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NOTE

From:	General Secretariat of the Council
To:	Council
Subject:	The need to include in the new Autonomous Trade Measures (ATM) Regulation for Ukraine effective solutions to prevent excessive agricultural imports from Ukraine and the negative impact on the agricultural sector of the EU and its Member States, in particular those bordering Ukraine <i>- Information from the Polish delegation</i>

Delegations will find in the Annex a note from the Polish delegation on the above-mentioned subject, to be dealt with under "Any other business" at the Council (Agriculture and Fisheries) on 23 January 2024.

The need to include in the new Autonomous Trade Measures (ATM) Regulation for Ukraine effective solutions to prevent excessive agricultural imports from Ukraine and the negative impact on the agricultural sector of the EU and its Member States, in particular those bordering Ukraine

(Proposal to be discussed at the meeting of the EU Agriculture and Fisheries Council

23 January 2024 in Brussels under 'Any other business')

In view of the beginning of the discussion at the EU forum on the extension of the ATM regulation, it is necessary to analyse the experiences from the operation of these measures and their effects to date. Conclusions from such an analysis should then be used to develop mechanisms needed to better secure the EU agricultural market in the context of liberalization of imports from Ukraine.

The ATM Regulation, by introducing immediate and full liberalisation of customs duties on imports of all agricultural goods from Ukraine, was one of the factors behind the very significant increase in these imports. It has led to serious disruptions in the agricultural markets of Member States close to Ukraine, as well as social unrest.

For this reason, in principle, we believe that instead of extending the ATM regulation for another year, it would be better to return to talks with the Ukrainian side on a gradual, reciprocal liberalisation of trade under the EU-Ukraine Association Agreement, accompanied by a gradual adaptation of Ukrainian agriculture to EU standards and law. Such an approach would also fit in with Ukraine's EU accession process.

However, given the fact that the European Commission is expected to propose an extension of the ATM measures for another year, we consider it necessary to include in the new regulation provisions that would better protect against excessive imports from Ukraine and the resulting market problems than currently. We propose the following elements to be included in the new regulation:

- We were pleased to note the information about the intention of the Commission to include provisions for accelerated safeguard clause procedures and the possibility to apply regional safeguard measures in the case of disturbances on the markets of several or one Member State. We believe that at least for the introduction of regional safeguard measures, it should be sufficient to have the decision of the European Commission taken in consultation with a given Member State or Member States from the region affected by the problem of excessive imports, with full guarantee of the possibility of transit.
- We maintain the position already stated in discussions on previous ATM drafts, that, at least in the case of poultry meat, eggs and sugar, where there has already been and continues to be a particularly large increase in imports into the EU, it would be justified to exclude such products from full tariff liberalisation. This would be justified for two reasons. First of all, safeguard measures are, by definition, already triggered after market disturbances have occurred, whereas tariff quotas make it possible to prevent such disturbances. Secondly, the application of tariff quotas offers more predictability from the point of view of Ukrainian exporters than the constant risk of introduction of safeguard measures. However, if there are no exemptions from the product coverage of the ATM, it would be necessary to at least consider initiating a safeguard procedure on imports of these goods in the moment when the new regulation enters into force.
- In our view, the possibility to use safeguard instruments in the new ATM regulation should apply to all goods, including those fully liberalised under the DCFTA agreement with Ukraine. A lack of the possibility to apply safeguard measures under the ATM regulation, given the absence of bilateral safeguard clauses in the DCFTA agreement and the suspension of the possibility to apply WTO safeguard measures (the current ATM provision excluding imports from Ukraine from application of the EP and Council Regulation 2015/478 on common rules for imports), would result in an unprecedented (not taking place in relations with any other country) total lack of possibility of any safeguard measures in relation to goods that are very sensitive for Poland, such as soft fruits or rapeseed, among others.

- The current provision of the ATM Regulation which excludes imports from Ukraine from application of the Regulation 2015/478 on common rules for imports raises serious doubts. This is due to the fact that the provision also covers Article 24 of that Regulation, which allows Member States to apply restrictions to imports from outside the EU for reasons such as public order and safety, protection of human and animal health and life, or plant protection. We believe that security and the protection of life and health should take precedence over all other objectives, even support for Ukraine. The ATM Regulation should not restrict this right for Member States.

Regardless of the issue of extension of ATM regulation, we also request that Ukraine accelerate the implementation of its commitments on alignment of Ukrainian legislation in the area of agricultural production standards and requirements with the EU regulations listed in Annex V to the Association Agreement. This annex should also be supplemented with the missing EU regulations.

During the validity of the current ATM regulation, instruments regulating trade should be subject of separate bilateral arrangements with Ukraine. Poland wants to work out, together with Ukraine and with the support of the European Commission, such instruments which will prevent negative effects on selected markets, e.g. the sugar market.