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European Union

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WTO 85

## PROPOSAL

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	24 March 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2017) 137 final
Subject:	Proposal for a COUNCIL DECISION establishing the position to be taken on behalf of the European Union within the World Trade Organization on the modification of the frequency of WTO Trade Policy Reviews in paragraph C(ii) of Annex 3 of the WTO Agreement and the rules of procedure of the Trade Policy Review Body

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Delegations will find attached document COM(2017) 137 final.

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Encl.: COM(2017) 137 final



Brussels, 24.3.2017  
COM(2017) 137 final

2017/0062 (NLE)

Proposal for a

## **COUNCIL DECISION**

**establishing the position to be taken on behalf of the European Union within the World Trade Organization on the modification of the frequency of WTO Trade Policy Reviews in paragraph C(ii) of Annex 3 of the WTO Agreement and the rules of procedure of the Trade Policy Review Body**

## 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 on behalf of the European Union within the World Trade Organization (WTO) to adjust the frequency of the Trade Policy Reviews of the WTO Members set out in paragraph C (ii) ("Procedures for review") of Annex 3 to the WTO Agreement and the rules of procedure of the Trade Policy Review Body.

The expansion of the membership of the WTO since 1995 has also increased the number of reviews necessary to comply with paragraph C (ii) of Annex 3. This has increased the burden on the Members and the WTO Secretariat and the current cycle of Trade Policy Reviews has become thus unsustainable.

Discussions among WTO Members in the context of the Sixth Appraisal of the Trade Policy Review Mechanism have led in particular the Trade Policy Body to suggest:

- adjusting the frequency of the Trade Policy Reviews (TPRs) extending by one year the cycles currently set out in paragraph C (ii) of Annex 3, and
- changing slightly the rules of procedure of the Trade Policy Review Body to facilitate the review process.

#### Frequency of TPRs (Annex 3, paragraph C(ii) to the WTO Agreement)

The frequency according to which Members' trade policies are currently reviewed depends on their relative share of the world trade. The four Members having the largest shares of world trade are currently reviewed every two years (EU, US, China and Japan). The next sixteen Members (ex. Federation of Russia, Australia, Canada, and Switzerland) are reviewed every four years and the rest of the membership is reviewed in practice every six years to seven years. The Trade Policy Review Body takes the view that the frequency of reviews should be changed starting as of 2019 to three, five and seven years, respectively.

The decision on the adjustment of the review cycles will be taken by the Ministerial Conference of the WTO, pursuant to Article X:8 of the WTO Agreement, or by the General Council (in the intervals between meetings of the Ministerial Conference pursuant to Article IV:2 of the WTO Agreement), and will take effect for all Members upon its approval.

The Commission should be authorised to take a position on behalf of the European Union to join the consensus with a view to supporting the adoption of the decisions taken by the Ministerial Conference (or the General Council, in the interval between Ministerial Conference meetings), regarding the extension by one year of the current review cycles in paragraph C(ii) of Annex 3 to the WTO Agreement.

#### Modification of the Rules of Procedure of the TPRB

As a result of the Sixth Appraisal of the Trade Policy Review Mechanism, the Trade Policy Body (TPRB) also recommends modifying its rules of procedure. The modifications include slight changes to facilitate the conduct of the reviews, such as for example granting four

weeks instead of currently three to the Member reviewed so as to reply to advance questions when it uses the alternative timeline. Other changes<sup>1</sup> in the rules of procedure involve for example the possibility for a WTO Member to present significant changes to its trade policy at a meeting of the TPRB in between two Trade Policy Reviews or the possibility, on request of a Member, to make the second day of the review more interactive, using panels or the issuance by the WTO Secretariat of a list of speakers for the interventions of the WTO Members on the first day of the review.

The Commission should also be authorised to take a position on behalf of the European Union in the TPRB to join the consensus with a view to supporting the modification of the rules of procedure of the Trade Policy Review Body.

The decision to update the TPRB's rules of procedure will be taken by the TPRB.

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

The initiative is fully consistent with existing Union policies.

- **Consistency with other Union policies**

The Trade Policy Review serves to present not only EU Trade policy but all the other EU policies that have an impact on trade. The Trade Policy Reviews of other Members enables the EU to ask questions to the reviewed Member and enhance transparency.

## **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 envisaged decisions fall within the scope of the common commercial policy (Article 207 of the TFEU)

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

The European Union has exclusive competence with regard to the matters covered by this decision in accordance with Article 3 of the TFEU. Therefore, the subsidiarity principle does not apply.

### **Proportionality**

N.a.

- **Choice of the instrument**

This proposal is in accordance with Article 218(9) TFEU. There exists no other legal instrument that could be used in order to achieve the objective expressed in this proposal.

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<sup>1</sup> Document WT/RD/TPR/745.

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

N.a.

**4. BUDGETARY IMPLICATIONS**

N.a.

**5. OTHER ELEMENTS**

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

Proposal for a

## COUNCIL DECISION

**establishing the position to be taken on behalf of the European Union within the World Trade Organization on the modification of the frequency of WTO Trade Policy Reviews in paragraph C(ii) of Annex 3 of the WTO Agreement and the rules of procedure of the Trade Policy Review Body**

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) Annex 3, paragraph C(ii) of the Marrakesh Agreement establishing the World Trade Organization ('WTO Agreement') sets out the frequency for reviewing WTO Member's trade policies and practices. The frequency of the reviews of each Member's trade policy depends on its share of world trade. The four biggest trading Members are currently examined every 2 years. The sixteen following Members in terms of share of world trade are reviewed every 4 years, while the other Members are currently reviewed every 6 years.
- (2) The expansion of WTO Membership since 1995 has also increased the number of reviews necessary to comply with Annex 3 of the WTO Agreement, increasing the burden on Members and the WTO Secretariat. To safeguard the effectiveness of the review system, the Trade Policy Review Body (TPRB) of the WTO suggests to extend by one year the cycles currently in place. As a result, WTO Members would be reviewed every 3, 5 and 7 years, depending on their share of world trade.
- (3) In accordance with Article X:8 of the WTO Agreement, decisions to approve amendments to Annex 3 to the WTO Agreement must be taken by consensus by the Ministerial Conference or, pursuant to Article IV: 2 of the WTO Agreement, by the General Council in the intervals between meetings of the Ministerial Conference and shall take effect for all WTO Members upon approval.
- (4) To safeguard the effectiveness of the review system, the TPRB has recommended<sup>2</sup> also to amend its rules of procedure to introduce slight modifications that would facilitate the conduct of reviews, such as for example granting four weeks instead of currently three to the Member reviewed so as to reply to advance questions when it uses the alternative timeline. Other changes in the rules of procedure involve for

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<sup>2</sup> Document WT/RD/TPR/745.

example the possibility for a WTO Member to present significant changes to its trade policy at a meeting of the TPRB in between two Trade Policy Reviews or the possibility, on request of a Member, to make the second day of the review more interactive, using panels or the issuance by the WTO Secretariat of a list of speakers for the interventions of the WTO Members on the first day of the review. The TPRB can take the decision to amend its own rules of procedure pursuant to Article IV: 4 of the WTO Agreement.

- (5) It is in the interest of the Union to ensure a well functioning Trade Policy Review Mechanism so that all WTO Members continue to be reviewed regularly and that the meetings in the TPRB be as efficient and as well prepared as possible.
- (6) Therefore, it is appropriate to establish the position to be taken on behalf of the Union in the WTO to extend by one year the cycles of Trade Policy Reviews of WTO Members and to modify the rules of procedure of the TPRB to facilitate the conduct of reviews,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The position to be taken on behalf of the Union within the Ministerial Conference, or General Council of the World Trade Organization, shall be to join the consensus to amend paragraph C(ii) of Annex 3 to the WTO Agreement to extend by one year the cycles of Trade Policy Reviews of WTO Members. The review cycles in paragraph C(ii) of Annex 3 of the WTO Agreement depend on the share of world trade and currently stand at 2, 4 and 6 years. They will be replaced, respectively, by cycles of 3, 5 and 7 years.

This position shall be expressed by the Commission at the upcoming meeting of the Ministerial Conference, or of the General Council, whichever takes place earlier.

#### *Article 2*

The position to be taken on behalf of the Union within the Trade Policy Review Body shall be to join the consensus to amend the TPRB's rules of procedure- as envisaged in Document WT/RD/TPR/745.

This position shall be expressed by the Commission at an upcoming meeting of the TPRB.

#### *Article 3*

After its adoption, the Decision on the extension of the cycles of Trade Policy Reviews shall be published in the Official Journal of the European Union.

#### *Article 4*

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

Done at Brussels,

*For the Council  
The President*