



Brussels, 5.7.2018  
COM(2018) 518 final

2018/0281 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the conclusion, on behalf of the European Union, of the Agreement in the form of an  
Exchange of Letters between the Union and the People's Republic of China in  
connection with the WTO dispute settlement proceedings DS492 Measures affecting  
Tariff Concessions on Certain Poultry Meat Products**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

Following the WTO panel report adopted on 19 April 2017 in the WTO dispute settlement proceedings DS492 *Measures affecting Tariff Concessions on Certain Poultry Meat Products* brought by the People's Republic of China against the European Union, the EU needed to comply with the findings. In particular, the panel found that when allocating quantities within tariff rate quotas to supplying countries under WTO rules, the EU should have taken into account as a “special factor” China's increased ability to export poultry products to the EU following the relaxation of sanitary measures in July 2008. The reasonable period of time for the implementation of the Panel Report under the WTO rules began on 19 April 2017.

On 12 March 2018, the Council authorised the Commission to open negotiations on a mutually agreed solution ("MAS") with China. Negotiations with China resulted in an Agreement in the form of an Exchange of Letters that was initialled on 18 June 2018 in Geneva ("the Agreement"). The Agreement should respect rights of other suppliers, which were agreed in the context of past Article XXVIII GATT negotiations. The Commission also needs to provide for transparent and appropriate tariff quota management.

Thailand has indicated that it is in agreement with the allocation of TRQs to China as set out in the Agreement and we expect to receive their written confirmation shortly (and in any case before the formal signature of this Agreement).

Consequently, the European Commission proposes to the Council to adopt a decision to conclude the Agreement.

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

Not applicable – the measure is taken in implementation of a WTO Panel Report, a Union obligation under the WTO Agreement.

- **Consistency with other Union policies**

Not applicable – the measure is taken in implementation of a WTO Panel Report, a Union obligation under the WTO Agreement.

### 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 207 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)**

The proposal falls under exclusive competence of the Union, Article 3(1)(e) of the Treaty on the Functioning of the European Union. The subsidiarity principle therefore does not apply.

- **Proportionality**  
The measure is taken in implementation of a WTO Panel Report, a Union obligation 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 a WTO Panel Report, a Union obligation under the WTO Agreement.
- **Stakeholder consultations**  
Publication of the roadmap, regular consultation with the industry, stakeholders and Member States. Feedback from the European Poultry, Egg and Game Association (EPEGA) received in January 2018 following the publication of the roadmap clearly stated their support for the opening of these additional quotas.
- **Collection and use of expertise**  
Not applicable – the measure is taken in implementation of a WTO Panel Report, a Union obligation under the WTO Agreement.
- **Impact assessment**  
Not applicable – the measure is taken in implementation of a WTO Panel Report, a Union obligation under the WTO Agreement.
- **Regulatory fitness and simplification**  
Not applicable – the measure is taken in implementation of a WTO Panel Report, a Union obligation under the WTO Agreement.
- **Fundamental rights**  
Not applicable.

### 4. **BUDGETARY IMPLICATIONS**

See Financial Statement.

### 5. **OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**  
The Commission proposes to the Council that the Agreement in the form of an Exchange of Letters with China be concluded on behalf of the Union.  
The results of the Agreement are as follows:

The European Union shall open the following Tariff Rate Quotas (TRQ):

a TRQ of 6060 tonnes for the tariff line 1602.3929 (with specific country allocation of 6000 tonnes to China and 60 tonnes to all others), with an in-quota duty rate of 10.9%

a TRQ of 660 tonnes for the tariff line 1602.3985 (with specific country allocation of 600 tonnes to China and 60 tonnes to all others), with an in-quota duty rate of 10.9%

an erga omnes TRQ of 5000 tonnes for the tariff line 1602.3219, with an in-quota duty rate of 8%

The Commission will adopt implementing Regulations to expand and manage the relevant quotas, pursuant to Article 187(a) of the Single Common Market Organisation (CMO) Regulation (Regulation (EC) No 1308/2013).

These implementation measures are being prepared in parallel with this proposal.

Once the quotas are opened, the EU and China will notify the Agreement to the WTO Dispute Settlement Body as a MAS in relation to the dispute DS492.

Proposal for a

## COUNCIL DECISION

**on the conclusion, on behalf of the European Union, of the Agreement in the form of an Exchange of Letters between the Union and the People's Republic of China in connection with the WTO dispute settlement proceedings DS492 Measures affecting Tariff Concessions on Certain Poultry Meat Products**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) On 12 March 2018, the Council authorised the Commission to open negotiations on a mutually agreed solution with China as part of the WTO dispute settlement proceedings DS492 *Measures affecting Tariff Concessions on Certain Poultry Meat Products*.
- (2) Those negotiations have been concluded and an agreement in the form of an Exchange of Letters between the European Union and China was initialled on 18 June 2018.
- (3) The agreement was signed on behalf of the Union on [...], subject to its conclusion at a later date, in accordance with Council Decision [...]<sup>1</sup>
- (4) The Agreement should be approved on behalf of the European Union,

HAS ADOPTED THIS DECISION:

### *Article 1*

The Agreement in the form of an Exchange of Letters between the European Union and China in relation to DS492 European Union – Measures affecting Tariff Concessions on Certain Poultry Meat Products is hereby concluded.

The text of the Agreement is attached to this Decision.

### *Article 2*

The President of the Council shall designate the person empowered to proceed, on behalf of the Union, to give the notification provided for in the Agreement.

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<sup>1</sup> OJ L [...], [...], p. [...].

*Article 3*

This Decision shall enter into force on the date of its adoption. It shall be published in the *Official Journal of the European Union*.

The date of the entry into force of the Agreement shall be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

Done at Brussels,

*For the Council  
The President*

**LEGISLATIVE FINANCIAL STATEMENT**

<h1 style="margin: 0;">Annex</h1> <h2 style="margin: 0;">FINANCIAL STATEMENT</h2>		FinancSt/18/2693597 CM/aj	
		6.146.2018.1 agri.ddg1.a.2(2018)26 31461	
		DATE: 07/05/2018	
1. BUDGET HEADING: Chapter 12 – Customs duties and other duties		APPROPRIATIONS: EUR 22 844 million	
2. TITLE: Proposal for a COUNCIL DECISION on the conclusion, on behalf of the European Union, of the Agreement in the form of an Exchange of Letters between the Union and the People's Republic of China in connection with the WTO dispute settlement proceedings DS492 Measures affecting Tariff Concessions on Certain Poultry Meat Products			
3. LEGAL BASIS: Treaty on the Functioning of the European Union, and in particular Articles 207 in conjunction with Article 218(5)			
4. AIMS: to open tariff rate quotas on certain poultry meat products with specific allocation of quantities to China and quantities to all others, following the WTO dispute settlement proceedings DS492			
5. FINANCIAL IMPLICATIONS	CURRENT FINANCIAL PERIOD 2018 (EUR million)	FINANCIAL YEAR 2019 (EUR million)	FOLLOWING FINANCIAL YEARS 2020 and onwards (EUR million)
5.0 EXPENDITURE - CHARGED TO THE EU BUDGET (REFUNDS/INTERVENTIONS) - NATIONAL AUTHORITIES - OTHER	N.A.	-	-
5.1 REVENUE - OWN RESOURCES OF THE EU (LEVIES/CUSTOMS DUTIES) - NATIONAL	-	-8,2	-8,2
5.2 METHOD OF CALCULATION: see observations			
6.0 CAN THE PROJECT BE FINANCED FROM APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET?			YES <del>NO</del>
6.1 CAN THE PROJECT BE FINANCED BY TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET?			<del>YES</del> NO
6.2 WILL A SUPPLEMENTARY BUDGET BE NECESSARY?			<del>YES</del> NO
6.3 WILL APPROPRIATIONS NEED TO BE ENTERED IN FUTURE BUDGETS?			<del>YES</del> NO
OBSERVATIONS: The proposal has no impact on the expenditure. The theoretical loss of own resources, taking into account the deduction of 20% for collection costs, amounts to EUR 8,2 million. This is based on the assumption that the total quantities granted in the concessions (11720 tonnes) would have been imported also with application of the full tariff rate of 86,7 EUR/100kg, which would have led to a total own resources amount, net of collection costs, of EUR 11,2 million. The granted concession should result in an amount of own resources, net of collection costs of EUR 3 million.			