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2019/0132 (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 Ukraine amending the trade preferences for poultry meat and poultry meat preparations provided for by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part (“the Association Agreement”), including a Deep and Comprehensive Free Trade Area, entered into force on 1 September 2017. The Association Agreement, amongst others, lays down preferential terms for bilateral trade in goods.

From mid-2016, a new type of poultry cut started to be imported from Ukraine to the EU in increasing quantities. This novel cut consists of a traditional breast cap with the humerus bones of the wings attached, the latter making up for a very small part of the total weight of the cut. After a minimal transformation, this cut can be marketed in the EU as poultry breast. The rapid increase in duty free imports of this particular poultry cut, which was neither existent nor foreseeable during the negotiations of the Association Agreement, undermines the protection provided for poultry breast under the Association Agreement and has the potential to disrupt the delicate balance in the poultry meat market of the EU. On 20 December 2018, the Council authorised the Commission to open negotiations with Ukraine with a view to find a solution by amending the trade preferences for poultry meat and poultry meat preparations provided for by the Association Agreement.

The negotiations were conducted from 29 January to 22 February 2019 and concluded on 19 March 2019. The agreement consists of integrating the two tariff lines CN 0207 13 70 and 0207 14 70 into the existing tariff rate quota (TRQ) of currently 18 400 tons and increasing to 20 000 tons in 2021 (Order Number 09.4273) while the size of the TRQ will be increased by 50 000 tons. Imports under tariff lines CN 0207 13 70 and 0207 14 70 exceeding the TRQ would then become subject to Most Favoured Nation duty rate of 100,8 €/100 kg net weight.

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

The proposal establishes a stable and predictable trading environment for poultry meat and ensures reasonable and measured increase in trade with Ukraine. This is consistent with the objective of free and fair trade mentioned in Article 3(5) of the Treaty on European Union as well as with the objective of harmonious development of world trade mentioned in Article 206 of the Treaty on the Functioning of the European Union (TFEU).

• **Consistency with other Union policies**

The objectives described above are consistent with the Common Agricultural Policy, and in particular with its objectives under Article 39 of the TFEU which include market stabilisation.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• **Legal basis**

Article 207 in conjunction with 218(4) of the Treaty on the Functioning of the European Union (TFEU).

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

According to Article 5(3) of the TEU, the subsidiarity principle does not apply in areas of exclusive EU competence. The common commercial policy is listed among the areas of

exclusive competence of the Union in Article 3 of the TFEU. This policy includes the negotiation of trade agreements pursuant to, inter alia, Article 207 TFEU

- **Proportionality**

This proposal is in line with the principle of proportionality. Indeed, an amendment to the tariff rates and tariff rate quota concessions for poultry meat and poultry meat preparations in the Association Agreement is the only way to reach a solution to the problem highlighted above and therefore achieve the objective of this proposal.

- **Choice of the instrument**

Decision of the Council of the European Union.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

The Commission has been informed by various stakeholders notably the European Poultry meat sector of their concern about imports into the Union of this novel poultry cut, consisting mainly of poultry breast from Ukraine. The Commission has closely monitored imports of poultry meat from Ukraine and thoroughly analysed stakeholders' claims on this particular issue.

- **Collection and use of expertise**

The Commission has been in contact with various interested parties who provided their views on specific market access concerns in relation to duty free poultry meat imports from Ukraine.

- **Impact assessment**

The proposal is not supported by an Impact Assessment.

As explained under section "Reasons for and objectives of the proposal" imports of duty free novel cuts are increasing rapidly. As such imports are not subject to quantitative restrictions they have the potential, if their trade regime remains unchanged, to undermine the protection provided for poultry breast in the form of TRQs under the Association Agreement and consequently to disrupt the delicate balance in the poultry meat market of the EU. It is therefore urgent to find a solution to this situation. The Commission has received numerous written questions from Members of the European Parliament and the European poultry meat sector asking for action in order to find a solution.

The value of imports into the EU under the two tariff lines CN 0207 13 70 and 0207 14 70 in the last full calendar years 2016 and 2017 reached a combined import value of 43.9 million Euros. This is 23.9% of total EU poultry meat imports from Ukraine in 2016 and 2017 and represents 1.1% of total EU poultry meat imports from all third countries in those two calendar years. In 2018 the import value reached 91.4 million Euros.

The proposal will consolidate the current duty free imports under tariff lines CN Codes 0207 13 70 and 0207 14 70 "other cuts fresh or frozen" into the existing tariff rate quota for poultry

imports from Ukraine and reinstate the Most Favoured Nation duty for those two tariff lines. That means that the Association Agreement will stabilise existing EU imports of poultry meat from Ukraine and with no further consequences in bilateral trade.

- **Regulatory fitness and simplification**

Not relevant

- **Fundamental rights**

The proposal will not have any consequences for the protection of fundamental rights

4. BUDGETARY IMPLICATIONS

The proposal will have no impact on the budget of the EU in the form of foregone customs duties.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will continue to monitor closely imports of poultry meat from third countries.

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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 Article 207(3) and the first subparagraph of Article 207(4), in conjunction with point (a)(v) of Article 218(6) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part¹ ('the Association Agreement') entered into force on 1 September 2017.
- (2) A new type of poultry cut consists of a traditional breast cap with the humerus bones of the wings attached and can, after minimal transformation in the Union, be marketed in the Union as poultry breast. Unlimited imports of those cuts, of which imports from Ukraine reached 55 500 tons in 2018, therefore risk undermining the conditions under which traditional poultry breast cuts may be imported into the Union under the Association Agreement, in particular the quantitative restrictions in the form of a tariff rate quota.
- (3) On 20 December 2018, the Council authorised the Commission to open negotiations with Ukraine with a view to find a solution by amending the trade preferences for poultry meat and poultry meat preparations provided for by the Association Agreement. The negotiations were successfully concluded on 19 March 2019.
- (4) In accordance with Council Decision (EU) 2019/...², the Agreement in the form of an exchange of letters between the European Union and Ukraine amending the trade preferences for poultry meat and poultry meat preparations provided for by the Association Agreement was signed on [xx], subject to its conclusion.
- (5) The Agreement should be approved on behalf of the Union,

¹ OJ L 161, 29.5.2014, p. 3.

² Council Decision (EU) 2019/... on the signing, on behalf of the European Union, and provisional application of the Agreement in the form of an exchange of letters between the European Union and Ukraine amending the trade preferences for poultry meat and poultry meat preparations provided for by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part (OJ L xxx, xx.xx.xxxx, p. x).

HAS ADOPTED THIS DECISION:

Article 1

The Agreement in the form of an exchange of letters between the European Union and Ukraine amending the trade preferences for poultry meat and poultry meat preparations provided for by the Association Agreement is hereby approved on behalf of the Union³.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the European Union, to the deposit of the instrument of approval with the Depositary of the Agreement, in order to express the consent of the European Union to be bound by the Agreement.

Article 3

This Decision shall enter into force on the day of its adoption⁴.

Done at Brussels,

*For the Council
The President*

³ The Agreement has been published in [give OJ reference] together with the decision on signature.

⁴ 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.