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THE EUROPEAN PARLIAMENT

THE COUNCIL

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Subject: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on temporary trade-liberalisation measures supplementing trade concessions applicable to Ukrainian products under 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

REGULATION (EU) 2023/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

**on temporary trade-liberalisation measures supplementing trade concessions
applicable to Ukrainian products under 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 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 procedure¹,

¹ Position of the European Parliament of 9 May 2023 (not yet published in the Official Journal) and decision of the Council ...

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’) constitutes the basis of the relationship between the Union and Ukraine. In accordance with Council Decision 2014/668/EU², Title IV of the Association Agreement, which relates to trade and trade-related matters, has been applied provisionally since 1 January 2016, and entered into force on 1 September 2017, following ratification by all Member States.
- (2) The Association Agreement expresses the desire of the Parties to the Association Agreement (the ‘Parties’) to strengthen and widen relations in an ambitious and innovative way, to facilitate and achieve gradual economic integration, and to do so in compliance with the rights and obligations arising out of the World Trade Organization membership of the Parties.

¹ OJ L 161, 29.5.2014, p. 3.

² Council Decision 2014/668/EU of 23 June 2014 on the signing, on behalf of the European Union, and provisional application of 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, as regards Title III (with the exception of the provisions relating to the treatment of third-country nationals legally employed as workers in the territory of the other Party) and Titles IV, V, VI and VII thereof, as well as the related Annexes and Protocols (OJ L 278, 20.9.2014, p. 1).

- (3) Article 25 of the Association Agreement provides for the progressive establishment of a free trade area between the Parties in accordance with Article XXIV of the General Agreement on Tariffs and Trade 1994 ('GATT 1994'). To that end, Article 29 of the Association Agreement provides for the progressive elimination of customs duties in accordance with the Schedules included therein and for the possibility of accelerating and broadening the scope of such elimination. Article 48 of the Association Agreement provides that the public interest is to be considered before applying anti-dumping measures between the Parties.
- (4) Russia's unprovoked and unjustified war of aggression against Ukraine since 24 February 2022 has had a profoundly negative impact on the ability of Ukraine to trade with the rest of the world, both because of the destruction of production capacity and the unavailability of a significant proportion of means of transport due to, for example, the restriction and uncertainty of access to the Black Sea. Under such exceptional circumstances and to mitigate the negative economic impact of Russia's war of aggression against Ukraine, it is necessary to accelerate the development of closer economic relations between the Union and Ukraine in order to provide continued support to the Ukrainian authorities and population. It is therefore necessary and appropriate to continue stimulating trade flows and granting concessions in the form of trade-liberalisation measures for all products, in line with the acceleration of the elimination of customs duties on trade between the Union and Ukraine.

- (5) In accordance with Article 21(3) of the Treaty on European Union (TEU), the Union is to ensure consistency between the different areas of its external action. Pursuant to Article 207(1) of the Treaty on the Functioning of the European Union (TFEU), the common commercial policy is to be conducted in the context of the principles and objectives of the Union's external action.
- (6) Regulation (EU) 2022/870 of the European Parliament and of the Council¹ expires on 5 June 2023.

¹ Regulation (EU) 2022/870 of the European Parliament and of the Council of 30 May 2022 on temporary trade-liberalisation measures supplementing trade concessions applicable to Ukrainian products under 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 152, 3.6.2022, p. 103).

- (7) The trade-liberalisation measures established by this Regulation should take the following form: (i) the suspension of the application of the entry price system to fruit and vegetables; (ii) the suspension of tariff-rate quotas and import duties; (iii) by way of derogation from Article 14(1), first subparagraph, of Regulation (EU) 2016/1036 of the European Parliament and of the Council¹, anti-dumping duties on imports originating in Ukraine made during the application of this Regulation should not be collected at any point in time, including after the expiry of this Regulation; and (iv) the temporary suspension of the application of Regulation (EU) 2015/478 of the European Parliament and of the Council². Through those measures, the Union will, in effect, temporarily provide appropriate economic and financial support to the benefit of Ukraine and the economic operators that are affected.
- (8) In order to prevent fraud, the preferential arrangements established by this Regulation should be conditional upon Ukraine complying with all the relevant conditions for obtaining benefits under the Association Agreement, including the rules of origin of products concerned and the procedures related thereto, as well as Ukraine's involvement in close administrative cooperation with the Union, as provided for by the Association Agreement.

¹ Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 21).

² Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports (OJ L 83, 27.3.2015, p. 16).

- (9) Ukraine should abstain from introducing new duties or charges having equivalent effect and new quantitative restrictions or measures having equivalent effect, from increasing existing levels of duties or charges or from introducing any other restrictions on trade with the Union, unless clearly justified in the context of Russia's war of aggression. In the event that Ukraine fails to comply with any of those conditions, the Commission should be empowered to suspend temporarily all or part of the preferential arrangements established by this Regulation.
- (10) Article 2 of the Association Agreement provides, among other things, that respect for democratic principles, human rights and fundamental freedoms, the promotion of respect for the principles of sovereignty and territorial integrity, inviolability of borders, and independence as well as countering the proliferation of weapons of mass destruction, related materials and their means of delivery constitute essential elements of the Association Agreement. Furthermore, Article 3 of the Association Agreement states that the rule of law, good governance, the fight against corruption, the fight against the different forms of trans-national organised crime and terrorism, the promotion of sustainable development and effective multilateralism are central to enhancing the relationship between the Parties. It is appropriate to introduce the possibility of temporarily suspending the preferential arrangements established by this Regulation if Ukraine fails to respect the general principles of the Association Agreement, as is the case under other association agreements concluded by the Union.

- (11) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to temporarily suspend the preferential arrangements provided in Article 1(1) if the conditions for entitlement to those preferential arrangements are no longer complied with and to introduce safeguards in cases where Union markets of like or directly competing products are adversely affected by imports under this Regulation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹.
- (12) Subject to an assessment by the Commission carried out in the context of the regular monitoring of the impact of this Regulation and launched either following a duly substantiated request from a Member State or on the Commission's own initiative, it is necessary to provide for the possibility to reintroduce the customs duties otherwise applicable under the Association Agreement for imports of any products falling under the scope of this Regulation which are adversely affecting the Union market for like or directly competing products.

¹ 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 (OJ L 55, 28.2.2011, p. 13).

- (13) The Commission's annual report on the implementation of the Deep and Comprehensive Free Trade Area, which is an integral part of the Association Agreement, should include a detailed assessment of the implementation of the trade-liberalisation measures established by this Regulation.
- (14) In view of the urgency of the matter related to the situation caused by Russia's war of aggression against Ukraine, it is considered to be appropriate to invoke the exception to the eight-week period provided for in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the TEU, to the TFEU and to the Treaty establishing the European Atomic Energy Community.
- (15) In light of the urgency of the economic situation in Ukraine and the expiry of Regulation (EU) 2022/870 on 5 June 2023, this Regulation should enter into force on 6 June 2023,

HAVE ADOPTED THIS REGULATION:

Article 1
Trade-liberalisation measures

1. The following preferential arrangements are introduced:
 - (a) the application of the entry price system shall be suspended for those products to which it applies as specified in Annex I-A to the Association Agreement. No customs duties shall apply to imports of those products;
 - (b) all the tariff-rate quotas established under Annex I-A to the Association Agreement shall be suspended and the products covered by those quotas shall be admitted for importation into the Union from Ukraine without any customs duties.
2. By way of derogation from Article 14(1), first subparagraph, of Regulation (EU) 2016/1036, anti-dumping duties on imports originating in Ukraine made during the application of this Regulation shall not be collected at any point in time, including after the expiry of this Regulation.
3. The application of Regulation (EU) 2015/478 shall be temporarily suspended with regard to imports originating in Ukraine.

Article 2

Conditions for entitlement to the preferential arrangements

The preferential arrangements provided in Article 1(1) shall be subject to the following conditions:

- (a) compliance with the rules of origin of products and the procedures related thereto as provided for in the Association Agreement;
- (b) Ukraine's abstention from introducing new duties or charges having equivalent effect and new quantitative restrictions or measures having equivalent effect for imports originating in the Union, from increasing existing levels of duties or charges or from introducing any other restrictions on trade with the Union, including discriminatory internal administrative measures, unless clearly justified in the war context; and
- (c) Ukraine's respect for democratic principles, human rights and fundamental freedoms and respect for the principle of the rule of law as well as continued and sustained efforts with regard to the fight against corruption, and illegal activities provided for in Articles 2, 3 and 22 of the Association Agreement.

Article 3
Temporary suspension

1. Where the Commission finds that there is sufficient evidence of Ukraine's failure to comply with the conditions set out in Article 2, it may, by means of an implementing act, suspend in whole or in part the preferential arrangements provided for in Article 1(1). That implementing act shall be adopted in accordance with the examination procedure referred to in Article 5(3).
2. Where a Member State requests that the Commission suspends any of the preferential arrangements on the basis of Ukraine's failure to comply with the conditions set out in Article 2, point (b), the Commission shall provide a reasoned opinion within four months of the request on whether the claim of Ukraine's failure to comply is substantiated. If the Commission concludes that the claim is substantiated, it shall initiate the procedure referred to in paragraph 1 of this Article.

Article 4
Expedited safeguard

1. Where a product originating in Ukraine is imported under conditions which adversely affect the Union market for like or directly competing products, the Commission may reintroduce the customs duties otherwise applicable under the Association Agreement on imports of that product at any time by means of an implementing act. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 5(3).

The customs duties otherwise applicable under the Association Agreement may be reintroduced for as long as necessary to counteract the adverse effects on the Union market for like or directly competing products.

2. The Commission shall regularly monitor the impact of this Regulation, taking into account the information on exports, imports, prices on the Union market and Union production of the products subject to the trade-liberalisation measures under Article 1(1), point (b).

The Commission shall inform the Member States of the results of the regular monitoring every two months, starting from the entry into force of this Regulation.

3. The Commission shall carry out an assessment of the situation of the Union market for like or directly competing products with a view to reintroducing the customs duties. That assessment shall be launched:
- (a) following a duly substantiated request from a Member State including sufficient *prima facie* evidence reasonably available to that Member State pursuant to paragraph 4 of imports adversely affecting the market that is referred to in paragraph 1, or
 - (b) on its own initiative, after it has become apparent to the Commission that there is sufficient *prima facie* evidence of imports adversely affecting the market that is referred to in paragraph 1.

The assessment referred to in the first subparagraph shall be concluded within three months of its launch.

4. In carrying out the assessment pursuant to paragraph 3, the Commission shall take into consideration all relevant market developments including the impact of the imports concerned on the situation of the Union market for like or directly competing products. That assessment shall include factors such as:
- (a) the rate and amount of the increase in imports from Ukraine of the product concerned in absolute and relative terms,

- (b) the effect of the imports concerned on Union production and prices, whilst taking into consideration the development of imports from other sources.

This list is not exhaustive and other relevant factors may also be taken into consideration.

5. Where, as a result of the assessment referred to in paragraph 3, the Commission considers that the Union market for like or directly competing products has been adversely affected and intends to reintroduce the customs duties, it shall publish a notice in the *Official Journal of the European Union* announcing the reintroduction of the customs duties otherwise applicable under the Association Agreement on imports of that product. The notice shall provide a summary of the main results of the expedited assessment and specify the period within which interested parties may submit their views in writing. Such period shall not exceed 10 days from the date of publication of the notice.
6. Where exceptional circumstances require immediate action, the Commission may, without following the procedure under paragraph 5 and after informing the Committee on Safeguards established by Article 3(1) of Regulation (EU) 2015/478, take any preventive measure which is necessary.

Article 5
Committee procedure

1. The Commission shall be assisted by the Customs Code Committee established by Article 285(1) of Regulation (EU) No 952/2013 of the European Parliament and of the Council¹ with regard to Article 3(1) of this Regulation. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. The Commission shall be assisted by the Committee on Safeguards established by Article 3(1) of Regulation (EU) 2015/478 with regard to Article 4(1) of this Regulation. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

¹ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

Article 6

Assessment of the implementation of the trade-liberalising measures

The Commission's annual report on the implementation of the Deep and Comprehensive Free Trade Area shall include a detailed assessment of the implementation of the trade-liberalisation measures provided for in this Regulation and shall include, insofar as appropriate, an assessment of the social impact of those measures in Ukraine and in the Union. Information on imports of products under Article 1(1), point (b), shall be made available via the website of the Commission and shall be updated on a monthly basis.

Article 7

Entry into force and application

This Regulation shall enter into force on 6 June 2023.

This Regulation shall apply until 5 June 2024.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

For the European Parliament

The President

For the Council

The President
