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INFORMATION NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

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

- Outcome of the European Parliament's first reading
(Brussels, 18 to 19 May 2022)

I. INTRODUCTION

A number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

After the plenary approved the request of the Committee on International Trade to proceed according to the Rule 163 (urgent procedure) on 18 May 2022, the rapporteur, Sandra KALNIETE (EPP, LV), presented one amendment (amendment 1) to the abovementioned proposal for a Regulation. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

II. VOTE

When the plenary voted on 19 May 2022, it adopted the amendment to the abovementioned proposal for a Regulation by means of a single vote. The Commission's proposal as thus amended constitutes the Parliament's first reading position which is contained in its legislative resolution as set out in the Annex thereto¹.

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

¹ The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

P9_TA(2022)0208

Temporary trade liberalisation supplementing trade concessions applicable to Ukrainian products under EU/Ukraine Association Agreement *I**

European Parliament legislative resolution of 19 May 2022 on the 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 (COM(2022)0195 – C9-0159/2022 – 2022/0138(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2022)0195),
 - having regard to Article 294(2) and Article 207(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0159/2022),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the undertaking given by the Council representative by letter of 13 May 2022 to approve Parliament’s position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on International Trade (A9-0146/2022),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P9_TC1-COD(2022)0138

Position of the European Parliament adopted at first reading on 19 May 2022 with a view to the adoption of Regulation (EU) 2022/... 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

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 procedure²,

² Position of the European Parliament of 19 May 2022.

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 part³ (the ‘Association Agreement’) constitutes the basis of the relationship between the Union and Ukraine. In accordance with Council Decision 2014/668/EU⁴, 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.
- (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 Association Agreement.

³ OJ L 161, 29.5.2014, p. 3.

⁴ 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).

- (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 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.
- (5) 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 the closure 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 quick support to the Ukrainian authorities and population. It is therefore necessary and appropriate to stimulate trade flows and to grant 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.

- (6) 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.
- (7) The trade-liberalisation 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 tariff-rate 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 Council⁵, 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 Council⁶. 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.

⁵ 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).

⁶ 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).

- (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.
- (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 war context. 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 that, among other things, respect for democratic principles, human rights and fundamental freedoms 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 and to introduce corrective measures, as referred to in Articles 3 and 4 of this Regulation, in cases where Union producers of like or directly competing products 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 Council⁷.
- (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.

⁷ 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 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-liberalisation measures

1. The following preferential arrangements are introduced:
 - (a) 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;
 - (b) 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;
 - (c) 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 for in Article 1(1), points (a), (b) and (c), 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, 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), points (a), (b) and (c). That implementing act shall be adopted 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 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
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 imports of that 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-liberalisation measures established by this Regulation.
3. The Commission shall take a decision to initiate an investigation within a reasonable period of time:
 - (a) at the request of a Member State;
 - (b) at the request of a legal person or an 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 to Union producers of like or directly competing products as referred to in paragraph 1.

For the purposes of this paragraph, ‘major proportion of Union producers of like or directly competing products’ 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 those officials.

6. In examining whether serious difficulties to Union producers of like or directly competing products as referred to in paragraph 1 exist, the Commission shall take account, *among other things*, of the following factors concerning Union producers, where relevant information is available:
- market share,
 - production,
 - stocks,
 - production capacity,
 - capacity utilisation,
 - employment,
 - imports,
 - prices.
7. The investigation shall be completed within six months of the publication of the notice referred to in paragraph 4 of this Article. In exceptional circumstances, the Commission may extend that period by means of an implementing act adopted 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 decide whether to reintroduce the customs duties otherwise applicable under the Association Agreement by means of an implementing act adopted in accordance with the examination procedure referred to in Article 5(2) of this Regulation. 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. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 5(2) of this Regulation.

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 Council⁸. 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-liberalisation 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 (c), shall be made available via the website of the Commission.

⁸ 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 7
Transitory provision

The preferential arrangements referred to in Article 1(1), points (a), (b) and (c), shall apply to products which, on ... [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 entry into force of this Regulation].

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

Done at ...,

For the European Parliament

For the Council

The President

The President
