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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	29 October 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2016) 631 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the introduction of temporary autonomous trade measures for Ukraine supplementing the trade concessions available under the Association Agreement

Delegations will find attached document COM(2016) 631 final.

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EUROPEAN
COMMISSION

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2016/0308 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on the introduction of temporary autonomous trade measures for Ukraine
supplementing the trade concessions available under the Association Agreement**

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 (hereinafter referred to as ‘the Agreement’), 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.

One of the objectives of the Agreement is to establish conditions for enhanced economic and trade relations leading towards Ukraine's gradual integration with the EU Internal Market, including by setting up a Deep and Comprehensive Free Trade Area as stipulated in Title IV (Trade and Trade-related Matters) of the Agreement, and to support Ukraine's efforts to complete the transition into a functioning market economy by means of, inter alia, the progressive approximation of its legislation to that of the Union.

In order to increase the existing trade flows concerning the import of certain agricultural products from Ukraine into the Union, and to foster bilateral trade and economic cooperation with the Union, it is appropriate to grant additional autonomous trade preferences for Ukraine.

The new autonomous 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 autonomous trade measures provided for under the present Regulation are subject to the respect of these same principles by Ukraine.

Normal safeguard procedures apply.

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

The new autonomous trade measures would be consistent with the implementation of the EU-Ukraine Association Agreement and in particular with the provisional application of Title IV of the DCFTA from 1 January 2016.

Furthermore, recent FTAs negotiated by the European Union (notably with Peru and Colombia, with Central America, with Vietnam and with Canada) have already provided unlimited duty-free access for some of the agricultural products covered by the present Regulation.

- **Consistency with other Union policies**

The European Union has so far supported Ukraine's political and economic stabilisation and the consolidation of the reforms in particular in the areas of justice and fight against corruption, building capacity of public administration, as well as decentralisation. An

extensive support package of €12.8 billion includes Macro-Financial Assistance as well as numerous technical and financial assistance projects through annual Special Measures, and the assistance provided by the EIB among other International Financial Institutions to the implementation of the DCFTA.

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 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.

- **Choice of the instrument**

This proposal is in accordance with Article 207(2) TFEU, which envisages measures implementing the common commercial policy. There exists no other legal instrument that could be used in order to achieve the objective expressed in this proposal.

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

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

Not applicable.

- **Stakeholder consultations**

Stakeholder consultations were carried out in the framework of the sustainability impact assessment commissioned by DG Trade in 2007 which fed into the DCFTA negotiation process. Moreover, the measure is to be adopted in co-decision. It will therefore be put under the scrutiny of the EU Council and the European Parliament.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

In view of the difficult economic 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 Agreement have been

subject to the sustainability impact assessment mentioned above. 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**

The new autonomous 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.

3. BUDGETARY IMPLICATIONS

The European Union will see a loss of customs revenue corresponding to less than EUR 50 million annually with very limited impact on the EU's own resources. The value of duties foregone on the importation of industrial products will count for approximately 20% of the total.

4. OTHER ELEMENTS

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

On-line reporting on the utilisation of agricultural-related tariff-rate quotas 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 difficult economic situation and the economic reform efforts undertaken by Ukraine, and in order to support the development of closer economic relations with the European Union, the measure aims at increasing the trade flows concerning the import of certain agricultural products and to grant concessions in the form of autonomous trade measures in selected industrial products in line with the acceleration of the elimination of customs duties on trade between the European Union and Ukraine.

The autonomous trade measures would be granted in the form of zero-tariff quotas for certain agricultural products in addition to the preferential tariff-rate quotas set out in the Agreement, and the partial or full removal of import duties on several industrial products.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the introduction of temporary autonomous trade measures for Ukraine supplementing the trade concessions available under the Association Agreement

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,

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 constitutes the basis of the relationship between the Union and Ukraine. Title IV on trade and trade-related matters is provisionally applied since 1 January 2016². In its preamble, the Parties to the Association Agreement have expressed their desire to strengthen and widen relations in an ambitious and innovative way;
- (2) In view of the economic reform efforts undertaken by Ukraine, and in order to support the development of closer economic relations with the European Union, it is appropriate to increase the trade flows concerning the import of certain agricultural products and to grant concessions in the form of autonomous trade measures in selected industrial products in line with the acceleration of the elimination of customs duties on trade between the European Union and Ukraine.
- (3) The autonomous trade measures would be granted in the form of zero-tariff quotas for products listed in Annexes I and II in addition to the preferential tariff-rate quotas set out in the Agreement, and the partial or full removal of import duties on industrial products listed in Annex III;
- (4) In order to prevent any risk of fraud, the entitlement to benefit from the additional zero-tariff quotas should be conditional on the compliance by Ukraine with the relevant rules of origin of products concerned and the procedures related thereto as well as involvement in close administrative cooperation with the European Union as provided for by the Agreement;

¹ OJ L 161, 29.5.2014, p. 3

² Council Decision 2014/668/EU of 23 June 2014 (OJ L 278, 20.9.2014, p. 1).

- (5) Ukraine is to abstain from introducing new duties or charges having equivalent effect or new quantitative restrictions or measures having equivalent effect or from increasing existing levels of duties or charges or from introducing any other restrictions. In the event of failure to comply with any of these conditions the European Commission should be empowered to suspend temporarily all or part of the autonomous trade measures;
- (6) It is necessary to provide for the reintroduction of normal Common Customs Tariff duties for imports of any products which cause, or threaten to cause, serious difficulties to the European Union producers of like or directly competing products, subject to an investigation by the European Commission;
- (7) 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 established by this Regulation and to introduce corrective measures in cases where the Union market is affected by this Regulation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council³.
- (8) The tariff-rate quotas shall be administered by the Commission in accordance with Articles 49 to 54 of Commission Implementing Regulation (EU) 2015/2447⁴, with the exception of those for specific agricultural products which shall be administered by the Commission in accordance with Article 184 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council⁵.
- (9) Article 2 of the Association Agreement 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. It is appropriate to introduce the possibility to temporarily suspend the preferences in case of failure to respect the fundamental principles of human rights, democracy and the rule of law by Ukraine.
- (10) In view of the difficult economic situation in Ukraine, it is important for the Regulation to 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

Preferential arrangements and access to tariff quotas

³ 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).

⁴ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343 29.12.2015, p. 558).

⁵ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671)

1. Products listed in Annexes I and II shall be admitted for import into the European Union within the limits of Union tariff-rate quotas as set out in those Annexes.
2. The tariff-rate quotas for products listed in Annex I shall be administered by the Commission in accordance with Articles 49 to 54 of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015.
3. Tariff-rate quotas for specific agricultural products referred to in Annex II shall be administered by the Commission pursuant to the rules laid down in accordance with Article 184 of Regulation (EU) No 1308/2013.
4. Preferential customs duties on importation of certain industrial products originating goods from Ukraine will be applied according to Annex III.

Article 2

Conditions for entitlement to the preferential arrangements

Entitlement to benefit from the tariff-rate quotas introduced by Article 1 shall be subject to:

- (a) compliance with the rules of origin of products and the procedures related thereto as provided for in the Association Agreement, and notably in Protocol I concerning the definition of the concept of "originating products" and methods of administrative co-operation, and in Protocol II on mutual administrative assistance in customs matters;
- (b) 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 from the day of the entry into force of this Regulation;
- (c) respect for democratic principles, human rights and fundamental freedoms and respect for the principle of the rule of law provided for in Article 2 of the Association Agreement.

Article 3

Temporary suspension

Where the Commission finds that there is sufficient evidence of failure to comply with the conditions set out in Article 2 it may suspend in whole or in part the preferential arrangements provided for in this Regulation, in accordance with the examination procedure referred to in Article 5(2).

Article 4

Safeguard clause

1. Where a product originating in Ukraine is imported on terms which cause, or threaten to cause, serious difficulties to a Community producer of like or directly

competing products, Common Customs Tariff duties on such product may be reintroduced at any time by the Council acting by qualified majority on a proposal from the Commission.

2. At the request of a Member State or on the Commission's initiative, the Commission shall take a formal decision to initiate an investigation within a reasonable period of time. Where the Commission decides to initiate an investigation, it shall publish a notice in the Official Journal of the European Union announcing 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, which shall not exceed four months from the date of publication of the notice, within which interested parties may make their views known in writing.
3. The Commission shall seek all information it deems necessary and may verify the information received with Ukraine and any other relevant source. It may be assisted by officials of the Member States on whose territory verification might be sought, if that Member State so requests.
4. In examining whether there are serious difficulties, the Commission shall take account, inter alia, of the following factors concerning Community producers where the information is available:
 - market share,
 - production,
 - stocks,
 - production capacity,
 - capacity utilisation,
 - employment,
 - imports,
 - prices.
5. The investigation shall be completed within six months after the publication of the notice referred to in paragraph 2. The Commission may, in the case of exceptional circumstances, extend this period in accordance with the procedure referred to in Article 5.
6. The Commission shall take a decision within three months, in accordance with the procedure referred to in Article 5. Such decision shall enter into force within one month as from its publication.
7. Where exceptional circumstances requiring immediate action make an investigation impossible, the Commission may, after informing the Committee, take any preventive measure which is strictly necessary.

Article 5

Committee procedure

1. For the implementation of Article 1(2) and Article 4 of this Regulation, the Commission shall be assisted by the Customs Code Committee established by Article 248a of Regulation (EEC) No 2913/92. The 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

Entry into force and application

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

It shall apply for three years.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

**LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS HAVING A
BUDGETARY IMPACT EXCLUSIVELY LIMITED TO THE REVENUE SIDE**

1. NAME OF THE PROPOSAL:

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the introduction of temporary autonomous trade measures for Ukraine supplementing the trade concessions available under the Association Agreement

2. BUDGET LINES

Chapter and Article: Chapter 12, Article 120 (Custom duties)

Amount budgeted for the year 2016: 18.465,30 EUR million

3. FINANCIAL IMPACT

- ☐ Proposal has no financial implications
- ☒ Proposal has no financial impact on expenditure but has a financial impact on revenue – the effect is as follows:

(EUR million to one decimal place)

Revenue line ⁶	2016	2017
Article 120	0	35,3

Situation following action					
Revenue line	2016	2017	2018	2019	2020
Article 120	18.465,30	18430	18430	18430	

4. ANTI-FRAUD MEASURES

The EU's customs legislation is designed to ensure the correct application of all EU customs measures including the tariff preferences laid down in this Regulation, which also provides for the application of the necessary provisions of the Association Agreement between EU and Ukraine and the application of its Protocol I concerning the definition of the concept of "originating products" and methods of administrative co-operation and its respective Annexes, and

⁶ In the case of traditional own resources (agricultural duties, sugar levies, customs duties), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % for collection costs.

the possibility, after consultations, of temporary withdrawal of tariff preferences in the event of frauds and irregularities involving preferential treatment.

5. OTHER REMARKS

This estimate is based on internal calculations.