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2013/0364 (NLE)

Proposal for a

**COUNCIL DECISION**

**establishing the position to be taken by the European Union within the 9th Ministerial  
Conference of the World Trade Organization (WTO)**

## EXPLANATORY MEMORANDUM

### 1. OBJECTIVE OF THE PROPOSAL

The 9<sup>th</sup> WTO Ministerial Conference (MC9) will take place on 3-6 December 2013 in Indonesia. Negotiations are underway on a set of deliverables that could be agreed at the Ministerial Conference. Some of these form part of the Doha Development Agenda (DDA) and if agreed, would constitute a first step toward the conclusion of the entire Doha round of negotiations. A separate set of non-DDA issues might also be agreed at MC9 but is the subject of a separate proposal for a Council Decision.

With regard to the DDA issues, negotiations are taking place in 3 pillars: trade facilitation, agriculture and development. The EU attaches paramount importance to reaching agreement on trade facilitation, which would provide great economic benefits to all WTO Members. If negotiations on Trade Facilitation move forward as planned in the run-up to MC9, WTO members should be in a position to have a political understanding on the basic text of the agreement. Nevertheless, the finalisation of the agreement text will only occur in 2014 once the schedules of implementation will be ready (regarding those provisions that are planned to be implemented at the moment of entry into force of the agreement) as these will form an integral part of the agreement. Should negotiations advance satisfactorily in this direction and MC9 will be in a position to reach such a political understanding on the Trade Facilitation Agreement, then part of the MC9 deal will also be to deliver on certain development and agriculture issues. Some of these development and agriculture issues are likely to necessitate a Council Decision already for MC9 and are, therefore, the subject of the current proposal. A separate Council Decision regarding the EU position on the Trade Facilitation Agreement would likely be needed in 2014 once the Trade Facilitation text is fully ready and requires a position by the EU in the WTO.

Hence, this proposal for a Council Decision is limited to the development and agriculture deliverables that may be agreed in MC9, namely:

- A Monitoring Mechanism concerning special and differential treatment provisions for developing countries: in accordance with the orientations approved by the General Council of the WTO on 31 July 2002, the Special Session of the WTO Committee on Trade and Development is finalising negotiations on the functions, structure and terms of reference of a Monitoring Mechanism, that aims to contribute to facilitating the integration of developing and least-developed members into the multilateral trading system.
- Tariff Rate Quota (TRQ) administration: the text to be agreed in MC9 should include transparency provisions and an underfill mechanism. On transparency, TRQ administration is assimilated to import licensing measures and thus made subject to the WTO Agreement on Import Licensing, meaning that some procedural/transparency obligations would apply (e.g. mandatory publication, timelines for processing an application and notification). In addition, a necessity test should be applied which provides that administrative procedures should not be more burdensome than absolutely necessary to administer the measure. Regarding the underfill mechanism, when the fill rate of a TRQ is below 65% for a certain period (or in case of absence of notification), the importing WTO member may be requested to change the quota management to a first-come, first-served method (FCFS) or to a system of automatic, unconditional licences.

- Food Security: agreement in MC9 is sought for a ‘due restraint’ clause that would protect some developing country Members’ food security programmes from challenges in the WTO during a specific period of time and under specific conditions. This could take the form of a Ministerial Decision.

The objective of the present proposal is to allow the European Union to join a consensus on the above mentioned issues at the 9<sup>th</sup> WTO Ministerial Conference (MC9). The proposal therefore provides that the Council authorises the Commission to take a position on behalf of the European Union within the WTO to join the consensus with a view to supporting the adoption of the said decisions.

Given the fact that the Ministerial Conference will take place on 3-6 December and that negotiations are ongoing on all elements of the possible Bali package, the Commission would expect that the Council would take its decision once the situation regarding the relevant texts would be sufficiently clear, possibly during the Ministerial Conference itself.

## **2. LEGAL BASIS OF PROPOSAL**

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides that the Council, on a proposal from the Commission or the High Representative of the Union for Foreign Affairs and Security Policy, shall adopt a decision establishing the position to be adopted on the Union’s behalf when a body set up by an international agreement is called upon to take a decision having legal effects. The decisions by the Ministerial Conference regarding TRQ administration, food security and the Monitoring Mechanism would fall under this provision.

All of the envisaged measures fall within the scope of the common commercial policy (Article 207 TFEU) and are directly associated with the functioning of the WTO and the multilateral trading system.

## **3. SCOPE OF THE PROPOSAL**

The Commission shall be authorised to take a position on behalf of the European Union to join the consensus with a view to support the adoption of the decisions taken by the Ministerial Conference regarding food security, TRQ administration and the Monitoring Mechanism.

Consistent with Article 218(10), the European Parliament will be immediately and fully informed.

Proposal for a

**COUNCIL DECISION**

**establishing the position to be taken by the European Union within the 9th Ministerial Conference of the World Trade Organization (WTO)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The European Union attaches paramount importance to the functioning and progressive strengthening of the multilateral trading system, and recognises the need to advance the Doha Round of multilateral trade negotiations. A successful outcome of the 9<sup>th</sup> WTO Ministerial Conference would be a necessary step toward this objective, and would see an understanding regarding a WTO Trade Facilitation Agreement, accompanied by limited outcomes on agriculture and development issues, particularly those of concern to the Least Developed Countries.
- (2) Development is at the heart of the Doha Round of trade negotiations. At its meeting of 31 July 2002, the General Council of the WTO approved the recommendation of the Special Session of the Committee on Trade and Development (CTD) to establish a Monitoring Mechanism for special and differential treatment. This Monitoring Mechanism should aim to contribute to facilitating the integration of developing and least-developed members into the multilateral trading system. The Special Session of the CTD is finalising its negotiations regarding the functions, structure and terms of reference of such a Mechanism. The ensuing decision by the Ministerial Conference should be supported by the European Union.
- (3) Agriculture is a key element of the Doha Development Agenda and can only be fully resolved within a final outcome encompassing several other areas of the DDA mandate. Nevertheless, the European Union recognises the interest of some WTO Members in addressing specific agriculture concerns already during the 9<sup>th</sup> WTO Ministerial Conference, which would go hand in hand with a political understanding on an ambitious Trade Facilitation Agreement.
- (4) The efficient management of Tariff Rate Quotas (TRQ) and transparency regarding their use is essential for making sure that previous commitments taken during the Uruguay Round regarding market access for agriculture products are properly implemented. Negotiations conducted in the WTO throughout 2013 have allowed Members to reach agreement regarding the implementation of a TRQ Administration

mechanism, which encompasses transparency provisions and an underfill mechanism. On transparency, TRQ administration should be assimilated to import licensing measures and thus made subject to the WTO Agreement on Import Licensing, meaning that certain procedural and transparency obligations should apply. In addition, a necessity test should be applied which provides that administrative procedures should not be more burdensome than absolutely necessary to administer the relevant measure. Regarding the underfill mechanism, when the fill rate of a TRQ is below a defined level for a certain period (or in case of absence of notification), the importing WTO member may be requested to change the quota management to a first-come, first-served method or to a system of automatic, unconditional licences. A decision by the Ministerial Conference on TRQ administration is now envisaged which should be supported by the European Union.

- (5) WTO Members should have the ability to implement the necessary programmes including public stockholding for food security purposes in line with WTO rules. Public stockholding programmes for food security purposes need to meet specific conditions agreed among WTO Members so as not to distort international trade. Negotiations conducted in the WTO throughout 2013 have allowed Members to find an appropriate solution regarding such programmes deployed by developing countries in the form of an understanding among Members ('due restraint' clause) not to challenge such programmes during a specific period of time provided that they meet a certain set of conditions. A decision by the Ministerial Conference confirming this understanding is now envisaged which should be supported by the European Union.
- (6) The European Union's decision to join a consensus at the 9<sup>th</sup> WTO Ministerial Conference regarding the Monitoring Mechanism, TRQ administration and food security is dependent on the progress achieved regarding the Trade Facilitation Agreement and specifically on whether the Ministerial Conference reaches a political understanding on the text of this agreement,

HAS ADOPTED THIS DECISION:

*Article 1*

The position of the European Union regarding food security, Tariff Rate Quota administration and the Monitoring Mechanism shall be to join the consensus reached among WTO Members with a view to adopting the decisions by the 9<sup>th</sup> Ministerial Conference.

*Article 2*

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

Done at Brussels,

*For the Council  
The President*