



Brussels, 27.11.2018
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Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations of an agreement amending the existing tariff rate quota for poultry meat and poultry meat preparations and amending the existing tariff regime for other poultry cuts, set out in Annex I-A to Chapter 1 of the Association Agreement between the European Union and its 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 Agreement¹ (Agreement), including a Deep and Comprehensive Free Trade Area, between the European Union (EU) and its Member States, of the one part, and Ukraine, of the other part, has applied provisionally since 1 January 2016 and fully entered into force on 1 September 2017. The Agreement, amongst others, lays down preferential terms for bilateral trade in goods.

From mid-2016, using the preferences under the Agreement, a new type of poultry cut started to be imported from Ukraine to the EU in increasing quantities². 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 cut is mainly imported under tariff line CN 0207 13 70 ("other cuts fresh") and some minor quantities entered the EU under tariff line CN 0207 14 70 ("other cuts frozen"). Under the Agreement, imports under those two tariff lines can enter the EU market at zero duty and without any quantitative restrictions.

It should be highlighted that traditional cuts of poultry breast (CN 0207 13 50 or CN 0207 14 50) are subject to a quantitatively limited tariff rate quota (TRQ) at zero duty (currently at 17.600 tons, increasing to 20.000 tons by 2021)³ beyond which the Most Favoured Nation tariffs apply.

The rapid increase in duty free imports of this particular poultry cut, which was neither existent nor foreseeable during the negotiations of the Agreement, undermines the protection provided for poultry breast under the Agreement and has the potential to disrupt the delicate balance in the poultry meat market of the EU.

The objective of the proposal is to authorise the opening of negotiation for an amendment to the Agreement in order to better frame imports into the EU of poultry meat from Ukraine while ensuring the intended protection of EU producers.

To that effect, the envisaged amendment would consist in integrating the two tariff lines CN 0207 13 70 and 0207 14 70 into the existing tariff rate quota of currently 17 600 tons and increasing to 20 000 tons in 2021 (Order Number 09.4273) while the size of the quota would be reviewed. Imports under tariff lines CN 0207 13 70 and 0207 14 70 exceeding the quota would then become subject to Most Favoured Nation duty rates.

For establishing the new size of the quota/s, it is appropriate to consider the volume of imports into the EU from Ukraine of poultry products under the two tariff lines CN 0207 13 70 and 0207 14 70 between July 2017 and June 2018 and to take account of the likely increase in trade.

¹ OJ L 161, 29.5.2014, p. 3.

² In the first six months of 2018 imports of this cut reached provisionally 25.000 tons.

³ See Commission Implementing Regulation (EU) 2015/2078 of 18 November 2015 (OJ L 302, 19.11.2015, p. 63).

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

The aim is to establish a stable and predictable trading environment for poultry meat under the Agreement and to ensure 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 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 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.

The proposed measure 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. That means that the proposed measure would stabilise existing EU imports of poultry meat from Ukraine and no further consequences in bilateral trade are anticipated from this measure.

The time period during which the relevant imports grew from Ukraine coincided with reduced imports from one of the main third country poultry meat suppliers, Brazil, for reasons mainly linked to food safety. Under this very specific conjuncture, balance could be preserved on the EU market.

However, the already considerable and growing capacity to produce poultry in Ukraine will likely lead to further significant increases of imports into the EU, should duty free access for the “other cuts fresh or frozen” tariff lines be kept under the Agreement. Without reintroducing a duty on these tariff lines, the Ukrainian poultry sector would continue to enjoy unlimited access to the EU poultry breast market. This risks destabilising prices and disrupting the production/import balance in EU's poultry meat market.

- **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 proposed measure should have no impact on the budget of the EU in the form of foregone customs duties as a consequence of the introduction of an increased tariff rate quota for poultry meat. The size of the quota increase should indeed correspond largely to the annual import of poultry meat that currently enter the Union free of customs duties.

5. OTHER ELEMENTS

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

The Commission monitors closely imports of poultry meat from third countries. As a result of this monitoring the Commission detected, in time, the imports of this novel cut of duty free poultry meat. Imports of poultry meat will continue to be closely monitored by the Commission.

- **Explanatory documents (for directives)**

Not applicable

- **Detailed explanation of the specific provisions of the proposal**

The proposal relates to the authorisation to be given by the Council for the Commission to negotiate for the EU an amendment to the Agreement.

In accordance with Article 207 TFEU, it is suggested that the Council of the European Union designates the Trade Policy Committee as the committee in consultation with which the negotiations must be conducted.

The European Parliament will be informed at all stages of the procedure, in line with Article 218(10) TFEU.

The Commission recommends that the negotiating directives be made public immediately after their adoption.

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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 218(4).

Having regard to the recommendation from the European Commission,

Whereas:

- (1) The Association Agreement⁴ 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 Agreement') has applied provisionally since of 1 January 2016 and entered into force on 1 September 2017.
- (2) From mid-2016 imports from Ukraine into the EU of a new type of poultry cut under CN 0207 13 70 ("other cuts fresh") and CN 0207 14 70 ("other cuts frozen") have begun. These import have risen sharply and reached 25.000 tons in the first six months of 2018. Under the Agreement, these import can enter the EU market at zero duty without any quantitative limits.
- (3) The 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 these cuts therefore risk undermining the conditions under which traditional poultry breast cuts may be imported in the Union under the Agreement, in particular the quantitative restrictions in the form of a tariff rate quota.
- (4) Negotiations should therefore be opened with a view to concluding an agreement amending the Association Agreement with Ukraine as regards the tariff regime and tariff rate quota for poultry meat and poultry meat preparations,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is authorised to negotiate on behalf of the Union an amendment to the tariff schedule of the EU for the two tariff lines CN 0207 13 70 and CN 0207 14 70 "other cuts fresh or frozen" of Annex I-A to Chapter 1 and to the tariff rate quota for poultry meat and poultry meat preparations of Appendix to Annex I-A to Association Agreement.

⁴ OJ L 161, 29.5.2014, p. 3.

Article 2

The negotiating directives are set out in the annex.

Article 3

The negotiations shall be conducted in consultation with the [...].

Article 4

This Decision and its annex will be made public immediately after their adoption.

Article 5

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*