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2016/0191 (NLE)

Proposal for a

COUNCIL DECISION

establishing the position to be taken on behalf of the European Union within the General Council of the World Trade Organization on the United States' request for a WTO waiver to extend the system of preferential treatment granted to the Former Trust Territory of the Pacific Islands

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

The objective of this proposal is to establish the position to be taken by the European Union within the General Council of the World Trade Organization (WTO) on the United States' request for a renewal of its WTO waiver and thus allow the European Union to support this waiver request.

The granting of the US' request for a renewal of the WTO waiver would allow the US to continue providing preferential treatment to eligible products of the Former Trust Territory of the Pacific Islands (Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau) imported into the customs territory of the United States until 31 December 2026.

- **Consistency with existing policy provisions in the policy area**

N.a.

- **Consistency with other Union policies**

N.a.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides that when a decision having legal effect 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 European Union's behalf. The granting of a waiver to allow the United States to accord preferential treatment to eligible products of the Former Trust Territory of the Pacific Islands falls under this provision as the decision is taken in a body set up by an international agreement (the WTO General Council or Ministerial Conference) affecting the rights and obligations of the European Union.

- **Subsidiarity (for non-exclusive competence)**

N.a.

- **Proportionality**

N.a.

- **Choice of the instrument**

N.a.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

N.a.

4. BUDGETARY IMPLICATIONS

N.a.

5. OTHER ELEMENTS

The Commission will be authorised to take a position on behalf of the European Union to support the United States' request for a WTO waiver to the extent necessary to permit the United States to provide preferential treatment to eligible products of the Former Trust Territory of the Pacific Islands until 31 December 2026.

The United States is seeking an extension of its waiver (WT/L/694 of 1 August 2007) from paragraph 1 of Article I of GATT 1994 in order to continue to accord historical preferences to the former Trust Territory of the Pacific Islands consistent with its international obligations.

According to the United States, the system of preferential entry for the exports of these islands into the market of the United States is justified by both historical and economic reasons.

The United States assumed the obligations to ensure the security and economic development of the former TTPI states under a Trusteeship Agreement with the UN Security Council in 1947.

On the basis of the Trusteeship Agreement, the US has created a long-standing historical connection with the former TTPI and, from an economic point of view, over the longer term, the primary purpose of the system has been to promote the expansion of trade and the economic development of the beneficiaries in a manner consistent with the objectives of the GATT and with the trade, financial and development needs of the beneficiary countries. The United States, in its request, notes also that this purpose has become all the more important as each of the former Trusteeship areas have become self-governing entities.

The waiver request would be the third extension of the preferential tariff-treatment. On 8 September 1948, the United States was granted a waiver of its obligations under paragraph 1 of Article I of the GATT 1947 for an indefinite period., Pursuant to paragraph 1(b)(iii) of the GATT 1994 the waiver was revised and incorporated in the GATT 1994 with a two-year expiration periods when the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement") entered into force on 1 January 1995. Recognizing that, as provided for in paragraph 2 of the Understanding in Respect of Waivers of Obligations under the General Agreement on Tariffs and Trade 1994, unless extended, the waiver of 8 September 1948 would have expired on 31 December 1996, it was extended on 14 October 1996. It was extended a second time on 1 August 2007, covering the period until 31 December 2016.

For the European Union, the waiver request does not pose economic concerns since the preferential treatment is not expected to adversely impact the EU trade with the beneficiary countries.

In light of these considerations, the European Union should join the emerging consensus in favour of the waiver request in the WTO General Council.

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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) Paragraphs 3 and 4 of Article IX of the Marrakesh Agreement establishing the World Trade Organization ('WTO Agreement') set out the procedures for waiving an obligation imposed on a Member by the WTO Agreement or any of the Multilateral Trade Agreements.
- (2) The United States was granted a waiver of obligations under paragraph 1 of Article I of the General Agreement on Tariffs and Trade 1994 ('GATT 1994'), which was most recently extended on 1 August 2007 covering the period through 31 December 2016.
- (3) Pursuant to paragraph 3 of Article IX of the WTO Agreement, the United States submitted a request to waive until 31 December 2026 its obligations under paragraph 1 of Article I of the GATT 1994 to the extent necessary to permit the United States to continue providing preferential treatment to eligible products of the Former Trust Territory of the Pacific Islands (Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau) imported into the customs territory of the United States.
- (4) The granting of the United States request for a WTO waiver would not affect negatively either the economy of the European Union or the trade relations with the beneficiaries of the waiver.
- (5) It is appropriate, therefore, to establish the position to be taken on behalf of the European Union within the WTO General Council to support the waiver request by the United States,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the European Union within the General Council of the World Trade Organization shall be to support the United States' request to waive obligations under paragraph 1 of Article I of the General Agreement on Tariffs and Trade 1994 until 31 December 2026 in accordance with the terms of the United States' waiver request.

This position shall be expressed by the Commission.

Article 2

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

Done at Brussels,

*For the Council
The President*