



Brussels, 28 November 2012

**BACKGROUND<sup>1</sup>**  
***FOREIGN AFFAIRS COUNCIL - TRADE ISSUES***  
**Thursday 29 November in Brussels**

*Starting at 9.00, the Council will be called on to approve a mandate for the negotiation of a free trade agreement with **Japan**.*

*It will review progress in negotiations that are currently underway on free trade agreements with **Canada** and **Singapore**.*

*Trade relations with the **southern Mediterranean** are amongst the other items on the Council's agenda.*

*Over lunch, ministers will discuss trade and investment relations with **Russia**, following its accession to the WTO, and trade and investment relations with **China**.*

*A presidency **press conference** will be held after lunch.*

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<sup>1</sup> This note has been drawn up under the responsibility of the press office

## **Decision-making procedures for trade policy**

The Council will take stock of ongoing work on "Omnibus I & II" proposals on the procedures used for decision-making under the EU's common commercial policy (*docs* [7455/11](#) + [11762/11](#)).

The two draft regulations are aimed at modifying a number of regulations adopted between 1972 and 2009, adapting them to decision-making procedures provided for by the Treaty of Lisbon<sup>2</sup>.

The aim is to start negotiations with the European Parliament on the texts in December.

As regards the adoption of delegated and implementing acts under EU regulations, the treaty introduced the following provisions:

- Delegated acts: Article 290 of the Treaty on the Functioning of the European Union allows the legislator, i.e. the Parliament and the Council, to delegate to the Commission the power to adopt non-legislative acts of general application, supplementing or amending certain non-essential elements of a basic legislative act. Article 290(2) of the treaty provides two conditions to which the legislator may subject the delegation of power: firstly, the right to revoke the delegation of power, and secondly the right to express objections, i.e. the right of opposition;
- Implementing acts: Article 291 of the TFEU allows implementing powers to be delegated to the Commission. Rules and general principles for control by the member states of the Commission's exercise of implementing powers have been laid down in regulation 182/2011.

The Omnibus proposals provide that procedures used under specific existing regulations whereby the Council was involved in decision-making that was not based on decision 1999/468/EC on implementing procedures be converted into either delegated acts pursuant to article 290 or implementing acts pursuant to article 291 of the TFEU. For all other decision-making procedures established in trade policy legislation, the proposals provide that the regime for delegated acts laid down in article 290 be used.

Based on article 207(2) of the TFEU, the two regulations require a qualified majority for adoption by the Council, in agreement with the Parliament.

## **Foreign direct investment - Financial responsibility for dispute settlement**

The Council will take stock of ongoing work on a proposal for a regulation aimed at establishing a legal and financial framework for investor-state dispute settlement proceedings, as part of a broader framework for foreign direct investment (*doc.* [11868/12](#)). The Council will hold an exchange of views on the basis of a presidency note.

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<sup>2</sup> The Treaty of Lisbon entered into force in December 2009.

The Treaty of Lisbon has brought foreign direct investment within the scope of the EU's common commercial policy, making it an EU competence. International agreements on foreign direct investment include the possibility for an investor to bring a claim against a state where the state is alleged to have acted in a manner that is inconsistent with the agreement. Where such litigation takes place, the state will incur costs and may, if it loses, be required to pay compensation.

The draft regulation, submitted by the Commission in June, sets a framework for managing the financial consequences of such disputes, specifying how cooperation between the Commission and the member states should be structured in specific cases.

Under the proposal, financial responsibility arising from a dispute settlement claim would be apportioned to either the EU, a member state or both, depending on the origin of the measure for which the investor has filed a complaint.

The proposal is one of the key elements in the creation of an EU investment policy, which involves the negotiation of new rules on investment with key trading partners<sup>3</sup>, and the continuity of existing bilateral investment treaties between member states and third countries

The European Parliament's committee on international trade is expected to vote on the draft regulation in the first quarter of 2013.

Based on article 207(2) of the Treaty on the Functioning of the European Union, the regulation requires a qualified majority for adoption by the Council, in agreement with the Parliament.

## **EU-Japan trade relations**

The Council will be called on to authorise the Commission to open negotiations on a free trade agreement with Japan.

This follows a "scoping" exercise that was launched following the EU-Japan summit in Brussels in May 2011, in order to define the potential scope and level of ambition of a free trade agreement. The agreement would be negotiated in parallel with a broader bilateral framework agreement. The scoping exercise was concluded in May 2012.

The Commission submitted to the Council its proposal for a mandate on 20 July. The proposal included a recommendation for a Council decision authorising the opening of negotiations, with the related draft negotiating directives in an annex. The proposed directives foresee an agreement that would provide for the progressive and reciprocal liberalisation of trade in goods, services and investment, as well as rules on trade-related issues and the elimination of non-tariff barriers.

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<sup>3</sup> The Council has adopted directives for negotiations on investment with Canada, India, Singapore, Tunisia, Morocco, Jordan and Egypt.

The presidency submitted a revised draft mandate on 21 November.

Japan is the EU's seventh-largest trading partner while the EU is Japan's third-largest trading partner, with 3.6 % and 11 % respectively of each other's trade in goods in 2011.

The European Council in October called for an agreement to be reached on negotiating directives with a view to launching negotiations in the months ahead.

The decision requires a common accord of the member states for adoption by the Council.

### **EU-Canada trade negotiations**

The Commission will brief the Council on latest developments in negotiations on a comprehensive economic and trade agreement with Canada. The Council will discuss the remaining outstanding issues, with a view to enabling the negotiations to be concluded.

The European Council in October called for the negotiations to be finalised in the coming months. Commissioner Karel De Gucht met Canadian trade minister Ed Fast in Brussels on 22 November.

In a note submitted on 6 November, the Commission confirms that the negotiations have entered their final phase. But while an *ad referendum* agreement has been reached in many areas, a sizeable list of open issues remains. According to the Commission, the following issues are likely to remain on the table until an accord is reached: tariff rate quotas for sensitive agricultural products, pharmaceutical patents and geographical indications, public procurement market access, services and investment market access, financial services, cultural services, "mode 4" services and the "car package" (product-specific rules of origin, tariffs and automotive standards).

Canada is the EU's 12th most important trading partner while the EU is Canada's second-largest trading partner, with 1.6 % and 10.4 % respectively of each other's external trade in 2011.

The talks have been ongoing for more than three years. In April 2009, the Council provided a mandate for the Commission to negotiate a comprehensive economic and trade agreement (CETA) with Canada. Negotiations were launched at the EU-Canada summit in Prague the following month. In September 2011, the Council authorised the Commission to start talks on investment within the framework of those negotiations.

On 30 October 2012, an agreement was reached with Canada on the chapter of the agreement relating to the criminal enforcement of intellectual property rights. This was negotiated by the Cyprus presidency on behalf of the member states, as the issue falls within the competences of the member states.

## **EU-Singapore trade negotiations**

The Commission will brief the Council on latest developments in negotiations on a free trade agreement with Singapore. The Council will assess the situation and the prospects for reaching an agreement.

The European Council in October called for the negotiations to be finalised in the coming months. A free trade agreement (FTA) with Singapore would set a precedent for FTAs with other ASEAN<sup>4</sup> countries.

Key outstanding issues concern tariffs, rules of origin (regional cumulation), geographical indications (GIs) and market access for services. Singapore's main request concerns rules of origin and an improved tariff offer; it expects the EU to move on these two issues in return for concessions on services and GIs, as well as other regulatory disciplines.

ASEAN is the EU's third largest trading partner outside Europe. Singapore is the EU's main investment partner within the bloc, accounting for a third of EU trade with ASEAN.

In April 2007, the Council provided a mandate for the Commission to negotiate a region-to-region FTA with the ASEAN countries. However, those talks were put on hold in May 2009. In December 2009, the Council therefore decided to pursue FTA negotiations with the ASEAN countries individually, in particular with Singapore, whilst preserving the objective of a region-to-region FTA.

## **Trade relations with southern Mediterranean countries**

The Council will assess moves towards the launch of free trade negotiations with Egypt, Jordan, Morocco and Tunisia. The Commission will brief the Council on progress on "scoping" exercises aimed at defining the scope and level of ambition of possible "deep and comprehensive" free trade areas with the four countries.

The Trade Policy Committee has just recently given the go-ahead for the launch of negotiations on a "deep and comprehensive" free trade area between the EU and Morocco.

In response to the events of the "Arab Spring", the European Council in March 2011 asked the Commission to present proposals on how to further enhance trade and foreign direct investment in the southern Mediterranean, in the short, medium and long term.

Accordingly, the negotiations would set out to upgrade existing Euro-Mediterranean association agreements with Egypt, Jordan, Morocco and Tunisia in order to substantially enhance market access, improve the investment climate and support economic reforms there, taking into account the particular circumstances of each partner country.

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<sup>4</sup> Association of Southeast Asian Nations

In December 2011, the Council authorised the opening of negotiations and adopted negotiating directives for "deep and comprehensive" free trade areas with Egypt, Jordan, Morocco and Tunisia. It specified that negotiations would only be launched after consultation of the Trade Policy Committee on the basis of a report from the Commission.

On 14 November 2012, the Commission announced the successful completion of the scoping exercise for Morocco, and on 23 November the Trade Policy Committee supported the Commission's view that Morocco is able and ready to negotiate a "deep and comprehensive" free trade area. Meanwhile, the process with Tunisia is still underway, and at least one more bilateral meeting will be necessary to complete technical work. At this point in time, the readiness of Jordan and Egypt remains to be determined.

### **Other items**

Over lunch, ministers will review developments following **Russia's** accession to the WTO in August. They will consider the implementation by Russia of commitments made during the accession process and the compatibility of its trade restrictions with WTO rules.

Ministers will also discuss the prospects for trade and investment relations with **China**, including the possible launch of negotiations on investment and China's suggestion to explore the feasibility of a free trade agreement.

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