Proposal for a

COUNCIL DECISION

amending Council Decision 2001/855/EC of 15 November 2001 in order to take account of certain treaties and trade agreements concluded with third countries by new Member States prior to their accession to the European Union

(presented by the Commission)
EXPLANATORY MEMORANDUM

The Council is hereby invited to authorise the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Hungary, the Republic of Latvia, the Republic of Lithuania, the Republic of Poland and the Republic of Slovenia to maintain in force certain trade-related agreements after their accession to the EU.

1- Legal basis

Council Decision 69/494/EEC of 16 December 1969 on the progressive standardisation of agreements concerning commercial relations between Member States and third countries allows Member States to request an authorisation for the continuation in force of provisions governing matters covered by the common commercial policy.

Authorisation may be granted when the matters covered by the bilateral agreements are not the subject of Community agreements. Moreover, the provisions of the bilateral agreements must not constitute an obstacle to the implementation of the common commercial policy. Member States must be willing to adapt and if necessary terminate the bilateral agreements; the agreements must therefore contain short (3-12 months) denunciation clauses. The authorisation is granted for a period of four years. It was last granted to the 15 Member States on 15 November 2001 by Council Decision 2001/855/EC.

2- Scope of the exercise

The Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Hungary, the Republic of Latvia, the Republic of Lithuania, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, and the Slovak Republic were requested to ensure that all their international agreements incompatible with their EU membership obligations were denounced or renegotiated by the time of their accession to the EU (article 6.10 of the Act of Accession). This commitment was translated into action by the new Member States.

However, before their accession to the EU, eight acceding countries (the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Hungary, the Republic of Latvia, the Republic of Lithuania, the Republic of Poland and the Republic of Slovenia) have notified the Commission of their intention to request the prolongation of certain agreements in accordance with the provisions of Council Decision 69/494/EEC.

The Commission has analysed these requests. Out of the 44 agreements concerned, 17 should be authorised to remain in force. Six notifications were found to be irrelevant in the present exercise. However, 21 agreements were found not to meet one or several of the above-mentioned conditions. Consequently, these agreements should not be allowed to remain in force.

Due to delays in the procedure and in receiving certain acceding countries’ notifications, the present proposal could not be elaborated before 1 May 2004. In the period between 1 May 2004 and the adoption by the Council of the attached proposal, the rights of third countries are safeguarded under Article 307 of the Treaty.
3- Result of consultations

Consultations were held with the new Member States concerned which so requested. These consultations were instrumental in clarifying whether the bilateral agreements whose maintenance in force after accession to the EU was requested contained provisions relating to the EU’s common commercial policy, and whether these provisions could constitute an obstacle to that policy. The new Member States concerned also provided information on their contacts with the co-contracting countries to bring the agreements in conformity with the acquis communautaire.

4- Duration of the proposed authorisation

It is proposed that, in accordance with Article 3 of Council Decision 69/494/EEC, and in order to harmonise the duration of validity of agreements prolonged under the present Decision, with those listed under Council Decision 2001/855/EC, the authorisation to maintain in force the 17 agreements is only granted until 30 April 2005. The authorisation may be renewed for four years on 1 May 2005 for the agreements of the 25 Member States meeting the criteria set out in Council Decision 69/494/EEC, should the necessary conditions still be met.

5- Procedure

The Council is invited to adopt the attached proposal for a Council Decision amending the annex to Council Decision 2001/855/EC.
Proposal for a

COUNCIL DECISION

amending Council Decision 2001/855/EC of 15 November 2001 in order to take account of certain treaties and trade agreements concluded with third countries by new Member States prior to their accession to the European Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 69/494/EEC of 16 December 1969 on the progressive standardisation of agreements concerning commercial relations between Member States and third countries and on the negotiation of Community agreements¹, and in particular Article 3 thereof,

Having regard to the proposal from the Commission,²

Whereas:

(1) The automatic renewal or continuation in force of certain provisions governing matters covered by the common commercial policy contained in the friendship, trade and navigation treaties and trade agreements concluded between the Member States and third countries was last authorised by Council Decision 2001/855/EC,³ which was adopted on 15 November 2001.

(2) The Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Poland, and the Republic of Slovenia (“the new Member States concerned”) have requested authorisation for the continuation in force of provisions governing matters covered by the common commercial policy within the meaning of Article 133 of the Treaty contained in a number of trade-related agreements, in order to avoid interrupting their contractual commercial relations with the third countries concerned.

(3) Some of the matters covered by the national bilateral agreements are governed by Community agreements; authorisation should accordingly be given only in respect of those matters not covered by Community agreements.

(4) The bilateral agreements and agreements to be automatically renewed or maintained in force should not be allowed to obstruct the implementation of the common commercial policy.

² OJ C […] […], p. […]
(5) Authorisation should also be given where the existence of the agreement facilitates the enforcement of substantial outstanding debts owed by the third country to the Member State, provided that the Member State undertakes to terminate or renegotiate such agreement once the debt is settled.

(6) Moreover, such authorisation should not serve to absolve the new Member States concerned from the obligation of avoiding and eliminating any incompatibility between such bilateral agreements and the provisions of Community law.

(7) The new Member States concerned have taken, and continue to take, the necessary steps to ensure that the requisite conditions, if any, are met to adapt or terminate those bilateral agreements.

(8) On conclusion of the consultations under Article 2 of Decision 69/494/EEC, it was established that the provisions of certain specified bilateral agreements would not constitute an obstacle to the implementation of the common commercial policy;

(9) The bilateral agreements in question contain termination clauses requiring a period of notice of between three and twelve months.

(10) In order to harmonise the duration of validity of the agreements now requiring to be extended with those currently listed in Decision 2001/855/EC, the authorisation to uphold those agreements should not extend beyond the closing date laid down in that Decision,

HAS ADOPTED THIS DECISION:

Article 1

The bilateral trade agreements listed in the Annex to this Decision are added to the Annex to Decision 2001/855/EC.

Article 2

The provisions governing matters covered by the common commercial policy within the meaning of Article 133 of the Treaty, and contained in the bilateral trade agreements listed in the Annex to Decision 2001/855/EC as amended by this Decision, may be maintained in force up to 30 April 2005.
This authorisation shall apply only to those areas not covered by agreements between the Community and the third countries concerned. The new Member States concerned shall inform the Commission of any circumstances that might necessitate withdrawal of the authorisation granted in Article 2.

This Decision shall apply from 1 May 2004.

This Decision is addressed to the Member States.

Done at Brussels, […]

For the Council
The President
<table>
<thead>
<tr>
<th>Estado miembro</th>
<th>País tersero</th>
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<th>Fecha del Acuerdo</th>
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<tbody>
<tr>
<td>Česka republika</td>
<td>Česká republika</td>
<td>Trade Agreement</td>
<td>24.10.1987</td>
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<tr>
<td>Afghanistan</td>
<td>Afghanistan</td>
<td>Protocol to the 1987 Trade Agreement</td>
<td>29.04.1988</td>
</tr>
<tr>
<td>Pakistan</td>
<td>Pakistan</td>
<td>Statute of the Czech-Afghan Joint Committee</td>
<td>22.06.1982</td>
</tr>
<tr>
<td>Iraq</td>
<td>Iraq</td>
<td>Long-Term Trade and Payment Agreement</td>
<td>18.12.1973</td>
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<tr>
<td>North Korea</td>
<td>North Korea</td>
<td>Trade Agreement</td>
<td>01.11.1990</td>
</tr>
<tr>
<td>Eesti</td>
<td>Eesti</td>
<td>Trade and Economic Cooperation Agreement</td>
<td>31.07.2001</td>
</tr>
<tr>
<td>Kýpr</td>
<td>Kýpr</td>
<td>Trade Agreement</td>
<td>2.10.1981</td>
</tr>
<tr>
<td>Magyarország</td>
<td>Cambodia</td>
<td>Mutual Trade and Payments Agreement</td>
<td>12.03.1992</td>
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<td>Albania</td>
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<td>12.12.1990</td>
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<td>Polska</td>
<td>Iraq</td>
<td>Trade and Payments Agreement</td>
<td>01.01.1959</td>
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<td>Long-Term Agreement on Economic, Scientific and Technical Cooperation</td>
<td>20.05.1989</td>
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<td>Libya</td>
<td>Agreement on Economic, Scientific and Technical Cooperation</td>
<td>11.02.1974</td>
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<td>Trade and Payment Agreement</td>
<td>17.05.1991</td>
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<td>20.08.1974</td>
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<td>Former Yugoslav Republic of Macedonia</td>
<td>Trade and Economic Cooperation</td>
<td>23.03.2001</td>
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