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2016/0067 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, of an agreement in the form of a Declaration on the expansion of Trade in Information Technology Products (ITA)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The "Ministerial Declaration on Trade in Information Technology Products", known as the Information Technology Agreement (ITA), was concluded by 29 WTO Member States at the Singapore Ministerial Conference in 1996[1]. The ITA entered into force in the European Union in 1997[2].Today, the ITA counts 82 participants, or half of WTO Members, and covers 97% of trade in this sector.

The ITA requires that each participant eliminates and binds customs duties at zero on a Most Favoured Nation basis for all information technology (IT) products covered. The ITA covers about 200 tariff lines, including computers, telephones, but also inputs, components and machinery for the production of IT goods. The duty free treatment given by the ITA participants has played an important role in the enormous development and expansion of trade that the IT sector has experienced over the close to 20 years of application of the ITA. Trade in the sector has quadrupled. However, during this time span technological progress has changed the IT sector beyond recognition, while the coverage of the ITA remained the same.

The above-mentioned ITA Ministerial Declaration establishes in paragraph 3 of the Annex that participants “shall meet periodically under the auspices of the Council on Trade in Goods to review the product coverage specified in the Attachments, with a view to agreeing, by consensus, whether in the light of technological developments, experience in applying the tariff concessions, or changes to the HS nomenclature, the Attachments should be modified to incorporate additional products, and to consult on non-tariff barriers to trade in information technology products. Such consultations shall be without prejudice to rights and obligations under the WTO Agreement”.

In May 2012, several countries proposed to expand the product coverage of the ITA. On 24 July 2015, the text of the "Declaration on the Expansion of Trade on Information Technology Products" was agreed, with a view to bind and eliminate customs duties on an additional list of 201 IT products.

Subsequently, in accordance with paragraph 5 therein, the participants agreed on the staging commitments for each product listed in document G/MA/W/117. There are currently 25 participating members (or 53 counting EU MS) in the expansion of the ITA, which cover 90% of trade in the items on the list. Annual trade in these 201 products is valued at over USD 1.3 trillion per year, and accounts for approximately 10% of total global trade today.

The agreement in the form of a Declaration on the Expansion of the ITA (and the schedules containing the staging commitments of the participants) was adopted by the Ministers of the participant countries on 16 December 2015 ("Ministerial Declaration on the Expansion of Trade in Information Technology Products"), during the 10th WTO Ministerial Conference in Nairobi.

The Declaration on the Expansion of the ITA will enter into force in the European Union once it is accepted. The objective of this proposal is the approval by the European Union of the agreement in the form of a Declaration on the Expansion of the ITA.

2. LEGAL BASIS

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[1] WT/MIN (96)/16

[2] Council Decision 97/359/EC of 24 March 1997 concerning the elimination of duties on information technology products (OJ L 155, 12.6.1997, p. 1).

The objective of the ITA expansion is to eliminate duties on IT goods not included in the original ITA. Therefore the ITA expansion covers matters that fall under the common commercial policy. The legal basis of this proposal is Article 207(4) of the Treaty on the Functioning of the European Union (TFEU) in conjunction with point (v) of Article 218(6)(a) thereof.

The proposal falls under the exclusive competence of the Union. As a result, the principle of subsidiarity does not apply.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

Before the start of the negotiations DG Enterprise conducted an SME survey on the expansion of the ITA. The survey was conducted via an established DG Enterprise SME network and its aim was to gauge the response of SMEs involved in production and/or sales of ICT products to the likely removal of tariffs on a series of products as a result of an expansion of the ITA. A questionnaire was submitted together with a semantic list of products.

The majority of companies replied that the elimination of customs duties on the ICT goods on the list would have an effect on the company activity. The majority also replied that lower import prices would mean increased profitability and/or allow the company to better compete in the EU market. Some companies also replied that they would be more competitive on their export market, but others thought that lower import prices for products similar to those produced by the company would increase domestic competition.

- **Collection and use of expertise**

During the negotiations the Commission kept in close touch with EU industry associations in the sectors covered, such as Digital Europe, the European Semiconductor Industry Association (ESIA) and individual EU-based companies. These associations provided the Commission with valuable information on which IT related products were priorities, and which ones sensitive for EU industry. Member States also regularly provided the Commission with this type of information, coming from national industry associations and individual companies.

- **Impact assessment**

An economic assessment was made by an external company before the negotiations started. This assessment can be consulted at the following link http://trade.ec.europa.eu/doclib/docs/2011/april/tradoc_147791.pdf. The authors assessed the trade and economic impacts of extending the product coverage of the ITA based on a defined list of products proposed by the Commission. The estimation of changes in EU trade flows covered (EUR 55 billion more exports covered per year, and EUR 40 billion more imports) was well below the final outcome (see figures below). However, on the basis of these figures the consultants found that European exports and imports would both increase and that by lowering the price of these new ITA products and increasing consumption, extending the scope of the ITA product list will benefit EU companies and improve their possibility for doing business. They also found that extending the ITA to cover more products will benefit consumers of these products since they will face lower prices and a wider set of products to choose from. Combining all these benefits in one single number, they found that there is a welfare gain for the EU economy of around EUR 45 million from eliminating tariffs on the extended list of products. Consumer welfare would increase by EUR 520 million (consumer surplus). As covered exports and imports ended up significantly higher than the estimations, economic effects can also be expected to be larger in reality.

With the final results of the negotiations now known, the Commission has made its own in-house assessment, of which the following three elements are the most important findings:

- EUR 74-150 billion of EU exports are covered by the agreement. This is admittedly a wide range, but this is on account of ex-outs which do not allow assessing with certainty how much of the affected tariff lines will actually be liberalized.
- EU exporters will save EUR 0.8-2.1 billion in duty payments upon their extra EU exports
- As the products under negotiation are crucial intermediates in many EU exports significant value chain effects can be expected. A general equilibrium simulation points to overall exports of goods that may increase by about 0.7% to 1.4% of their baseline value. In terms of current extra EU exports of goods, this amounts to EUR 12-24 billion.

The Commission will also issue its findings in a short report to the Council, which will be presented independently from the memorandum.

4. BUDGETARY IMPLICATIONS

In total the European Union is expected to lose EUR 1.5 billion in duties on IT goods. However, this loss will be spread out over a total of 7 years. Most low duties will be eliminated at entry into force, representing 25% of duty value. After 3 years more than 60% of duty will have been phased out, while 30% will only be eliminated after 7 years.

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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 the first subparagraph of Article 207(4), in conjunction with point (v) of Article 218(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament[3],

Whereas:

(1) The Ministerial Declaration on Trade in Information Technology Products adopted in Singapore on 13 December of 1996 (commonly described as Information Technology Agreement ("ITA")) specifies, in paragraph 3 of its annex, that Participants shall meet periodically under the auspices of the Council on Trade in Goods of the WTO to review the product coverage, with a view to agreeing, by consensus, whether the Attachments should be modified to incorporate additional products in the light of technological developments, experience in applying the tariff concessions, or changes to the Harmonized System nomenclature.

(2) The Council authorised the Commission on 8 July 2009 to negotiate a review of the ITA, including the expansion of its product coverage to reflect technological developments and convergence.

(3) Negotiations on the expansion of the ITA have been conducted by the Commission in consultation with the Committee established under Article 207(3) of the Treaty.

(4) On 28 July 2015, the participants in the negotiations issued a Declaration on the Expansion of Trade in Information Technology Products (the "Declaration on the expansion of the ITA"), which records the results of the negotiations.

(5) During the 10th WTO Ministerial conference held in Nairobi on 15-18 December 2015, the participants in the negotiations issued a Ministerial Declaration on the expansion of Trade in Information Technology Products of 16 December 2015 (WT/MIN 15/25) (the "Ministerial Declaration") which endorses and opens for acceptance the Declaration on the ITA expansion, in accordance with paragraph 9 thereof. The Ministerial Declaration also records the agreement of the participants in the negotiations with the draft schedules submitted by each of them pursuant to paragraph 5 of the Declaration on the expansion of the ITA, which is contained in WTO document G/MA/W/117.

(6) The agreement in the form of a Declaration on the expansion of the ITA should be approved on behalf of the Union, together with the EU's schedule and the schedules

[3] OJ C , , p. .

submitted by other participants in the negotiations and which are contained in the WTO document G/MA/W/117.

(7) In accordance with the Declaration on the expansion of the ITA, the Union should submit to the WTO the necessary modifications to its schedule to the GATT 1994, as set out in the EU-schedule CLXXIII (G/MA/TAR/RS/357/corr.1),

HAS ADOPTED THIS DECISION:

Article 1

The Declaration on the Expansion of Trade in Information Technology Products of 28 July 2015 ("Declaration on the expansion of the ITA"), endorsed and opened for acceptance by the Ministerial declaration of 16 December 2015, together with the schedules submitted in accordance with paragraph 5 of the first declaration and contained in the WTO document G/MA/W/117, are hereby approved on behalf of the European Union.

The text of the Declaration on the expansion of the ITA, including its Attachments, is attached to this decision.

Article 2

The Commission is hereby authorized to submit to the World Trade Organisation the necessary modifications to the European Union's Schedule annexed to the GATT 1994 as set out in the EU-schedule CLXXIII (G/MA/TAR/RS/357/corr.1).

Article 3

The President of the Council shall designate the person(s) empowered to deposit, on behalf of the Union, the instrument of acceptance, as specified in paragraph 9 of the Declaration on the expansion of the ITA, in order to express the consent of the Union to be bound by that declaration.

Article 4

The Declaration on the expansion of the ITA shall not be construed as conferring rights or imposing obligations which can be directly invoked in courts of the European Union or a Member State.

Article 5

This Decision enters into force on the day of its adoption.

Done at Brussels,

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS HAVING A BUDGETARY IMPACT EXCLUSIVELY LIMITED TO THE REVENUE SIDE

1. NAME OF THE PROPOSAL:

COUNCIL DECISION on the conclusion, on behalf of the European Union, of an agreement in the form of a Declaration on the expansion of Trade in Information Technology Products (ITA)

2. BUDGET LINES:

Chapter: Chapter 12 – Customs duties and other duties

3. FINANCIAL IMPACT

☐ Proposal has no financial implications

☑ Proposal has no financial impact on expenditure but has a financial impact on revenue – the effect is as follows:

(€ million to one decimal place)

Budget line	Revenue[4]	12 month period, starting 01/07/2016	2016
Article 1 2 0	*Impact on own resources*	437,7	218,9

Situation following action					
	2017	2018	2019	2020	2021
Article 1 2 0	302,9	168,0	168,0	112,7	57,4

4. ANTI-FRAUD MEASURES

General anti-fraud measures associated with EU customs administration will apply.

4 Regarding traditional own resources (agricultural duties, sugar levies, customs duties) the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % of collection costs

5. OTHER REMARKS

The total amount of duty lost is estimated at €1.5 billion, or €1.125 billion without the 25% collection cost. This will be spread out over a total of 7 years (8 cuts). The duty on the majority of lines will be eliminated as part of the first cut on 1 July. The loss over the first calendar year (2016) should be cut in two as it will apply only from 1 July. The same applies for the following years, as 1 July is the implementation date rather than 1 January. On the remaining lines linear cuts will be made over 3 years (4 cuts), with duty on some sensitive lines eliminated after 5 or 7 years, in 6 or 8 equivalent cuts.

However, the exact schedule of cuts will be included only in the Commission regulation that will implement the Council decision.