EXPLANATORY MEMORANDUM ON EUROPEAN UNION LEGISLATION

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

Submitted by Department for Business, Innovation and Skills on 14th February 2015.

SUBJECT MATTER

1. The Commission proposal will allow the EU to ratify the new World Trade Organisation (WTO) Agreement on Trade Facilitation.

2. The proposal comprises the Commission’s proposal for a Council Decision (6025/15), the text of the Agreement on Trade Facilitation (6025/15 ADD 1) and developing countries’ Category A notifications under the Agreement (6025/15 ADD 2).

3. The Agreement on Trade Facilitation was agreed at the WTO Ministerial at Bali in December 2013. The text of the Agreement was legally scrubbed in the first half of 2014 and the Protocol on the Agreement was adopted by the WTO General Council in November 2014. In doing so, the General Council formally adopted the final, legally-scrubbed, text and opened the Agreement for acceptance by WTO Members. The Agreement will enter into force when two-thirds of WTO Members have ratified.

4. The Agreement is intended to improve the cross-border movement of goods by improving transparency, streamlining customs procedures and removing red tape. The Agreement is divided into two sections. Section I contains provisions on the movement of goods. Section II contains special and differential treatment provisions intended to help developing countries implement the Agreement.

5. The Agreement is binding on developed countries from the date of its entry into force. However, developing countries and Least Developed Countries (LDCs) can determine for themselves the timing and entry into force of their commitments, notifying their intentions to the WTO. For these purposes, their commitments are split into three categories – Category A, which will enter into force when the Agreement enters into force; Category B, which will enter into force after a transitional period; and Category C, which will enter into force only after a transitional period and following support to build implementation capacity in-country.

SCRUTINY HISTORY

6. BIS submitted an EM on 27/11/2013 relating to “Proposal for a Council Decision establishing the position to be taken by the European Union within the 9th
Ministerial Conference of the World Trade Organization (WTO). The Commons European Scrutiny Committee cleared it (Report 26, session 13/14). The Lords Select Committee on the EU cleared it (POS 02/12/2013).

MINISTERIAL RESPONSIBILITY

7. The Secretary of State for Business, Innovation and Skills has primary responsibility for the proposal. The Financial Secretary to the Treasury, in his role as departmental minister for HM Revenue and Customs, has an interest in the implementation of the Agreement. The Secretary of State for International Development has an interest in the benefits of the Agreement for developing countries.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

8. Trade policy is a reserved matter under the UK’s devolution settlements. However, we have shared the content of this Explanatory Memorandum in draft with the devolved administrations.

LEGAL AND PROCEDURAL ISSUES

Legal basis

9. The proposal is based on Article 207(4), in conjunction with point (v) of Article 218(6)(a) of the Treaty on the Functioning of the European Union.

10. No Justice and Home Affairs (JHA) opt-in considerations arise.

European Parliament Procedure

11. The special legislative procedure as set out in Article 218 TFEU.

Voting procedure

12. The proposal will be subject to Qualified Majority Voting.

Impact on United Kingdom Law

13. No UK legislation will be required to implement the proposed Decision.

Application to Gibraltar

14. The proposed Council Decision will not apply to Gibraltar, which is not covered by the EU’s or UK’s WTO membership.

Fundamental rights analysis

APPLICATION TO THE EUROPEAN ECONOMIC AREA

16. The EEA states will not be directly bound by the proposed decision but are expected to adopt the same policies.

SUBSIDIARITY

17. Trade negotiations are handled at European Union level. European Union action is therefore appropriate.

POLICY IMPLICATIONS

18. The Government has strongly supported the negotiation of the Agreement on Trade Facilitation which is consistent with our wider trade and development policy, will benefit our exporters and will benefit developing countries.

19. The Agreement on Trade Facilitation is the first full multilateral agreement negotiated since the establishment of the WTO in 1995. Reaching agreement at Bali in December 2013 and subsequently adopting the Protocol on the Agreement in November 2014 has therefore been of great importance to the WTO as an institution.

20. The UK, through the Commission as our negotiator, helped to shape the Agreement while it was under negotiation. The UK is already fully compliant with the binding obligations in the Agreement and there will therefore be no immediate practical consequences for UK businesses. Most other developed countries are either fully or near-fully compliant. It is from developing countries’ implementation of the Agreement over time that the benefits will chiefly arise, partly to our own and other developed countries’ exporters but primarily to developing countries’ own importers and exporters.


CONSULTATION

22. The Government consulted widely with business, civil society and other stakeholders during the negotiation of the Agreement on Trade Facilitation.

23. No consultation is planned on the proposal for a Council Decision itself.

IMPACT ASSESSMENT

24. The agreement is not expected to have any significant effects on UK customs procedures or the speed of customs clearance at the UK border. However, it should bring benefits for UK exporters and importers (and hence UK consumers) as a result of improved customs clearance times and reductions in administrative burdens at the border in a number of overseas markets, particularly in developing countries.
25. The precise benefits to the UK will depend on the scale and timing of the implementation of the obligations in the Agreement by developing country WTO Members (including “best endeavours” elements). The OECD, for example, has estimated that the agreement could reduce trade costs in developing countries by between 12 and 15%, depending on the scale of implementation. Based on earlier economic modelling by the European Commission¹, the global annual benefits of a trade facilitation agreement could be around $100bn (£70bn), with the EU benefiting by £12bn annually. On reasonable assumptions, the gains for the UK could be in the region of £1bn per year².

26. Given that the UK already complies with the binding obligations in the Agreement on Trade Facilitation, there will be no change in the regulatory burden on UK business as a result of the proposal to conclude the Agreement. No further impact assessment is therefore envisaged at this time. However, we — and many others — will look carefully at the implementation of the Agreement and assess its benefits to all participants over time.

FINANCIAL IMPLICATIONS

27. Given that the UK already complies with the binding obligations in the Agreement on Trade Facilitation, the proposal to conclude the Agreement does not impose any additional costs on the UK.

TIMETABLE

28. The Agreement on Trade Facilitation has already been negotiated and the final text of the Agreement was adopted by the WTO General Council and opened for acceptance by WTO Members in November 2014.

29. The proposal for a Council Decision to conclude is expected to move swiftly, possibly reaching COREPER and Council in mid-March 2015. Thereafter, it will be remitted to the European Parliament (EP) for consent.

30. It is expected that the EP will give consent in early autumn, allowing the dossier to return to Council and for the EU to be in a position to deposit its instrument of acceptance with the WTO Secretariat well ahead of the next WTO Ministerial in December 2015.

Lord Livingston


² The methodology used to derive the possible benefit of the Agreement on Trade Facilitation to the UK is explained in the annex attached to this document.
Annex: Agreement on Trade Facilitation: UK Gains

There is no direct estimate of the potential gains that the Agreement on Trade Facilitation might produce for the EU or UK. But an earlier simulation of the potential gains from trade facilitation liberalisation by CEPII for the European Commission\(^3\), provides some indications of the likely scale of the benefits.

CEPII simulated the impact of various multilateral liberalisation scenarios, including an ambitious Trade Facilitation (TF) deal as part of the Doha Development Agenda (DDA). The estimate assumed a TF deal would reduce the time for goods to clear customs/ports (both going in and being sent out) by 50% of the gap between a country’s actual performance and the average (median) performance for its region\(^4\).

In 2013 prices\(^5\), this boosts global welfare by around £70bn and provides benefits for the EU of around £12bn.

No estimate was provided for the UK alone. However, the impact on the UK is likely to be proportionate to: a) the UK share of extra EU imports and exports of goods, and b) the extent to which the UK’s own customs clearance times would be expected to improve as a result of the TFA.

In 2013 the UK accounted for 14% of extra EU goods imports and 13.2% of extra EU exports\(^6\). On this basis alone one would expect the UK share of the total EU gains to be in the region of £1.7bn.

However, the UK customs regime is one of the most efficient within the EU. According to the World Bank Doing Business report\(^7\), the time to clear UK customs/ports is lower than the EU and OECD average for both imports and exports. For example, in terms of exports, it took 7 days for exports to be processed UK, whereas the median for the EU was 9 days.

Given this, it is unlikely that any benefits for UK traders as a result of changes in processing times at the UK end of an import/export transaction will be less than the EU average. However, UK traders will still benefit from changes taking place in clearance times at customs posts in the country of origin of UK imports and country of destination for UK exports.

Although the gains for the UK may therefore be less than our share of extra-EU trade might suggest, it is still reasonable to assume that gains will in the region of £1 bn (out of £12 bn for the EU as a whole).

The scale of benefits to the UK from the Agreement on Trade Facilitation will also depend to some extent on the degree to which WTO Members implement the optional (“best endeavours”) elements of the agreement. Modelling by the OECD\(^8\)

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\(^1\) Economic impact of potential outcome of the DDA II, CEPII-CIREM, Oct 2011 by Yvan Decreux and Lionel Fontagné

\(^2\) Impacts of Better Trade Facilitation in Developing Countries, Analysis with a New GTAP Database for the Value of Time in Trade, GTAP 11th Conference, Helsinki, 2008, Minor P., Tsigas M.

\(^3\) CEPII estimates were based on 2004 prices. Their estimates were therefore adjusted by the change in the GDP deflator between 2004 and 2013.

\(^4\) Eurostat, EasyCovext database. Based on trade in all goods.

\(^5\) http://www.doingbusiness.org/

\(^6\) http://www.oecd.org/trade/tradedev/OECD_TAD_WTO_trade_facilitation_agreement_potential_impact
suggests, however, that even with limited implementation of optional elements, the agreement will still generate significant reductions in the costs of trading. This suggests that the above estimates of income effects of the agreement will not be highly sensitive to variations in the level of implementation of optional elements.

**OECD Estimates of Reduction in Trading Costs from Trade Facilitation Agreement (%)**

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<th>Low-Income Countries</th>
<th>Lower-Middle Income Countries</th>
<th>Upper Middle Income Countries</th>
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<tr>
<td>Full Implementation</td>
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<td>15.1</td>
<td>12.9</td>
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<tr>
<td>Limited Implementation</td>
<td>11.7</td>
<td>12.6</td>
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Source: OECD