

16 May 2019

Reply to the letter of Poultry Union of Ukraine to MEP Thomas Waitz

On 14 May 2019, the Poultry Union of Ukraine sent a letter signed by Executive Director Sergii Karpenko to MEP Thomas Waitz. This letter was titled “Inaccuracies in Shifting Values’ Briefing ‘MHP Poultry Trade Issue’”.

Shifting Values is pleased to reply to the allegations made in this letter as follows:

General remark

Mr Karpenko’s letter frequently uses the simple technique of putting words into the mouth of the opposite party and then refuting these words. This will be shown in various instances below.

Bullet point “MHP is a leading poultry company known for its quality, efficiency and sustainability”

Mr Karpenko’s letter starts by praising MHP and asserting i.a. that “MHP is hundred per cent compliant with EU ... animal welfare standards”.

This of course raises the question why MHP wouldn’t make public the way the company treats its animals. Even the EBRD, which already granted four loans to MHP, seems to have no information even on basic animal welfare parameters at MHP. Asked, if the Bank can confirm a maximum stocking density of 38-39 kg of live weight per m² poultry house for MHP operations, the EBRD replied: “This information is not available to the Bank.” Asked, if MHP broiler and breeder operations comply with other aspects of EU regulations (e.g. lighting), the EBRD said that it was “not in a position to comment on MHP’s compliance with the EU regulations on lighting”.¹

Regarding the EU regulations on slaughter, an audit by the European Commission carried out in 2018 concluded: “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.”² Of course, we would

¹ Request for Information - EBRD agribusiness projects. *EBRD responses*. Received by Albert Schweitzer Stiftung für unsere Mitwelt, 1 May 2019

² 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

be happy to hear that MHP preferred not to apply national provisions and instead employed procedures that ensure that animals are stunned properly before their throats are opened.

Further, secret footage taken at MHP's foie gras production site shows a range of extreme forms of cruelty to animals³, which raises severe doubts about MHP's capacities or willingness to ensure that animals at their facilities are treated as required by their internal standards.

Therefore, we would like to invite MHP and the Poultry Union of Ukraine to provide substantiated information on animal welfare aspects throughout the production chain and to allow for independent third party assessment on animal welfare (not only on food safety).

Bullet point "The Briefing Paper's allegations of cheating are unfair: our members merely used a trade concession granted under the DCFTA"

The letter calls it "of most concern" that "the Briefing Paper unfairly suggests that Ukrainian exporters of poultry have been cheating by 'exploiting (if not creating) a loophole in the Association Agreement' between the EU and Ukraine. As further explained below, our members exporting poultry cuts to the EU have not done anything illegal or wrong, but only used a trade concession that the EU granted to Ukraine in return for many other trade concessions that Ukraine granted the EU under the DCFTA."

While the Briefing in no sentence accuses anyone of cheating or illegal action, others have been much less reserved in their interpretation of MHP's export practices. For example, the Austrian agriculture minister called this "a crystal-clear swindle".⁴

The European Commission called the MHP cut a "novel cut" and explained the necessity to enter negotiations with Ukraine by the "rapid increase in duty free imports of this particular poultry cut, which was neither existent nor foreseeable during the negotiations of the Agreement".⁵

Bullet point "The Briefing Paper is misleading as to what was imported and when"

Mr Karpenko's letter says: "From a factual point of view, the Briefing Paper implies, incorrectly, that in 2015 and 2016 Ukraine exported 'breast cap with the humerus bone of the wing attached' under CN tariff line 0207 13 50. ... However, the Briefing paper provides no

³ <https://www.independent.co.uk/news/world/europe/foie-gras-engine-oil-geese-force-feeding-video-footage-a8872826.html>

⁴ see e.g. <https://www.vn.at/newsticker/koestinger-eu-agrarfoerderung-an-tierwohlstandards-binden/1161294>

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[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)

evidence to support such statement on Ukrainian exports of ‘breast cap with the humerus bone of the wing attached’ prior to June 2016.”

Funnily, the letter in the same paragraph quotes the Briefing correctly as saying:

“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”. The Briefing in no way stated that breast cuts with bone imported under 0207 13 50⁶ included the humerus bone. Instead the Briefing explained that the switch in poultry breast cuts happened at a 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”⁷, with the trial phase ending in June 2016.

Bullet point “EU customs law is clear that the products at issue cannot be classified under tariff line 0207 13 50”

The letter alleges that *“the Briefing Paper fails to understand that under EU customs law the poultry cut ‘breast cap with the humerus bone of the wing attached’ must be classified under tariff line 0207 13 70.”* Once again, the letter then continues by citing the Briefing correctly, showing that it understood perfectly well what the letter a few lines before alleged it would fail to understand.

This is followed by the letter’s next allegation: *“Contrary to what the Briefing Paper states, Additional Note 4(e) was not introduced capriciously by Commission Regulation (EU) 2018/1602, but has been part of the Combined Nomenclature for many years.”* Well, where does the Briefing state anything like this? The only thing it does is giving EU Regulation 2018/1602 as the source for CN definitions, as it is the one currently in force.

As if this wasn’t enough, the letter gets funnier with every paragraph. The next thing it does is presenting a kind of ‘own goal argument’: *“When the CN intends to include a poultry part attached to another within a subheading referring to a specific poultry part attached to another within a subheading referring to a specific poultry part, it explicitly indicates this in the subheading”,* giving the example of 0207 13 40: ‘Cuts – Backs, necks, backs with necks attached, rumps and wing-tips’. *“In contrast, tariff line 0207 13 50 only refers to ‘breasts and cuts thereof’.”* Well, yes, and 0207 13 70 only refers to ‘other cuts’ – i.e. other than those listed under 0207 13 10 to 0207 13 60 (including 0207 13 50: ‘breasts and cuts thereof’). So why would the MHP breast cut at issue be classified as ‘other cut’ and not as ‘breasts and cuts

⁶ CN 0207 13 50: “Cuts – With bone in: Breasts and cuts thereof”

⁷ <http://www.mhp.com.ua/library/file/mhp-sa-annual-report-2016-final.pdf>

thereof? The letter explains: *“Cuts thereof means that only cuts obtained from the (whole) breast are covered by these subheadings, and not breasts still attached to other parts.”*

Let's take a look at the *other parts* that the chicken breasts are *attached to*. The European Commission explains: *“This novel cut 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.”*⁸

Maybe the European Commission and the Poultry Union of Ukraine should quarrel over whether the bone is attached to the breast or the breast is attached to the bone. However, the point is that 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”*⁹, as was pointed out in the Briefing. This is why this “novel cut” is not covered by 0207 13 50 despite the fact that this tariff line is titled “breasts and cuts thereof”.

Further, the letter says that *“it cannot be argued that tariff line 0207 13 70 is merely intended to include chicken parts of limited values”*. This is why the Briefing didn't include any argument even close to this.

Bullet point “Three BTI Decisions confirm that the product at issue falls under tariff line 0207 13 70”

The letter acknowledges that *“the Briefing Paper acknowledges”* the Dutch authorities' justification for classifying the MHP cut as 0207 13 70. The letter continues: *“You may be aware that an additional BTI Decision of the Dutch customs authorities and two BTI Decisions of the Slovak customs authorities have also reached the same conclusion”*. Yes, thank you, we are aware of this, as we already pointed out in the Briefing.

Bullet point “It was perfectly lawful for our members to export the product in question under tariff line 0207 13 70 before receiving a BTI Decision”

The letter takes umbrage at the Briefing's sentence that *“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.”* However, it remains unclear to us, why

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[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)

⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L:2018:273:FULL>

Mr Karpenko reads this sentence as alleging unlawfulness. The point is that it took more than a year before the first BTI was issued. Why? What happened after one year? Why has the Dutch customs authority been content with the classification of this “novel cut” as 0207 13 70 without a BTI for one year and why did it then see the necessity to issue a BTI?

Bullet point “The Briefing Paper misrepresents the poultry agreement as favouring Ukraine – when in fact it is very beneficial for the EU”

Once again, Mr Karpenko presents an allegation and then correctly cites the Briefing, thereby disproving his own allegation. The Briefing’s sentence reads: “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.” Nothing in this sentence speaks about the new scheme favouring Ukraine or not favouring the European Union. Instead, it says that it would “reward MHP and their helpers in EU Member States”. In fact, we don’t believe that what is beneficial to MHP shareholders is also beneficial to Ukraine. By contrast, we believe that creating a quasi-monopolist, like International Finance Institutions and export credit agencies of EU member states did by excessively fostering MHP, is detrimental to Ukraine, its people and its economy, including its poultry industry which Mr Karpenko claims to speak for.

This is of course a widespread and substantiated opinion. The European Parliament recently expressed “its deep concern about the ongoing redistribution of wealth in the hands of oligarchical structures”, stressed “its conviction that meaningful progress with the implementation of the AA and the reforms will only be possible if the deoligarchisation process is pursued” and encouraged Ukraine to focus on deoligarchisation as one of the three main priorities in its reform agenda.¹⁰

Bullet point “Ukrainian producers will not be in a position to export the product in question under tariff line 0207 13 50, for the reasons outlined above, and because the tariffs in place above the quota make it uneconomical”

According to a recent study by Wageningen University, offer prices of breast fillets from Ukraine are 89 eurocent per kg lower than the EU average (transport costs included).¹¹ We therefore do not know why Mr Karpenko thinks that a duty of 60 eurocent per kg would make it “commercially impossible for MHP ... to export any product to the EU”.

¹⁰ http://www.europarl.europa.eu/doceo/document/TA-8-2018-0518_EN.html?redirect

¹¹ Wageningen Economic Research, 2018: Competitiveness of the EU poultry meat sector, base year 2017. https://www.avec-poultry.eu/wp-content/uploads/2018/12/WUR-report-2018-116-Competitiveness-EU-poultry-meat-PvanHorne_def.pdf

Bullet point “The Briefing Paper’s suggestions that the EU should reclassify the product in question as ‘breasts’ would breach the DCFTA and WTO rules, and lead to claims against the EU from various trading partners for compensation”

Mr Karpenko’s argument that defining poultry breasts as ‘breasts’ would be “a violation of ... the DCFTA because it would subject the poultry cut ‘breast cap with the humerus bones of the wings attached’ to a customs duty higher than what was agreed under the DCFTA” seems strange, first because common sense would suppose that breasts are defined as ‘breasts’, and second because this “novel” MHP cut was not an object of the DCFTA negotiations, as it didn’t exist at that time (see above).

Bullet points “The Briefing Paper misrepresents EU audits of poultry production in Ukraine as highlighting significant concerns” and “The Briefing Paper misleadingly relies on ten-year-old data”

The accusation in the letter reads: “The Briefing Paper also refers in a misleading manner to outdated European Commission reports of its audits of poultry production in Ukraine, and selectively quotes criticisms, out of context.

In particular, the Paper states that a Commission report of 2010 identified ‘deficiencies in relation to hanging and stunning of birds’ and that it concluded that ‘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’.”

Sorry, Mr Karpenko, for having to tell you that this last quote is paragraph 83 of the report on the audit carried out in **2018**. And paragraph 83 continues by saying: “Recommendation 1 of the 2010 audit report is therefore and in practice not adequately addressed.”¹²

Recommendation 1 of the 2010 audit report reads: “In order to comply with the requirements of the animal welfare attestation contained in the veterinary certificate for poultry meat in Regulation (EC) No 798/2008, CAs [Competent Authorities] should ensure that in SHs [Slaughterhouses] wishing to export to the EU the deficiencies in relation to animal welfare identified by the MT [Mission Team] are corrected.”¹³

Bullet point “The Briefing Paper only quotes negative conclusions, out of context”

¹² 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/act_getPDF.cfm?PDF_ID=13809

¹³ http://ec.europa.eu/food/audits-analysis/act_getPDF.cfm?PDF_ID=8342

Mr Karpenko found more quotes in the Briefing making him angry: *“Where it does quote a more recent 2018 report, the Briefing Paper is also selective, quoting only negative findings out of context. It states that the Commission’s audit of 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.’”*

Well, what’s wrong with quoting this important Commission finding? The quote is paragraph 44 of the Commission’s report, presenting the conclusions of chapter 5.3 ‘Listing of Establishments’. However, we are happy to present more context:

For this chapter, the audit team reviewed the implementation of the approval procedure in two establishments which were listed for EU exports in April 2016 and February 2017 respectively. One of these establishments thereupon had to be removed from the list of export establishments, as “during the on-site visit in this establishment, the audit team noted several, including significant, deficiencies in relation to layout, structure, maintenance, sanitary conditions and hygiene practices (see paragraph 66). No such non-compliances had been recorded in the latest reports of the OV [Official Veterinarian]. A CCA [Central Competent Authority] representative shared the audit team’s opinion that ‘Establishment B’ did not meet the EU requirements and suggested, based on the non-compliances found, that it had not met these requirements at the time of approval either.” (paragraphs 39 and 40)

“In the case of ‘Establishment A’ (listed for EU export in April 2016): the audit team noted that the approval procedure was not fully followed by the CA as the final inspection based on which the establishment was listed for EU export, was not carried out by the CCA (contrary to procedure) but by the regional CA. Moreover, when reviewing the inspection reports and other documents related to this approval, the audit team noted that the last inspection report by the regional CA was dated before the establishment was listed.” (paragraph 38)

Bullet point “The more recent 2018 audit found only four areas of concern on which the Commission made recommendations ...”

The letter says: *“Unfortunately, the Briefing Paper misleadingly omits to state that the audit of 2018 concluded that the ‘action plan in response to the recommendations following the 2010 audit has been implemented by [Ukraine] satisfactorily’ except for four issues/area for which the 2018 Report provided recommendations. These four areas were: (i) the level of knowledge of the competent authority staff on EU requirements; (ii) the performance and effectiveness of official controls; (iii) the compliance of establishments with EU rules; and (iv) procedures in place for de-listing of establishments for EU export.*

Thus, contrary to what the Briefing Paper misleadingly suggests, the conclusion of the 2018 report clearly indicate that much of the deficiencies identified nine years ago and before the entry into force of the DCFTA have been corrected, and that any residual issues are only marginal.”

Well, to us the issues listed here sound absolutely crucial rather than marginal.

Bullet point “... and the latest February 2019 audit found ‘significant improvement’, as Ukraine had addressed three of those four areas of concern – including animal welfare”

The 2019 audit has not been published yet by the European Commission, so we cannot comment on its contents. Maybe Mr Karpenko refers to the draft audit report, which is sent by the Commission to the Ukrainian authorities for comments.

Of course, we will be more than happy to learn about progress made in the field of animal welfare in Ukraine. However, when speaking about animal welfare in the context of the audits, we have to remind that the audits only covered slaughter, and not animal housing, breeding, treatment, etc. To our knowledge, there has been no audit yet dealing with the huge field of farm animal welfare apart from slaughter.