Regulation (EU) 2017/1566 of the European Parliament and of the Council of 13 September 2017 on the introduction of temporary autonomous trade measures for Ukraine supplementing the trade concessions available under the Association Agreement

REGULATION (EU) 2017/1566 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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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[(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)]. In the preamble to the Association Agreement, the Parties thereto expressed their desire to strengthen and widen relations in an ambitious and innovative way.

(2) In order to enhance the economic and political reform efforts undertaken by Ukraine, and 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 for certain industrial products in line with the acceleration of the elimination of customs duties on trade between the Union and Ukraine.

(3) The Commission has analysed the factual rationale for selecting the products that are to be subject to this Regulation, in particular the potential impact of this Regulation on small and medium-sized beneficiaries in Ukraine, and has provided an explanation thereof to the European Parliament and to the Council. The autonomous trade measures established by this Regulation should be granted for products that are beneficial in light of that analysis. Those autonomous trade measures should take the form of the following preferential arrangements: (i) zero-tariff quotas for the agricultural products listed in Annexes I and II to this Regulation in addition to the zero-tariff quotas set out in the

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Association Agreement; and (ii) the full removal of import duties ('preferential customs duties') on importation of the industrial products listed in Annex III to this Regulation.

(4) In order to prevent fraud, the entitlement to the autonomous trade measures established by this Regulation should be conditional on Ukraine having complied 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.

(5) 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 restrictions. 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 autonomous trade measures established by this Regulation.

(6) Subject to an investigation by the Commission, it is necessary to provide for the reintroduction of the Common Customs Tariff duties 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) 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 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[(4)].

(8) The zero-tariff quotas established by this Regulation should be administered by the Commission in accordance with Commission Implementing Regulation (EU) 2015/2447[(5)], with the exception of the zero-tariff quotas for certain agricultural products, which should be administered by the Commission in accordance with Regulation (EU) No 1308/2013 of the European Parliament and of the Council[(6)] and the implementing and delegated acts adopted pursuant to that Regulation.

(9) Articles 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 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 signed by the Union.

(10) 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

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include a detailed assessment of the implementation of the autonomous trade measures established by this Regulation.

(11) In light of the difficult economic situation in Ukraine, this Regulation should 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

1 In addition to the zero-tariff quotas established by the Association Agreement, the agricultural products listed in Annexes I and II to this Regulation shall be admitted for import into the Union from Ukraine within the limits of Union zero-tariff quotas as set out in those Annexes. Those zero-tariff quotas shall be administered as follows:

a the zero-tariff quotas for the agricultural products listed in Annex I to this Regulation shall be administered by the Commission in accordance with Articles 49 to 54 of Implementing Regulation (EU) 2015/2447;

b the zero-tariff quotas for the agricultural products listed in Annex II to this Regulation shall be administered by the Commission pursuant to Article 184 of Regulation (EU) No 1308/2013 and the implementing and delegated acts adopted pursuant to that Article.

2 The preferential customs duties on importation into the Union of certain industrial products originating from Ukraine shall apply in accordance with Annex III.

Article 2

Conditions for entitlement to the preferential arrangements

Ukraine's entitlement to the zero-tariff quotas and preferential customs duties on importation introduced by Article 1 shall be subject to:

(a) Ukraine's compliance with the rules of origin of products and the procedures related thereto as provided for in the Association Agreement, in particular in Protocol I thereto concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation, and in Protocol II thereto on mutual administrative assistance in customs matters; the zero-tariff quotas and preferential customs duties on importation introduced by Article 1 of this Regulation shall apply to goods originating in or that have been shipped from a territory not under the effective control of the Government of Ukraine, if those goods have been made available to the Ukrainian authorities for examination, and if their compliance with the conditions conferring entitlement to the preferential arrangements has been verified in accordance with the Association Agreement;

(b) from 1 October 2017, 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;

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(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; and

(d) Ukraine's continued compliance with 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

1 Where the Commission finds that there is sufficient evidence of failure by Ukraine 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).

2 Where a Member State requests that the Commission suspend any of the preferential arrangements provided for in this Regulation on the basis of a failure to comply with the conditions set out in point (b) of Article 2, 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 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, Common Customs Tariff duties under the Association Agreement on such product may be reintroduced at any time.

2 The Commission shall closely monitor the impact of this Regulation with regard to the products listed in Annexes I and II, 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 autonomous trade measures established by this Regulation.

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

— at the request of a Member State, or

— 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

— on the Commission's 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.

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.

4 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.

5 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:

— market share,
— production,
— stocks,
— production capacity,
— capacity utilisation,
— employment,
— imports,
— prices.

6 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, in the case of exceptional circumstances, extend this period in accordance with the examination procedure referred to in Article 5(2).

7 Within three months of the completion of the investigation, the Commission shall take a decision on whether to reintroduce the Common Customs Tariff duties under the Association Agreement by way 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 Common Customs Tariff duties under the Association Agreement 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 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).

8 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.