



BRIEFING

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Briefing MHP poultry trade issue

Trade and Classification

The Appendix to Annex I-A of the EU-Ukraine Association Agreement limits imports into the EU of poultry meat and poultry meat preparations to a duty free tariff rate quota of 20,000 tons/year by 2021 (in 2018 at 17.600 tons)¹. This includes the whole 0207.13 tariff line except 0207.13.70 (and 0207.13.91 – livers).

The Commission says that the poultry cut in question consists of “a traditional breast cap with the humerus bones of the wings attached, the latter making up for a very small part of the total weight of the cut. After a minimal transformation, this cut can be marketed in the EU as poultry breast.”² This cut “has received Binding Tariff Information decisions issued by customs authorities in several Member States certifying the correctness of the tariff classification”³ as CN 0207 13 70. A Binding Tariff Information is valid throughout the EU, regardless of where it is issued.⁴

The Combined Nomenclature⁵ defines:

0207 13	Cuts and offal, fresh or chilled (of chickens)
0207 13 10	Cuts: Boneless
0207 13 50	Cuts – With bone in: Breasts and cuts thereof
0207 13 70	Cuts – With bone in: Other

At first glimpse, it seems that clearly the breast cut with bone should be classified as 0207 13 50, not 0207 13 70, and therefore be included in the tariff rate quota. However, Commission Implementing Regulation (EU) 2018/1602 defines: “‘breasts’, for the purposes of subheadings 0207 13 50, 0207 14 50, ...: poultry cuts, consisting of the sternum and the ribs distributed on both sides of it, together with the surrounding musculature”.⁶

The Dutch Binding Tariff Informations (issued in 2017 and 2018) state that “because of the presence of the humerus with muscle mass, the sample does not satisfy the definition of breast with bone in ... The product is considered to be chilled other cut with bone in”.⁷

Interestingly, when The Netherlands started importing chicken breast with bone from Ukraine in 2015, these imports were classified as 0207 13 50. This continued until June 2016, when imports suddenly stopped under 0207 13 50 and commenced under 0207 13 70:

Imports by NL from UA (tons) ⁸	0207 13 50	0207 13 70
2015	28.9	0
Jan-May 2016	506.9	0.4
June 2016	111.6	43.2
July-Dec 2016	0	3,613.5

¹ Commission Implementing Regulation (EU) 2015/2078 of 18 November 2015 (OJ L 302, 19.11.2015, p. 63).

² Recommendation for a Council Decision, 27.11.2018, COM(2018) 765 final.

[www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2018/0765/COM_COM\(2018\)0765_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2018/0765/COM_COM(2018)0765_EN.pdf)

³ Letter by Commissioners Malmström and Hogan of 14 March 2019 to MEP Bernd Lange, FTB/cz S(2019)1904940

⁴ https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/what-is-common-customs-tariff/binding-tariff-information-bti

⁵ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.273.01.0001.01.ENG&toc=OJ:L:2018:273:TOC

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L:2018:273:FULL>

⁷ BTI References: NLRTD-2017-0772, NLBTI2018-0483 and 23 more

https://ec.europa.eu/taxation_customs/dds2/ebti/ebti_consultation.jsp?Lang=en

⁸ EU Trade Since 1988 by HS2, 4, 6 and CN8 (DS-045409) <http://epp.eurostat.ec.europa.eu/newxtweb/mainxtnet.do>

This was also the time, when MHP, to “improve access to the EU markets, in the first quarter of 2016 ... invested US\$ 3.5 million to commission a chicken processing operation in the Netherlands”⁹, with the trial phase ending in June 2016.¹⁰

However, it remains unclear, how MHP managed to export chicken breast with bone under 0207 13 70 for more than one year, before the first Binding Tariff Information was issued. Has there been a BTI issued in June 2016, which is no longer in the BTI database?

MHP has strong ties with the Netherlands. Dutch companies constructed large parts of MHP’s Vinnytsia megafarm complex. The Netherlands used public monies to insure deliveries to MHP. In total, the Dutch ECA Atradius granted more than EUR 216 million in export credit guarantees for deliveries to MHP. Notably, many of these trade deals not only include the goods, but also Dutch manpower for the installation of these goods.¹¹

The following EU Member States imported chicken meat from Ukraine under 0207 13 70:

Imports from UA under CN 0207 13 70 (tons) ¹²	NL	SK	PL	DE	Total
2016	3,657.1	0	0	0	3,657.1
2017	17,190.1	7,556.1	2,361.6	19.2	27,127.0
2018	22,576.3	10,210.2	22,680.9	96.6	55,564.0
Total 2016-2018	43,423.5	17,766.3	25,042.5	115.8	86,348.1

In total these four Member States imported 86,348 tons of poultry meat under 0207 13 70 from 2016 to 2018 worth € 135 million (2016: € 5m, 2017: € 39m, 2018: € 91m).¹³

In 2018, Poland surpassed The Netherlands as top importer of this type of cut, a trend that is continuing into 2019 (January: Poland 2,512.8, Netherlands 2,040.2, Slovakia 441.6 tons).

(There was no significant trade in 0207 14 70 – only 86 tons in 2016-2018.)

The agreement with Ukraine negotiated by the Commission provides that 0207 13 70 (and 0207 14 70) will be included in the tariff rate quote, which will be increased by 50,000 tons to 70,000 tons. At the same time, a duty of 100.8 €/100 kg for these two tariff lines is reinstated. But why should MHP export quantities in excess of the volume of the tariff rate quota under 0207 13 70, while the duty for 0207 13 50 is only 60.2 €/100 kg¹⁴? Instead they would likely switch back to classifying their cuts as 0207 13 50.

Not all of this poultry meat is destined for the EU market, as MHP states that it “will also continue ... to develop export market opportunities worldwide from our cutting facilities in the EU”.¹⁵ This

⁹ <http://www.mhp.com.ua/library/file/mhp-sa-annual-report-2016-final.pdf>

¹⁰ <http://www.poultrynews.co.uk/business-politics/business/dutch-plant-development-looks-positive-for-mhp.html>

¹¹ <https://atradiusdutchstatebusiness.nl/nl/artikel/afgegeven-polissen.html> ; Beantwoording vragen van de leden Thieme en Van Dekken over financiering van megastallen in het buitenland. 2012. <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2012/12/21/beantwoording-kamervragen-over-financiering-van-megastallen-in-het-buitenland.html>

¹² EU Trade Since 1988 by HS2, 4, 6 and CN8 (DS-045409) <http://epp.eurostat.ec.europa.eu/newxtweb/mainxtnet.do>

¹³ In 2016 and 2017 combined, this represented 1.1% of total EU poultry meat imports from all third countries

[http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2018/0765/COM_COM\(2018\)0765_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2018/0765/COM_COM(2018)0765_EN.pdf)

¹⁴ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.273.01.0001.01.ENG&toc=OJ:L:2018:273:TOC

¹⁵ MHP SE Consolidated management report for 2018 https://www.mhp.com.ua/library/file/mhp-financial-rep-2018_1.pdf

might serve the purpose to make use of the preferential tariff treatment of EU products and might concern markets such as South Africa.¹⁶

Negotiating directives

The Commission had proposed to the Council “to authorise the opening of negotiation for an amendment to the Agreement” which “would consist in integrating the two tariff lines CN 0207 13 70 and 0207 14 70 into the existing tariff rate quota ... (Order Number 09.4273) while the size of the quota would be reviewed. Imports under tariff lines CN 0207 13 70 and 0207 14 70 exceeding the quota would then become subject to Most Favoured Nation duty rates. For establishing the new size of the quota/s, it is appropriate to consider the volume of imports into the EU from Ukraine of poultry products under the two tariff lines CN 0207 13 70 and 0207 14 70 between July 2017 and June 2018 and to take account of the likely increase in trade. ... That means that the proposed measure would stabilise existing EU imports of poultry meat from Ukraine” Otherwise “the already considerable and growing capacity to produce poultry in Ukraine will likely lead to further significant increases of imports into the EU, should duty free access for the ‘other cuts fresh or frozen’ tariff lines be kept under the Agreement. ... The size of the quota increase should indeed correspond largely to the annual import of poultry meat that currently enter the Union free of customs duties.” Finally, the Commission recommended “that the negotiating directives be made public immediately after their adoption”.¹⁷

As the outcome of the negotiations corresponds to the Commission proposal, it is likely that the proposal was adopted by the Council on 20 December 2018¹⁸ without changing much.

Probably the Commission had previously tested the waters in the informal consultations with the Ukrainian authorities it held in summer 2018.¹⁹

If agreed, the new scheme would reward MHP and their helpers in EU Member States for exploiting (if not creating) a loophole in the Association Agreement.

Alternatives

The validity of Binding Tariff Informations is generally limited to three years.²⁰ The BTIs in question expire:

- Netherlands (25 BTIs): between 09/08/2020 and 08/08/2021
- Slovakia (2 BTIs): 11/05/2020 and 12/06/2021²¹

¹⁶ <https://epamonitoring.net/growing-role-of-ukraine-in-eu-poultry-meat-imports-raises-rules-of-origin-and-sps-issues-in-eu-poultry-meat-export-trade/>

¹⁷ Recommendation for a Council Decision, 27.11.2018, COM(2018) 765 final.

[http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2018/0765/COM_COM\(2018\)0765_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2018/0765/COM_COM(2018)0765_EN.pdf)
Annex: https://www.parlament.gv.at/PAKT/EU/XXVI/EU/04/49/EU_44932/imfname_10860667.pdf

¹⁸ Outcome of the Council meeting. 3666th Council meeting Environment. Luxembourg, 20 December 2018
<https://www.consilium.europa.eu/media/37692/sn05056-en18.pdf>

¹⁹ 12 February 2019. Answer given by Mr Hogan on behalf of the European Commission Question reference: P-006399/2018
http://www.europarl.europa.eu/doceo/document/P-8-2018-006399-ASW_EN.html

²⁰ https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/what-is-common-customs-tariff/binding-tariff-information-bti

²¹ BTI References: SK457410/17/139, SKBTI250355706/18/344 https://ec.europa.eu/taxation_customs/dds2/ebti/ebti_consultation.jsp?Lang=en

However, BTI decisions, under certain circumstances, may be annulled, **cease to be valid or be revoked** before the end of their 3-year validity period.

Any BTI that no longer complies with the legislation ceases to be valid. This can be due to a change in the Combined Nomenclature or a Commission measure to determine the tariff classification of goods for which the BTI decision was issued.

A BTI can be revoked if it is **no longer compatible with interpretation of the Combined Nomenclature** resulting from amendments to explanatory notes to the Combined Nomenclature or if the Commission issues a decision requesting an EU country to revoke a specific BTI decision.²²

Thus, it seems that the **Commission has sufficient instruments at hand to resolve the issue** of chicken breast imports under 0207 13 70, e.g. by mending the definition of 'breast' in the Additional Note 4(e) to Chapter 2 of the Combined Nomenclature and/or by requesting Member States to revoke their decisions.

Implementation of the EU-Ukraine Association Agreement

The **European Parliament resolution** of 12 Dec 2018 on the implementation of the EU Association Agreement with Ukraine²³ raises several points that are relevant for the issue of this briefing:

The need for **deoligarchisation** is mentioned three times, i.a. by stressing the Parliament's conviction "that meaningful progress with the implementation of the AA and the reforms will only be possible if the deoligarchisation process is pursued and does away once and for all with the entrenched system in which economic, political and media power is concentrated in the hands of a few individuals feeding off one another, a problem which is continuing to exert a strong influence over and increasingly hampering the progress of reforms".

The Parliament considers regulatory approximation with the EU acquis to be "the key dimension of the DCFTA" and "encourages the Commission to provide adequate technical and financial support". In this context, the EP "regrets the lack of progress in the approximation with EU animal welfare standards and calls on Ukraine to urgently adopt a strategy to fulfil that commitment."

The Parliament also welcomes the increase in trade volume between the EU and Ukraine and encourages the Commission to consider further autonomous trade preferences.

The European External Action Service's **Association Implementation Report on Ukraine**²⁴ states that the "SPS Strategy has been finalised in October 2018 and its final version was agreed by both the Ukrainian government and the EU." However, "animal welfare obligations under the AA are to be further considered, notably regarding poultry exports to the EU."

During 2018, the State Service of Ukraine for Food Safety and Consumer Protection resumed its official controls and veterinary checks thanks to the entry into force of the law on State Control for food, feed, animal health and animal welfare in April 2018.

²² https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/what-is-common-customs-tariff/binding-tariff-information-bti-validity_en

²³ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2018-0518+0+DOC+XML+V0//EN&language=EN>

²⁴ https://eeas.europa.eu/sites/eeas/files/2018_association_implementation_report_on_ukraine.pdf

An **audit by the DG Health and Food Safety**²⁵ in February/March 2018 found that significant deficiencies in some establishments approved for export to the EU were either not identified or not recorded and consequently not corrected, thereby undermining the reliability of the guarantees that only establishments which meet EU requirements are approved and maintained on the EU-list.

In most of the slaughterhouses visited the audit team noted that the animals were subject to slaughter prescribed by religious rites.²⁶ Therefore the stunning parameters (amperage) used were lower than required by EU legislation. The audit team noted that legislation requires that stunning of animals at slaughter should be carried out under conditions that exclude their death which is not in line with Article 2(f) of Regulation (EC) No 1099/2009.

Similar deficiencies in relation to hanging and stunning of birds were also detected during an audit in 2010.²⁷

The audit therefore concludes: “Official controls cannot guarantee that EU animal welfare requirements (on stunning in particular) are met for poultry entering the EU export production chain as the application of national provisions effectively prevent their application.”

In the response of the competent authorities of Ukraine to the audit’s recommendations, the deadline for alignment of legislation on slaughter was set at December 2018.²⁸ Currently, the schedule of the Ukrainian agriculture ministry for submitting a draft regulatory act to the Cabinet of Ministers of Ukraine stands at the 1st quarter of 2019.²⁹ (However, the 1st quarter was already mentioned as the timeline in the ministry’s plan for 2018.³⁰)

While the Commission’s reports and audits, the Ukrainian agriculture ministry’s plans and the Twinning project “Assistance with implementation of SPS commitments under the EU-Ukraine Association Agreement” deal with the slaughter of animals, the **welfare of animals during farming seems to be completely neglected** despite the fact that Annex IV-B to the AA names “farming animals” on a par with transport, stunning and slaughter of animals.

The Commission should make use of any negotiations with Ukraine for demanding that **animal welfare legislation (including animal farming) is implemented as soon as possible**, and provide adequate assistance to this end.

²⁵ Final Report of an Audit Carried out in Ukraine from 27 February 2018 to 11 March 2018 in order to evaluate the control system in place governing the production of poultry meat and products derived therefrom intended for export to the European Union

http://ec.europa.eu/food/audits-analysis/audit_reports/details.cfm?rep_id=4002

²⁶ MHP, too, says that all of its ‘Qualiko’ chicken is slaughtered in adherence to the Islamic Law. <https://youtu.be/t0WCK1RLVtM>

²⁷ DG(SANCO)/2010-8755 http://ec.europa.eu/food/audits-analysis/audit_reports/details.cfm?rep_id=2484

²⁸ http://ec.europa.eu/food/audits-analysis/act_getPDFannx.cfm?ANX_ID=9150

²⁹ <http://minagro.gov.ua/uk/regulatory?nid=26660>

³⁰ <http://minagro.gov.ua/uk/regulatory?nid=25080>