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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	11 December 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 776 final
Subject:	Proposal for a COUNCIL DECISION establishing the position to be taken on behalf of the European Union in the World Trade Organization's 13 th Ministerial Conference on the accession of the Democratic Republic of Timor-Leste to the WTO

Delegations will find attached document COM(2023) 776 final.

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EUROPEAN
COMMISSION

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2023/0458 (NLE)

Proposal for a

COUNCIL DECISION

establishing the position to be taken on behalf of the European Union in the World Trade Organization's 13th Ministerial Conference on the accession of the Democratic Republic of Timor-Leste to the WTO

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the Council decision establishing the position to be taken on the Union's behalf in the 13th Ministerial Conference of the World Trade Organization ('WTO') in connection with the envisaged adoption of a decision on the accession of the Democratic Republic of Timor-Leste to the WTO.

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement Establishing the World Trade Organization ('WTO Agreement')

The Agreement Establishing the World Trade Organization ('the WTO Agreement') aims to achieve the objectives mentioned in the preamble to the Agreement. The agreement entered into force on 1 January 1995.

The European Union ('EU') is a party to the Agreement.¹ All 27 EU Member States are also parties to the Agreement. The WTO may take decisions in accordance with the procedures set out in the WTO Agreement.

2.2. The Ministerial Conference of the World Trade Organization

The Ministerial Conference is the highest decision-making body of the WTO and meets at least once every two years. As a matter of law and practice, decisions are taken by consensus.

The next meeting of the Ministerial Conference will take place in Abu Dhabi, United Arab Emirates on 26-29 February 2024.

2.3. The envisaged act during the WTO Ministerial Conference and reason for and objective of the proposal

During the WTO's 13th Ministerial Conference ('MC13') a decision may be adopted regarding the WTO Accession of the Democratic Republic of Timor-Leste (Timor-Leste).

Members of the WTO and Timor-Leste have reached the concluding stage of an agreement on the terms for the accession of Timor-Leste to the organization. This comes after several years of negotiations, which began when Timor-Leste submitted its application to join the WTO in 2016.

In submitting the terms of Accession of Timor-Leste to the WTO for approval by the Council, the Commission considers these terms as representing a balanced and ambitious package of market opening commitments, which will bring substantial benefits to Timor-Leste and its WTO trading partners alike. Timor-Leste's request for accession has been examined in accordance with the guidelines set out by the WTO General Council on the accession of least-developed countries (LDCs).

2.4. Consistency with existing policy provisions in the policy area

Multilateralism is at the heart of EU's trade policy and the EU supports the WTO accession of third countries on right terms.

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

2.5. Consistency with other Union policies

Consistent with the EU external action and development policy, the proposal will anchor Timor-Leste in the multilateral trading system in accordance with the guidelines set out by the WTO General Council on the accession of LDCs.

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

General Notes

The objective of this proposal is to enable the EU to join a possible consensus in the WTO on the adoption by the Ministerial Conference of the envisaged act, consisting of a decision regarding the accession of Timor Leste to the WTO.

While it is not yet clear if, and to what extent, WTO Members will be able to reach consensus on the envisaged act, the EU position at MC13 has to be established in advance by the Council pursuant to Article 218(9) TFEU.²

The current proposal concerns a possible decision at MC13 on the accession of Timor-Leste to the WTO. In 2016, the Government of Timor-Leste applied for accession to the WTO. A Working Party on the accession of Timor-Leste was established on 7 December 2016. The sixth Working Party meeting took place on 11 October 2023. The multilateral negotiations on additional trade related areas are still ongoing. In March 2023, the Commission, on behalf of the EU, finalised bilateral negotiations on a comprehensive series of market opening commitments on the part of Timor-Leste. Accession to the WTO is expected to make a positive and lasting contribution to the process of economic reform and sustainable development in Timor-Leste. The EU should support the accession of Timor-Leste.

Since negotiations are currently ongoing, the Commission expects that the Council will take its decision on the EU position on the outcome of the negotiations once the situation regarding the relevant texts becomes clear, either at the beginning or during the Ministerial Conference itself.

The initiative is fully consistent with existing policy provisions. Similar decisions were prepared for previous WTO Ministerial Conferences, including most recently for the 10th WTO Ministerial Conference in 2015.³

Summary of terms of WTO accession

Schedule of commitments: goods and services

Tariffs for Goods

The tariff schedule of Timor-Leste consists of 10,810 tariff lines. Timor-Leste is binding 100% of its schedule and will implement the final bound rates as from the date of accession, with the exception of some tariff lines for information technology products (378 in 2027 and 27 in 2030).

- Industrial goods: The average final bound rate for non-agricultural products is 10.0% (highest tariff peaks are at 80% for fresh fish and bamboo).

² To the extent that, contrary to the current expectations, the consensus was formalised in an international agreement amending the WTO Agreement or in a plurilateral international agreement among some WTO Members, the Commission would make the necessary proposals in accordance with Article 218(6) TFEU following the adoption of the texts and their opening for acceptance by the MC13 or by the WTO Members concerned during MC13.

³ [pdf\(europa.eu\)](https://ec.europa.eu/economy_finance/pdf/europa.eu)

- Agricultural goods: The average final bound rate for agricultural products is 15.7% (highest tariff peaks are at 80% for coffee and cocoa).

These average levels for tariffs are very ambitious for an LDC, especially taking into consideration the small size and vulnerability of the economy of Timor-Leste.

Services

Timor-Leste's services schedule of specific commitments in services is very comprehensive and ambitious considering its LDC status. Timor-Leste will undertake market access and national treatment commitments in a broad range of services sectors, including professional, computer and other business services, communication services, construction services, distribution services, educational services, environmental services, financial (insurance and banking) services, health-related and social services, tourism and travel-related services, recreational, cultural and sporting services and transport services. Timor-Leste will also commit to the reference paper on services domestic regulation.

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’*⁴.

4.1.2. Application to the present case

The WTO Ministerial Conference is a body set up by an agreement, namely the WTO Agreement, which according to Article IV:1 of the WTO Agreement has the authority to take decisions on all matters covered under any of the multilateral trade agreements, including decisions having legal effects.

The envisaged acts mentioned above constitute acts having legal effects, as they may affect the rights and obligations of the Union by virtue of international law.

The envisaged acts do 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

⁴ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

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.

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

4.3. Conclusion

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

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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 1994⁵ and entered into force on 1 January 1995.
- (2) Pursuant to Articles IV:1 and IX:1 of the WTO Agreement, the Ministerial Conference of the World Trade Organization ('WTO') may adopt decisions by consensus.
- (3) The WTO Ministerial Conference, during its 13th meeting on 26-29 February 2024, may adopt a decision on the accession of Timor-Leste to the WTO.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the WTO Ministerial Conference, as the decisions are binding on the Union.
- (5) Negotiations for the WTO accession of Timor-Leste started in 2016. The Working Party on the accession of Timor-Leste was established on 7 December 2016. The sixth Working Party meeting took place on 11 October 2023. The multilateral negotiations on additional trade related areas are still ongoing. In March 2023, the Commission, on behalf of the EU, finalised bilateral negotiations on a comprehensive series of market opening commitments on the part of Timor-Leste. Accession to the WTO is expected to make a positive and lasting contribution to the process of economic reform and sustainable development in Timor-Leste. The EU should support the accession of Timor Leste,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 13th WTO Ministerial Conference shall be:

To join the consensus reached among WTO Members with a view to adopting a decision regarding the accession of Timor-Leste to the WTO.

⁵ OJ L 336, 23.12.1994, p. 1.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*