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2015/0156 (NLE)

Proposal for a

COUNCIL DECISION

establishing the position to be taken on behalf of the European Union within the Council for Trade in Services of the World Trade Organization on the acceptance of preferences notified by WTO Members as regards services and service suppliers of Least-Developed Country other than those described in Article XVI of the GATS

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The proposed Council Decision is the first step of the implementation of the **WTO Services Waiver for Least Developed Countries** (LDCs). The Services Waiver¹ allows WTO Members to grant unilateral preferences on services to the LDCs and it requires acceptance by the Council for Trade in Services (CTS) of the notified preferences granted with respect to measures other than those described in Article XVI of the GATS (market access). The proposed **Council Decision** establishes the position to be taken by the Commission on behalf of the Union in the CTS.

The proposed Council Decision does **not refer to any treatment the EU itself will grant to LDCs**, what would be the next step for the operationalization of the waiver. The intended treatment to be notified to the CTS and accorded to LDCs is currently being prepared along the lines of an approach consulted with the Member States and signalled to WTO Members at a high-level meeting of the CTS on 5 February 2015.

• Consistency with existing policy provisions in the policy area and other Union policies

At the Ninth WTO Ministerial Conference in Bali the European Union joined the consensus on the adoption of a Services Waiver for LDCs. The EU is committed to the success of the upcoming Tenth Ministerial Conference of the WTO in Nairobi in December 2015 and to moving decisively forward the Doha Development Round negotiations and the implementation of the Bali outcome package, including the LDC elements. The proposed Council Decision is part of this Bali implementation process.

By supporting the economic advancement of LDCs, the proposed acceptance of preferences notified by other WTO Members will contribute to the achievement of the objectives of the Treaty providing that the EU shall contribute to the harmonious development of the world trade and define and pursue common policies to foster the sustainable development of developing countries². This proposed acceptance will also be conducive to conclude a part of the Doha Development Agenda negotiations on services.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal bases for the proposed Council Decision are Articles 91, 100 and the first subparagraph of Article 207(4), in conjunction with Article 218(9) of the Treaty on the functioning of the European Union (TFEU).

Article 218(9) TFEU provides that when an act having legal effects needs to be adopted in a body set up by an international agreement, 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 with respect to the adoption of this act in this body. The acceptance of preferences notified by other WTO

¹ Waivers are permissions granted by the WTO General Council/Ministerial Conference to derogate temporarily from certain WTO obligations which are otherwise applicable.

² Article 205 and 206 TFEU and Article 21 of the TEU.

Members falls under this provision as the decision is taken in a body set up by an international agreement (Council for Trade in Services) affecting the rights and obligations of the EU.

The envisaged preferences relate to obligations under the General Agreement on Trade in Services and may concern all service sectors, including transport services. Therefore, the proposed decision falls within the scope of Articles 91, 100 and 207(4), first subparagraph, of the TFEU.

3. BUDGETARY IMPLICATIONS

The proposal has no budgetary implications.

4. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The approval of the preferential treatment granted to LDCs by other WTO Members does not trigger any implementation process in the EU.

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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 of Articles 91, 100 and 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) Article IX of the Marrakesh Agreement establishing the World Trade Organization (WTO) sets out the procedures for the granting of waivers concerning the Multilateral Trade Agreements in Annex 1A or 1B or 1C to that Agreements and their annexes.
- (2) A waiver was requested whereby the WTO Members would be enabled to grant preferential treatment to services and service suppliers of Least-Developed Country Members without according the same treatment to like services and service suppliers of all other WTO Members by exceptionally derogating from the obligation under paragraph 1 of Article II of the General Agreement on Trade in Services (GATS). The Council adopted the position of the Union in support of the waiver by Council Decision of 14 December 2011 (2012/8/EU).
- (3) The WTO Ministerial Decision of 17 December 2011 authorising WTO Members to grant such preferential treatment to services and service suppliers of Least-Developed Country Members for a period of 15 years, sets forth in paragraphs 1 and 2 that Members according preferential treatment pursuant to this waiver shall submit a notification to the Council for Trade in Services (CTS) and that preferential treatment with respect to the application of measures other than those described in Article XVI of the GATS, is subject to approval by the CTS in accordance with its procedures.
- (4) The requirement of CTS approval with regard to those measures was restated in paragraph 1.3 of the WTO Ministerial Decision of 7 December 2013.
- (5) The acceptance of preferences granted by other WTO Members to the services and service suppliers of Least-Developed Country Members is in the interest of the development objectives of the European Union and is conducive to conclude a part of the Doha Development Agenda negotiations on services.
- (6) It is appropriate, therefore, to establish the position to be taken by the Union within the CTS to approve the preferential treatment granted by WTO Members regarding measures other than those described in Article XVI of the GATS,

HAS ADOPTED THIS DECISION:

Article 1

The position of the Union within the Council for Trade in Services of the WTO shall be to support the approval of the preferential treatment granted by WTO Members to services and service suppliers of least-developed countries regarding the application of measures other than those described in Article XVI of the GATS ("Market Access") in accordance with the WTO Ministerial Decision of 7 December 2013 (WT/L/918).

This position shall be expressed by the European Commission.

Article 2

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

Done at Brussels,

For the Council
The President
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