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2022/0364 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, of the Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

The Doha Round of trade negotiations (also called the Doha Development Agenda or "DDA") in the World Trade Organization ("WTO") was launched in 2001 and covered a broad set of issues including fisheries subsidies, agriculture, industrial goods, services, industrial subsidies, and development issues. The WTO negotiations on fisheries subsidies were tasked to deliver on the United Nations Sustainable Development Goal Target 14.6.

The UN Sustainable Development Goal Target 14.6 sets out the aim to prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, and eliminate subsidies that contribute to illegal, unregulated and unreported fishing, and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the WTO fisheries subsidies negotiation.

At the 12th WTO Ministerial Conference that took place on 12-17 June 2022 in Geneva, consensus was reached on the Agreement on Fisheries Subsidies ("the Agreement"). The 12th WTO Ministerial Conference adopted¹ the Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization by inserting the Agreement on Fisheries Subsidies, as set out in the Annex to that Protocol, into the Marrakech Agreement after the Agreement on Subsidies and Countervailing Measures.

The Agreement is a crucial step to ensure that fisheries subsidies employ sustainability as their core objective and avoid harm to the oceans and fish stocks that are indispensable for the livelihood of coastal communities around the world. In an unprecedented way, all WTO Members signed up to substantial limitations on subsidising unsustainable fishing, notably:

- Prohibition of subsidies to illegal, unregulated and unreported fishing;
- Prohibition of subsidies for fishing outside of the jurisdiction of a coastal State and outside the competence of a relevant regional fisheries management organisation (RFMO/A) to protect the most vulnerable areas lacking established and coordinated fisheries management regime;
- Prohibition of subsidies to fishing regarding overfished stocks conditional on sustainability standards to rebuild such stocks to healthy level;
- Disciplines regarding subsidies benefitting vessels not flying the flag of the subsidising Member; and
- Extensive transparency and notification provisions to monitor the implementation of the Agreement.

The WTO Members also committed to continue negotiations based on the outstanding issues in documents WT/MIN(21)/W/5 and WT/MIN(22)/W/20 with a view to making recommendations to the 13th WTO Ministerial Conference for additional provisions that would achieve a comprehensive agreement on fisheries subsidies, including through further disciplines on certain forms of fisheries subsidies that contribute to overcapacity and overfishing, recognizing that appropriate and effective special and differential treatment for

¹ WT/MIN(22)/33

developing country Members and least developed country Members should be an integral part of these negotiations.

The Agreement on Fisheries Subsidies will enter into force for the WTO Members that have accepted it upon acceptance by two thirds of the WTO Members. The present Commission proposal for a Council decision aims at formally concluding the Agreement in accordance with Article 218(6) of the Treaty on the Functioning of the European Union (TFEU) to enable the Union to notify its acceptance to the WTO.

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

The negotiations were conducted in close consultation with the Trade Policy Committee as provided for by Article 218(3) of the TFEU. The formal conclusion of the negotiations by the Council is one of the necessary steps under Article 218(6) of the TFEU to give legal effect to the negotiated outcome.

- **Consistency with other Union policies**

The Agreement is fully consistent with Union policies, in particular with the Common Commercial Policy, the Common Fisheries Policy, State aid rules and policy on decent work.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The Agreement is to be concluded by the Union pursuant to a decision of the Council based on Article 218(6) of the TFEU, following the European Parliament's consent.

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

According to Article 5(3) of the Treaty on European Union, the subsidiarity principle does not apply in areas of exclusive EU competence.

- **Proportionality**

The proposal to conclude the Agreement does not exceed what is necessary to achieve the objective of taking additional commitments under the Marrakesh Agreement Establishing the World Trade Organization on behalf of the European Union.

- **Choice of the instrument**

This proposal for a Council decision is submitted in accordance with Article 218(6) of the TFEU, which envisages the adoption by the Council of a decision authorising the conclusion of the agreement. This is the only legal instrument available to achieve the objective expressed in this proposal.

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**

The agreement is not subject to REFIT procedures.

- **Fundamental rights**

The proposal does not affect the protection of fundamental rights within the Union.

4. BUDGETARY IMPLICATIONS

The agreement is not expected to have a financial impact on the EU budget.

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**

The acceptance of the Protocol by the Union would permit the incorporation of the Agreement into Annex 1A of the WTO Agreement.

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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 the first subparagraph of Article 207(4), in conjunction with point v) of Article 218(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament²,

Whereas:

- (1) The Union is a Member to the World Trade Organization ("WTO") which launched the Doha Round of trade negotiations, known as the Doha Development Agenda in November 2001. The WTO negotiations on fisheries subsidies were tasked to deliver on the United Nations Sustainable Development Goal Target 14.6.
- (2) The Commission negotiated with other Members in consultation with the Committee established by Article 207(3) of the Treaty.
- (3) The negotiations were concluded at the 12th WTO Ministerial Conference on 17 June 2022. The WTO Ministerial Conference adopted³ the Protocol amending the Marrakesh Agreement establishing the World Trade Organization ("the Protocol") and declared it open for acceptance by the WTO Members.
- (4) The Protocol includes the Agreement on Fisheries Subsidies in its Annex, which will be inserted into Annex 1A to the Marrakesh Agreement Establishing the World Trade Organization upon entry into force of the Protocol.
- (5) The Protocol should be concluded on behalf of the Union,

² OJ C , , p. .

³ WT/MIN(22)/33

HAS ADOPTED THIS DECISION:

Article 1

The Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization is hereby concluded on behalf of the Union.

The text of the Protocol is attached to this Decision.

Article 2

The President of the Council shall designate the person(s) empowered to deposit, on behalf of the Union, the instrument of acceptance, as specified in paragraphs 3 and 5 of the Protocol in order to express the consent of the Union to be bound by the Protocol⁴.

Article 3

This Protocol shall not be construed as conferring rights or imposing obligations which can be directly invoked in courts of the Union or the Member States.

Article 4

This Decision shall enter into force on the day of its adoption and shall be published in the Official Journal of the European Union.

Done at Brussels,

*For the Council
The President*

⁴ The date of entry into force of the Protocol will be published in the Official Journal of the European Union by the General Secretariat of the Council.