EUROPEAN COMMISSION

Brussels, 19.4.2010
COM(2010)153 final

2010/0083 (NLE)

Proposal for a

COUNCIL DECISION

on the Agreement in the form of an Exchange of Letters between the European Union and the Republic of Chile on the provisional application of the Understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean

EXPLANATORY MEMORANDUM

Following a complaint brought by ANAPA (Spanish National Association of Owners of Deep-sea Longliners), the European Commission initiated an investigation under Council Regulation No. 3286/94 (Trade Barriers Regulation) (notice of initiation published on 10 July 1998). On 23 March 1999, the European Commission issued its investigation report, according to which Chilean practices denying access to Chilean ports to vessels fishing swordfish on the high seas in the South-Eastern Pacific were inconsistent with Article V of the General Agreement on Tariffs and Trade of 1994 (GATT).

Following Commission Decision 2000/296/EC of 5 April 2000 concerning the Chilean prohibition on unloading of swordfish catches of Community vessels in Chilean ports, the European Commission initiated a WTO dispute settlement procedure against Chile.

In reaction to this WTO case, Chile asked that certain questions be submitted to compulsory dispute settlement under the UN Law of the Sea Convention. Subsequently, Chile and the Community submitted on 19 December 2000 a dispute regarding the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean to a Special Chamber of the International Tribunal of the Law of the Sea (ITLOS).

On 25 January 2001, the European Commission and Chile reached a provisional arrangement as a consequence of which Parties agreed to the parallel suspension of the WTO and ITLOS procedures.

In April 2008 the Council adopted a decision authorising the Commission to conduct negotiations with Chile on behalf of the European Union to reach a definitive agreement on a new fisheries cooperation framework.

On 30 October 2008 the Commission presented to the Council's Working Party on Internal and External Fisheries the text of the Understanding agreed between negotiators concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean. The new Understanding will ensure access to designated Chilean ports for transhipments and landings operations, as well as for logistical purposes, for fishing vessels flying the flags of Member States operating in the South-Eastern Pacific waters. The new Understanding does not call into question the respective competences of existing regional fisheries management organisations currently established (Inter-American Tropical Tunas Commission – IATTC) nor of those that are in the course of being established (South Pacific Regional Fisheries Management Organisation – SPRFMO).

On 3 December 2009 the Commission presented to the Council's Working Party on Internal and External Fisheries the outcome of the bilateral technical talks with Chile that took place on 5-6 October 2009 in New York. The Parties initialled a technical Annex I to the Understanding that contains detailed procedures to be followed by the EU vessels fishing for swordfish seeking access the designated Chilean ports. These procedures are in keeping with modern FAO Port State measures.

In the meantime, both Parties have already jointly withdrawn the ITLOS case. On 16 December 2009 the ITLOS Special Chamber placed on record the discontinuance of the case in accordance with the joint request of Chile and the EU.

Preparations are also underway for a joint withdrawal of the WTO Case (WT/DS/193 - Measures Affecting the Transit and Importation of Swordfish). However, the Commission will not, at this stage propose a closure of the Trade Barriers Regulation case. The Commission intends to make proposal for the withdrawal only after the formal conclusion of the Agreement by the respective EU and Chilean authorities and provided that the provisions on access to Chilean ports of EU vessels fishing for swordfish on the high seas in the South-Eastern Pacific have been implemented in a satisfactory manner during a reasonable period of time.

The Member States and the European Parliament should be invited by the Commission to start the relevant procedure for conclusion. In the meantime, in order to ensure that access for EU vessels fishing for swordfish to the designated Chilean ports is not delayed any further, it is necessary to provisionally apply the Understanding, for which a simultaneous but separate Council decision is herewith proposed.

2010/0083 (NLE)

Proposal for a

COUNCIL DECISION

on the Agreement in the form of an Exchange of Letters between the European Union and the Republic of Chile on the provisional application of the Understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43, in conjunction with Article 218 (5), thereof,

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

Whereas:

(1) It is the objective of the European Union to establish framework cooperation agreements on fisheries with third Parties to ensure the conservation and sustainable management of species of common interest and the access of EU vessels to third Parties' ports for operations of transhipment and landings, and for logistical purposes.

(2) On 4 April 2008 the Council authorised the Commission to open negotiations with the Republic of Chile for the conservation of swordfish stocks in the South-Eastern Pacific Ocean. The negotiations were successfully concluded by the initialling of the Understanding concerning the conservation and management of swordfish stocks in the South-Eastern Pacific Ocean and its detailed Annex I.

(3) The Commission has proposed to the Council to adopt a decision concluding the agreement in the form of an exchange of letters (Proposal for a Council Decision on the conclusion of the Understanding between the European Union and the Republic of Chile concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean of XXXX).

(4) In view of the interest of EU vessels fishing for swordfish on the high seas in the South-Eastern Pacific to obtain access to designated Chilean ports without delay, the Understanding should be applied provisionally pending the conclusion of the Agreement.

[1] OJ C […], […], p. […].

HAS ADOPTED THIS DECISION:

Article 1

The Agreement in the form of an Exchange of Letters on the provisional application of the Understanding between the European Union and the Republic of Chile concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean is hereby approved on behalf of the European Union, pending the entry into force of the Understanding.

The text of this Agreement on the provisional application in the form of an Exchange of Letters between the European Union and Chile is attached to this Decision.

Article 2

The European Commission is authorised to sign, on behalf of the European Union, the Letter from the European Union referred to in Article 1 and to designate the persons empowered to proceed to the signature

Article 3

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

Article 4

This Decision shall be published in the *Official Journal of the European Union.*

Done at Brussels, […]

For the Council
The President
[…]

ANNEX

AGREEMENT IN THE FORM OF AN EXCHANGE OF LETTERS

between the European Union and the Republic of Chile on the provisional application of the Understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean

A. *Letter from the European Union*

Sir/Madame,

I have the honour to refer to the negotiations that have taken place in Brussels on 15 and 16 October 2008 between the European Union and Chile which led to the Understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean (hereafter 'the Understanding'), as well as to the bilateral technical discussions in New York on 5 and 6 October 2009.

The European Union has started its internal procedures for the conclusion of the Understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean reached on 15-16 October 2008 including the detailed Annex I agreed on 5-6 October 2009.

Pending the completion of these procedures, the European Union shall provisionally apply the Understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean reached on 15-16 October 2008 and its Annex I agreed on 5-6 October 2009 as complemented by the Note Verbale of Chile of 23 November 2009.

The following documents and information form an integral part of this Agreement in the form of an Exchange of Letters:

a) the Understanding agreed on 15-16 October 2008 in Brussels as modified by:

b) the detailed Annex I to the Understanding as agreed during the bilateral technical meeting on 5-6 October 2009 in New York;

c) the Note Verbale of Chile of 23 November 2009 designating the Chilean ports of Arica, Antofagasta and Punta Arenas for access by EU vessels fishing for swordfish on the high seas in the South Eastern Pacific Ocean, in relation to point (xi) of the Annex mentioned in (b) above.

d) the first meeting of the Bilateral Technical and Scientific Committee will take place at the latest on 1 June 2010.

I should be obliged if you would acknowledge receipt of this letter and confirm that this letter and your reply constitute an Agreement between Chile and the European Union to provisionally apply the Understanding in accordance with the provisions contained in the documents listed above.

This agreement will apply from the day following the day of your reply.

Please accept, Sir/Madam, the assurance of my highest consideration.

For the European Union

The President

[…]

B. *Letter from the Republic of Chile*

Sir/Madam,

I have the honour to acknowledge receipt of your letter of today's date, which reads as follows:

'I have the honour to refer to the negotiations that have taken place in Brussels on 15 and 16 October 2008 between the European Union and Chile which led to the Understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean (hereafter 'the Understanding'), as well as to the bilateral technical discussions in New York on 5 and 6 October 2009.
The European Union has started its internal procedures for the conclusion of the Understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean reached on 15-16 October 2008 including the detailed Annex I agreed on 5-6 October 2009.
Pending the completion of these procedures, the European Union shall provisionally apply the Understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean reached on 15-16 October 2008 and its Annex I agreed on 5-6 October 2009 as complemented by the Note Verbale of Chile of 23 November 2009.
The following documents and information form an integral part of this Agreement in the form of an Exchange of Letters:

a) the Understanding agreed on 15-16 October 2008 in Brussels as modified by:

b) the detailed Annex I to the Understanding as agreed during the bilateral technical meeting on 5-6 October 2009 in New York;

c) the Note Verbale of Chile of 23 November 2009 designating the Chilean ports of Arica, Antofagasta and Punta Arenas for access by EU vessels fishing for swordfish on the high seas in the South Eastern Pacific Ocean, in relation to point (xi) of the Annex mentioned in (b) above.

d) the first meeting of the Bilateral Technical and Scientific Committee will take place at the latest on 1 June 2010.

I should be obliged if you would acknowledge receipt of this letter and confirm that this letter and your reply constitute an Agreement between Chile and the European Union to provisionally apply the Understanding in accordance with the provisions contained in the documents listed above.

This agreement will apply from the day following the day of your reply'.

I have the honour to confirm that your letter and this reply constitute an Agreement between Chile and the European Union.

Please accept, Sir/Madam, the assurance of my highest consideration.

For the Republic of Chile

The President

[…]