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2015/0234 (NLE)

Proposal for a

**COUNCIL DECISION**

**establishing the position to be taken by the European Union within the Ministerial Conference of the World Trade Organization as regards an extension of the moratorium on customs duties on electronic transmissions and the moratorium on non-violation and situation complaints**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The objective of this proposal is to allow the Union to join a consensus in the World Trade Organisation (WTO) on the adoption by the WTO Ministerial Conference of two decisions relating to (1) a moratorium on customs duties on electronic transmissions ("e-commerce moratorium") and (2) the application of subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 on "non-violation and situation complaints" to the settlement of disputes under the Agreement on Trade Related Aspects of Intellectual Property Rights ("TRIPS").

The Union has always supported the extension of the "e-commerce moratorium" because e-commerce is a service and therefore it should not be subject to customs duties. Further, the moratorium provides significant economic benefits to the Union companies.

The TRIPS Agreement laid down a moratorium of five years from its entry into force in 1995 on the application of subparagraphs 1(b) and 1(c) of Article XXIII on non-violation and situation complaints to consultations and the settlement of disputes under TRIPS (Article 64 (2) TRIPS). During that period, no consensus was reached on the scope and modalities for non-violation and situation complaints pursuant to Article 64 (3) TRIPS.

After the initial five year period expired the WTO Ministerial Conference has continuously extended the suspension by consensus decision, pursuant to Article 64 (3) TRIPS, and it did so until its next session. The last extension of 11 December 2013 lasts until the Ministerial Conference in 2015. The WTO Ministerial Conference Decisions directed the Council for TRIPS to continue its examination of the scope and modalities for complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 and make recommendations to its next Session. The Decisions also stated that it was agreed that, in the meantime, Members will not initiate such complaints under the TRIPS Agreement.

So far no consensus was reached on scope and modalities.

The proposal provides that the Council authorises the Commission to take a position on behalf of the European Union within the WTO to join a consensus as regards the extension of the "e-commerce moratorium" on an indefinite basis (or at every Ministerial Conference where the e-commerce moratorium is proposed for adoption), and the extension of the moratorium on non-violation and situation complaints under TRIPS Agreement until the WTO Ministerial Conference takes a decision on the scope and modalities of the non-violation complaints.

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

The initiative is fully consistent with existing policy provisions. Similar decisions have been prepared for previous WTO Ministerial Conferences, including most recently for the 9th WTO Ministerial Conference in 2013.

### 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides that when a Decision having legal effects needs to be taken 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. The extension of the moratoria falls under this provision

as the Decision is taken in a body set up by an international agreement (the WTO Ministerial Conference) affecting the rights and obligations of the Union.

The envisaged e-commerce moratorium relates to matters falling within the scope of the common commercial policy (Article 207 TFEU) and in particular, to obligations under the General Agreement on Trade in Services. Similarly, the envisaged moratorium on non-violation and situation complaints relates to matters falling within the scope of the common commercial policy, in particular to obligations under the TRIPS Agreement.

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

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

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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(4), in conjunction with Article 218(9), thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) A moratorium on customs duties on electronic transmissions ('e-commerce moratorium') to the effect that WTO members are to continue their current practice of not imposing customs duties on electronic transmissions was adopted in the form of a declaration at the 1998 Ministerial conference of the World Trade Organization (WTO). Currently the moratorium takes the form of a WTO Ministerial Conference decision, which has been renewed every two years since 1998.
- (2) A moratorium on non-violation and situation complaints has continuously been extended at the WTO Ministerial Conference after the expiration of the five year period for taking the decision on the scope and modalities of such complaints pursuant to Article 64(3) of the TRIPS Agreement.
- (3) These moratoria were last extended at the WTO Ministerial Conference in December 2013 till 2015. They should be further extended at any next WTO Ministerial Conference or made permanent should a consensus to that effect arise in the on-going or future discussions.
- (4) It is in the interest of the Union to give its support to the extension of the e-commerce moratorium on an indefinite basis and to the extension of the moratorium on non-violation and situation complaints until such moment the Ministerial Conferences approves the recommendations of the Council for TRIPS with regard to the scope and modalities of non-violation and situation complaints pursuant to Article 64(3) of the TRIPS,

HAS ADOPTED THIS DECISION:

### *Article 1*

The position of the Union within the Ministerial Conference of the World Trade Organisation shall be to support an extension of the moratorium on customs duties on electronic transmissions ('e-commerce moratorium') and of the moratorium on complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 ("non-

violation and situation complaints"), until the Ministerial Conference takes a decision on the scope and modalities of the non-violation and situation complaints.

*Article 2*

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

Done at Brussels,

*For the Council  
The President*