EUROPEAN
COMMISSION

Brussels, 7.11.2012
COM(2012) 641 final

2012/0304 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement in the form of an Exchange of Letters between the European Union and the People's Republic of China pursuant to Article XXIV:6 and Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions in the schedules of the Republic of Bulgaria and Romania in the course of their accession to the European Union

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

With the accession of the Republic of Bulgaria and Romania, the European Union enlarged its customs union. Consequently, the European Union was obliged under World Trade Organization (WTO) rules (GATT Article XXIV:6) to enter into negotiations with WTO Members having negotiating rights in the schedules of any of the acceding Members in order to agree on compensatory adjustment. Such adjustment is due if the adoption of the EU's external tariff regime results in an increase in tariff beyond the level for which the acceding country has bound itself at the WTO, whilst taking 'due account of reductions of duties on the same tariff line made by other constituents of the customs union upon its formation'.

On 29 January 2007, the Council authorised the Commission to open negotiations under Article XXIV:6 of GATT 1994. The Commission has therefore negotiated with the Members of the WTO holding negotiating rights with respect to the withdrawal of specific concessions in relation to the withdrawal of the schedules of the Republic of Bulgaria and Romania, in the course of their accession to the European Union.

Negotiations with the People's Republic of China resulted in a draft Agreement in the form of an Exchange of Letters that was initialled on 31 May 2012.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Negotiations have been conducted by the Commission within the framework of the negotiating directives issued by the Council. The Council (Trade Policy Committee) and the European Parliament (INTA Committee) were informed of the text of the draft agreement prior to being initialled.

3. LEGAL ELEMENTS OF THE PROPOSAL

This proposal asks the Council to adopt a Decision concluding the Agreement in the form of an Exchange of Letters with the People's Republic of China. In parallel, a separate proposal on the signature of this Agreement is also submitted.

The ensuing implementing Regulation will be adopted by the Commission, pursuant to Article 144 of the Single Common Market Organisation (CMO) Regulation (Regulation (EC) No 1234/2007) and to Article 7 of the Regulation (EC) No 1216/2009 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products.

2012/0304 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement in the form of an Exchange of Letters between the European Union and the People's Republic of China pursuant to Article XXIV:6 and Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions in the schedules of the Republic of Bulgaria and Romania in the course of their accession to the European Union

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 Parliament,

Whereas:

(1) On 29 January 2007 the Council authorised the Commission to open negotiations with certain other Members of the World Trade Organization under Article XXIV:6 of the General Agreement on Tariffs and Trade (GATT) 1994 in the course of the accession to the European Union of the Republic of Bulgaria and Romania.

(2) Negotiations have been conducted by the Commission within the framework of the negotiating directives adopted by the Council.

(3) These negotiations have been concluded and the Agreement in the form of an Exchange of Letters between the European Union and the People's Republic of China pursuant to Article XXIV:6 and Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions in the schedules of the Republic of Bulgaria and Romania in the course of their accession to the European Union ('the Agreement') was initialled on 31 May 2012.

(4) The Agreement was signed on behalf of the European Union on […], subject to its conclusion at a later date, in accordance with Council Decision […][1].

(5) The Agreement should be approved,

[1] OJ L […], […], p. […].

HAS ADOPTED THIS DECISION:

Article 1

The Agreement in the form of an Exchange of Letters between the European Union and the People's Republic of China pursuant to Article XXIV:6 and Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions in the schedules of the Republic of Bulgaria and Romania in the course of their accession to the European Union (the Agreement) is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to give, on behalf of the Union, the notification provided for in the Agreement[2].

Article 3

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

Done at Brussels,

For the Council
The President

[2] The date of entry into force of the Agreement will be published in the Official Journal of the European Union by the General Secretariat of the Council.

ANNEX

AGREEMENT IN THE FORM OF AN EXCHANGE OF LETTERS

Between the European Union and the People's Republic of China pursuant to Article XXIV:6 and Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions in the schedules of the Republic of Bulgaria and Romania in the course of their accession to the European Union

A. Letter from the European Union

Place, date

Sir,

Following negotiations under Article XXIV:6 and Article XXVIII of the General Agreement on Tariffs and Trade 1994 (GATT) relating to the modification of the Schedules of the Republic of Bulgaria and Romania in the course of their accession to the European Union, I have the honour to propose the following:

1. The European Union shall incorporate in its schedule, for the customs territory of the EU 27, the concessions contained in the schedule of the EU 25 with the following modifications:

On tariff line 0703 20 00 add 12 375 tonnes to the allocation for People's Republic of China under the EU tariff rate quota for garlic, maintaining the present in quota rate of 9.6%.

Add 800 tonnes (drained net weight) to the allocation for People's Republic of China under the EU tariff rate quota for mushroom of species agaricus, prepared or preserved otherwise than by vinegar (tariff item number 2003 10 30, out of quota rate 18.4 + 222.0€/100kg/net eda) and mushroom of species agaricus, provisionally preserved or preserved otherwise than by vinegar (tariff item number 2003 10 20, out of quota rate 18.4 + 191.0€/100kg/net eda), in quota rate 23%; inclusion of tariff line 0711 51 00 (out of quota rate 9.6 + 191 €/100 kg/net eda) in the quota.

Create a tariff rate quota of 2 026 tonnes (erga omnes) for chocolate with an in-quota rate of 38% (tariff items numbers 1806 20, 1806 31, 1806 32 and 1806 90).

Create a tariff rate quota of 2 289 tonnes (erga omnes) for confectionary with an in-quota rate of 35% (tariff item number 1704).

Create a tariff rate quota of 409 tonnes (erga omnes) for biscuits with an in-quota rate of 40% (tariff item number 1905 90).

2. People's Republic of China accepts the European Union's approach to netting-out of tariff rate quotas as a way of adjusting the GATT obligations of the EU 25 and those of the Republic of Bulgaria and Romania following the recent enlargement of the European Union.

The European Union and the People's Republic of China shall notify each other the completion of their internal procedures for the entry into force of the agreement. The agreement shall enter into force 14 days after the date of receipt of the latest notification.

I should be obliged if you would confirm that your Government is in agreement with the content of this letter. Should this be the case, this letter and your confirmation shall together constitute an Agreement in the form of an Exchange of Letters between the European Union and the People's Republic of China.

Please accept, Sir, the assurance of my highest consideration.

For the European Union

B. Letter from the People's Republic of China

Place, date

Sir,

I have the honour to acknowledge the receipt of your letter of …, which reads as follows:

"Following negotiations under Article XXIV:6 and Article XXVIII of the General Agreement on Tariffs and Trade 1994 (GATT) relating to the modification of the Schedules of the Republic of Bulgaria and Romania in the course of their accession to the European Union, I have the honour to propose the following:

1. The European Union shall incorporate in its schedule, for the customs territory of the EU 27, the concessions contained in the schedule of the EU 25 with the following modifications:

> On tariff line 0703 20 00 add 12 375 tonnes to the allocation for People's Republic of China under the EU tariff rate quota for garlic, maintaining the present in quota rate of 9.6%.
>
> Add 800 tonnes (drained net weight) to the allocation for People's Republic of China under the EU tariff rate quota for mushroom of species agaricus, prepared or preserved otherwise than by vinegar (tariff item number 2003 10 30, out of quota rate 18.4 + 222.0€/100kg/net eda) and mushroom of species agaricus, provisionally preserved or preserved otherwise than by vinegar (tariff item number 2003 10 20, out of quota rate 18.4 + 191.0€/100kg/net eda), in quota rate 23%; inclusion of tariff line 0711 51 00 (out of quota rate 9.6 + 191 €/100 kg/net eda) in the quota.
>
> Create a tariff rate quota of 2 026 tonnes (erga omnes) for chocolate with an in-quota rate of 38% (tariff items numbers 1806 20, 1806 31, 1806 32 and 1806 90).
>
> Create a tariff rate quota of 2 289 tonnes (erga omnes) for confectionary with an in-quota rate of 35% (tariff item number 1704).
>
> Create a tariff rate quota of 409 tonnes (erga omnes) for biscuits with an in-quota rate of 40% (tariff item number 1905 90).

2. People's Republic of China accepts the European Union's approach to netting-out of tariff rate quotas as a way of adjusting the GATT obligations of the EU 25 and those of the Republic of Bulgaria and Romania following the recent enlargement of the European Union.

The European Union and the People's Republic of China shall notify each other the completion of their internal procedures for the entry into force of the agreement. The agreement shall enter into force 14 days after the date of receipt of the latest notification.

I should be obliged if you would confirm that your Government is in agreement with the content of this letter. Should this be the case, this letter and your confirmation shall together constitute an Agreement in the form of an Exchange of Letters between the European Union and the People's Republic of China."

I hereby have the honour to express my Government's agreement with the above letter.