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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Ministerial Conference of the World Trade Organization as regards public stockholding for food security purposes, trade-distorting domestic support, including for cotton, export restrictions in agriculture, fisheries subsidies, domestic regulation in services, and SMEs/Transparency of Regulatory Measures for Trade in Goods

EXPLANATORY MEMORANDUM

1. SUBJECT-MATTER OF THE PROPOSAL

The present proposal for a decision concerns the establishment of the position to be taken on behalf of the Union in the 11th Ministerial Conference (MC11) of the World Trade Organization ("WTO") in connection with the possible adoption of several decisions relating to the Doha Development Agenda (DDA). The proposal covers: public stockholding for food security purposes, trade-distorting domestic support in agriculture including for cotton, export restrictions in agriculture, fisheries subsidies, domestic regulation in services, and SMEs/transparency of regulatory measures for trade in goods.

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement Establishing the World Trade Organization ("WTO Agreement")

The Marrakesh Agreement Establishing the WTO ('the WTO Agreement') entered into force on 1 January 1995. The European Union¹ and all 28 EU Member States are parties to the Agreement.

2.2. The Ministerial Conference of the WTO

The Ministerial Conference is the highest decision-making body of the WTO and meets at least once every two years. The next meeting of the Ministerial Conference will take place in Buenos Aires, Argentina (10-13 December, 2017).

2.3. The envisaged acts of the WTO Ministerial Conference

MC11 may adopt decisions having legal effects regarding (1) public stockholding for food security purposes; (2) trade-distorting domestic support, including for cotton; (3) export restrictions in agriculture; (4) fisheries subsidies; (5) domestic regulation in services; and (6) SMEs/transparency of regulatory measures for trade in goods ('the envisaged acts').

3. POSITION TO BE TAKEN ON BEHALF OF THE UNION

The objective of this proposal is to allow the Union to join a possible consensus at MC11 on the adoption of decisions having legal effects relating to the issues outlined above.

While it is not yet clear if, and to what extent, WTO Members will be able to reach consensus, the EU position at MC11 has to be established in advance by the Council pursuant to Article 218(9) TFEU.²

The current proposal covers those issues on which decisions may be taken:

- **Public stockholding for food security purposes (PSH):** negotiations aim at agreeing on a 'permanent solution' fulfilling the goal set out in the Bali Ministerial

¹ Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regard matters within its competence, of the agreements reached in the Uruguay Round of multilateral negotiations (1986-1994) (OJ L 336, 23.12.1994, p. 1).

² To the extent that, contrary to the current expectations, the consensus was formalised in an international agreement amending the WTO Agreement or in a plurilateral international agreement among some WTO Members, the Commission would make the necessary proposals in accordance with Article 218(6) TFEU following the adoption of the texts and their opening for acceptance by the MC11 or by the WTO Members concerned during MC11.

Decision of 7 December 2013 on Public Stockholding for Food Security Purposes (WT/MIN(13)/38-WT/L/913), as interpreted by the subsequent General Council Decision of 27 November 2014 (WT/L/939) and in the Ministerial Decision of 19 December 2015 (WT/MIN(15)/44-WT/L/979). Such a decision could be similar to the current Bali interim solution, with or without additional conditions and with or without an expanded scope (to include also later "post-Bali" programmes).

- **Trade-distorting domestic support in agriculture, including for cotton:** Negotiations on trade-distorting domestic support are embedded in Article 20 of the WTO Agreement on Agriculture and have been part of the DDA mandate, as embodied in the Doha Ministerial Declaration of 14 November 2001 (WT/MIN(01)/DEC/1). In order to inject momentum in the process, the EU together with Brazil, Colombia, Peru and Uruguay submitted a proposal (JOB/AG/99) on trade-distorting domestic support (including trade-distorting domestic support for cotton as well as on public stockholding for food security purposes). The EU should support an outcome that may be reached on trade-distorting domestic support, including for cotton, at MC11.
- **Export restrictions:** Negotiations on strengthening the disciplines on export prohibitions and restrictions in Article 12.1 of the Agreement on Agriculture are embedded in Article 20 of the WTO Agreement on Agriculture and are part of DDA negotiations. Given the importance of the issue for the agricultural reform process and for moving towards a fair and market-oriented agricultural trading system, the Union should support an outcome on export restrictions to the extent it is reached.
- **Fisheries Subsidies (FS):** Negotiations on FS are part of the DDA and the elimination of certain fisheries subsidies is foreseen in the UN Sustainable Development Goal 14 Target 6 ("SDG 14.6") agreed by Heads of States in 2015. The EU submitted to the WTO a proposal on the issue (TN/RL/GEN/181/Rev.1). Negotiations are underway and the Union should support an outcome in this area to the extent it is reached.
- **Domestic Regulation (DR):** negotiations on domestic regulation in services were foreseen in Article VI:4 of the WTO General Agreement on Trade in Services (GATS). Over the last months work on DR has advanced resulting in a consolidated negotiating text proposal supported by around 50 WTO Members (including the EU). The proposed DR disciplines are limited only to the requirements and procedures related to licensing and qualifications, as well as technical standards, and would apply to the sectors where market access commitments were taken under the GATS. Negotiations are underway and the Union should support an outcome in this area to the extent it is reached.
- **SMEs/Transparency of Regulatory Measures for Trade in Goods:** The DDA mandate foresaw negotiations on market access for non-agricultural products including non-tariff barriers. In 2017 the EU submitted an NTB-related proposal to the WTO on a "Ministerial Decision on Facilitating SME Trade: Transparency of Regulatory Measures for Trade in Goods" (TN/MA/W/144/Rev.3, co-sponsored by Australia, Hong Kong, Taiwan, Singapore, and Japan). The EU proposal would facilitate SME access to international trade by enhancing transparency (with the notification of the final texts to the WTO and the creation of a public repository) as well as good regulatory practices (with the public consultation of stakeholders on new measures, with a scope limited to TBT and SPS measures). Negotiations are

underway and the Union should support an outcome in this area to the extent it is reached.

Since negotiations are currently ongoing on all elements of the possible Buenos Aires package, the Commission expects that the Council will take its decision on the EU position on the outcome of the negotiations once the situation regarding the relevant texts becomes sufficiently clear, possibly during the Ministerial Conference itself.

The initiative is fully consistent with existing policy provisions. Similar decisions were prepared for previous WTO Ministerial Conferences, including most recently for the 10th WTO Ministerial Conference in 2015.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing *'the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.'*

4.1.2. Application to the present case

The WTO Ministerial Conference is a body set up by an agreement, namely the WTO Agreement which according to Article IV:1 has the authority to take decisions on all matters covered under any of the multilateral trade agreements, including decisions having legal effects.

The envisaged acts mentioned above constitute acts having legal effects, as they may affect the rights and obligations of the Union.

The envisaged acts do not supplement or amend the institutional framework of the agreement.

The procedural legal basis for the proposed decision, therefore, is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged acts relate to the common commercial policy, as the envisaged possible decisions on DDA issues fall thereunder.

The substantive legal basis of the proposed decision, therefore, is Article 207 TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 207 TFEU in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACTS

As the acts of the WTO Ministerial Conference will supplement the WTO Agreement, it is appropriate to publish them in the *Official Journal of the European Union* after their adoption.

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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) The Marrakesh Agreement Establishing the World Trade Organization ('the WTO Agreement') was concluded by the Union by Council Decision 94/800/EC of 22 December 1994³ and entered into force on 1 January 1995.
- (2) Pursuant to Articles IV:1 and IX:1 of the WTO Agreement, the Ministerial Conference of the World Trade Organization ('WTO') may adopt decisions by consensus.
- (3) The WTO Ministerial Conference, during its 11th meeting on 10-13 December 2017, may adopt decisions on public stockholdings for food security purposes (PSH), trade-distorting domestic support, including for cotton; export restrictions in agriculture; fisheries subsidies, domestic regulation in services, and Small- and Medium-Sized Enterprises (SMEs)/Transparency of Regulatory Measures for Trade in Goods.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the WTO Ministerial Conference, to the extent that these decisions may have legal effects.
- (5) The 11th WTO Ministerial Conference is considered by WTO Members as the deadline for adopting a permanent solution on the issue of public stockholdings for food security purposes. This goal was stipulated in the Bali Ministerial Decision of 7 December 2013 on Public Stockholding for Food Security Purposes (WT/MIN(13)/38-WT/L/913), as interpreted and reconfirmed by subsequent decisions. In this respect, the Union should support a permanent solution on the issue of public stockholding for food security purposes to the extent it is reached.
- (6) Negotiations on trade-distorting domestic support are embedded in Article 20 of the WTO Agreement on Agriculture and, together with cotton, are part of the Doha Development Agenda (DDA). In this respect the EU together with Brazil, Colombia, Peru and Uruguay submitted a proposal (JOB/AG/99) on trade-distorting domestic support (including trade-distorting domestic support for cotton as well as on public stockholding) in 2017. Given the importance of the issue and the fact that the Union

³ OJ L 336, 23.12.1994, p. 1.

has been one of the proponents, the Union should support an outcome on trade-distorting domestic support, including for cotton, to the extent it is reached.

- (7) Negotiations on strengthening the disciplines on export prohibitions and restrictions in Article 12.1 of the Agreement on Agriculture are embedded in Article 20 of the WTO Agreement on Agriculture and form part of DDA negotiations. Given the importance of the issue for the agricultural reform process and for moving towards a fair and market-oriented agricultural trading system, the Union should support an outcome on export restrictions to the extent it is reached.
- (8) Negotiations on fisheries subsidies are part of the DDA and the elimination of certain fisheries subsidies was identified as a priority in UN Sustainable Development Goal 14 Target 6 ("SDG 14.6") agreed by Heads of States in 2015. Given the importance of the issue for trade and sustainable development, and the fact that the Union has been one of the proponents, the Union should support an outcome to the extent it is reached.
- (9) Negotiations on domestic regulation in services were foreseen in Article VI:4 of the WTO General Agreement on Trade in Services (GATS) and form part of the DDA. An outcome could cover administration of measures, independence, transparency, technical standards, development of measures and Special and Differential Treatment. Given the maturity of the discussions and the systemic importance for reaching a decision on the issue, the Union, being also one of the proponents, should support an outcome to the extent it is reached.
- (10) Negotiations on market access for non-agricultural products are part of the DDA mandate and include non-tariff barriers (NTBs). The EU submitted to the WTO in 2017 a proposal for a "Ministerial Decision on Facilitating SME Trade: Transparency of Regulatory Measures for Trade in Goods" (TN/MA/W/144/Rev.3). This decision, in its entirety or with a narrower or broader scope could be adopted at MC11. Given the importance of the issue and the fact that the Union has been one of the proponents, the Union should support an outcome on the basis of the EU proposal to the extent it is reached.
- (11) In the WTO Ministerial Conference, the Union is to be represented by the Commission in accordance with Article 17(1) of the Treaty on European Union (TEU),

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 11th session of the WTO Ministerial Conference shall be the following:

The position of the Union within the Eleventh Ministerial Conference of the World Trade Organization shall be to join the consensus reached among WTO Members with a view to adopting decisions regarding public stockholding for food security purposes, trade-distorting domestic support, including for cotton, export restrictions in agriculture, fisheries subsidies, domestic regulation in services, and SMEs/Transparency of Regulatory Measures for Trade in Goods.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*