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2020/0325 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the General Council of the World Trade Organisation as regards the adoption of a decision exempting certain purchases of foodstuffs from application of export prohibitions or restrictions

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) on a proposal aimed at exempting the purchases of foodstuffs for non-commercial humanitarian purposes by the World Food Programme from application of export prohibitions or restrictions.

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 of the WTO Agreement, WTO bodies strive to take their decisions by consensus.

2.3. The envisaged act of the General Council of the World Trade Organisation

Paragraph 2(a) of Article XI of GATT 1994 permits WTO Members to impose export prohibitions and restrictions on agricultural products, including food for humanitarian purposes, subject to the disciplines set out in Article 12 of the WTO Agreement on Agriculture.

In the context of the COVID-19 pandemic, some WTO Members have again reverted to applying export restrictions or prohibition on agricultural products.

The WTO General Council in its meeting in December 2020, or at a subsequent meeting in 2021, may be requested to adopt a decision aimed at exempting non-commercial humanitarian purchases of foodstuffs by the World Food Programme from the application of export prohibitions or restrictions.

The proposal is presented in view of the critical humanitarian support provided by the World Food Programme, made more urgent in the light of the COVID-19 pandemic and other crises.

Decisions at the WTO are taken by consensus. Therefore, the Council needs to adopt a Decision under Article 218(9) TFEU to authorise the EU to join the consensus.

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

The objective of this proposal is to enable the European Union to join a consensus on the adoption of a decision exempting the purchases of foodstuffs for non-commercial humanitarian purposes by the World Food Programme from application of export prohibitions

or restrictions possibly as early as the December 2020 WTO General Council meeting or at a subsequent meeting of the Council in 2021.

From the Union's perspective, a timely decision by the Council to join consensus on this issue at the General Council is crucial to sustain the EU position in the WTO, in particular considering the urgent humanitarian context of the issue due to the Covid-19 pandemic.

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.'*

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 has the authority to take decisions on all matters covered under any of the multilateral trade agreements, including decisions having legal effects.

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.

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

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 of the TFEU.

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 excluding the foodstuffs purchased for non-commercial humanitarian purposes by the World Food Programme from export prohibitions or restrictions, it is appropriate to publish it 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 the first subparagraph of Article 207(4), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 22 December 1994, the Marrakesh Agreement Establishing the World Trade Organization (the ‘WTO Agreement’) was concluded by the Union by Council Decision 94/800/EC¹ 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, the functions of the Ministerial Conference are to be conducted by the General Council of the WTO in the intervals between meetings of the Ministerial Conference.
- (4) Pursuant to paragraph 1 of Article IX of the WTO Agreement, WTO bodies follow, where possible, the practice of taking decisions by consensus.
- (5) The General Council of the WTO, during its December 2020 meeting or a subsequent meeting in 2021, may be requested to consider a proposal aimed at exempting foodstuffs purchased for non-commercial humanitarian purposes by the United Nations World Food Programme from export prohibitions and restrictions.
- (6) 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.
- (7) Paragraph 2(a) of Article XI of GATT 1994 permits WTO members to apply export prohibitions or restrictions in specific circumstances. Article 12 of the WTO Agreement on Agriculture specifies additional conditions to be observed by WTO Members in such cases. During the COVID-19 pandemic, WTO Members have resorted to such measures, which can also affect foodstuffs purchased for non-commercial humanitarian purposes.
- (8) Humanitarian purchases by the World Food Programme should be exempted from export prohibitions and restrictions in view of the critical humanitarian support

¹ OJ L 336, 23.12.1994, p. 1

provided by the World Food Programme, which has become even more crucial during the COVID-19 pandemic.

- (9) In the General Council of the WTO, the Union is represented by the Commission, in accordance with Article 17(1) of the Treaty on European Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf within the General Council of the World Trade Organization (the 'General Council of the WTO') in its December 2020 meeting, or at a subsequent meeting in 2021, shall be the following:

If a consensus is reached among WTO Members for exempting foodstuffs purchased by the World Food Programme for non-commercial humanitarian purposes from the application of export prohibitions or restrictions, the Union shall join such consensus. Minor changes to that draft position may be agreed to by the representatives of the Union in the General Council of the WTO without further decision of the Council.

Article 2

This decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*