



Council of the
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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	22 February 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.:	COM(2021) 76 final
Subject:	Recommendation for a COUNCIL DECISION authorising the opening of negotiations on an agreement between the European Union and Panama under Article XXVIII of the General Agreement on Tariffs and Trade 1994 regarding the withdrawal of its WTO tariff rate quotas on liquid milk and evaporated milk

Delegations will find attached document COM(2021) 76 final.

Encl.: COM(2021) 76 final



Brussels, 22.2.2021
COM(2021) 76 final

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations on an agreement between the European Union and Panama under Article XXVIII of the General Agreement on Tariffs and Trade 1994 regarding the withdrawal of its WTO tariff rate quotas on liquid milk and evaporated milk

EXPLANATORY MEMORANDUM

CONTEXT OF THE PROPOSAL

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

By communication G/SECRET/45 dated 12 August 2020, Panama notified the WTO Members of its intention to withdraw its tariff quotas for liquid milk and evaporated milk under tariff lines 0401.10.00, 0401.20.10, 0401.20.90, 0402.91.91, 0402.91.92, 0402.91.99, 0402.99.91, 0402.99.92 and 0402.99.99 from its Schedule of Concessions CXLI, in accordance with the procedure laid down in Article XXVIII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994). At the same time, Panama indicated it is ready to negotiate and consult with Members concerned (i.e. substantial suppliers and Initial Negotiating Right holders for the tariff lines concerned) pursuant to Article XXVIII GATT 1994. To this end, Panama has submitted import statistics by country of origin covering the last three years for which data are available.

According to Article XXVIII of the GATT 1994, as the WTO Member having Initial Negotiating Right for the tariff lines covering evaporated milk (0402.91.91, 0402.91.92, 0402.91.99, 0402.99.91, 0402.99.92 and 0402.99.99) and being a substantial supplier for the tariff lines covering the liquid milk (0401.10.00, 0401.20.10, 0401.20.90), the EU has the right to negotiate with Panama appropriate compensation, in order to maintain a general level of concessions not less favourable to trade than before the change envisaged by Panama.

According to the Procedures for Negotiations under Article XXVIII adopted by the GATT Council on 10 November 1980¹, on 26 October 2020 the EU presented a claim of interest as Member holding an Initial Negotiating Right on items covered under HS 0402 and as Member being a substantial supplier of items covered under HS 0401 10 and 0401 20.

The objective of the proposal is to obtain from the Council the authorisation for the Commission to open the negotiations pursuant to Article XXVIII of the GATT 1994 with Panama in order to agree adequate compensation for the EU following Panama's decision to withdraw certain tariff concessions for liquid milk and evaporated milk from Schedule of Concessions CXLI.

This proposal is without prejudice to Commission Recommendation of 29 July 2015 (COM (2015) 369 final) authorising the opening of negotiations under Article XXIV:6 and/or XXVIII of GATT 1994 with WTO members modifying their tariff concessions.

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

The proposal is consistent with the EU commercial policy and with the rules of the World Trade Organization.

- **Consistency with other Union policies**

Not applicable.

¹ Guidelines adopted on 10 November 1980, GATT documents C/113 and C/113/Corr.1, GATT BISD 27S/26-28.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The Commission does not indicate the substantive legal basis when it recommends the Council to adopt a decision authorising the negotiations of an international agreement. Therefore, Article 218(3) and (4) shall be indicated as legal basis for this proposal.

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

According to Article 5(3) of the TEU, the subsidiarity principle does not apply in areas of exclusive EU competence. The common commercial policy is listed among the areas of exclusive competence of the Union in Article 3 of the TFEU. Negotiations under Article XXVIII GATT concern matters falling with trade policy.

- **Proportionality**

The present Recommendation proposes to the Council to authorise the Commission to open negotiations, on behalf of the EU, under Article XXVIII of the GATT 1994 with Panama. Panama notified WTO Members the intention to negotiate under Article XXVIII of the GATT 1994 in order to withdraw from its Schedule of Concessions CXLI its tariff quotas for liquid milk and evaporated milk under tariff lines 0401.10.00, 0401.20.10, 0401.20.90, 0402.91.91, 0402.91.92, 0402.91.99, 0402.99.91, 0402.99.92 and 0402.99.99. According to WTO rules, the EU, as WTO member having Initial Negotiating Right for the tariff lines covering evaporated milk (0402.91.91, 0402.91.92, 0402.91.99, 0402.99.91, 0402.99.92 and 0402.99.99) and being a substantial supplier for the tariff lines covering the liquid milk (0401.10.00, 0401.20.10, 0401.20.90), has the right to negotiate with Panama appropriate compensation. The Commission recommendation proposed is in line with the principle of proportionality and necessary in view of the objectives set out above.

- **Choice of the instrument**

The only available instrument to achieve the objective is an international agreement. An authorisation to open negotiations over 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. According to the WTO rules, negotiations under Article XXVIII of the GATT 1994 should be conducted with the greatest possible secrecy.

- **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 on an agreement between the European Union and Panama under Article XXVIII of the General Agreement on Tariffs and Trade 1994 regarding the withdrawal of its WTO tariff rate quotas on liquid milk and evaporated milk

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the recommendation from the European Commission,

Whereas,

- (1) Panama notified World Trade Organization ('WTO') Members on 12 August 2020 of its intention to launch negotiations under Article XXVIII of the General Agreement on Tariffs and Trade 1994 ('GATT 1994') in order to withdraw its tariff quotas for liquid milk and evaporated milk under tariff lines 0401.10.00, 0401.20.10, 0401.20.90, 0402.91.91, 0402.91.92, 0402.91.99, 0402.99.91, 0402.99.92 and 0402.99.99 from its Schedule of Concessions CXLI, in accordance with the procedure laid down in Article XXVIII:1 of the GATT 1994.
- (2) The Union communicated its claim of interest to Panama on 26 October 2020 as a WTO Member holding an Initial Negotiating Right regarding the tariff lines covering evaporated milk and being a substantial supplier regarding the tariff lines covering liquid milk, with respect to the concessions which are the subject of negotiation and consultation under Article XXVIII of the GATT 1994.
- (3) The Commission should therefore be authorised to open negotiations under Article XXVIII of the GATT 1994 with Panama in order to agree adequate compensation for the Union following Panama's decision to withdraw certain tariff concessions for liquid milk and evaporated milk from Schedule of Concessions CXLI,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate, on behalf of the Union, an agreement with Panama, pursuant to Article XXVIII of the GATT 1994 for appropriate compensation, following Panama's decision to withdraw quotas for liquid milk and evaporated milk under tariff lines 0401.10.00, 0401.20.10, 0401.20.90, 0402.91.91, 0402.91.92, 0402.91.99, 0402.99.91, 0402.99.92 and 0402.99.99 from its Schedule of Concessions CXLI.

Article 2

The negotiating directives are set out in the Annex.

Article 3

The negotiations shall be conducted in consultation with the Trade Policy Committee.

Article 4

This decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*