



EUROPEAN COMMISSION

Brussels, 14.11.2011
COM(2011) 762 final

2011/0347 (NLE)

Proposal for a

COUNCIL DECISION

establishing the position to be adopted on behalf of the European Union within the World Trade Organization (WTO) as regards requests under Article IX of the Marrakesh Agreement establishing the World Trade Organization (the WTO Agreement) for granting and/or extending certain waivers

EXPLANATORY MEMORANDUM

1. OBJECTIVE OF THE PROPOSAL

The objective of this proposal is to allow the EU to join a consensus in the World Trade Organization (WTO) on the adoption of certain waivers¹ by the WTO General Council. The proposal provides that the Council authorises the Commission to take a position on behalf of the European Union within the WTO as regards requests under Article IX of the WTO Agreement for granting and/or extending certain waivers, provided certain conditions are met including the conditions laid out in Article IX of the WTO Agreement which justify a decision granting a waiver.

2. LEGAL BASIS OF THE PROPOSAL

Article 218(9) of the Treaty on the functioning of the European Union (TFEU) provides that when a decision having legal effect 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 granting of a waiver/or the extension of a waiver falls under this provision as the decision is taken in a body set up by an international agreement (the WTO General Council or Ministerial Conference) affecting the rights and obligations of the EU.

3. SCOPE OF THE PROPOSAL

The Commission will be authorised to take a position on behalf of the EU to support requests for specific waivers having marginal political, economic and trade importance and in accordance with the overall EU trade policy.

The EU should be in a position to act in an expeditious manner in the WTO's decision making process on these waiver requests. Individual Council Decisions on each waiver request covered by this decision would appear disproportionate in view of the limited scope of the waivers. It could also entail procedural difficulties as the EU-internal process for adopting a Council Decision could take longer than the waiver adoption process in the WTO with the consequence that the EU could end up not being in a position to join the consensus in the General Council thereby delaying the WTO action.

The proposed Decision concerns the following requests for waivers and requests for the extension of waivers:

- 1) *Requests for waivers and requests for the extension of waivers related to the introduction of the Harmonised Commodity Description and Coding System (so-called Harmonised System, HS) on 1 January 1988, and its first, second, third, fourth and fifth amendments, recommended by the Council of the World Customs Organization, respectively called "HS92 changes", "HS96 changes", "HS2002*

¹ Waivers are permissions granted by the WTO General Council/Ministerial Conference to derogate temporarily from certain WTO obligations which are otherwise applicable.

changes”, “HS2007 changes” and “HS2012 changes”, as well as future HS amendments, which establish the obligation to introduce these changes to Members’ schedules of concessions (transposing Schedules of tariff concessions into the HS nomenclature)

These collective waivers² relate to the transposition of Members’ schedules of tariff commitments into more recent versions of the Harmonised System nomenclature. They are needed for the situation when a WTO Member has followed the World Customs Organization recommendation and introduced nationally a more recent version of the nomenclature but has not yet had time to transpose it into its schedule of concessions in the context of the WTO (as a matter of fact the EU is benefitting from the HS2002, HS2007 waivers). It is, therefore, in the interest of the EU that the annual extension of such waivers is granted in an expeditious manner. These waiver requests concern mainly the extension of existing waivers but also adoption of new HS amendments. In this context, before the beginning of 2012, a new waiver on the HS2012 will have to be adopted (and the EU will have to request to be covered by it).

- 2) *Requests for the extension of the existing waiver related to Cape Verde’s implementation of the of Article VII of the GATT 1994 and of the WTO Agreement on Customs Valuation.*

This waiver allows Cape Verde to extend the period for the full implementation of Article VII of the General Agreement on Tariffs and Trade (GATT) and of the WTO Agreement on Customs Valuation until 31 December 2011³. A possible extension of this waiver would be of minimal economic and trade importance to the EU.

- 3) *Requests for the extension of the existing waiver related to Canada's tariff preference programme*

This waiver allows Canada to provide duty-free treatment to eligible imports of Commonwealth Caribbean countries benefiting from the provision of CARIBCAN, without being required to extend the same duty-free treatment to like products of any other Member. Canada's waiver is valid until 31 December 2011⁴. A possible extension of this waiver would be of minimal economic and trade importance to the EU. It would also be in line with the EU's policies to support the economic development of developing countries through trade preferences.

- 4) *Requests for extensions of the existing waiver by Cuba relieving it from the provisions of paragraph 6 of the Article XV of the General Agreement on Tariffs and Trade 1994*

This waiver allows Cuba to derogate from the provisions of paragraph 6 of Article XV of the GATT, which provides that any WTO Member which ceases to be a member of the International Monetary Fund must enter into a special agreement with the WTO. This waiver was first granted to Cuba in 1964 and it is currently valid until 31 December 2011⁵.

² The last waiver on the HS96 can be found in document WT/L/801, on the HS2002 in document WT/L/808 and on the HS2007 in document WT/L/809.

³ See document WT/L/812.

⁴ See document WT/L/677.

⁵ See document WT/L/678.

5) *Requests for extensions of the existing waiver on the Kimberley process certification scheme*

This collective waiver is related to the Kimberley Process Certification Scheme for Rough Diamonds, in which also the EU participates together with 19 other WTO Members. The objective of this waiver is to prevent trade in so-called "conflict diamonds". This waiver is valid until 31 December 2012⁶. A possible extension of this waiver would be of minimal economic and trade importance to the EU while being of great relevance for its overall external relations.

The proposal further provides that:

- The Commission shall inform the Council (via the Trade Policy Committee) sufficiently in advance of any meeting of the relevant WTO body at which a decision may be taken on a request covered by the decision.
- The Council may request that the procedure for the adoption of an individual Council decision on the waiver request in question be pursued.

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

⁶ See document WT/L/676.

Proposal for a

COUNCIL DECISION

establishing the position to be adopted on behalf of the European Union within the World Trade Organization (WTO) as regards requests under Article IX of the Marrakesh Agreement establishing the World Trade Organization (the WTO Agreement) for granting and/or extending certain waivers

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) Article IX of the Marrakesh Agreement establishing the World Trade Organization (the “WTO Agreement”) sets out the procedures for the granting of waivers concerning the Multilateral Trade Agreements in WTO Agreement Annexes 1A or 1B or 1C and their annexes.
- (2) When waiver requests are made in the WTO, often a very limited timeframe is given for the final decision by the relevant WTO body on these requests, while prompt reaction from the WTO Members is required.
- (3) It is in the interest of the Union that the requests for granting and/or extending the annual waivers⁷ related to the introduction of the Harmonised Commodity Description and Coding System (so-called Harmonised System, HS) on 1 January 1988, and its first, second, third, fourth and fifth amendments, recommended by the Council of the World Customs Organization, respectively called “HS92 changes” (entered into force on 1 January 1992), “HS96 changes” entered into force on 1 January 1996), “HS2002 changes” (entered into force on 1 January 2001), “HS2007 changes” (entered into force on 1 January 2007) and “HS2012 changes” (will enter into force 1 January 2012), as well as future HS amendments, which establish the obligation to introduce these changes to Members’ schedules of concessions (transposing Schedules of tariff concessions into the HS nomenclature) be adopted in an expeditious manner.
- (4) The waiver allowing Cape Verde to extend the period for the full implementation of Article VII of the GATT and of the WTO Agreement on Customs Valuation will

⁷ The last waiver on the HS96 can be found in document WT/L/801, on the HS2002 in document WT/L/808 and on the HS2007 in document WT/L/809.

expire on 31 December 2011⁸. An extension would be of minimal economic and trade importance to the Union.

- (5) The waiver related to Canada's trade preference programme CARIBCAN will expire on 31 December 2011⁹. The extension of this waiver would be of minimal economic and trade importance to the Union and would also be in line with the Union's policy to support the economic development of developing countries through trade preferences.
- (6) The waiver allowing Cuba to derogate from the provisions of paragraph 6 of Article XV of the General Agreement on Tariffs and Trade 1994 will expire on 31 December 2011¹⁰. An extension of this waiver would be of minimal economic and trade importance to the Union.
- (7) The waiver allowing countries participating in the Kimberley Process Certification Scheme for Rough Diamonds to impose certain restrictions on the trade of so-called "blood diamonds" will expire on 31 December 2011¹¹. Its extension would be of minimal economic and trade importance to the Union while being of great relevance for its overall trade relations,

HAS ADOPTED THIS DECISION:

Article 1

The European Union shall support the following requests under Article IX:3 of the Marrakesh Agreement establishing the World Trade Organization (the WTO Agreement) within the relevant WTO body:

- (a) requests for granting and/or extending the waivers related to the introduction of the Harmonised Commodity Description and Coding System (HS) and its amendments from 1992 ("HS92 changes"), 1996 ("HS96 changes"), 2002 ("HS2002 changes"), 2007 ("HS2007 changes") and 2012 ("HS2012 changes"), as well as future HS amendments, which establish the obligation to introduce these changes to Members' schedules of concessions;
- (b) requests for extending the waiver allowing Cape Verde to extend the period for the full implementation of Article VII of the GATT and of the WTO Agreement on Customs Valuation;
- (c) requests for extending the waiver allowing Canada to grant preferential treatment to selected developing countries (CARIBCAN programme).
- (d) requests for extending the waiver for Cuba relieving it from the provisions of paragraph 6 of the Article XV of the General Agreement on Tariffs and Trade 1994;
- (e) requests for extending the waiver on the Kimberley process certification scheme.

⁸ See document WT/L/812.

⁹ See document WT/L/677.

¹⁰ See document WT/L/678.

¹¹ See document WT/L/676.

Article 2

The Commission shall inform the Council via the Trade Policy Committee sufficiently in advance of any meeting of the relevant WTO body at which a decision may be taken on a request covered by this Decision. In accordance with Article 241 of the Treaty, the Council may request, within 10 working days of the date where the Commission has informed the Trade Policy Committee that the procedure for the adoption of an individual Council decision on the waiver request in question be pursued.

Article 3

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

Done at Brussels,

*For the Council
The President*