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EUROPEAN COMMISSION

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Proposal for a

COUNCIL DECISION

establishing the European Union position in the WTO General Council with regard to a decision on a Transparency Mechanism for Preferential Trade Arrangements

EXPLANATORY MEMORANDUM

1. At its meeting of 14-15 December 2006 the General Council of the World Trade Organisation (WTO) adopted a decision establishing the Transparency Mechanism for Regional Trade Agreements (RTAs)¹.
2. At the same meeting the WTO General Council adopted a Decision with regard to Transparency for Preferential Trade Arrangements (PTA)², under which the Committee on Trade and Development had been asked to consider transparency for preferential arrangements under paragraph 2 of the Enabling Clause – other than RTAs – and to report back within six months for appropriate action by the General Council. The Decision had been adopted without prejudice to the results of the deliberations of the CTD. Subsequently, on the basis of reports from the Chairman of the CTD, the General Council had agreed to extend by successive six-month periods the deadline for the CTD to consider this matter and to report back for appropriate action. The latest extension, agreed by the Council in July 2010, runs until December 2010.
3. Following extensive negotiations in the CTD and informal consultations, the CTD concluded its consideration of the matter at its 80th Regular Session on 4 October 2010³ and agreed on a Transparency mechanism for Preferential Trade Arrangements, to be forwarded to the General Council for adoption.
4. With respect to PTA transparency, our objectives and position in the negotiations reflected the importance the EU attaches to inter alia: (1) increasing awareness of PTA developments around the globe; (2) being able to monitor and assess the ways other members' PTAs may influence our trade and investments also having regard to the fact that both developed and developing WTO members grant preferences; (3) ensuring better functioning of WTO in the oversight and review of PTAs; and (4) a better understanding of the impact of PTAs and their interaction with the multilateral trading system. The agreed draft is considered to meet these objectives. It complements the already provisionally adopted WTO Transparency Mechanism on Regional Trade Agreement, which addresses reciprocal preferential agreements
5. Although the PTA Transparency mechanism will require the EU to split data between different preferential schemes, in the main, the data required by the WTO Secretariat are already publicly available from different sources and databases. The guide and the factual presentation to be provided by the WTO secretariat would provide a more uniform, consistent and comprehensive presentation of PTAs overall.
6. The Transparency Mechanism deals exclusively with procedural matters on how PTAs are notified and factually presented and considered in the WTO and as such it do not prejudice the substance of the relevant provisions of the Enabling clause or other instruments mentioned in Paragraph 1(a), (b) or (c) of the Transparency Mechanism nor affect Members' rights and obligations under the WTO Agreements in any way.

¹ WTO Decision WT/L/671.

² The Decision was circulated as WT/L/672.

³ WT/COMTD/71 of 11 October 2010.

7. To ensure that developing country Members can make full use of this mechanism, the draft text envisages the provision by the WTO Secretariat of technical support to developing country Members, and especially least-developed countries, in the implementation of the Transparency Mechanism.
8. The PTA Transparency Mechanism is expected to be formally adopted by the General Council of the WTO at its meeting of [14-15 December 2010]. This Transparency Mechanism would then apply on a provisional basis until WTO Members approve its permanent application. Pursuant to its provisions Members would review the Mechanism after three years, and if necessary modify the Mechanism in light of the experience gained from its provisional operation.
9. At the time of the adoption in the General Council of the WTO all four co-sponsors and the EU would make a statement to the effect that during the negotiations it was considered that a decision on the mechanisms permanent application would take into account the status of the RTA-TM.

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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 in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Members of the World Trade Organisation (WTO) agreed at a meeting of its General Council of 14-15 December, 2006 to conduct negotiations aimed, inter alia, at clarifying and improving disciplines and procedures applying to Preferential Trade Arrangements.
- (2) Enhancing transparency on Preferential Trade Arrangements and their effects is of systemic interest and will be of benefit to all WTO Members,
- (3) The General Council of the WTO (29 July, 2010) gave a period until December 2010 to complete the negotiations of the Transparency Mechanism for Preferential Trade Arrangements.
- (4) The WTO Committee on Trade and Development concluded its consideration of the matter at its 80th Regular Session on 4 October 2010 and agreed to forward for adoption to the WTO General Council the attached Transparency Mechanism for Preferential Trade Arrangements,

HAS ADOPTED THIS DECISION:

Sole Article

The position of the European Union in the General Council of the World Trade Organisation with regard to the Transparency Mechanism for Preferential Trade Arrangements attached to this decision is to support its adoption

Done at [...],

*For the Council
The President*

ANNEX

TRANSPARENCY MECHANISM FOR PREFERENTIAL TRADE ARRANGEMENTS

A. Coverage

1. The transparency mechanism shall apply to the following Preferential Trade Arrangements (PTAs):
 - (a) PTAs falling under paragraph 2 of the Decision of 28 November 1979 on Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries ("Enabling Clause"), with the exception of regional trade agreements under paragraph 2(c)⁴ as described in the General Council Decision of 14 December 2006 (Transparency Mechanism for Regional Trade Agreements).
 - (b) PTAs taking the form of preferential treatment accorded by any Member to products of least-developed countries.
 - (c) Any other non reciprocal preferential treatment authorised under the WTO Agreement.
2. The purpose of this Mechanism is to enhance transparency of the PTA under consideration. These procedures do not prejudice the substance of the relevant provisions of the Enabling Clause or any other instrument as referred in 1(a), (b) or (c), nor affect Members' rights and obligations under the WTO Agreements in any way.

B. Notification

3. The required notification of a PTA shall take place as early as possible; it will occur when practicable before the application of preferential treatment by the notifying Member⁵ and, at the latest, three months after the PTA is in force.
4. Notifying Members shall specify under which provision or provisions in paragraph 1 their PTAs are notified. The Member notifying a PTA shall provide the full text of the related legislation and any related instruments (e.g., regulations, annexes, schedules, protocols), in one of the WTO official languages and in an electronically exploitable format, including, when appropriate, internet links.

C. Procedures to Enhance Transparency

⁴ For greater clarity, since it has been notified to the GATT/WTO under paragraph 2(c) of the Enabling Clause, the Global System of Trade Preferences (GSTP) is not covered by this Mechanism, but instead, is covered by the General Council Decision of 14 December 2006 (Transparency Mechanism for Regional Trade Agreements).

⁵ The Notifying Member is the Member granting the non-reciprocal preferences.

5. Upon notification, the PTA shall be considered by the Committee on Trade and Development (CTD) under the procedures established in paragraphs 6 to 13 below.
6. The consideration by the CTD of a notified PTA shall be normally concluded in a period not exceeding 12 months after the date of notification.
7. To assist Members in their consideration of the PTA:
 - (a) the notifying Member shall make available to the WTO Secretariat data as specified in Annex 1, in an electronically exploitable format. If the PTA covers several sub-schemes the data should be detailed enough so as to allow an analysis by sub-scheme. Disaggregated data, if available for these sub-schemes, shall be provided.
 - (b) the WTO Secretariat shall prepare a guide indicating where specific types of information can be found, following, as appropriate, the template contained in Annex 2. The guide shall be made available as soon as possible after the notification. Members shall be free to present the guide themselves when notifying PTAs.
 - (c) the WTO Secretariat shall prepare a factual presentation of the PTA, on its own responsibility and in full consultation with the notifying Member, before it is circulated to Members. As a part of these preparations, Members receiving benefits under the PTA shall, upon request, be given an opportunity to view and submit comments on the draft factual presentation, within a specified timeframe, while respecting deadlines allowed for final consultations with the notifying Member.
8. The data referred to in paragraph 7(a) shall be made available as soon as possible. Normally, the timing of the data submission shall not exceed ten weeks – or 20 weeks in the case of PTAs notified by developing country Members - after the date of notification of the PTA.
9. The guide and factual presentation provided for in paragraphs 7(b) and 7(c) shall be primarily based on the information provided by the notifying Member; if necessary, the WTO Secretariat may also use data available from other sources, in full consultation with the Notifying Member and taking into account the views of the Notifying Members in furtherance of factual accuracy. In preparing the factual presentation, the Secretariat shall use as a basis the elements contained in Annex 3. Additionally, the Secretariat may also include in the factual presentation, as appropriate, the following elements: background information, scope and coverage (products and countries), exceptions, S&D provisions, specific rules concerning the application of the scheme (graduation, eligibility for additional preferences), rules of origin, provisions affecting trade in goods (IP, labour, environment, TBT, SPS, trade remedies, if applicable), specific customs-related procedures, composition of merchandise imports from beneficiary member, fulfilment of TRQs, relationship with other PTAs by the same Notifying Member and imports under the PTA in the last three years, if applicable. In preparing the factual presentation, the WTO Secretariat shall refrain from any value judgement on any matters.

10. The WTO Secretariat's factual presentation shall not be used as a basis for dispute settlement procedures or to create new rights and obligations for Members.
11. As a rule, a single formal meeting of the Committee on Trade and Development – Dedicated Session will be devoted to consider each PTA notified; any additional exchange of information should take place in written form.
12. The WTO Secretariat's factual presentation, as well as any additional information submitted by the notifying Member, shall be circulated in all WTO official languages not less than 13 weeks in advance of the meeting devoted to the consideration of the PTA. Members' written questions or comments on the PTA under consideration shall be transmitted to the notifying Member through the WTO Secretariat at least eight weeks before the corresponding meeting; the notifying Member shall normally respond to those questions and comments within five weeks after receipt; the WTO Secretariat shall circulate these questions or comments, together with replies, to all Members at least three days before the corresponding meeting.
13. All written material submitted, as well as the minutes of the CTD meeting devoted to the consideration of a notified PTA will be promptly circulated in all WTO official languages and made available on the WTO website.
14. Any Member may, at any time, bring to the attention of the CTD any suggestion for improvement on the general operation of these procedures, including the elaboration, format or content of factual presentations by the Secretariat.

D. Subsequent Notification and Reporting

15. Changes affecting the implementation of a PTA during a calendar year shall be notified on an annual basis, no later than 30 June of the next immediate calendar year. Elements to be notified in electronically exploitable format include:
 - (a) Legal changes made, including modifications of any related explanatory texts, as well as the corresponding schedules, annexes and protocols, in one of the WTO official languages, as applicable.
 - (b) Changes in the implementation of the PTA, including, but not limited to, a list of graduated beneficiaries and the period of graduation, and of specific product/country waivers, if appropriate.⁶
 - (c) Changes in the preferential tariffs per beneficiary partner applied under the PTA, at the tariff-line level.
16. The notifying Member shall notify data on imports from each of the beneficiary partners on an annual basis at the tariff-line level, in value for total imports, imports

⁶ [For example, changes in number of beneficiaries; new applications for preferential treatment; degradation of countries, sectors and/or products; changes due to seasonal circumstances; enactment of special safeguards; fulfilment of tariff rate quotas; changes raising from circumstances related to the extension of other preferential treatment, if applicable.] This footnote is for purposes of negotiations only and it shall be removed from the text after negotiations come to an end.

entered under MFN and imports entered under PTA benefits⁷ no later than 31 October for data of the previous year.

17. The notifying Member shall not be expected to make available the annual information required in paragraph 15 and 16 if it has already been submitted to the Integrated Data Base, or have otherwise been provided to the Secretariat in an appropriate electronic format.⁸ References to relevant publicly accessible internet websites where this information can be found in electronically exploitable format⁹ and in one of the WTO official languages shall suffice.
18. To the extent a developing country Member has technical constraints fulfilling the notification requirements of paragraph 16, the Member will not be expected to do so until 31 July 2013. The Member may submit an outline of the steps to be taken to fulfil these notification requirements to the CTD by 31 July 2012.
19. The communications submitted under paragraph 15 will be promptly made available on the WTO website. Data to be notified under paragraph 16 will be promptly made available on the Integrated Data Base in line with the dissemination policy adopted for the IDB.¹⁰ Data to be notified will not prejudice the legal status of the PTA under consideration.

E. Other Provisions

20. The Committee on Trade and Development is instructed to implement this Transparency Mechanism. For purposes of performing the functions established under this Mechanism, the CTD shall convene in dedicated session.
21. For each PTA in force when these transparency procedures are adopted, the WTO Secretariat shall prepare a factual abstract¹¹, in full consultation with the notifying Member.
22. Upon request, the WTO Secretariat shall and any Member may provide technical support to developing country Members, and especially least-developed countries, in the implementation of this Mechanism, in particular – but not limited to – with respect to the preparation of PTA-related data and other information to be submitted

⁷ If the Notifying Member has already submitted the corresponding data to the UNCTAD, the provision of a copy of such data to the WTO would be acceptable, provided that it fulfils the notification requirements set forth in paragraph 16.

⁸ Data submissions can be furnished in PC database formats, spreadsheet formats, or text-delimited formats; the use of word-processing formats should be avoided, if possible. With the consent of the Notifying Member, trade and tariff data submitted in the context of the annual submissions can subsequently be included in the WTO Integrated Data Base (IDB) if it satisfies IDB data formats. In this respect, see document G/MA/IDB/W/6 for the Guidelines for Supplying PC IDB Submissions and document G/MA/238 and its addenda regarding the dissemination of IDB data.

⁹ "Electronically exploitable format" means that entire data sets of a Member's annual data can be downloaded without undue restrictions (i.e. no limitations on the number of tariff lines or records that could be downloaded) and in formats that lend themselves to processing into data base format by the WTO Secretariat.

¹⁰ Document G/MA/238.

¹¹ See template on Annex 3.

to the WTO Secretariat, as well as regarding access to the information provided by the notifying Member.

23. Any Member may, at any time, bring to the attention of the CTD information on any PTA that it considers ought to have been submitted to Members in the framework of these procedures.
24. The WTO Secretariat shall maintain an updated electronic database on individual PTAs. This database shall include relevant tariff and trade-related information, and give access to all written material related to notified PTAs available at the WTO. The database should be structured so as to be easily accessible to the public. Access to the data referenced under paragraph 17 shall follow the dissemination policy adopted for the IDB.¹²
25. With respect to PTAs already notified under the relevant WTO transparency provisions and in force, they will be subject to the procedures under sections D to E above.

F. Reappraisal of the Mechanism

26. This Mechanism will apply on a provisional basis until Members approve its permanent application. Members will review the Mechanism after three years, and if necessary modify, the Mechanism in light of the experience gained from its provisional operation.

¹² Document G/MA/238.

ANNEX 1

Initial Notification of PTAs by Notifying Members

1. The notifying Member shall notify to the WTO the information requested in this Annex. The notifying Member shall not be expected to make available the information required in this Annex if the corresponding data have already been submitted to the Integrated Data Base, or have otherwise been provided to the Secretariat in an appropriate electronic format.¹³
2. The Member notifying a PTA shall submit the following data, at the tariff-line level:¹⁴
 - (a) A full listing of preferential duties under the PTA per beneficiary partner.
 - (b) A full tariff listing of the notifying Member's MFN duty rates applied on the year of the PTA's implementation and on the year preceding it.
 - (c) Other data, where applicable (e.g., tariff-rate quotas, seasonal restrictions, special safeguards and, if available, *ad valorem* equivalents for non-*ad valorem* duties).
 - (d) Product-specific preferential rules of origin as defined in the PTA.
 - (e) Import data for the most recent three years preceding the notification from each of the beneficiary partners, in value for total imports, imports entered under MFN and imports entered under PTA benefits.¹⁵

¹³ Data submissions can be furnished in PC database formats, spreadsheet formats, or text-delimited formats; the use of word-processing formats should be avoided, if possible. Trade and tariff data submitted in the context of a PTA notification can subsequently be included in the WTO Integrated Data Base (IDB) if it satisfies IDB data formats. In this respect, see document G/MA/IDB/W/6 for the Guidelines for Supplying PC IDB Submissions and document G/MA/238 and its addenda regarding the dissemination of IDB data. If the Notifying Member has already submitted the corresponding data to the UNCTAD, the provision of a copy of such data to the WTO would be acceptable, provided that it fulfils the notification requirements set forth in this annex.

¹⁴ References to "tariff-line level" shall be understood to mean the detailed breakdown of the national customs nomenclature (HS codes with, for example, 8, 10 or more digits). It is crucial that all data elements supplied use the same national customs nomenclature or are associated with corresponding conversion tables.

¹⁵ Members recognise that for the first notification to be made after entry into force of this Mechanism the data pertaining to 2(e) will be submitted by notifying Member only if it is already available.

3. The notifying Member shall also supply other general information as it deems appropriate for further clarification of the PTA, or indicate any internet links where it can be found, as exemplified below:¹⁶
 - (a) As applicable details of criteria for graduation and for de-graduation, and on their application (any provisions mandating an early/previous notification of products/countries to be graduated; timetable for the procedures related to graduation).
 - (b) Indicators of product coverage and exceptions of the arrangement.
 - (c) Coverage of countries eligible.
 - (d) Technical guidebooks for the utilization of the PTA by potential beneficiaries.
 - (e) Any other available explanatory notes and quick reference material to PTA's features and implementation regulations.

¹⁶ Including, but not limited to, (a) criteria and restrictions for eligibility, modification of beneficiaries list; (b) tariff treatment, different preferential treatment, exceptions to the preferential treatment; (c) list of beneficiaries, number of beneficiaries, history of countries excluded from the preferential treatment; (d) handbooks from UNCTAD (for example http://www.unctad.org/en/docs/itcdtsbmisc42rev3_en.pdf and http://www.unctad.org/en/docs/itcdtsbmisc25rev2_en.pdf); and (e) from Members governments (http://www.ustr.gov/assets/Trade_Development/Preference_Programs/GSP/asset_upload_file406_10685.pdf).

ANNEX 2

Guide to PTAs

A - BASIC INFORMATION:
1) <i>Notifying member:</i> (Name of the Notifying Member)
2) <i>Date PTA entered into force:</i> (Insert date and link to relevant source)
3) <i>Date of last renewal of the PTA:</i> (Insert date and link to relevant source)
4) <i>Date of notification to the WTO and symbol of WTO documents:</i> (Insert date and link to relevant source and insert the symbol of the document and correlated link)
5) <i>Date of expiration of PTA:</i> (Insert date and link to relevant source)
6) <i>Number of Beneficiaries:</i> (Insert current number of Beneficiaries and link to relevant source)
7) <i>Number of Eligible Products (tariff lines):</i> (Insert current number of eligible products (tariff lines) and link to relevant source)
8) <i>Enactment of PTA, Related Legislation and Publication of PTA modifications:</i> (Insert the name/number of the laws within the notifying Member and correlated link)
9) <i>Authority(ies) granting the beneficial treatment:</i> (Insert which authority is entitled to grant the beneficial treatment and link to relevant source)
10) <i>National authorities in charge of PTA management:</i> (Insert which authority is entitled to manage the beneficial treatment and link to relevant source)
B – REFERENCES TO INFORMATION ABOUT:
I. BENEFICIARIES
(a) <i>List of Beneficiaries:</i> (Insert the link where the complete list of beneficiaries can be found)
(b) <i>Eligibility:</i> (Name the document, article/section where the eligibility criteria can be found and insert the specific related link)
(c) <i>Restrictions to Eligibility:</i> (Name the document, article/section where restrictions to eligibility can be found and insert the specific related link)

<p>(d) <i>Modification to Beneficiaries List:</i> (Name the document, article/section where the criteria for modifying the beneficiaries list can be found and insert the specific related link)</p>
<p>II. SCOPE OF PRODUCTS (IN ACCORDANCE WITH THE NOTIFYING MEMBER'S CLASSIFICATION OF PRODUCTS)</p>
<p>(a) <i>List of Eligible Products:</i> (Insert the link where the complete list of eligible products can be found)</p>
<p>(b) <i>Ineligible products:</i> (Insert the link where the complete list of non-eligible products can be found)</p>
<p>(c) <i>Modification to Eligible Products List:</i> (Name the document, article/section where provisions related to modification of eligible products can be found and insert the specific related link)</p>
<p>III. PTA TREATMENT</p>
<p>(a) <i>Tariff Treatment:</i> (Name the document, article/section where provisions related to tariff treatment can be found and insert the specific related link)</p>
<p>(b) <i>Exceptions:</i> (Name the document, article/section where provisions related to tariff treatment exceptions can be found and insert the specific related link)</p>
<p>(c) <i>Different Preferential Treatment:</i> (Name the document, article/section where provisions related to different kinds of preferential treatment can be found and insert the specific related link)</p>
<p>(d) <i>Request of Preferential Treatment:</i> (Insert the link where it contains explanation about the procedures for requesting preferential treatment)</p>
<p>IV. RULES OF ORIGIN (INCLUDING REQUISITES AND RESTRICTIONS)</p>
<p>(Name the document, article/section where rules of origin can be found, including requisites for considering origin and restrictions. Insert the specific related link)</p>
<p>V. PREFERENTIAL TRADE VOLUME AFFECTED IN THE LAST 3 (THREE) YEARS (in USD millions)</p>
<p>(Insert the related link where it is possible to find relevant trade statistics and specify accessing website requirements if such exist)</p>

ANNEX 3

Factual Abstract to PTAs Currently in Force

I. NOTIFYING MEMBER			
(Name of the Notifying Member)			
II. DATE OF ENTRY INTO FORCE / LAST RENEWAL			
(Insert date and link to relevant source)			
III. DATE OF EXPIRATION			
(Insert date and link to relevant source)			
IV. RELATED WTO/GATT DOCUMENTS AND LINKS TO NATIONAL LEGISLATION			
(Insert the number of the document and correlated link)			
(Insert the name/number of the law(s) and correlated link)			
V. NUMBER OF BENEFICIARIES			
(Insert current number and link to relevant source)			
<i>- Eligibility criteria:</i>			
(Insert explanation of criteria to eligibility and correlated link)			
VI. NUMBER OF COVERED PRODUCTS (IN ACCORDANCE WITH THE NOTIFYING MEMBER'S CLASSIFICATION OF PRODUCTS)			
(Insert current number and link to relevant source)			
<i>- Exceptions:</i>			
(Insert current number and link to relevant source)			
VII. PREFERENTIAL TREATMENT			
(Name the document, article/section where provisions related to preferential treatment can be found and insert the specific related link)			
VIII. RULES OF ORIGIN			
(Name the document, article/section where rules of origin can be found, including requisites for considering origin and restrictions. Insert the specific related link)			
IX. PREFERENTIAL TRADE DATA (in USD millions)			
(US)HS Chapters	Year – 1	Year – 2	Year – 3
Total			