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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	22 May 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	Recommendation for a COUNCIL DECISION authorising the opening of negotiations with a view to apportioning the Union's WTO concessions on Tariff Rate Quotas annexed to the General Agreement on Tariffs and Trade 1994 in view of the withdrawal of the United Kingdom from the Union

Delegations will find attached document COM(2018) 311 final.

Encl.: COM(2018) 311 final



Brussels, 22.5.2018
COM(2018) 311 final

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations with a view to apportioning the Union's WTO concessions on Tariff Rate Quotas annexed to the General Agreement on Tariffs and Trade 1994 in view of the withdrawal of the United Kingdom from the Union

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

On 29 March 2017, the Government of the United Kingdom (UK) notified the European Council of the UK's intention to withdraw from the European Union (EU) of which it is currently a Member State.

The UK's withdrawal from the EU has implications beyond the bilateral relationship between the EU and the UK, in particular with regard to their World Trade Organization (WTO) commitments. Both the EU and the UK are original Members of the WTO. When the European Community accepted the WTO Agreement and the Multilateral Trade Agreements in 1994, the schedule of concessions and commitments that was annexed to the General Agreement on Tariffs and Trade 1994 (GATT 1994) for the European Communities (the EU's WTO schedule) was thereby simultaneously annexed for the UK. The EU's schedule therefore contains commitments applicable also to the UK in its capacity as a WTO Member.

As far as the EU is concerned, its scheduled commitments for goods will remain applicable to its territory, but the EU's existing quantitative commitments, notably the Tariff Rate Quotas (TRQs), will require certain adjustments to reflect the UK's withdrawal from the EU. As the EU's WTO schedule will no longer be applicable to the UK, the EU's existing WTO bound TRQs (agricultural, fish and industrial) need to be apportioned between the UK and the EU to become effective on the date the EU's WTO schedule no longer applies to the UK.

In line with the provisions of Article XXVIII of GATT 1994 for modifying concessions the EU will need to conduct negotiations on the apportionment of the TRQs with concerned WTO Members which have been identified as having relevant market access rights under the individual TRQs (having so-called principal or substantial supplying interest or holding an initial negotiating right). The EU will also consult with the WTO Members having consultation rights.

These negotiations will need to be conducted in a tight timeframe. It is anticipated that the UK will withdraw from the EU on 30 March 2019. This being said, a Withdrawal Agreement is currently being negotiated and the negotiators of the EU and of the UK have agreed on the text for transitional arrangements whereby, upon the entry into force of the Withdrawal Agreement Union law, including the international agreements to which the Union is party such as the GATT 1994, should apply to the UK from the date of withdrawal until 31 December 2020.

It cannot be excluded that Article XXVIII agreements with the relevant WTO Members may not have been concluded within the available time limit, at least not for all the TRQs concerned.

To this end, in parallel to the present recommendation, the Commission is proposing a basic legislative act (following the Ordinary Legislative Procedure) to ensure that in the absence of such Article XXVIII agreements the EU can proceed with the apportionment of the TRQs unilaterally in line with Article XXVIII and that the Commission is given the necessary empowerments to consequently amend the relevant EU provisions on the opening and implementation of the relevant TRQs.

The objective of this recommendation is therefore to authorise the opening of negotiations by the Commission pursuant to Article XXVIII of the GATT 1994 to modify the relevant concessions (notably WTO bound TRQs) in the European Union's WTO schedule, so as to apportion them between the Union and the United Kingdom.

In addition, the United Kingdom needs to launch the procedures in the WTO for setting out its own schedule of concessions and commitments already before the date on which it ceases to be a Member State of the Union. Therefore, it is necessary to authorise the United Kingdom to undertake the necessary procedures for this purpose with a view to agreeing with other WTO Members on its portion of the TRQs currently included in the European Union's WTO schedule.

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

Not applicable.

- **Consistency with other Union policies**

Not applicable.

2. **LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

Article 207 and Article 218(3) and (4) of the Treaty on the Functioning of the European Union (TFEU).

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

The common commercial policy is listed among the areas of exclusive competence of the Union in Article 3 of the Treaty on the Functioning of the European Union (TFEU). According to Article 5(3) of the TFEU the subsidiarity principle does not apply to areas of exclusive Union competence.

- **Proportionality**

The present Recommendation proposes to the Council to authorise the Commission to open negotiations under Article XXVIII of the GATT 1994 with a view to modifying the EU's WTO concessions on bound Tariff Rate Quotas. According to WTO rules, this procedure has to be followed in order to change the concessions set out in the schedule of a Member of the WTO. In view of this, the proposed measure is proportionate to the objectives set out above.

- **Choice of the instrument**

The available instrument to achieve the objective is an international agreement. An authorisation to open negotiations for an international agreement is therefore required.

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

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

Not applicable.

- **Collection and use of expertise**
Not applicable.
- **Impact assessment**
Not applicable.
- **Regulatory fitness and simplification**
Not applicable.
- **Fundamental rights**
Not applicable.

4. BUDGETARY IMPLICATIONS

Not applicable.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**
Not applicable.
- **Explanatory documents (for directives)**
Not applicable.
- **Detailed explanation of the specific provisions of the proposal**
Not applicable.

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations with a view to apportioning the Union's WTO concessions on Tariff Rate Quotas annexed to the General Agreement on Tariffs and Trade 1994 in view of the withdrawal of the United Kingdom from the Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 218(3) and (4) thereof,

Having regard to the Recommendation from the European Commission,

Whereas:

- (1) The existing quantitative commitments in the area of goods made by the European Union in the World Trade Organization (WTO) will require certain adjustments to reflect the withdrawal of the United Kingdom of Great Britain and Northern Ireland (United Kingdom) from the Union. In particular, the existing tariff rate quotas for certain agricultural, fish and industrial products included in the Union's Schedule of concessions and commitments annexed to the General Agreement on Tariffs and Trade 1994 (GATT 1994) need to be apportioned between the United Kingdom and the Union following the United Kingdom's withdrawal from the Union.
- (2) The Commission should therefore be authorised to open negotiations under Article XXVIII of the GATT 1994 with those WTO Members that have negotiating rights with a view to modifying those tariff rate quotas.
- (3) The United Kingdom needs to launch the procedures in the WTO for setting out its own schedule of concessions and commitments already before the date on which it ceases to be a Member of the Union.
- (4) It is therefore necessary to authorise the United Kingdom to undertake the necessary procedures with a view to setting out its own schedule of concessions and commitments annexed to the GATT 1994, including negotiations with other WTO members on the portions of the tariff rate quotas to be included therein.

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to open negotiations, on behalf of the Union, with the WTO Members that have negotiating rights with a view to modifying the tariff rate quotas currently included in the Union's schedule of concessions of and commitments annexed to the GATT 1994.

Article 2

The negotiating directives addressed to the Commission are set out in the Annex.

Article 3

The negotiations shall be conducted by the Commission in consultation with the [name of the special committee to be inserted by the Council].

Article 4

The United Kingdom is hereby authorised to undertake the necessary procedures with a view to setting out its own schedule of concessions and commitments annexed to the GATT 1994 as well as any quantitative limits therein, including negotiations with other WTO Members on its portion of the tariff rate quotas currently included in the Union's schedule of concessions and commitments annexed to the GATT 1994.

Article 5

This Decision is addressed to the Commission and to the United Kingdom.

Done at Brussels,

*For the Council
The President*