Regulation (EU) 2018/196 of the European Parliament and of the Council of 7 February 2018 on additional customs duties on imports of certain products originating in the United States of America (codification)

REGULATION (EU) 2018/196 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 7 February 2018

on additional customs duties on imports of certain products originating in the United States of America

(codification)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) Council Regulation (EC) No 673/2005[(2)] has been substantially amended several times[(3)]. In the interests of clarity and rationality, that Regulation should be codified.

(2) On 27 January 2003, the Dispute Settlement Body ('DSB') of the World Trade Organization ('WTO') adopted the Appellate Body report[(4)] and the Panel report[(5)], as upheld by the Appellate Body report, finding that the Continued Dumping and Subsidy Offset Act ('CDSOA') was incompatible with the United States' obligations under the WTO agreements.

(3) Since the United States failed to bring its legislation into conformity with the covered agreements, the European Community ('Community') requested authorisation from the DSB to suspend the application of its tariff concessions and related obligations under the General Agreement on Tariffs and Trade ('GATT') 1994 to the United States[(6)]. The United States objected to the level of suspension of tariff concessions and related obligations, and the matter was referred to arbitration.

(4) On 31 August 2004, the Arbitrator determined that the level of nullification or impairment caused every year to the Community was equal to 72 % of the amount of CDSOA disbursements relating to anti-dumping or countervailing duties paid on imports from the Community for the most recent year for which data were available at that time, as published by the United States' authorities. The Arbitrator concluded that the suspension by the Community of concessions or other obligations, in the form of the imposition of an additional import duty above bound custom duties, on a list

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2018/196 of the European Parliament and of the Council. (See end of Document for details)*

of products originating in the United States covering, on a yearly basis, a total value of trade not exceeding the amount of nullification or impairment would be consistent with WTO rules. On 26 November 2004, the DSB granted the authorisation to suspend the application to the United States of tariff concessions and related obligations under GATT 1994 in accordance with the decision of the Arbitrator.

(5) The CDSOA disbursements for the most recent year for which data were available at that time relate to the distribution of anti-dumping and countervailing duties collected during the Fiscal Year 2004 (1 October 2003 to 30 September 2004). On the basis of the data published by the United States' Customs and Border Protection, the level of nullification or impairment caused to the Community was calculated at USD 27,81 million. The Community was, therefore, authorised to suspend the application of its tariff concessions to the United States at an equivalent amount. The effect of a 15 % *ad valorem* additional import duty on imports of the products listed in Annex I originating in the United States represented, over one year, a value of trade that did not exceed USD 27,81 million. In respect of those products, the Community suspended the application of its tariff concessions to the United States as from 1 May 2005.

(6) If the non-implementation of the DSB ruling and recommendation persists, the Commission should adjust annually the level of suspension to the level of nullification or impairment caused by the CDSOA to the European Union at that time. The Commission should amend the rate of the additional import duty or the list in Annex I so that the effect of the additional import duty on imports from the United States of the selected products represents, over one year, a value of trade that does not exceed the amount of nullification or impairment.

(7) The Commission should respect the following criteria:

(a) the Commission should amend the rate of the additional import duty in the event that adding products to the list in Annex I or removing products from that list does not allow the level of suspension to be adjusted to the level of nullification or impairment; otherwise, the Commission should add products to the list in Annex I if the level of suspension increases, or withdraw products from that list if the level of suspension decreases;

(b) if products are added, the Commission should select the products from the list in Annex II in an automatic fashion following the order in which the products are listed; as a consequence, the Commission should also amend the list in Annex II by removing from it the products added to the list in Annex I;

(c) if products are withdrawn, the Commission should, first, remove products that were added to the list in Annex I after 1 May 2005; the Commission should then remove products that were in the list in Annex I on 1 May 2005 following the order of that list.

(8) In order to make the necessary adjustments to the measures provided for in this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending the rate of the additional import duty or the lists in Annexes I

and II under the conditions laid down in this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[7]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts,

HAVE ADOPTED THIS REGULATION:

Article 1

The tariff concessions and related obligations under GATT 1994 of the Union shall be suspended in respect of products originating in the United States listed in Annex I to this Regulation.

[*F1 Article 2*

An *ad valorem* duty of 0,012 % additional to the customs duty applicable under Regulation (EU) No 952/2013 of the European Parliament and of the Council[8] shall be imposed on the products originating in the United States listed in Annex I to this Regulation.**]**

Textual Amendments

F1 Substituted by Commission Delegated Regulation (EU) 2020/578 of 21 February 2020 amending Regulation (EU) 2018/196 of the European Parliament and of the Council on additional customs duties on imports of certain products originating in the United States of America.

Article 3

1 The Commission shall adjust the level of suspension annually to the level of nullification or impairment caused by the United States' Continued Dumping and Subsidy Offset Act (‘CDSOA’) to the Union at that time. The Commission shall amend the rate of the additional import duty or the list in Annex I under the following conditions:

a the level of nullification or impairment shall be equal to 72 % of the amount of disbursements under the CDSOA relating to anti-dumping and countervailing duties paid on imports from the Union for the most recent year for which data are available at that time, as published by the United States' authorities;

b the amendment shall be such that the effect of the additional import duty on imports of the selected products originating in the United States represents, over one year, a value of trade that does not exceed the level of nullification or impairment;

c except in circumstances set out in point (e), when the level of suspension increases, the Commission shall add products to the list in Annex I; those products shall be selected from the list in Annex II following the order of that list;

d except in circumstances set out in point (e), when the level of suspension decreases, products shall be withdrawn from the list in Annex I; the Commission shall remove, first, products that were in the list in Annex II on 1 May 2005 and were added to the list in Annex I at a later stage; the Commission shall then remove products that were in the list in Annex I on 1 May 2005 following the order of that list;

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e the Commission shall amend the rate of the additional import duty when the level of suspension cannot be adjusted to the level of nullification or impairment by adding or removing products from the list in Annex I.

2 When products are added to the list in Annex I, the Commission shall, at the same time, amend the list in Annex II by removing those products from that list. The order of the products remaining in the list in Annex II shall not be modified.

3 The Commission shall be empowered to adopt delegated acts in accordance with Article 4 to make the adjustments and amendments referred to in paragraphs 1 and 2 of this Article.

Where information on the amount of disbursements made by the United States is made available late in the year, in such a way that it is not possible to meet WTO and statutory deadlines by using the procedure provided for in Article 4, and where, in the case of adjustments and amendments to the Annexes, imperative grounds of urgency so require, the procedure provided for in Article 5 shall apply to delegated acts adopted pursuant to the first subparagraph.

Article 4

1 The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2 The power to adopt delegated acts referred to in Article 3(3) shall be conferred on the Commission for a period of five years from 20 February 2014. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3 The delegation of power referred to in Article 3(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4 Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6 A delegated act adopted pursuant to Article 3(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 5

1 Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.