



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31.10.2006
COM(2006) 644 final

2006/0212 (ACC)

Proposal for a

COUNCIL DECISION

On a Community Position concerning the decision by the WTO General Council to apply provisionally the Transparency Mechanism for Regional Trade Agreements

(presented by the Commission)

EXPLANATORY MEMORANDUM

As part of the Doha Development Agenda (DDA), negotiations are underway aimed at clarifying and improving current WTO rules for Regional Trade Agreements (RTAs). These rules-RTA negotiations, in which the Community has taken an active role, consist of two pillars: substantive disciplines and transparency procedures.

With respect to RTA transparency, our objectives and position reflect the importance we attach to inter alia: (1) being aware of key RTA developments around the globe; (2) being able to predict and assess the ways other members' RTAs may influence our exports and investment; and (3) ensuring better functioning of WTO in the oversight and review of RTAs, especially poor quality RTAs among developing countries. The current WTO procedures for RTAs have, to date, failed on all these accounts and especially in the case of RTAs between developing countries.

The negotiations on RTA transparency are relatively uncontroversial and, hence, recorded good progress for the last two years. Reflecting this, the Sixth WTO Ministerial Conference, (Hong Kong, December 2005) instructed the Negotiating Group on Rules-RTAs to work for a provisional decision on the Transparency Mechanism for Regional Trade Agreements by 30 April 2006. On 29 June 2006 negotiators were indeed able to reach consensus on a draft text for a RTA Transparency Mechanism, which was subsequently formally agreed at the meeting of the Negotiating Group on Rules on 10 July 2006. The EC strongly supported the final text of the Mechanism. The 133 Committee has been regularly consulted during the negotiations and all Member States have expressed support for the text referred to above.

The RTA Transparency Mechanism implies the establishment of one uniform procedure for notifications and reviews, based on factual reports by the WTO Secretariat, of all RTAs. As before, the Committee on Regional Trade Agreements will conduct the review of RTAs falling under Article XXIV of General Agreement on Tariffs and Trade (GATT) and Article V of the General Agreement on Trade in Services (GATS). The Committee on Trade and Development will continue to conduct the review of RTAs falling under the Enabling Clause (trade arrangements between developing countries) but, with a view to ensuring uniform methods and treatment, this will be carried out by a dedicated session of the Committee on Trade and Development to be serviced by the section in the WTO Secretariat in charge of RTAs. The draft text also envisages the provision by the WTO Secretariat of technical support to developing country Members, and especially least-developed countries, in the implementation of the Transparency Mechanism.

Thereby, the final deal largely fulfils long-standing EC priorities and objectives on RTA transparency. It addresses most, if not all, current ambiguities and loopholes in the system, while limiting the administrative burden for WTO Members. It reinforces the capacity and role of the WTO to oversee RTA developments worldwide. The draft Transparency Mechanism is a major step forward in clarity and transparency of RTAs between developing countries, which have been subject to a rather exclusive and opaque procedural treatment for the last 30 years under the Enabling Clause.

The Mechanism deals exclusively with the ways RTAs are inter alia notified and factually examined in the WTO. It has no implications on the substantive WTO disciplines for RTAs, nor on WTO Members' RTAs.

It is now expected that the Transparency Mechanism will be formally adopted, on a provisional basis, by the General Council of the WTO on [10 October 2006]. The Transparency Mechanism is to be applied immediately on a “test basis”. Members are to review, and if necessary modify, this provisional decision, and replace it by a permanent mechanism adopted as part of the overall results of the Doha Round.

In view of the current suspension of the DDA, adoption by the General Council of a decision on the RTA Transparency Mechanism would send a strong, positive signal on WTO Members' continuous commitment to the multilateral trading system.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 in conjunction with the second subparagraph of Article 300 (2) thereof,

Having regard to the proposal from the Commission¹,

Whereas:

- (1) WTO Members agreed at the Fourth WTO Ministerial Conference (Doha, November 2001) to conduct negotiations aimed, inter alia, at clarifying and improving disciplines and procedures applying to Regional Trade Agreements,
- (2) Regional Trade Agreements have greatly increased in number and have become an important element in WTO Members' trade policies and developmental strategies,
- (3) Enhancing transparency on Regional Trade Agreements and their effects is of systemic interest and will be of benefit to all WTO Members,
- (4) The Sixth WTO Ministerial Conference (Hong Kong, December 2005) instructed the WTO Negotiating Group on Rules to work for a provisional decision on the Transparency Mechanism for Regional Trade Agreements by 30 April 2006,
- (5) In the negotiations pursued under the terms of the Doha Ministerial Declaration, in accordance with paragraph 47 of that Declaration, agreements reached at an early stage may be implemented on a provisional basis,

HAS ADOPTED THIS DECISION:

Article 1

The position of the European Community in the General Council of the World Trade Organisation with regard to the Transparency Mechanism for Regional Trade Agreements attached to this decision is to approve its provisional application. This position shall be expressed by the Commission.

¹ OJ C [...], [...], p. [...].

Article 2

This Decision is addressed to the Member States.

Done at Brussels, [...]

*For the Council
The President
[...]*

TRANSPARENCY MECHANISM FOR REGIONAL TRADE AGREEMENTS

The General Council,

Having regard to paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement");

Conducting the functions of the Ministerial Conference in the interval between meetings pursuant to paragraph 2 of Article IV of the WTO Agreement;

Noting that trade agreements of a mutually preferential nature ("regional trade agreements" or "RTAs") have greatly increased in number and have become an important element in Members' trade policies and developmental strategies;

Convinced that enhancing transparency in, and understanding of, RTAs and their effects is of systemic interest and will be of benefit to all Members;

Having regard also to the transparency provisions of Article XXIV of GATT 1994, the Understanding on the Interpretation of Article XXIV of GATT 1994 ("GATT Understanding"), Article V of GATS and the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries ("Enabling Clause");

Recognizing the resource and technical constraints of developing country Members;

Recalling that in the negotiations pursued under the terms of the Doha Ministerial Declaration², in accordance with paragraph 47 of that Declaration, agreements reached at an early stage may be implemented on a provisional basis;

Decides:

A. Early Announcement

1. Without prejudging the substance and the timing of the notification required under Article XXIV of the GATT 1994, Article V of the GATS or the Enabling Clause, nor affecting Members' rights and obligations under the WTO agreements in any way:
 - (a) Members participating in new negotiations aimed at the conclusion of an RTA shall endeavour to so inform the WTO.
 - (b) Members parties to a newly signed RTA shall convey to the WTO, in so far as and when it is publicly available, information on the RTA, including its official name, scope and date of signature, any foreseen timetable for its entry into force or provisional application, relevant contact points and/or website addresses, and any other relevant unrestricted information.
2. The information referred to in paragraph 1 above is to be forwarded to the WTO Secretariat, which will post it on the WTO website and will periodically provide Members with a synopsis of the communications received.

² WT/MIN(01)/DEC/1

B. Notification

3. The required notification of an RTA by Members that are party to it shall take place as early as possible. As a rule, it will occur no later than directly following the parties' ratification of the RTA or any party's decision on application of the relevant parts of an agreement, and before the application of preferential treatment between the parties.
4. In notifying their RTA, the parties shall specify under which provision(s) of the WTO agreements it is notified. They will also provide the full text of the RTA (or those parts they have decided to apply) and any related schedules, annexes and protocols, in one of the WTO official languages; if available, these shall also be submitted in an electronically exploitable format. Reference to related official Internet links shall also be supplied.

C. Procedures to Enhance Transparency

5. Upon notification, and without affecting Members' rights and obligations under the WTO agreements under which it has been notified, the RTA shall be considered by Members under the procedures established in paragraphs 6 to 13 below.
6. The consideration by Members of a notified RTA shall be normally concluded in a period not exceeding one year after the date of notification. A precise timetable for the consideration of the RTA shall be drawn by the WTO Secretariat in consultation with the parties at the time of the notification.
7. To assist Members in their consideration of a notified RTA:
 - (a) the parties shall make available to the WTO Secretariat data as specified in the Annex, if possible in an electronically exploitable format; and
 - (b) the WTO Secretariat, on its own responsibility and in full consultation with the parties, shall prepare a factual presentation of the RTA.
8. The data referred to in paragraph 7(a) shall be made available as soon as possible. Normally, the timing of the data submission shall not exceed ten weeks – or 20 weeks in the case of RTAs involving only developing countries – after the date of notification of the agreement.
9. The factual presentation provided for in paragraph 7(b) shall be primarily based on the information provided by the parties; if necessary, the WTO Secretariat may also use data available from other sources, taking into account the views of the parties in furtherance of factual accuracy. In preparing the factual presentation, the WTO Secretariat shall refrain from any value judgement.
10. The WTO Secretariat's factual presentation shall not be used as a basis for dispute settlement procedures or to create new rights and obligations for Members.
11. As a rule, a single formal meeting will be devoted to consider each notified RTA; any additional exchange of information should take place in written form.

12. The WTO Secretariat's factual presentation, as well as any additional information submitted by the parties, shall be circulated in all WTO official languages not less than eight weeks in advance of the meeting devoted to the consideration of the RTA. Members' written questions or comments on the RTA under consideration shall be transmitted to the parties through the WTO Secretariat at least four weeks before the corresponding meeting; they shall be distributed, together with replies, to all Members at least three working days before the corresponding meeting.
13. All written material submitted, as well as the minutes of the meeting devoted to the consideration of a notified agreement will be promptly circulated in all WTO official languages and made available on the WTO website.

D. Subsequent Notification and Reporting

14. The required notification of changes affecting the implementation of an RTA, or the operation of an already implemented RTA, shall take place as soon as possible after the changes occur. Changes to be notified include, inter alia, modifications to the preferential treatment between the parties and to the RTA's disciplines. The parties shall provide a summary of the changes made, as well as any related texts, schedules, annexes and protocols, in one of the WTO official languages and, if available, in electronically exploitable format.³
15. At the end of the RTA's implementation period, the parties shall submit to the WTO a short written report on the realization of the liberalization commitments in the RTA as originally notified.
16. Upon request, the relevant WTO body shall provide an adequate opportunity for an exchange of views on the communications submitted under paragraphs 14 and 15.
17. The communications submitted under paragraphs 14 and 15 will be promptly made available on the WTO website and a synopsis will be periodically circulated by the WTO Secretariat to Members.

E. Bodies Entrusted with the Implementation of the Mechanism

18. The Committee on Regional Trade Agreements ("CRTA") and the Committee on Trade and Development ("CTD") are instructed to implement this Transparency Mechanism.⁴ The CRTA shall do so for RTAs falling under Article XXIV of GATT 1994 and Article V of GATS, while the CTD shall do so for RTAs falling under paragraph 2(c) of the Enabling Clause. For purposes of performing the functions established under this Mechanism, the CTD shall convene in dedicated session.

³ In their notification, Members may refer to official Internet links related to the agreement where the relevant information can be consulted in full, in one of the WTO official languages.

⁴ The Director-General is invited to ensure consistency in the preparation of the WTO Secretariat factual presentations for the different types of RTAs, taking into account the variations in data provided by different Members.

F. Technical Support for Developing Countries

19. Upon request, the WTO Secretariat shall provide technical support to developing country Members, and especially least-developed countries, in the implementation of this Transparency Mechanism, in particular – but not limited to - with respect to the preparation of RTA-related data and other information to be submitted to the WTO Secretariat.

G. Other Provisions

20. Any Member may, at any time, bring to the attention of the relevant WTO body information on any RTA that it considers ought to have been submitted to Members in the framework of this Transparency Mechanism.
21. The WTO Secretariat shall establish and maintain an updated electronic database on individual RTAs. This database shall include relevant tariff and trade-related information, and give access to all written material related to announced or notified RTAs available at the WTO. The RTA database should be structured so as to be easily accessible to the public.

H. Provisional Application of the Transparency Mechanism

22. This Decision shall apply, on a provisional basis, to all RTAs. With respect to RTAs already notified under the relevant WTO transparency provisions and in force, this Decision shall apply as follows:
 - (a) RTAs for which a working party report has been adopted by the GATT Council and those RTAs notified to the GATT under the Enabling Clause will be subject to the procedures under Sections D to G above.
 - (b) RTAs for which the CRTA has concluded the "factual examination" prior to the adoption of this Decision and those for which the "factual examination" will have been concluded by 31 December 2006, and RTAs notified to the WTO under the Enabling Clause will be subject to the procedures under Sections D to G above. In addition, for each of these RTAs, the WTO Secretariat shall prepare a factual abstract presenting the features of the agreement.
 - (c) Any RTA notified prior to the adoption of this Decision and not referred to in subparagraphs (a) or (b) will be subject to the procedures under Sections C to G above.

I. Reappraisal of the Mechanism

23. Members will review, and if necessary modify, this Decision, in light of the experience gained from its provisional operation, and replace it by a permanent mechanism adopted as part of the overall results of the Round, in accordance with paragraph 47 of the Doha Declaration. Members will also review the legal relationship between this Mechanism and relevant WTO provisions related to RTAs.

ANNEX

Submission of Data by RTA Parties

1. RTA parties shall not be expected to make available the information required below if the corresponding data has already been submitted to the Integrated Data Base (IDB),⁵ or has otherwise been provided to the Secretariat in an adequate format.⁶
2. For the goods aspects in RTAs, the parties shall submit the following data, at the tariff-line level:⁷
 - (a) Tariff concessions under the agreement:
 - (i) a full listing of each party's preferential duties applied in the year of entry into force of the agreement; and
 - (ii) when the agreement is to be implemented by stages, a full listing of each party's preferential duties to be applied over the transition period.
 - (b) MFN duty rates:
 - (i) a full tariff listing of each RTA party's MFN duties applied on the year of entry into force of the agreement⁸; and
 - (ii) a full tariff listing of each RTA party's MFN duties applied on the year preceding the entry into force of the agreement.
 - (c) Where applicable, other data (e.g., preferential margins, tariff-rate quotas, seasonal restrictions, special safeguards and, if available, ad valorem equivalents for non-ad valorem duties).
 - (d) Product-specific preferential rules of origin as defined in the agreement.
 - (e) Import statistics, for the most recent three years preceding the notification for which they are available:
 - (i) each party's imports from each of the other parties, in value; and
 - (ii) each party's imports from the rest of the world, broken down by country of origin, in value.

⁵ Trade and tariff data submissions in the context of an RTA notification can subsequently be included in the IDB, provided that their key features are appropriate. In this respect, see document G/MA/IDB/W/6 (dated 15 June 2000) for the Guidelines for Supplying PC IDB Submissions and documents G/MA/115 (dated 17 June 2002) and G/MA/115/Add.5 (dated 13 January 2005) for WTO Policy regarding the dissemination of IDB data.

⁶ Data submissions can be furnished in PC database formats, spreadsheet formats, or text-delimited formats; the use of word-processing formats should be avoided, if possible.

⁷ References to "tariff-line level" shall be understood to mean the detailed breakdown of the national customs nomenclature (HS codes with, for example, 8, 10 or more digits). It is crucial that all data elements supplied use the same national customs nomenclature or are associated with corresponding conversion tables

⁸ In the case of a customs union, the MFN applied common external tariff.

3. For the services aspects in RTAs, the parties shall submit the following data, if available, for the three most recent years preceding the notification: trade or balance of payments statistics (by services sector/subsector and partner), gross domestic product data or production statistics (by services sector/subsector), and relevant statistics on foreign direct investment and on movement of natural persons (by country and, if possible, by services sector/subsector).
4. For RTAs involving only developing countries, in particular when these comprise least-developed countries, the data requirements specified above will take into account the technical constraints of the parties to the agreement.