Commission Implementing Regulation (EU) 2018/724 of 16 May 2018 on certain commercial policy measures concerning certain products originating in the United States of America

COMMISSION IMPLEMENTING REGULATION (EU) 2018/724

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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 8 March 2018 the United States of America ('United States') adopted safeguard measures in the form of a tariff increase on imports of certain steel and aluminium products, effective from 23 March 2018 and with an unlimited duration. On 22 March the effective date of the tariff increase with respect to the European Union was deferred to 1 May 2018.

(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 World Trade Organisation ('WTO') Agreement 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 concessions or other obligations to the trade of the WTO Member applying the safeguard measure, provided that no satisfactory solution is reached in consultations and 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 reach 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. The WTO Agreement allows for the right of suspension to be exercised (a) immediately,

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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.

(6) The Commission exercises the right to suspend the application of substantially equivalent concessions or other obligations with the intention of rebalancing concessions or other obligations 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 may consist of, inter alia, the suspension of tariff concessions and the imposition of new or increased customs duties.

(7) In designing and selecting appropriate commercial policy measures, the Commission applies 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, including with regard to essential raw materials.

(8) In accordance with Article 9 of Regulation (EU) No 654/2014, the Commission provided an opportunity for stakeholders to express their views and submit information regarding the Union's economic interests in this respect[(3)].

(9) 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 steel and aluminium products concerned to the United States. The affected Union imports of the relevant steel and aluminium products into the United States are worth at least EUR 6,41 billion in 2017 (of which EUR 5,30 billion is total steel imports and EUR 1,11 billion is total aluminium imports).

(10) Therefore, a suspension of trade concessions on certain products up to a level which reflects and does not exceed the amount that would result from the application of the United States' duties to the imports of the steel and aluminium 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.

(11) Subsequently, with a separate implementing act, the Commission may decide to implement the suspension of the application of trade concessions, if necessary or to the extent necessary, through the application of additional customs duties on certain products originating in the United States imported into the Union. The Commission should decide on the scope of the application, and reflecting the timing requirements described in recital (5), depending on whether the United States excludes certain products or companies from the safeguard measures.

(12) Reflecting the timing requirements described in recital (5), the additional customs duties should apply, if necessary or to the extent necessary, in two stages. At the first stage, *ad valorem* duties of a maximum rate of 25 % on imports of the products listed in Annex

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I, may be applied immediately and until the United States ceases to apply its safeguard measures to products from the Union.

(13) The total amount of *ad valorem* duties at the first stage reflects the United States' tariff increase of 25 % on imports of 'carbon and alloy flat products' and 'carbon and alloy long products'[(4)] from the Union into the United States (EUR 2,83 billion total value of Union imports into the United States in 2017). These are the steel products for which the United States' safeguard measures have not been taken as a result of an absolute increase in imports.

(14) At the second stage, further additional *ad valorem* duties of a maximum rate of 10 %, 25 %, 35 % and 50 % on imports of the products listed in Annex II, may be applied as from 23 March 2021 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.

(15) The total amount of *ad valorem* duties at the second stage reflects the United States' tariff increase of 10 % on imports of the aluminium products[(5)] and of 25 % on imports of 'carbon and alloy pipe and tube products', 'carbon and alloy semi-finished products' and 'stainless steel products'[(6)] from the Union into the United States (EUR 3,58 billion total value of Union imports into the United States in 2017 of which EUR 2,47 billion is steel imports and EUR 1,11 billion is aluminium imports). These are the products for which there appears to have been an absolute increase in imports.

(16) The commercial policy measures and the products concerned have been selected in accordance with the criteria of Article 4(2)(c) and (3) of Regulation (EU) No 654/2014.

(17) By not exceeding the value of the Union imports affected by the United States' safeguard measures as described in recitals (9) and (10), the commercial policy measures are proportionate to the effect of the United States' safeguard measures and not excessive. It is also noted that only a fraction of the total value available will be initially exercised, as described in recitals (12) and (13).

(18) The commercial policy measures should provide some relief to the steel and aluminium Union industries affected by the United States' safeguard measures.

(19) The commercial policy measures should apply to imports of products originating in the United States on which the Union is not substantially dependent for its supply. The commercial policy measures may also apply with respect to the steel and aluminium sectors. This approach avoids as much as possible a negative impact on the various actors on the Union market, including consumers.

(20) Products for which an import licence with an exemption from or a reduction of duty has been issued prior to the date entry into force of this regulation should not be subject to these additional customs duties.

(21) Products for which the importers can prove that they have been exported from the United States to the Union prior to the date of application of the additional customs duties should not be subject to the additional customs duties.

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(22) 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.

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

(24) 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:

Article 1

The Commission shall immediately, and in any event no later than 18 May 2018, give written notice to the WTO Council for Trade in Goods that, absent disapproval by the Council for Trade in Goods, the Union suspends, from 20 June 2018, the application to the trade of the United States of import duty concessions under the GATT 1994 in respect of the products listed in Annex I and Annex II, so as to allow for an application of additional customs duties on the importation of these products originating in the United States.

Article 2

The application of additional customs duties on these products, through a subsequent Commission implementing act, shall be effected within the following parameters, and take into account any subsequent exclusion of certain products or companies from the safeguard measures by the United States:

(a) **[**[F1]At the first stage, additional ad valorem duty of a maximum rate of 10 % and 25 % shall be applied on imports of products listed in Annex I from 20 June 2018**]**.

(b) At the second stage, further additional *ad valorem* duty of a maximum rate of 10 %, 25 %, 35 % or 50 % may be applied on imports of products listed in Annex II:

— from 23 March 2021, or

— from the fifth day following the date of 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. In the latter event, the Commission shall publish in the *Official Journal of the European Union* a notice indicating the date on which such ruling is adopted or notified.

Textual Amendments

F1 Substituted by Commission Implementing Regulation (EU) 2018/886 of 20 June 2018 on certain commercial policy measures concerning certain products originating in the United States of America and amending Implementing Regulation (EU) 2018/724.

Article 3

The suspension provided for in Article 1 may be exercised as long as, and to the extent that, the United States applies or re-applies its safeguard measures in a manner that would affect products from the Union. The Commission shall publish in the *Official*

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Journal of the European Union a notice indicating the date on which the United States has ceased to apply its safeguard measures.

Article 4

1 Products listed in the Annexes for which an import licence with an exemption from or a reduction of duty has been issued prior to the date of entry into force of this regulation shall not be subject to additional duty.

2 Products listed in the Annexes for which the importers can prove that they have been exported from the United States to the Union prior to the date on which an additional duty is applied with respect to that product shall not be subject to the additional duty.

Article 5

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.