Regulation (EU) No 1029/2012 of the European Parliament and of the Council of 25 October 2012 introducing emergency autonomous trade preferences for Pakistan

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) The relationship between the European Union (hereinafter referred to as 'the Union') and the Islamic Republic of Pakistan (hereinafter referred to as 'Pakistan') builds on the Cooperation Agreement which entered into force on 1 September 2004[(2)]. One of its main objectives is to secure the conditions for, and to promote the increase and development of, trade between the Parties to the Cooperation Agreement. Respect for human rights, including core labour rights, and democratic principles are also an essential element of that Agreement.

(2) In July and August 2010, following heavy monsoon rains, devastating floods affected extensive regions of Pakistan, notably the areas of Balochistan, Khyber Pakhtunkhwa, Punjab, Sindh and Gilgit-Baltistan. According to United Nations sources, the flooding affected some 20 million people and 20 per cent of Pakistan's land, equivalent to at least 160 000 square kilometres, and leaving up to 12 million people in need of urgent humanitarian aid.

(3) Humanitarian aid is of course the primary instrument in this kind of situation and the Union has been at the forefront in this field since the beginning of the emergency, committing in excess of EUR 423 million in emergency aid to Pakistan.

(4) It will be important to use all available means to support Pakistan's recovery from this emergency including the proposed exceptional trade measures to boost Pakistan's exports in order to contribute to its future economic development, while ensuring that consistency and coherence is maintained at all levels with a view to developing a sustainable long-term strategy.

(5) The severity of this natural disaster demands an immediate and substantial response, which would take into account the geostrategic importance of Pakistan's partnership

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with the Union, mainly through Pakistan's key role in the fight against terrorism, while contributing to the overall development, security and stability of the region.

(6) The effects of the autonomous trade preferences should be able to be measured concretely in terms of job creation, poverty eradication and the sustainable development of Pakistan's working population and poor.

(7) The European Council, in a Declaration on Pakistan attached to its Conclusions of 16 September 2010, resolved to mandate Ministers to agree urgently on a comprehensive package of short, medium and longer term measures which will help underpin Pakistan's recovery and future development, comprising inter alia ambitious trade measures essential for economic recovery and growth.

(8) In particular, the European Council underlined its firm commitment to grant exclusively to Pakistan increased market access to the Union through the immediate and time limited reduction of duties on key imports from Pakistan. In the light of that Declaration, the Commission proposed a package identifying 75 tariff lines specific to Pakistan's core export sectors in those areas worst hit by the floods, asserting that an increase in Pakistani exports to the Union of EUR 100 million or more a year would provide real, substantial and worthwhile assistance to the region.

(9) Pakistan's trade with the Union is mainly composed of textiles and clothing products which accounted for 73,7 % of Pakistani exports to the Union in 2009. Pakistan also exports ethanol and leather, which are in addition to textiles and clothing, sensitive industrial products in certain Member States where jobs in the industry have already been impacted to varying degrees by the global recession. Those industries are struggling to adapt to a new global trading environment.

(10) The textiles sector is of key importance to the Pakistani economy, accounting for 8,5 % of gross domestic product and employing 38 % of the labour force, about half of which is made up of women.

(11) Given the hardship being suffered by the Pakistani people due to the devastating floods, it is therefore appropriate to extend exceptional autonomous trade preferences to Pakistan by suspending for a limited period of time all tariffs for certain products of export interest to Pakistan. The provision of such trade preferences should only cause limited adverse effects on the domestic market of the Union and should not affect negatively least developed Members of the World Trade Organisation (WTO).

(12) Those measures are proposed as part of an exceptional package, in response to the specific situation in Pakistan. Under no circumstances should they constitute a precedent for the Union's trade policy with other countries.

(13) The autonomous trade preferences will be either in the form of an exemption from customs duties upon import in the Union or in the form of tariff-rate quotas.

(14) Entitlement to benefit from the exceptional autonomous trade preferences is conditional on Pakistan's compliance with the relevant rules of origin of products and the procedures related thereto as well as involvement in effective administrative cooperation with the Union in order to prevent any risk of fraud. Serious and systematic violations of the

conditions for the entitlement to the preferential arrangement, fraud or failure to provide administrative cooperation for the verification of origin of goods should constitute reasons for a temporary suspension of the preferences.

(15) For the purposes of defining the concept of originating products, certification of origin and administrative cooperation procedures, Part I, Title IV, Chapter 2, Section 1 and Section 1A of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code[(3)], with the exception of Articles 68 to 71, 90 to 97i and 97j(2) of those Sections, should apply. However, as regards cumulation of origin, only materials originating in the Union should be allowed to be used for such purposes. Regional cumulation and other types of cumulation except that with the materials originating in the Union should not apply in relation to the determination of the originating status of products covered by the autonomous trade preferences established pursuant to this Regulation in order to ensure that sufficient transformation takes place in Pakistan.

(16) Extending autonomous trade preferences to Pakistan requires a waiver from the obligations of the Union under Articles I and XIII of the General Agreement on Tariffs and Trade 1994 (GATT) pursuant to Article IX of the Agreement establishing the WTO. The WTO General Council granted such a waiver on 14 February 2012.

(17) In order to ensure an immediate and sustainable impact on the economic recovery of Pakistan in the aftermath of the floods and in accordance with the WTO waiver, it is recommended to limit the duration of the autonomous trade preferences until 31 December 2013.

(18) In order to react swiftly and ensure the integrity and orderly functioning of the autonomous trade preferences for Pakistan and in order to ensure uniform conditions for the implementation of this Regulation concerning temporary suspension due to non-compliance with customs-related procedures and obligations, due to serious and systematic violations of the fundamental principles of human rights, democracy and the rule of law by Pakistan, or due to Pakistan not respecting the condition that it abstain from 1 July 2012 from introducing new or increasing existing export duties or charges having equivalent effect or any other restriction or prohibition on the export or sale for export of any materials used in the production of the products covered by this Regulation, powers should be conferred on the Commission to adopt immediately applicable implementing acts, where imperative grounds of urgency so require. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers[(4)].

(19) In order to make the necessary technical adaptations to the list of goods for which the autonomous trade preferences apply and to remove products from the scope of this Regulation where volumes of imports covered by this Regulation increase beyond certain levels, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect

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of amending Annexes I and II to reflect changes in the combined nomenclature and to remove products from the scope of this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(20) In order to address without delay significantly increased imports of the products exempted from customs duties when imported into the Union and which may have an adverse impact upon Union producers, the Commission should adopt delegated acts removing products from the scope of this Regulation under the urgency procedure.

(21) No later than two years after the expiry of this Regulation, the Commission should submit a report to the European Parliament and to the Council on the effects of these autonomous trade preferences. That report should include a detailed analysis of the effects of these preferences on the economy of Pakistan and their impact on trade and the Union's tariff income as well as on the Union economy and jobs. In reporting, the Commission should take into account in particular the effects of the autonomous trade preferences in terms of job creation, poverty eradication and the sustainable development of Pakistan's working population and poor,

HAVE ADOPTED THIS REGULATION:

Article 1

Preferential arrangements

1 Products originating in Pakistan and included in Annex I shall be exempt from customs duties upon import into the Union.

2 Products originating in Pakistan and included in Annex II shall be admitted for import into the Union subject to the special provisions laid down in Article 3.

Article 2

Conditions for entitlement to the preferential arrangements

1 Entitlement to benefit from the preferential arrangements introduced in Article 1 shall be subject to:

a compliance with the rules of origin of products and the procedures related thereto as provided for in Part I, Title IV, Chapter 2, Section 1 and Section 1A, subsections 1 and 2 of Regulation (EEC) No 2454/93, with the exception of Articles 68 to 71, 90 to 97i and Article 97j(2) of those Sections. However, as regards cumulation of origin for the purpose of the determination of the originating status of products covered by the arrangements introduced in Article 1 of this Regulation, only cumulation with the materials originating in the Union is allowed. Regional cumulation and other types of cumulation with the exception of the cumulation with materials originating in the Union, is not allowed;

b compliance with the methods of administrative cooperation as provided for in Part I, Title IV, Chapter 2, Section 1, subsection 3 of Regulation (EEC) No 2454/93;

c Pakistan not engaging in serious and systematic violations of human rights, including core labour rights, fundamental principles of democracy and the rule of law;

d Pakistan abstaining from introducing new or increasing existing export duties or charges having equivalent effect or any other restriction or prohibition on the export or sale for export of any materials primarily used in the production of any of the products covered by those preferential arrangements destined for the territory of the Union, from 1 July 2012.

2 Certificates of origin 'Form A' issued by the competent authorities of Pakistan pursuant to this Regulation shall bear the following endorsement in box 4 'Autonomous measure — Regulation (EU) No 1029/2012[(5)]'.

Article 3

Tariff quotas

1 Products listed in Annex II shall be admitted for import into the Union with the exemption of customs duties within the limits of Union tariff quotas as set out in that Annex.

2 The tariff quotas referred to in paragraph 1 and listed in Annex II shall be administered by the Commission in accordance with Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93.

Article 4

Removal of products from the scope of this Regulation

1 Where, in the calendar year 2012 or 2013, imports based on customs import data for a product originating from Pakistan and included in Annex I increase, in volume, by 25 % or more, as compared to the average of the years 2009 to 2011, that product shall be removed from the scope of this Regulation for the remainder of that year. For the purposes of this paragraph, the Commission shall be empowered to adopt delegated acts, in accordance with Article 6, to amend Annex I to remove that product from the scope of this Regulation for the remainder of that year.

2 Upon the entry into force of the delegated act, imports of the product referred to in paragraph 1 shall be subject to 'most-favoured-nation' or other applicable duties.

Article 5

Technical adjustments to the Annexes

The Commission shall be empowered to adopt delegated acts in accordance with Article 6 to amend the Annexes in order to incorporate amendments and technical adjustments made necessary by amendments to the Combined Nomenclature and to the TARIC subdivisions.