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WTO 294

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	30 October 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2019) 563 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the General Council of the World Trade Organisation

Delegations will find attached document COM(2019) 563 final.

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2019/0245 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the General Council of the World Trade Organisation

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on Union's behalf in the General Council of the World Trade Organization (WTO) in connection with the envisaged adoption of a decision on the Review of the Understanding on Tariff Rate Quota Administration Provisions of Agricultural Products, as Defined in Article 2 of the Agreement on Agriculture.

2. CONTEXT OF THE PROPOSAL

2.1. The Marrakesh Agreement establishing the World Trade Organization

The proposed Council Decision seeks to authorise the European Commission to support on Union's behalf a decision to be taken in the General Council of the World Trade Organization (WTO). The World Trade Organization was established by Marrakesh Agreement ('WTO Agreement') that entered into force on 1 January 1995.

The European Union is a party to that Agreement.

2.2. Ministerial Conference and General Council of the World Trade Organization

Pursuant to paragraph 1 of Article IV of the WTO Agreement, the Ministerial Conference has the authority to take decisions on all matters under any of the Multilateral Trade Agreements.

However, pursuant to paragraph 2 of Article IV of the WTO Agreement, in the intervals between meetings of the Ministerial Conference, its functions are conducted by the General Council.

Pursuant to paragraph 1 of Article IX, the WTO bodies strive to take their decisions by consensus.

2.3. The envisaged act of the General Council of the WTO

In December 2013, at the Ninth Session of the WTO Ministerial Conference, (Trade) Ministers adopted a decision on 'Understanding on Tariff Rate Quota Administration Provisions of Agricultural Products, as defined in Article 2 of the Agreement on Agriculture' (WT/MIN(13)/39) ('TRQ Understanding').

The objective of the TRQ Understanding is to streamline tariff rate quota administration for agricultural products. In Paragraph 13, the TRQ Understanding envisages its review, taking into account the experience with its operation to date. The review was to be commenced no later than four years following the adoption of the TRQ Understanding. In 2018, the Committee on Agriculture proceeded with the review process. Early 2019, the Secretariat of the Committee on Agriculture issued the draft report to be addressed to the General Council of the WTO giving an account of the developments to date.

Given the lack of consensus among the WTO members on the substantive changes to the TRQ Understanding, the Committee recommends to the General Council to extend the review period until end-2021 and to enhance transparency of TRQ administration (See Annex 2 of the report).

These recommendations (in Annex 2 of the report) should be presented to the General Council in December 2019. The General Council should adopt these recommendations in the form of a decision on the review of the TRQ Understanding.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The objective of this proposal is to enable the Union to cause the adoption of a decision on the review of the TRQ Understanding in the December 2019 meeting of the WTO General Council.

From Union's perspective, the extension of the review period until end of 2021 is crucial, because it allows for the continuation of the existing TRQ Understanding and permits WTO members to hold further discussions concerning the review of this TRQ Understanding.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing 'the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.'

The concept of 'acts having legal effects' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are 'capable of decisively influencing the content of the legislation adopted by the EU legislature'[1].

4.1.2. Application to the present case

The General Council of the WTO is a body set up by an agreement, namely the WTO Agreement.

The act which the General Council is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with paragraph 2 of Article II and paragraph 3 of Article IX of the WTO Agreement.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to the common commercial policy.

Therefore, the substantive legal basis of the proposed decision is Article 207 TFEU.

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[1] Judgment of the Court of Justice of 7 October 2014, C-399/12, Germany v Council, EU:C:2014:2258, paragraphs 61 to 64.

4.3. Conclusion

The legal basis of the proposed decision should be the first subparagraph of Article 207(4), in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the WTO General Council will supplement the WTO Agreement by extending the application of the TRQ Understanding and by providing rules on the better utilization of tariff rate quotas, it is appropriate to publish the Act in the Official Journal of the European Union after its adoption.

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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) first subparagraph in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Marrakesh Agreement Establishing the World Trade Organization ('the WTO Agreement') was concluded by the Union by Council Decision 94/800/EC of 22 December 1994[2] and entered into force on 1 January 1995.

(2) Pursuant to paragraph 1 of Article IV of the WTO Agreement, the Ministerial Conference of the World Trade Organization ('WTO') has the authority to take decisions on all matters under any of the Multilateral Trade Agreements.

(3) Pursuant to paragraph 2 of Article IV of the WTO Agreement, in the intervals between meetings of the Ministerial Conference, its functions are to be conducted by the General Council of the WTO.

(4) Pursuant to paragraph 1 of Article IX, the WTO bodies usually take decisions by consensus.

(5) The Ninth Session of the WTO Ministerial Conference (Bali, December 2013) adopted a Ministerial Decision on Understanding on Tariff Rate Quota Administration Provisions of Agricultural Products, as defined in Article 2 of the Agreement on Agriculture (WT/MIN(13)/39) ('the TRQ Understanding') that governs the management of tariff rate quotas of agricultural products.

(6) Pursuant to paragraph 13 of the TRQ Understanding, a review of operation of the Understanding is to be commenced no later than four years following its adoption, taking into account experience gained up to that time. The objective of this review is to promote a continuing process of improvement in the utilisation of tariff rate quotas.

(7) In accordance with paragraph 13, the Committee on Agriculture proceeded with the review of the TRQ Understanding in 2018. The review findings will be presented to the December 2019 meeting of the General Council in the form of a report issued by the Committee on Agriculture (Report No… 'Review of the Operation of the Bali Decision on TRQ Administration', dated ...).

[2] Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ L 336, 23.12.1994, p. 1).

(8) Given the lack of consensus among the WTO members on the substantive amendments to the TRQ Understanding, the report recommends to prolong the review period until the end of 2021, so that a consensus on substantive amendments may be reached. The report further includes recommendations aiming at the increased transparency of TRQ administration.

(9) In its December 2019 meeting, the General Council of the WTO should be invited to consider the adoption of the recommendations laid down in Annex 2 of the Report No… in the form of a decision on the review of the TRQ Understanding.

(10) It is appropriate to establish the position to be taken on the Union's behalf in the General Council of the WTO, as the decision to be adopted will be binding on the Union.

(11) In the General Council of the WTO, the Union is to be represented by the Commission, in accordance with Article 17(1) of the Treaty on European Union (TEU),

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the European Commission on the Union's behalf in the December 2019 meeting of the General Council of the World Trade Organization shall be based on the draft Decision adopting the recommendations made to the General Council by the Committee on Agriculture in Annex 2 of its Report No … of ….. attached to this Decision.

Minor changes to the draft Decision may be agreed to by the representatives of the Union in the General Council of the World Trade Organization without further decision of the Council.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President