COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.10.2005
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2005/0216 (ACC)
2005/0217 (ACC)

Proposal for a

COUNCIL DECISION

on the adoption of the Agreement on Duty-Free Treatment of Multi-Chip Integrated Circuits (MCPs)

Proposal for a

COUNCIL DECISION

on the acceptance of the Agreement on Duty-Free Treatment of Multi-Chip Integrated Circuits (MCPs)

(presented by the Commission)

EXPLANATORY MEMORANDUM

Multi-chip integrated circuits, or "multi-chip packages" (MCPs) are a relatively new category of assembled semiconductors that did not exist at the time the tariff-cutting mechanism of the ITA (the WTO Agreement on Information Technologies) was concluded in 1996. If MCPs had existed at the time the ITA was negotiated, it is most likely that they would have been incorporated into the ITA at zero duty.

In 2004, the major producers of semiconductors based in the EU and elsewhere requested that their respective home jurisdictions, which are grouped together in the Government/Authorities Meeting on Semiconductors (GAMS), grant MCPs the same treatment as other products covered by the ITA. The EU, Japan, Korea, the United States and Chinese Taipei as the five GAMS members endorsed this initiative at the 2004 GAMS meeting. The GAMS members were able to successfully conclude negotiations on an Agreement on Duty-Free Treatment of Multi-Chip Integrated Circuits (the "Agreement") on 15 September 2005 in Seoul.

The Council had adopted negotiating directives for this Agreement in spring 2005.

In substance, the draft Agreement envisages that all GAMS members reduce to zero the rate of all customs duties and charges applied to MCPs, as defined in the 2007 Harmonised System (HS) of the World Customs Organisation.

The draft Agreement would only reduce applied duties and charges on MCPs, whilst leaving the bound rates unchanged. Importantly, the draft Agreement expressly authorises the Parties, when negotiating a multilateral tariff reduction agreement under the auspices of the WTO, to claim credit as part of their overall balance of concessions when also binding tariffs on MCPs at zero level.

The agreement is expected to enter into force between four GAMS members on 1 January 2006, assuming that domestic ratification procedures can be completed swiftly. Japan already applies in practice zero-level duties and charges on MCPs and is therefore effectively in compliance with the terms of the Agreement. Due to the length of the ratification procedure in Japan, she is expected to join the Agreement in the course of 2006.

For the ratification process, the GAMS members have agreed on a two-step procedure. In a first step, the Agreement would be adopted - subject to later acceptance - by all five GAMS members. Then, once all instruments of adoption have been received by the designated depositary, the agreement would be open to acceptance. The corresponding Commission proposals for two Council decisions are contained hereinafter.

It is envisaged that the Agreement can at a later stage be extended to other jurisdictions manufacturing MCPs, such as China, Hong-Kong, India, Malaysia, and Singapore.

2005/0216 (ACC)

Proposal for a

COUNCIL DECISION

on the adoption of the Agreement on Duty-Free Treatment of Multi-Chip Integrated Circuits (MCPs)

(text with relevance to the EEA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 in conjunction with the first sentence of the first subparagraph of Article 300 (2) thereof,

Having regard to the proposal from the Commission[1],

Whereas:

(1) The Commission has negotiated on behalf of the Community an Agreement on Duty-Free Treatment of Multi-Chip Integrated Circuits (MCPs) (the "Agreement").

(2) In a declaration signed on 15 September 2005, the prospective Parties to this Agreement recorded the finalisation of negotiations on the text of the agreement.

(3) Subject to a possible acceptance at a later date, the Agreement should be adopted.

(4) By adopting this decision, the Council shall also be considered as depositing an instrument of adoption with the depositary designated by the Agreement, which is the Secretary-General of the Council of the European Union,

HAS DECIDED AS FOLLOWS:

Sole Article

Subject to a possible acceptance at a later date, the Agreement on Duty-Free Treatment of Multi-Chip Integrated Circuits (MCPs) is hereby adopted on behalf of the Community.

[1] OJ C , , p. .

The text of the Agreement is attached to this Decision.

Done at Brussels,

For the Council
The President

ANNEX

Note: Only the English version is authentic

Agreement on Duty-Free Treatment of Multi-Chip Integrated Circuits (MCPs)

Recalling that there exists a shared view on the duty-free treatment of MCPs among the Members of the Government/Authorities Meeting on Semiconductors (GAMS), which are the European Community represented in GAMS through the European Commission; Japan; the Republic of Korea; the United States of America; and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, those GAMS Members have agreed as follows:

(1) For purposes of this Agreement:

(a) **multi-chip integrated circuits (MCPs)** means multi-chip integrated circuits consisting of two or more interconnected monolithic integrated circuits combined to all intents and purposes indivisibly, whether or not on one or more insulating substrates, with or without lead frames, but with no other active or passive circuit elements;

(b) **Harmonized System** means the Harmonized Commodity Description and Coding System set out in the Annex to the International Convention on the Harmonized Commodity Description and Coding System, as may be amended, and as adopted and implemented by the Parties in their respective internal laws and regulations;

(c) **Party** means a GAMS Member or any Member of the World Trade Organization (WTO) that has deposited its instrument of acceptance with the depositary; and

(d) terms used in this Agreement that are also used in the Marrakech Agreement Establishing the World Trade Organization (the WTO Agreement) shall have the same meaning as in the WTO Agreement.

(2) This Agreement shall apply to all MCPs, regardless of where such products are classified in the Harmonized System.

(3) Each Party shall, on a most-favored-nation basis, reduce to zero the rate of all customs duties and other duties and charges, as such duties and charges are described in Article II:1(b) of the General Agreement on Tariffs and Trade 1994 (GATT 1994), that it applies to MCPs, in accordance with the following procedures:

(a) Each Party shall apply duties and charges on MCPs at a rate of zero until all the Parties agree that a sufficient level of global trade in MCPs is covered in a multilateral tariff reduction agreement under the auspices of the WTO.

(b) At that time, or, if that time is before 31 December 2006, on 1 January 2007, each Party shall bind all duties and charges on MCPs at a rate of zero.

(c) All the Parties agree to cooperate with other Members of the WTO to achieve 90 percent coverage of global trade in MCPs in such a tariff reduction agreement.

(4) (a) Each Party shall, at the time of its acceptance of this Agreement, provide to the depositary a list of the headings in its tariff schedule that include MCPs. If a Party subsequently classifies an MCP in a heading not included on its original list, that Party shall promptly provide a modified list to the depositary.

(b) Any Party may at any time request modifications to a list of another Party that it finds to be incomplete, in which case the requested Party shall consult and work with the requesting Party in good faith to complete all modifications as necessary. The modified list shall be provided to the depositary.

(c) The depositary shall transmit the provided list, including its modifications, to all Parties.

(5) Notwithstanding the autonomous liberalization of applied duties and charges on MCPs under this Agreement, each Party shall be permitted to take into account the binding of tariffs on MCPs at zero level as part of its overall balance of concessions in a multilateral tariff reduction agreement under the auspices of the WTO.

(6) Without prejudice to paragraph 3, nothing in this Agreement shall be interpreted as affecting a Party's rights and obligations under the WTO Agreement.

(7) (a) After the depositary receives four instruments of acceptance from GAMS Members, those Parties shall agree on a date of entry into force of the Agreement.

(b) This Agreement shall be open for acceptance by any Member of the WTO. An acceptance following the entry into force of this Agreement shall enter into force on the date such acceptance is received by the depositary. The depositary shall inform all Parties upon receipt of an acceptance.

(c) If the Parties agree to amend this Agreement, subparagraphs (a) and (b) shall apply *mutatis mutandis* to such amendment.

(8) When all the Parties bind all duties and charges on MCPs at a rate of zero pursuant to paragraph 3 subparagraphs (a) to (c), this Agreement shall terminate.

(9) The original of this Agreement in the English language as well as the instruments of acceptance shall be deposited with the Secretary-General of the Council of the European Union.

2005/0217 (ACC)

Proposal for a

COUNCIL DECISION

on the acceptance of the Agreement on Duty-Free Treatment of Multi-Chip Integrated Circuits (MCPs)

(text with relevance to the EEA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 in conjunction with the first sentence of the first subparagraph of Article 300 (2) thereof,

Having regard to the proposal from the Commission[2],

Whereas:

(1) With Decision of … the Council adopted[3] subject to a possible acceptance at a later date, on behalf of the Community the Agreement on Duty-Free Treatment of Multi-Chip Integrated Circuits (MCPs) (the "Agreement").

(2) In the meantime, a total of four prospective Parties to the Agreement have, subject to a possible acceptance at a later stage, adopted the Agreement. This is the minimum number of Parties required for this Agreement to take effect.

(3) The four prospective Parties to the Agreement have agreed that it shall enter into effect between them on 1 January 2006 [*to be confirmed*].

(4) The Agreement should now be accepted on behalf of the Community.

(5) By adopting this decision, the Council shall also be considered as depositing an instrument of acceptance with the depositary designated by the Agreement, which is the Secretary-General of the Council of the European Union,

HAS DECIDED AS FOLLOWS:

Sole Article

The Agreement on Duty-Free Treatment of Multi-Chip Integrated Circuits (MCPs) is hereby accepted on behalf of the Community.

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2 OJ C […],[…], p. […].

3 OJ L […], […], p. […].

The text of the Agreement as authenticated by the Secretary-General of the Council is attached to this Decision.

Done at Brussels,

For the Council
The President

ANNEX

Note: only the English version is authentic

Agreement on Duty-Free Treatment of Multi-Chip Integrated Circuits (MCPs)

Recalling that there exists a shared view on the duty-free treatment of MCPs among the Members of the Government/Authorities Meeting on Semiconductors (GAMS), which are the European Community represented in GAMS through the European Commission; Japan; the Republic of Korea; the United States of America; and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, those GAMS Members have agreed as follows:

(1) For purposes of this Agreement:

(a) **multi-chip integrated circuits (MCPs)** means multi-chip integrated circuits consisting of two or more interconnected monolithic integrated circuits combined to all intents and purposes indivisibly, whether or not on one or more insulating substrates, with or without lead frames, but with no other active or passive circuit elements;

(b) **Harmonized System** means the Harmonized Commodity Description and Coding System set out in the Annex to the International Convention on the Harmonized Commodity Description and Coding System, as may be amended, and as adopted and implemented by the Parties in their respective internal laws and regulations;

(c) **Party** means a GAMS Member or any Member of the World Trade Organization (WTO) that has deposited its instrument of acceptance with the depositary; and

(d) terms used in this Agreement that are also used in the Marrakech Agreement Establishing the World Trade Organization (the WTO Agreement) shall have the same meaning as in the WTO Agreement.

(2) This Agreement shall apply to all MCPs, regardless of where such products are classified in the Harmonized System.

(3) Each Party shall, on a most-favored-nation basis, reduce to zero the rate of all customs duties and other duties and charges, as such duties and charges are described in Article II:1(b) of the General Agreement on Tariffs and Trade 1994 (GATT 1994), that it applies to MCPs, in accordance with the following procedures:

(a) Each Party shall apply duties and charges on MCPs at a rate of zero until all the Parties agree that a sufficient level of global trade in MCPs is covered in a multilateral tariff reduction agreement under the auspices of the WTO.

(b) At that time, or, if that time is before 31 December 2006, on 1 January 2007, each Party shall bind all duties and charges on MCPs at a rate of zero.

(c) All the Parties agree to cooperate with other Members of the WTO to achieve 90 percent coverage of global trade in MCPs in such a tariff reduction agreement.

(4) (a) Each Party shall, at the time of its acceptance of this Agreement, provide to the depositary a list of the headings in its tariff schedule that include MCPs. If a Party subsequently classifies an MCP in a heading not included on its original list, that Party shall promptly provide a modified list to the depositary.

(b) Any Party may at any time request modifications to a list of another Party that it finds to be incomplete, in which case the requested Party shall consult and work with the requesting Party in good faith to complete all modifications as necessary. The modified list shall be provided to the depositary.

(c) The depositary shall transmit the provided list, including its modifications, to all Parties.

(5) Notwithstanding the autonomous liberalization of applied duties and charges on MCPs under this Agreement, each Party shall be permitted to take into account the binding of tariffs on MCPs at zero level as part of its overall balance of concessions in a multilateral tariff reduction agreement under the auspices of the WTO.

(6) Without prejudice to paragraph 3, nothing in this Agreement shall be interpreted as affecting a Party's rights and obligations under the WTO Agreement.

(7) (a) After the depositary receives four instruments of acceptance from GAMS Members, those Parties shall agree on a date of entry into force of the Agreement.

(b) This Agreement shall be open for acceptance by any Member of the WTO. An acceptance following the entry into force of this Agreement shall enter into force on the date such acceptance is received by the depositary. The depositary shall inform all Parties upon receipt of an acceptance.

(c) If the Parties agree to amend this Agreement, subparagraphs (a) and (b) shall apply *mutatis mutandis* to such amendment.

(8) When all the Parties bind all duties and charges on MCPs at a rate of zero pursuant to paragraph 3 subparagraphs (a) to (c), this Agreement shall terminate.

(9) The original of this Agreement in the English language as well as the instruments of acceptance shall be deposited with the Secretary-General of the Council of the European Union.