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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	27 April 2022
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2022) 195 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on temporary trade liberalisation 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

Delegations will find attached document COM(2022) 195 final.

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EUROPEAN
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Brussels, 27.4.2022
COM(2022) 195 final

2022/0138 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on temporary trade liberalisation 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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The unprovoked and unjustified military aggression of Russia against Ukraine since 24 February 2022 has had a profound negative impact on Ukraine's ability to trade with the rest of the world, because of the toll imposed on human lives, the need to focus on the defence of the territory, vast populations being displaced and also because of the destruction of production capacity and the unavailability of a significant share of transport means due to the closure of the access to the Black Sea. In this difficult context, Ukraine has asked the Union to facilitate as much as possible the conditions to enable the country to maintain its trade position with the rest of the world and further deepen its trade relations with the Union. Measures to this end include facilitating overland logistics and increasing the degree of market liberalisation. These measures would add flexibility and certainty for Ukrainian producers.

Therefore, the Commission is proposing a Regulation of the European Parliament and of the Council introducing trade-liberalising measures in the form of the three following measures, which should apply for a period of one year:

– Temporary suspension of all outstanding tariffs under Title IV of the Association Agreement between the EU and Ukraine (hereinafter referred to as 'the Association Agreement')[1] establishing a deep and comprehensive free trade area (DCFTA). This concerns three categories of products:

  - industrial products subject to duty phase out by the end of 2022;
  - fruits and vegetables subject to the entry-price system;
  - agricultural products and processed agricultural products subject to tariff-rate quotas.

– Temporary non-collection of anti-dumping duties on imports originating in Ukraine as of the date of entry into force of this Regulation; and

– Temporary suspension of the application of the common rules for imports (safeguard)[2] with respect of imports originating in Ukraine.

These temporary and exceptional measures will contribute to supporting and fostering the existing trade flows from Ukraine to the Union. This is in line with one of the main objectives of the Association Agreement, which is to establish conditions for enhanced economic and trade relations leading towards Ukraine's gradual integration in the EU Internal Market.

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[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 part (OJ L 161, 29.5.2014, p. 3) was signed by the Parties in two parts, in March and June 2014. The Association Agreement has been provisionally applied in some parts since 1 November 2014. The Deep and Comprehensive Free Trade Area (DCFTA) has been provisionally applied since 1 January 2016 and is fully in force since 1 September 2017 following ratification by all EU Member States.

[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).

The trade-liberalising measures provided for under the present proposal for a Regulation are taken in observance of the commitment in Article 2 of the Association Agreement which enshrines as an essential element of the Agreement the promotion of respect for the principles of sovereignty and territorial integrity, inviolability of borders and independence. In the same vein, the trade-liberalising measures themselves would be conditional upon respect for the same basic principles set out in Article 2, including those providing that the respect for democratic principles, human rights and fundamental freedoms and respect for the principle of the rule of law constitute essential elements of that Agreement.

Furthermore, the trade-liberalising measures contained in this proposal aim at ensuring, in accordance with Article 207(1) TFEU, that the Union's common commercial policy is conducted in the context of the principles and objectives of the Union's external action set out in Article 21 TEU.

Normal safeguard procedures apply.

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

These trade-liberalising measures would be consistent with the implementation of the Association Agreement and in particular with the Title IV establishing a DCFTA, which provides that Parties shall progressively establish a free trade area over a transitional period of a maximum of 10 years starting from the entry into force of that Agreement.

In addition, Ukraine has requested in 2021 the activation of the review under Article 29(4) of the Agreement with the purpose of considering accelerating and broadening the scope of the elimination of customs duties between Ukraine and the Union.

- **Consistency with other Union policies**

The European Union has strongly condemned the Russian aggression to Ukraine and has undertaken unprecedented steps to support the country in this exceptional context, ranging from financial assistance, including emergency macro-financial assistance, to the delivery of military equipment. The proposed Regulation would therefore comply with the Union's obligation under Article 21(3) TEU to ensure consistency between the different areas of its external action, as well as with Article 207(1) TFEU which provides that the common commercial policy is to be conducted in the context of the principles and objectives of the Union's external actions.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for the proposal is Article 207(2) of the Treaty on the Functioning of the European Union.

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

The common commercial policy, in accordance with Article 3(1)(e) of the TFEU, is defined as an exclusive Union competence. Therefore, the subsidiarity principle does not apply.

- **Proportionality**

This proposal is necessary in order to implement the common commercial policy and to achieve the objective of supporting Ukraine in its current difficulties economically, also in the area of trade with the Union.

- **Choice of the instrument**

This proposal is in accordance with Article 207(2) TFEU, which envisages common commercial policy measures.

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

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

Not applicable.

- **Stakeholder consultations**

Not applicable.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

In view of the emergency situation in Ukraine, it is important for the Regulation to enter into force as soon as possible. Therefore, no impact assessment was carried out for the measure at hand. However, the trade and trade-related provisions of the Association Agreement have been subject to a sustainability impact assessment commissioned by DG Trade in 2007 which fed into the DCFTA negotiation process. That study confirmed that implementation of trade and trade-related provisions would have a positive economic impact for the EU as well as for Ukraine.

- **Regulatory fitness and simplification**

The measure does not increase the regulatory burden of companies.

- **Fundamental rights**

These measures would respect the same basic principles as those enshrined in the Association Agreement between the EU and Ukraine. In particular, Article 2 of the Association Agreement with Ukraine provides that the respect for democratic principles, human rights and fundamental freedoms and respect for the principle of the rule of law, constitute essential elements of that Agreement.

The trade-liberalising measures would also be in accordance with the European Charter on Fundamental Rights.

4. BUDGETARY IMPLICATIONS

Based on an estimation according to the level of imports from Ukraine in 2021, the European Union will see a loss of customs revenue corresponding to less than EUR 31 million annually. In addition, the loss of anti-dumping duties is estimated at EUR 34,6 million. This figure is very likely to be significantly lower as the level of imports from Ukraine has been affected by the conflict. Therefore, the impact on the EU's own resources will be very limited.

5. OTHER ELEMENTS

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

On-line reporting on the evolution of bilateral EU-Ukraine trade is available via dedicated websites of the European Commission.

- **Explanatory documents (for directives)**

Not applicable.

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

In view of the emergency situation in Ukraine, the measure aims at increasing the trade flows concerning all imports from Ukraine by suspending all outstanding tariffs and import duties applied to Ukrainian products. The trade-liberalising measures would be granted in the form of full removal of import duties on all products.

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on temporary trade liberalisation 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 procedure[1],

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 part[2] (the 'Association Agreement') constitutes the basis of the relationship between the Union and Ukraine. Title IV of the Association Agreement, which relates to trade and trade-related matters, has been applied provisionally since 1 January 2016[3], and is fully in force since 1 September 2017 following ratification by all Member States.

(2) The Association Agreement expresses the Parties' desire 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 rights and obligations arising out of the World Trade Organization membership of the Parties.

(3) Article 2 of the Association Agreement establishes, among other things, respect for democratic principles, human rights and fundamental freedoms as well as the promotion of respect for the principles of sovereignty and territorial integrity, inviolability of borders and independence as essential elements of the Agreement.

(4) 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 (GATT) 1994. To that end, Article 29 of the Association Agreement provides for the progressive elimination of customs duties in

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1 (…)

2 OJ L 161, 29.5.2014, p. 3.

3 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).

accordance with the schedules included in the Association Agreement and envisages the possibility to accelerate and broaden 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.

(5) The unprovoked and unjustified military aggression of Russia against Ukraine since 24 February 2022 has had a profound negative impact on the ability of Ukraine to trade with the rest of the world, also because of the destruction of production capacity and the unavailability of a significant share of transport means due to the closure of the access to the Black Sea. To mitigate the negative economic impact of the aggression, it is necessary to accelerate the development of closer economic relations between the Union and Ukraine in order to provide a quick support to the Ukrainian authorities and the population under these exceptional circumstances. It is therefore appropriate and necessary to stimulate trade flows and to grant concessions in the form of trade-liberalising measures for all products in line with the acceleration of the elimination of customs duties on trade between the Union and Ukraine.

(6) In accordance with Article 21(3) of the Treaty on European Union, 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, the common commercial policy is to be conducted in the context of the principles and objectives of the Union's external action.

(7) The trade-liberalising measures established by this Regulation should take the following form: (i) the full removal of import duties (‘preferential customs duties’) on the importation of industrial products from Ukraine; (ii) the suspension of the application of the Entry Price System to fruit and vegetables; (iii) the suspension of the zero-tariff quotas and the full removal of import duties; (iv) by way of derogation from Article 14(1), subparagraph 1, of Regulation (EU) 2016/1036 of the European Parliament and of the Council[4], 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 (v) the temporary suspension of the application of Regulation (EU) 2015/478 of the European Parliament and of the Council[5]. Through these measures the Union will, in effect, temporarily provide appropriate economic and financial support to the benefit of Ukraine and its concerned economic operators.

(8) In order to prevent fraud, the preferential arrangements established by this Regulation should be conditional on 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 that Agreement.

(9) Ukraine should abstain from introducing new duties or charges having equivalent effect and new quantitative restrictions or measures having equivalent effect, or from increasing existing levels of duties or charges or from introducing any other

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4 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).

5 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).

restrictions on trade with the Union, unless clearly justified in the war context. In the event that Ukraine fails to comply with any of these 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 that, among others, respect for democratic principles, human rights and fundamental freedoms as well as the countering of weapons of mass destruction, related materials and their means of delivery constitute essential elements of relations with Ukraine, which are governed by that Agreement. Furthermore, Article 3 of the Association Agreement refers to the rule of law, good governance, the fight against corruption and 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 provided for in this Regulation if Ukraine fails to respect the general principles of the Association Agreement, similarly to 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 enabling it to temporarily suspend the preferential arrangements referred to in points (i), (ii) or (iii) of recital 7 and to introduce corrective measures in cases where Union producers are or might be seriously 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 Council[6].

(12) Subject to an investigation by the Commission, 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 cause, or threaten to cause, serious difficulties to Union producers of like or directly competing products.

(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-liberalising measures established by this Regulation.

(14) In light of the emergency situation in Ukraine, this Regulation should provide for an appropriate transitory provision and enter into force on the day following that of its publication in the Official Journal of the European Union,

HAVE ADOPTED THIS REGULATION:

Article 1

Trade-liberalising measures

1. The preferential customs duties on importation into the Union of certain industrial products originating in Ukraine that are subject to a seven-year phase-out in accordance with Annex I-A to the Association Agreement shall be set to zero.

[6] 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).

2. The application of the Entry Price System shall be suspended for those products where it applies as specified in Annex I-A to the Association Agreement. No customs duties shall apply to those products.

3. All the tariff-rate quotas established under Annex I-A to the 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.

4. 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.

5. 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), (2) and (3) 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) the abstention by Ukraine from introducing new duties or charges having equivalent effect and new quantitative restrictions or measures having equivalent effect for imports originating in the Union, or from increasing existing levels of duties or charges or from introducing any other restrictions, including discriminatory internal administrative measures, unless clearly justified in the war context;

(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), (2) or (3), in accordance with the examination procedure referred to in Article 5(2).

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 such 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

Safeguard clause

1. Where a product originating in Ukraine is imported on terms which cause, or threaten to cause, serious difficulties to Union producers of like or directly competing products, the customs duties otherwise applicable under the Association Agreement on such product may be reintroduced at any time.

2. The Commission shall closely monitor the impact of this Regulation, including with regard to the prices on the Union market, taking into account the information on exports, imports and Union production of the products subject to the trade-liberalising measures established by this Regulation.

3. The Commission shall take a formal decision to initiate an investigation within a reasonable period of time:

   (a) at the request of a Member State,

   (b) at the request of any legal person or any association that does not have legal personality, acting on behalf of the Union industry, meaning all or a major proportion of Union producers of like or directly competing products, or

   (c) on its own initiative if it is apparent to the Commission that there is sufficient prima facie evidence of serious difficulties as referred to in paragraph 1.

   For the purposes of this Article, 'major proportion' means Union producers whose collective output constitutes more than 50 % of the total Union production of the like or directly competing products produced by that portion of the Union industry which have expressed either support for or opposition to the request, and which represent no less than 25 % of total production of the like or directly competing products produced by the Union industry.

4. Where the Commission decides to initiate an investigation, it shall publish a notice in the *Official Journal of the European Union* announcing the initiation of the investigation. The notice shall provide a summary of the information received and state that any relevant information should be sent to the Commission. It shall specify the period within which interested parties may submit their views in writing. Such period shall not exceed four months from the date of publication of the notice.

5. The Commission shall seek all information it deems necessary and may verify the information received with Ukraine or any other relevant source. It may be assisted by officials of the Member State on whose territory verification might be sought, if that Member State requests such assistance by officials.

6. In examining whether serious difficulties as referred to in paragraph 1 exist, the Commission shall take account, inter alia, of the following factors concerning Union producers, where the information is available:

   (a) market share,

   (b) production,

   (c) stocks,

   (d) production capacity,

   (e) capacity utilisation,

   (f) employment,

   (g) imports,

(h) prices.

7. The investigation shall be completed within six months of the publication of the notice referred to in paragraph 3 of this Article. The Commission may by means of an implementing act, in the case of exceptional circumstances, extend this period in accordance with the examination procedure referred to in Article 5(2).

8. Within three months of the completion of the investigation, the Commission shall take a decision on whether to reintroduce the customs duties otherwise applicable under the Association Agreement by means of an implementing act, in accordance with the examination procedure referred to in Article 5(2). That implementing act shall enter into force within one month of its publication.

The customs duties otherwise applicable under the Association Agreement may be reintroduced for as long as necessary to counteract the deterioration in the economic or financial situation of Union producers, or for as long as the threat of such deterioration persists. Where the facts as finally established show that the conditions set out in paragraph 1 of this Article are not met, the Commission shall adopt an implementing act terminating the investigation and proceedings in accordance with the examination procedure referred to in Article 5(2).

9. Where exceptional circumstances requiring immediate action make an investigation impossible, the Commission may, after informing the Customs Code Committee referred to in Article 5(1), 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 of Regulation (EU) No 952/2013 of the European Parliament and of the Council[7]. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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-liberalising 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(3) shall be made available via the website of the Commission.

Article 7

Transitory provision

[7] 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).

3. The preferential arrangements referred to in Article 1(1), (2) or (3) shall apply to products which on the date of entry into force of this Regulation are either in transit from Ukraine to the Union or under customs control in the Union, subject to the making of a claim to that effect to the responsible customs authorities of the Union within six months of that date.

Article 8

Entry into force and application

1. This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

2. This Regulation shall apply until [one year from the date of its entry into force].

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*