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Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, of the Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Trade facilitation was added to the WTO work programme at the 1996 Singapore Ministerial Conference.

The Doha Round of trade negotiations in the World Trade Organization (also called the Doha Development Agenda or "DDA") was launched in 2001 and covered a broad set of issues including agriculture, industrial goods, services, industrial subsidies and development issues. Negotiations on trade facilitation however only started later after July 2004, when the WTO General Council adopted the "WTO Doha Round Framework Package" including Annex D providing the negotiating framework for trade facilitation.

Once launched, negotiations on trade facilitation had a mandate to clarify and improve relevant aspects of several articles of the General Agreement on Tariffs and Trade of 1994 ("GATT 1994"): Article V (Freedom of Transit), Article VIII (Fees and Formalities connected with Importation and Exportation), and Article X (Publication and Administration of Trade Regulations) with a view to further expediting the movement, release and clearance of goods, including goods in transit. Besides, the mandate states that "the negotiations shall further aim at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues". Finally, the mandate also states that results of the negotiations shall take fully into account the principle of special and differential treatment for developing and least-developed countries. Including that the extent and the timing of entering into commitments shall be related to the implementation capacities of developing and least-developed Members.

At the 9th WTO Ministerial Conference (MC9) that took place on 3-6 December 2013, consensus was reached on a set of DDA issues, including on the Agreement on Trade Facilitation. In this context, the main outcome of MC9 was the Ministerial Decision on Trade Facilitation (WT/MIN(13)/36 WT/L/911), under which:

- The negotiation of the Agreement on Trade Facilitation was concluded, subject to a legal revision of the text.
- A Preparatory Committee on Trade Facilitation was established in order to ensure the expeditious entry into force of the Agreement and in order to prepare for the efficient operation of the Agreement on Trade Facilitation upon its entry into force.
- Ministers instructed the General Council to adopt a Protocol to insert the Agreement as Annex 1A to the Marrakesh Agreement establishing the WTO, and to open the Protocol for acceptance until 31 July 2015.

The legal revision of the text of the Agreement was completed in the first half of 2014. The Protocol was meant for adoption by end July 2014; however, at the WTO General Council on 24-25 July, a Member blocked the adoption of the Protocol as it was not satisfied with progress made on public stockholding programs (which were subject of another Ministerial Decision in Bali). In November 2014, following intense negotiation mainly between India and the US, an agreement was reached that broke the impasse.

Therefore, on 26 November 2014, the General Council adopted the Protocol amending the Marrakesh Agreement Establishing the World Trade Organization and opened it for acceptance by each WTO Member according with its internal procedures. The Protocol will enter into force in accordance with Article X.3 of the WTO Agreement, taking effect for the

Members that have accepted the Protocol and upon acceptance by two thirds of the WTO Members.

2. THE OUTCOME OF THE NEGOTIATIONS

The Agreement on Trade Facilitation is the first agreement in the WTO's history and contains a set of measures designed to improve the cross-border movement of goods by improving transparency, streamlining customs procedures and eliminating red tape. For developing countries, it also contains innovative flexibilities which may become standard in future rules-type agreements. Its benefits have been estimated to be very substantial. The OECD Trade Facilitation Indicators estimate that comprehensive implementation of all measures of the Agreement on Trade Facilitation would reduce total trade costs by 10% in developed countries and by 13-15.5% in developing countries.

The Agreement is divided into two sections:

- Section I contains provisions for expediting the movement, release and clearance of goods. It clarifies and improves the relevant articles (V, VIII and X) of the GATT 1994.
- Section II contains special and differential treatment provisions for developing and least-developed countries aimed at helping them implement the provisions of the Agreement.

The commitments addressed in Section I are wide and include provisions for the publication of laws, regulations and procedures, including publication in the Internet; provisions for advance rulings; disciplines on fees and charges; pre-arrival processing of goods; use of electronic payment; rapid release of goods; trade facilitation measures for authorized operators; fast release of expedited shipments and perishable goods; reduced formalities and documentation requirements; promotion of the use of a single window; uniformity in application of border procedures; temporary admission of goods; improved and simplified transit procedures; and provisions for customs cooperation.

Besides, to assist developing countries and least-developed countries to implement trade facilitation reforms, the Agreement includes unprecedented flexibilities on special and differential treatment. Although the Agreement will be binding in its entirety on developed countries as from its entry into force, it recognizes that some developing and least-developed country members will require technical assistance before they can implement some of the obligations to which it binds them. Consequently, it has been agreed that commitments by developing and least developed country members will be implemented according to different categories of commitments that attach different timeframes for implementation.

It is up to each developing and least-developed country to determine the timing and entry into force of its commitments, according to the following categories:

- Category A commitments are those that a Member has designated for implementation upon entry into force of the Agreement;
- Category B commitments are those that a Member has designated for implementation after a transitional period;
- Category C commitments are those that a Member has designated for implementation after a transitional period and upon the acquisition of implementation capacity through technical assistance and support for capacity building.

A significant number of developing countries have already submitted their notifications of Category A commitments.

A complex early-warning procedure has been established to cover situations where a country experiences difficulty in obtaining the support required, or where it experiences difficulty in implementation without technical assistance, and needs to transfer certain commitments from Category B to Category C. All commitments notified to the Committee on Trade Facilitation will be annexed to the Agreement and become an integral part thereof.

The Agreement on Trade Facilitation will enter into force once accepted by two-thirds of the WTO Membership. The swift entry into force and rapid implementation of the Agreement is in the interest of the European Union as well as other Members of the WTO, as the Agreement on Trade Facilitation will contribute to the economic development of all WTO Members.

3. LEGAL ELEMENTS OF THE PROPOSAL

Legal basis

The primary objectives of Agreement on Trade Facilitation are to simplify customs procedures and to ensure that trade flows as seamlessly and predictably as possible. Therefore, the Agreement covers matters that fall under the common commercial policy. The legal basis of this proposal is Article 207(4) in conjunction with Article 218(6) of the Treaty on the Functioning of the European Union (TFEU).

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

Proposed action

Article 218(6) of the TFEU provides that the Council, on a proposal from the Commission, shall adopt the decision concluding the Agreement after obtaining the consent of the European Parliament. With this proposal the Council is requested to conclude the Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization. The European Parliament will be called upon to give its consent to the conclusion of the Protocol.

4. BUDGETARY IMPLICATION

This proposal has no implications for the budget of the Union.

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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 Parliament¹,

Whereas:

- (1) The World Trade Organization ("WTO") launched the Doha Round of trade negotiations, known as the Doha Development Agenda in November 2001. The negotiations on trade facilitation were launched in July 2004, based on a commitment to clarify and improve several articles of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"): Article V (Freedom of Transit), Article VIII (Fees and Formalities connected with Importation and Exportation), and Article X (Publication and Administration of Trade Regulations), with a view to further expediting the movement, release and clearance of goods, including goods in transit. Besides, the mandate referred to provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues.
- (2) Negotiations have been conducted by the Commission in consultation with the Committee established by Article 207(3) of the Treaty.
- (3) The 9th WTO Ministerial Conference held in Bali on 3-6 December 2013 adopted the Ministerial Decision on Trade Facilitation, which concluded negotiations on the Agreement on Trade Facilitation subject to the legal review of the text. The Ministerial Decision also set up the Preparatory Committee on Trade Facilitation and instructed the WTO's General Council to adopt a Protocol to insert the Agreement as Annex 1A to the Marrakesh Agreement establishing the WTO and to open it for acceptance by each WTO Member according to its internal procedures.
- (4) At its meeting on 26 November 2014, the WTO's General Council adopted the Protocol amending the Marrakesh Agreement establishing the World Trade Organisation ("the Protocol") and opened it for acceptance by the WTO Members.
- (5) The Protocol includes the Agreement on Trade Facilitation and the commitments of developing countries that are incorporated as an Annex to the Agreement. A significant number of developing countries have already notified their Category A commitments pursuant to Article 15(1) of the Agreement on Trade Facilitation. The Committee on Trade Facilitation will receive the notifications of commitments under Category A for least-developed countries pursuant to Article 15(2) of the Agreement

¹ OJ C , , p . .

on Trade Facilitation and the notifications of commitments under Categories B and C for both developing and least-developed countries pursuant to Article 16(5) of the Agreement on Trade Facilitation. The commitments will become an integral part of the Agreement on Trade Facilitation.

(6) The Protocol should be concluded on behalf of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization is hereby concluded on behalf of the European Union.

The text of the Protocol is attached to this Decision.

Article 2

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 4 of the Protocol in order to express the consent of the Union to be bound by the Protocol².

Article 3

This Protocol shall not be construed as conferring rights or imposing obligations which can be directly invoked in courts of the Union or Member State.

Article 4

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

Done at Brussels,

*For the Council
The President*

² The date of entry into force of the Protocol will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.