



Brussels, 29 -06- 2017

Mr Bernd LANGE, M.E.P.

Chairman, European Parliament Committee on International Trade (INTA)

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 (2016/0308 (COD))

Dear Mr Lange,

Following the informal contacts between the representatives of the three institutions, the Permanent Representatives Committee today approved the compromise package as contained in the Annexes 1 and 2 to this letter.

I am therefore now in a position to confirm that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the final compromise text annexed to this letter (subject to the revision by the lawyers-linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in that wording.

On behalf of the Council I also wish to thank you for your close cooperation which should enable us to reach agreement on this dossier at first reading.

Yours sincerely,

Ambassador Marlene BONNICI
Chair of the Permanent Representatives
Committee (Part 2)

copy to: Mrs Cecilia MALMSTRÖM, Member of the Commission
Mr Jarosław WAŁĘSA, M.E.P., EP Rapporteur

REGULATION (EU) No .../2017
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

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 procedure¹,

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

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) *With a view to enhancing* the economic *and political* reform efforts undertaken by Ukraine, and in order to support *and accelerate* the development of closer economic relations with the ■ Union, it is appropriate *and necessary* 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 ■ Union and Ukraine.

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).

- (3) *After the factual basis and explanation provided by the Commission to the European Parliament and to the Council regarding the rationale behind the selection of the products subject to the measure and in particular regarding its potential impacts on small and medium-sized beneficiaries in Ukraine, the autonomous trade measures should be granted for products that are assessed to be beneficial in light of that analysis. Those autonomous trade measures should take 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 Association 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 *for products listed in Annexes I and II and the partial or full removal of import duties on industrial products listed in Annex III* should be conditional on the compliance by Ukraine 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 involvement in close administrative cooperation with the* ■ Union as provided for by *that* Agreement.

- (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 Council¹.

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).

- (8) The tariff-rate quotas shall be administered by the Commission in accordance with Articles 49 to 54 of Commission Implementing Regulation (EU) 2015/2447¹, 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 Council².
- (9) Article 2 *and* 3 of the Association Agreement *provide that* respect for democratic principles, human rights and fundamental freedoms and ■ the principle of the rule of law, *as well as efforts to combat corruption and organised crime, and measures to promote sustainable development and effective multilateralism*, constitute essential elements of *relations with Ukraine, which are governed by* that Agreement. It is appropriate to introduce the possibility to temporarily suspend the preferences in *the* case of failure *by Ukraine* to respect the *general* principles of *the Association Agreement, as has been done in other association agreements signed by the Union*.

¹ 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).

² 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).

- (9a) *The Commission's annual report on the implementation of the Deep and Comprehensive Free Trade Agreement should include a detailed assessment of the implementation of the temporary autonomous trade measures provided for in this Regulation.*
- (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

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 ***and preferential customs duties on importation*** 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; ***the preferences shall apply to goods originating in, or shipped from, territory not under the effective control of the Government of Ukraine which have been made available to the Ukrainian authorities for examination, for which compliance with the conditions conferring entitlement to preferential origin has been verified in accordance with the EU-Ukraine Association Agreement;***

- (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, *including discriminatory internal administrative measures*, 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 *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;
- (ca) *continued respect for obligations to cooperate on matters related to employment, social policy and equal opportunities in accordance with Chapter 13 of Title IV (Trade and Sustainable Development) and Chapter 21 of Title V (Cooperation on employment, social policy and equal opportunities) of the Association Agreement, and the goals set out in Article 420 thereof.*

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 *of this Regulation*, 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).

Where a Member State requests that the Commission suspend any of the preferential arrangements on the basis of failure to comply with the conditions set out in Article 2(b), the Commission shall provide a reasoned opinion within four months of such request on whether the claim of failure to comply is substantiated. If the Commission concludes that the claim is substantiated, it shall initiate the procedure referred to in the first paragraph 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 a *Union* producer of like or directly competing products, Common Customs Tariff duties on such product may be reintroduced at any time **■**.
- 1a. *The Commission shall closely monitor the impact of this Regulation with regard to the products listed in Annex I and II, including with regard to prices on the Union market and taking into account the information on exports, imports and EU production of the products subject to the measure.*

2. At the request of a Member State, *any legal person or any association not having legal personality, acting on behalf of Union industry, meaning all or a major proportion of Union producers of like or directly competing products*, or on the Commission's own initiative *if it is apparent to the Commission that there is sufficient prima facie evidence*, the Commission shall take a formal decision to initiate an investigation within a reasonable period of time. *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 expressing either support for or opposition to the request and no less than 25 % of total production of the like or directly competing products produced by the Union industry.* 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. *The Common Customs Tariff duties shall be reintroduced for as long as necessary to counteract the deterioration in the economic and/or financial situation of Union producers, or for as long as the threat of such deterioration persists. The period of reintroduction shall not exceed one year, unless it is extended in duly justified circumstances. Where the facts as finally established show that the conditions set out in Article 4(1) 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).*
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 5a

Assessment of the implementation of the autonomous trade measures

The Commission's annual report on the implementation of the Deep and Comprehensive Free Trade Agreement shall include a detailed assessment of the implementation of the temporary autonomous trade 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 the utilisation of agriculture-related tariff-rate quotas shall be made available via websites of the Commission.

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

ANNEX I

Notwithstanding the rules for the interpretation of the Combined Nomenclature, the wording of the description of the products is to be considered as having no more than an indicative value, the scope of the preferential scheme being determined, within the context of this Annex, by CN codes as they exist at the time of adoption of this Regulation.

Order No	CN code	Description of goods	Quota period From entry into force of this Regulation for 36 months	Annual quota volume (in tonnes net weight unless otherwise specified)
09.6750	0409	Natural honey		2 500
09.6751	Ex 1103 19 20	Barley groats		7 800
	1103 19 90	Groats and meals of cereals (excl. wheat, rye, oats, maize, rice and barley)		
	1103 20 90	Cereal pellets (excl. wheat, rye, oats, maize, rice and barley)		
	1104 19 10	Rolled or flaked wheat grains		
	1104 19 50	Rolled or flaked maize grains		
	1104 19 61	Rolled barley grains		
	1104 19 69	Flaked barley grains		
	ex 1104 29	Worked grains (for example, hulled, pearled, sliced or kibbled), other than of oats, of rye or of maize		
	1104 30	Germ of cereals, whole, rolled, flaked or ground		

Order No	CN code	Description of goods	Quota period From entry into force of this Regulation for 36 months	Annual quota volume (in tonnes net weight unless otherwise specified)
09.6752	2002	Tomatoes prepared or preserved otherwise than by vinegar or acetic acid		3 000
09.6753	2009 61 90 2009 69 11 2009 69 71 2009 69 79 2009 69 90	Grape juice (including grape must), of a Brix value not exceeding 30, of a value not exceeding 18 EUR per 100 kg net weight Grape juice (including grape must), of a Brix value exceeding 67, of a value not exceeding 22 EUR per 100 kg net weight Grape juice (including grape must), of a Brix value exceeding 30 but not exceeding 67, of a value not exceeding 18 EUR per 100 kg net weight		500
09.6754	1004	Oats		4 000

ANNEX II

Tariff rate quotas for specific agricultural products referred to in Article 1(3)

Notwithstanding the rules for the interpretation of the Combined Nomenclature, the wording of the description of the products is to be considered as having no more than an indicative value, the scope of the preferential scheme being determined, within the context of this Annex, by CN codes as they exist at the time of adoption of this Regulation.

Product	Tariff classification	Quantity
Common <u>wheat</u> , spelt and meslin, flour, groats, meal and pellets	1001 99 00 1101 00 15, 1101 00 90 1102 90 90 1103 11 90 1103 20 60	65 000 tons/year
<u>Maize</u> , other than seed, flour, groats, meal, pellets and grains	1005 90 00 1102 20 1103 13 1103 20 40 1104 23	625 000 tons/year
<u>Barley</u> , other than seed, flour and pellets	1003 90 00 1102 90 10 ex 1103 20 25	325 000 tons/year

ANNEX III

Preferential tariffs applied for specific products referred to in Article 1(4)

Notwithstanding the rules for the interpretation of the Combined Nomenclature, the wording of the description of the products is to be considered as having no more than an indicative value, the scope of the preferential scheme being determined, within the context of this Annex, by CN codes as they exist at the time of adoption of this Regulation.

CN 2016	DESCRIPTION	Applied duties
	CHAPTER 31 – FERTILISERS	
3102 21 00	Ammonium sulphate (excl. that in pellet or similar forms, or in packages with a gross weight not exceeding 10 kg)	0 %
3102 40 10	Mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising substances, with a nitrogen content not exceeding 28 % by weight (excl. those in pellet or similar forms, or in packages with a gross weight not exceeding 10 kg)	0 %
3102 50 00	Sodium nitrate (excl. that in pellet or similar forms, or in packages with a gross weight not exceeding 10 kg)	0 %
3105 20 10	Mineral or chemical fertilisers containing nitrogen, phosphorus and potassium, with a nitrogen content exceeding 10 % by weight on the dry anhydrous product (excl. those in tablets or similar forms, or in	0 %

	packages with a gross weight not exceeding 10 kg)		
3105 51 00	Mineral or chemical fertilisers containing nitrates and phosphates		0 %
	CHAPTER 32 – TANNING OR DYEING EXTRACTS; TANNINS AND THEIR DERIVATIVES; DYES, PIGMENTS AND OTHER COLOURING MATTER; PAINTS AND VARNISHES; PUTTY AND OTHER MASTICS; INKS		
320611 00	Pigments and preparations based on titanium dioxide, containing 80 % or more by weight of titanium dioxide calculated on the dry matter		0 %
	CHAPTER 64 – FOOTWEAR, GAITERS AND THE LIKE; PARTS OF SUCH ARTICLES		
6402 91 90	Footwear covering the ankle, with outer soles and uppers of rubber or plastics		0 %
6402 99 98	Footwear with outer soles of rubber or plastics and uppers of plastics, with in-soles of a length of 24 cm or more, for women		0 %
6403 99 96	Men's footwear with outer soles of rubber, plastics or composition leather and uppers of leather (not covering the ankle), with in-soles of a length of 24 cm or more (excl. 6403.11-00 to 6403.40.00, 6403.99.11, 6403.99.36, 6403.99.50)		0 %
6403 99 98	Footwear with outer soles of rubber, plastics or composition leather and uppers of leather, with in-soles of a length of 24 cm or more, for women		0 %

	CHAPTER 74 – COPPER AND ARTICLES THEREOF	
7407 21 10	Bars and rods, of copper-zinc base alloys "brass"	0 %
7408 11 00	Wire of refined copper, with a maximum cross-sectional dimension of more than 6 mm	0 %
	CHAPTER 76 – ALUMINIUM AND ARTICLES THEREOF	
7601 10 00	Aluminium, not alloyed, unwrought	0 %
7601 20 20	Unwrought aluminium alloys in the form of slabs or billets	0 %
7601 20 80	Unwrought aluminium alloys (other than slabs and billets)	0 %
7604 21 00	Hollow profiles of aluminium alloys	0 %
7604 29 90	Solid profiles, of aluminium alloys	0 %
7616 99 90	Articles of aluminium, uncast	0 %
	CHAPTER 85 - ELECTRICAL MACHINERY AND EQUIPMENT AND PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND ACCESSORIES OF SUCH ARTICLES	
8525 80 99	Video camera recorders other than those only able to record sound and images taken by the television camera	0 %

8528 71 19	Video tuners (excl. electronic assemblies for incorporation into automatic data-processing machines and apparatus with a microprocessor-based device incorporating a modem for gaining access to the Internet and having a function of interactive information exchange capable of receiving television signals "set-top boxes with communication function")	0 %
8528 71 99	Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus, not designed to incorporate a video display or screen (excl. video tuners, set-top boxes with a communication function)	0 %
8528 72 40	Reception apparatus for television, colour, with LCD screen	0 %

Draft Commission Statement related to Article 3 of the Regulation on the temporary autonomous trade measures (ATMs) for Ukraine

The Commission notes that should it be impossible to implement the suspension of preferential arrangements before full utilization of the annual zero-tariff rate quotas for agricultural products, the Commission shall endeavour proposing a reduction or suspension of these concessions in the following years.
