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Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, of the Agreement between the European Union and the United States of America relating to the modification of concessions on all the tariff rate quotas included in the EU Schedule CLXXV as a consequence of the United Kingdom's withdrawal from the European Union

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In October 2018, the EU formally launched the negotiations process (under Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994) with a number of WTO Members in Geneva. The underlying principle of the negotiations is a “joint approach” developed between the EU and the UK back in 2017 on how to “apportion” the quantitative commitments contained in the EU28 WTO schedule for the 143 EU agricultural, fish and industrial WTO tariff rate quotas (TRQs). The basis of this approach is that the existing volume of each TRQ would be fully maintained in the future, but split across two separate customs territories: the EU27 and the UK.

The principle of the applied methodology is based on the trade flows into the EU27 and the UK during a representative reference period (of 3 years from 2013 to 2015) for all WTO TRQs.

The agreed methodology of the apportionment is described in detail in Regulation (EU) 2019/216 of the European Parliament and of the Council. More specifically, Article 2b) of this Regulation empowers the Commission to amend the apportionment shares taking into account pertinent information that it may receive either in the context of negotiations under Article XXVIII of GATT 1994 or from other sources with an interest in a specific tariff rate quota.

On 15 June 2018, the Council authorised the Commission to launch negotiations under Article XXVIII GATT with the relevant WTO Members with a view to apportioning the Union's WTO concessions on TRQs.

The United States of America (USA) has negotiating rights for 70 TRQs and consultation rights for 16 TRQs.

For the majority of the TRQs where the USA is concerned, the original EU proposed apportioned volumes were accepted by the USA.

Changes in volumes have been agreed for the following TRQs.

The EU27 share of the USA and Canada's country-specific beef TRQ will be revised to 10 500 tonnes.

The EU27 share of two erga omnes TRQs in the pigmeat sector will be revised to 4 786 tonnes and 5 720 tonnes respectively, taking into account a more recent reference period from 2015 to 2017.

The EU27 share of a USA country specific TRQ in the pigmeat sector will be brought to zero, taking into account a more recent reference period from 2015 to 2017.

The EU27 share of an erga omnes TRQ on skimmed-milk powder will be revised to 62 917 tonnes to avoid a non-commercially viable volume on UK side.

The EU27 share of three erga omnes TRQs on potatoes, tomatoes and carrots will be revised to 4 295 tonnes, 472 tonnes and 1 244 tonnes to avoid non-commercially viable volumes on UK side.

The EU27 share of an erga omnes TRQ on cucumbers will be revised to 647 tonnes taking into account the reference period from 2013 to 2016.

The EU27 share of an erga omnes TRQ on dried onions will be revised to 9 770 tonnes taking into account the reference period from 2014 to 2016.

The EU27 share of an erga omnes TRQ on almonds will be revised to 86 223 tonnes taking into account the reference period from 2014 to 2016.

The EU27 share of an erga omnes TRQ on cherries will be revised to 151 tonnes taking into account the reference period from 2014 to 2016.

The EU27 share of a USA country specific TRQ on common wheat will be adjusted to 572 000 tonnes taking into account a more recent reference period from 2016 to 2018.

The EU27 share of two erga omnes TRQ in the cereal sectors will be revised to 307 105 tonnes and 276 440 tonnes respectively, taking into account more recent reference periods, from 2016 to 2018 in the first case and from 2015 to 2017 in the second case.

The EU27 share of an erga omnes TRQ on paddy rice will be revised to 7 tonnes to avoid a non-commercially viable volume on UK side.

The EU27 share of the USA country-specific sub-allocation of two TRQs on semi-milled or wholly milled rice will be revised to 25 772 tonnes and 1 910 tonnes respectively, taking into account more recent reference periods, from 2017 to 2020 in the first case and from 2013 to 2018 in the second case.

The EU27 share of an erga omnes TRQ on broken rice will be revised to 28 360 tonnes, taking into account a more recent reference period from 2016 to 2018.

The EU27 share of an erga omnes TRQ on grape juice will be revised to 2 525 tonnes, taking into account a more recent reference period from 2017 to 2019.

The EU27 share of an erga omnes TRQ and a USA country-specific TRQ on food preparations will be revised to 783 tonnes and 1 286 tonnes respectively, taking into account a more recent reference period from 2016 to 2018.

The EU27 share of an erga omnes TRQ on fruit juices will be revised to 6 551 tonnes, taking into account trade in reference periods 2015-2017 and 2016-2018.

For two erga omnes TRQs on preparations used in animal feeding the EU27 will retain the entire original EU28 volume (2 800 tonnes and 2 700 tonnes), taking into account a more recent reference period from 2016 to 2018 and to avoid small quantities on UK side.

The EU27 share of an erga omnes TRQ on dog and cat food will be revised to 1 732 tonnes, taking into account a more recent reference period from 2016 to 2018.

The EU27 share of an erga omnes TRQ on shrimp will be revised to 500 tonnes (100 % of the EU28 volume) to avoid an uneconomical quantity on UK side.

The EU27 share of an erga omnes TRQ on plywood will be revised to 448 500 cubic m.

In addition, for an erga omnes beef TRQ, the in-quota rate will be reduced, lowering the ad valorem part of the duty from 20 % to 15 %.

The relevant Regulation (EU) 2019/216 of the European Parliament and Council, Commission Implementing Regulation (EU) 2020/761 and Commission Implementing Regulation (EU) 2020/1988 will be amended to reflect these amended TRQ volumes.

The European Commission had previously submitted a proposal of Council decision for the same Agreement (COM(2021)122 final). Prior to the signature of the Agreement, at the request of USA, a change was made to the language regime; in addition, following negotiations with other WTO partners, the volume of two TRQs (on fruit juices and plywood) has been modified. As a consequence of these changes the Commission is now submitting a new proposal for a Council decision.

The Council (Trade Policy Committee) has been regularly consulted on the content and advancement of the negotiations.

Consequently, the European Commission proposes to the Council to authorise the signature of the Agreement, subject to its conclusion at a later stage.

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

Not applicable. The measure is taken in implementation of an agreement following negotiations in the framework of the Article XXVIII of the GATT 1994, a Union right under the WTO Agreement.

- **Consistency with other Union policies**

Not applicable. The measure is taken in implementation of an agreement following negotiations in the framework of the Article XXVIII of the GATT 1994, a Union right under the WTO Agreement.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 207(4) of the Treaty on the Functioning of the European Union (TFEU), in conjunction with Article 218(6) of the TFEU for conclusion of international agreements.

- **Subsidiarity (for non-exclusive competence)**

Not applicable. The measure is taken in implementation of an agreement following negotiations in the framework of the Article XXVIII of the GATT 1994, a Union right under the WTO Agreement.

- **Proportionality**

Not applicable. The measure is taken in implementation of an agreement following negotiations in the framework of the Article XXVIII of the GATT 1994, a Union right under the WTO Agreement.

- **Choice of the instrument**

A Decision of the Council authorising the conclusion of the Agreement is required under Article 218(6) TFEU.

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

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

Not applicable. The measure is taken in implementation of an agreement following negotiations in the framework of the Article XXVIII of the GATT 1994, a Union right under the WTO Agreement.

- **Stakeholder consultations**

Not applicable. The measure is taken in implementation of an agreement following negotiations in the framework of the Article XXVIII of the GATT 1994, a Union right under the WTO Agreement.

- **Collection and use of expertise**

Not applicable. The measure is taken in implementation of an agreement following negotiations in the framework of the Article XXVIII of the GATT 1994, a Union right under the WTO Agreement.

- **Impact assessment**

Not applicable. The measure is taken in implementation of an agreement following negotiations in the framework of the Article XXVIII of the GATT 1994, a Union right under the WTO Agreement.

- **Regulatory fitness and simplification**

Not applicable. The measure is taken in implementation of an agreement following negotiations in the framework of the Article XXVIII of the GATT 1994, a Union right under the WTO Agreement.

- **Fundamental rights**

Not applicable. The measure is taken in implementation of an agreement following negotiations in the framework of the Article XXVIII of the GATT 1994, a Union right under the WTO Agreement.

4. BUDGETARY IMPLICATIONS

Not applicable. The measure is taken in implementation of an agreement following negotiations in the framework of the Article XXVIII of the GATT 1994, a Union right under the WTO Agreement.

5. OTHER ELEMENTS

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

Not applicable.

- **Explanatory documents (for directives)**

Not applicable. The measure is taken in implementation of an agreement following negotiations in the framework of the Article XXVIII of the GATT 1994, a Union right under the WTO Agreement.

- **Detailed explanation of the specific provisions of the proposal**

Not applicable. The measure is taken in implementation of an agreement following negotiations in the framework of the Article XXVIII of the GATT 1994, a Union right under the WTO Agreement.

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on the conclusion, on behalf of the European Union, of the Agreement between the European Union and the United States of America relating to the modification of concessions on all the tariff rate quotas included in the EU Schedule CLXXV as a consequence of the United Kingdom's withdrawal from the European Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4), in conjunction with Article 218(6)(a)(v) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament¹,

Whereas:

- (1) In accordance with Council Decision [XXX] (EU) XXXX/XXX , the Agreement between the European Union and the United States of America pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions on all the tariff rate quotas included in the EU Schedule CLXXV as a consequence of the United Kingdom's withdrawal from the European Union (the 'Agreement') was signed on behalf of the Union on [...], subject to its conclusion at a later date.
- (2) The objective of the Agreement is to provide for the apportionment of the tariff rate quotas included in the EU Schedule CLXXV of the General Agreement on Tariffs and Trade (GATT) 1994 as a consequence of the United Kingdom's withdrawal from the Union, pursuant to Article XXVIII of GATT 1994.
- (3) The Agreement should be approved on behalf of the European Union,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the United States of America pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions on all the tariff rate quotas included in the EU Schedule CLXXV as a consequence of the United Kingdom's withdrawal from the European Union is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

¹ OJ C [...], [...], p. [...].

The Commission shall, on behalf of the Union, give the notification provided for in Article 3(1) of the Agreement with a view to expressing the Union's consent to be bound by the Agreement.

Article 3

This Decision shall enter into force on the day following that of its adoption.

Done at Brussels,

*For the Council
The President*