the WTO system for an appropriate time-period. Should a ministerial outcome be necessary, the EU should support an agreed outcome. Such an outcome could extend certain LDC provisions to recently graduated countries for a strictly limited period of time,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 13th session of the WTO Ministerial Conference shall be:

To join the consensus reached among WTO Members with a view to adopting decisions regarding dispute settlement reform, fisheries subsidies, food security, transparency improvements in agriculture, public stockholding for food security purposes, domestic support in agriculture, export restrictions in agriculture, export competition in agriculture, market access in agriculture, special safeguard mechanism (SSM) in agriculture, cotton, TRIPS waiver, special and differential treatment, least-developed countries graduation proposal – "support measures" in a number of specified WTO agreements and decisions ("Annex 2").

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President