EUROPEAN
COMMISSION

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2013/0360 (NLE)

Proposal for a

COUNCIL DECISION

establishing the position to be taken by the European Union within the Ministerial Conference of the World Trade Organisation (WTO) as regards an extension of the moratoria on customs duties on electronic transmissions ("e-commerce moratorium") and non-violation and situation complaints

EXPLANATORY MEMORANDUM

1. OBJECTIVE OF THE PROPOSAL

The objective of this proposal is to allow the European Union to join a consensus in the World Trade Organisation (WTO) on the adoption by the WTO Ministerial Conference of two decisions extending the moratoria on customs duties on electronic transmissions ("e-commerce moratorium") and non-violation and situation complaints.

The Union has always supported the extension of the "e-commerce moratorium" as, from the Union's perspective, e-commerce is a service and therefore it should not be subject to customs duties. Further, the moratorium provides significant economic benefits to the Union companies.

As regards non-violation and situation complaints, the Union is of the opinion that they were designed to maintain a balance of negotiated market access and tariff concessions under the General Agreement on Tariffs and Trade of 1994 (“GATT”) and, accordingly, it does not appear appropriate to have them apply at this stage under the Agreement on Trade Related Aspects of Intellectual Property Rights (“TRIPS”).

The proposal provides that the Council authorises the Commission to take a position on behalf of the European Union within the WTO to join a consensus as regards the said decisions.

2. LEGAL BASIS OF PROPOSAL

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides that when a Decision having legal effects needs to be taken in a body set up by an international agreement, the Council, on a proposal from the Commission or the High Representative of the Union for Foreign Affairs and Security Policy, shall adopt a Decision establishing the position to be adopted on the Union’s behalf. The extension of the moratoria falls under this provision as the Decision is taken in a body set up by an international agreement (the WTO Ministerial Conference) affecting the rights and obligations of the Union.

The envisaged e-commerce moratorium relates to matters falling within the scope of the common commercial policy (Article 207 TFEU) and in particular, to obligations under the General Agreement on Trade in Services. Similarly, the envisaged moratorium on non-violation and situation complaints relates to matters falling within the scope of the common commercial policy, in particular to obligations under the TRIPS.

3. SCOPE OF THE PROPOSAL

The Commission will be authorised to take a position on behalf of the European Union to support the extension of the e-commerce and non-violation and situation complaints moratoria by the WTO Ministerial Conference. Should there be an emerging consensus to propose the indefinite extension of the "e-commerce moratorium" and/or the non violation and situation complaints moratorium, so that the moratoria in question become permanent, the European Union should be supportive.

Consistent with Article 218(10), the European Parliament will be immediately and fully informed.

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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(4), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) A moratorium on customs duties on electronic transmissions ("e-commerce moratorium") stating that "*members will continue their current practice of not imposing customs duties on electronic transmissions*" was adopted in the form of a declaration at the 1998 Ministerial conference of the World Trade Organisation ("WTO").

(2) Currently the moratorium takes the form of a WTO Ministerial Conference decision, which has been renewed every two years since 1998. The moratorium was last extended at the WTO Ministerial Conference in December 2011 till 2013. It should be further extended by the WTO Ministerial Conference or made permanent should a consensus to that effect arise in the on-going or future discussions.

(3) No consensus on banning or allowing non-violation or situation complaints under the TRIPS Agreement has been possible up to now. The Declaration adopted at the WTO Ministerial Conference in Hong Kong in 2005 states: *"We take note of the work done by the Council for Trade-Related Aspects of Intellectual Property Rights pursuant to paragraph 11.1 of the Doha Decision on Implementation-Related Issues and Concerns and paragraph 1.h of the Decision adopted by the General Council on 1 August 2004, and direct it to continue its examination of the scope and modalities for complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 and make recommendations to our next Session. It is agreed that, in the meantime, Members will not initiate such complaints under the TRIPS Agreement."*

(4) The procedure so far for the successive extensions of the moratorium on non-violation and situation complaints has been a decision by the WTO Ministerial Conference following a recommendation from the Council for Trade Related Aspects of Intellectual Property Rights. Considering that a very limited number of WTO members are insisting that the debate surrounding the application of non-violation and situation

complaints continues, should those countries change their stance in favour of a permanent waiver, the EU should be ready to join the consensus.

(5) It is in the interest of the European Union to give its support to the extension of the moratoria on e-commerce and non-violation and situation complaints.

(6) The Commission will report regularly to the Trade Policy Committee on the state of play of the discussions on further extensions of the moratoria on e-commerce and non-violation and situation complaints, in particular should the positions of other Members in the World Trade Organisation (WTO) on the adoption of sucessive decisions by the WTO Ministerial Conference change,

HAS ADOPTED THIS DECISION:

Article 1

The position of the European Union within the Ministerial Conference of the World Trade Organisation shall be to support the extension of the moratoria on customs duties on electronic transmissions ("e-commerce moratorium") and non-violation and situation complaints.

Should there be an emerging consensus to propose the indefinite extension of the "e-commerce moratorium" and/or the non-violation and situation complaints moratorium, the position of the European Union within the Ministerial Conference of the World Trade Organisation shall be to support the longer period of time or the turning of the moratorium on customs duties on electronic transmissions and/or the moratorium on non-violation and situations complaints into a permanent one.

Article 2

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the Council
The President