Commission Implementing Regulation (EU) 2020/502 of 6 April 2020 on certain commercial policy measures concerning certain products originating in the United States of America

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 654/2014 of the European Parliament and of the Council of 15 May 2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules[(1)], and in particular Article 4(1) thereof,

Whereas:

(1) On 24 January 2020 the United States of America ("United States") adopted safeguard measures in the form of a tariff increase on imports of certain derivative aluminium products and certain derivative steel products, effective from 8 February 2020, with an unlimited duration.

(2) Notwithstanding the United States' characterisation of these measures as security measures, they are in essence safeguard measures. They consist of remedial action that disturbs the balance of concessions and obligations resulting from the Agreement Establishing the World Trade Organization ("WTO") and restricts imports for the purpose of protecting domestic industry against foreign competition, for the sake of that industry's commercial prosperity. The security exceptions of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") do not apply to or justify such safeguard measures, and have no bearing on the right of rebalancing under the relevant provisions of the WTO Agreement.

(3) The WTO Agreement on Safeguards provides for the right of any exporting Member affected by a safeguard measure to suspend the application of substantially equivalent obligations under the GATT 1994 to the trade of the WTO Member applying the safeguard measure, provided that no satisfactory solution is reached in consultations between those Members and that the WTO Council for Trade in Goods does not disapprove.

(4) Consultations between the United States and the Union as envisaged in Articles 8 and 12.3 of the WTO Agreement on Safeguards did not result in any satisfactory solution[(2)].

(5) The suspension by the Union of substantially equivalent concessions or other obligations should take effect following the expiration of 30 days after its notification to the Council for Trade in Goods, unless the Council for Trade in Goods disapproves.

(6) The WTO Agreement allows for the right of suspension to be exercised (a) immediately, provided that the safeguard measure has not been taken as a result of an absolute increase in imports, or does not conform to the relevant provisions of the WTO Agreement, or (b) after the expiry of a period of three years as from the application of the safeguard measure.

(7) The United States' safeguard measures are capable of having a considerable negative economic impact on the Union industries concerned. They would significantly limit Union exports of the relevant derivative aluminium products and the relevant derivative steel products to the United States. The affected Union imports of the relevant derivative aluminium and steel products into the United States are worth nearly EUR 40 million in 2019.

(8) Therefore, a suspension of trade concessions in the form of an increase in customs duties on selected products originating in the United States imported into the Union, which reflect and do not exceed the amount that would result from the application of the United States' duties to the imports of the relevant derivative aluminium products and the relevant derivative steel products from the Union into the United States, represents an appropriate suspension of the application of substantially equivalent trade concessions in line with the WTO Agreement on Safeguards.

(9) The Commission exercises the right to rebalance concessions in the trade relations with third countries on the basis of Article 4(1) of Regulation (EU) No 654/2014. The appropriate action takes the form of commercial policy measures, which should consist of the suspension of tariff concessions and the imposition of new or increased customs duties.

(10) In designing and selecting these measures, the Commission has applied objective criteria in accordance with Article 4(2)(c) and Article 4(3) of Regulation (EU) No 654/2014, including as relevant the proportionality of any measures, their potential to provide relief to the Union industries affected by the safeguard measures, and the aim of minimising negative economic impact on the Union. In line with Article 9 of Regulation (EU) No 654/2014, the Commission has provided an opportunity for stakeholders to express their views and submit information regarding the relevant Union's economic interests[(3)].

(11) Accordingly, the Commission has ensured that the additional customs duties are proportionate to the effect of the United States' safeguard measures and not excessive, as described in recitals (8), (16) and (18).

(12) Furthermore, the selected measures have the potential to provide some relief to the Union steel and aluminium industries affected by the United States' safeguard measures.

(13) Finally, these measures concern imports of products originating in the United States on which the Union is not substantially dependent for its supply. This approach avoids as much as possible a negative impact on the various actors on the Union market, including consumers.

(14) Reflecting the timing requirements described in recital (6), and absent disapproval by the Council for Trade in Goods as referred to in recital (5), the additional customs duties should apply in two stages.

(15) At the first stage, an *ad valorem* duty of 20 % and 7 % on imports of the products specified in Article 1(2)(a), should be applied from 8 May 2020 and until the United States ceases to apply its safeguard measures to products from the Union.

(16) The total amount of *ad valorem* duties at the first stage reflects the United States' tariff increase of 10 % and 25 % on imports of bumper stampings of aluminium, comprising parts and accessories of the motor vehicles of headings 8701 to 8705, and bumper stampings of steel, comprising parts and accessories of the motor vehicles of headings 8701 to 8705 (both described in HTS[(4)] code 8708 10 30), and body stampings of aluminium for tractors suitable for agricultural use and body stampings of steel for tractors suitable for agricultural use (both described in HTS code 8708 29 21)[(5)] from the Union into the United States (EUR 19 million total value of Union imports into the United States in 2019). These are the products for which the United States' safeguard measures have not been taken as a result of an absolute increase in imports.

(17) At the second stage, a further additional *ad valorem* duty of 4,4 % on imports of the product specified in Article 1(2)(b), should be applied as from 8 February 2023 or upon the adoption by, or notification to, the WTO Dispute Settlement Body of a ruling that the United States' safeguard measures are inconsistent with the relevant provisions of the WTO Agreement, if that is earlier, until the United States' safeguard measures cease to apply.

(18) The total amount of *ad valorem* duties at the second stage reflects the United States' tariff increase of 10 % and 25 % on imports of the rest of the relevant products from the Union into the United States[(6)] (EUR 21 million total value of Union imports into the United States in 2019). These are the products for which the United States' safeguard measures may have been taken as a result of an absolute increase in imports.

(19) The Commission may amend this Regulation to account for any modification of or amendment to the United States' safeguard measures, including through product or company exclusion.

(20) This Regulation is without prejudice to the question of the consistency of the United States' safeguard measures with the relevant provisions of the WTO Agreement.

(21) In light of the applicable WTO time limits, it is appropriate that this act should enter into force on the day on which it is published in the *Official Journal of the European Union*.

(22) The measures provided for in this Regulation are in accordance with the opinion of the Trade Barriers Committee, established by Regulation (EU) 2015/1843 of the European Parliament and of the Council[(7)],

HAS ADOPTED THIS REGULATION: