Commission Implementing Regulation (EU) 2020/1646 of 7 November 2020 on commercial policy measures concerning certain products from the United States of America following the adjudication of a trade dispute under the Dispute Settlement Understanding of the World Trade Organization

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1646

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on commercial policy measures concerning certain products from the United States of America following the adjudication of a trade dispute under the Dispute Settlement Understanding of the World Trade Organization

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 and amending Council Regulation (EC) No 3286/94 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization[(1)], and in particular Article 4(1) thereof,

Whereas:

(1) On 11 April 2019, the Dispute Settlement Body of the World Trade Organization ('WTO') adopted its recommendations and rulings in the dispute *DS353 United States – Measures Affecting Trade in Large Civil Aircraft (Second complaint) – Recourse to Article 21.5 of the DSU by the European Union*, confirming that the United States has failed to bring its measures, found to be inconsistent with the Agreement on Subsidies and Countervailing Measures ('SCM Agreement'), into conformity with its obligations under that Agreement. With respect to the FSC/ETI tax concessions, the Appellate Body confirmed that the United States has not withdrawn the subsidies and that the original recommendations and rulings remain operative[(2)].

(2) With respect to the other relevant measures, in accordance with paragraph 8 of the 'Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding ("DSU") and Article 7 of the SCM Agreement'[(3)] between the European Union and the United States with respect to this dispute, the European Union requested the DSU Article 22.6 arbitrator to resume its work. The arbitrator issued its decision on 13 October 2020[(4)].

(3) The arbitrator's decision states that the European Union may request authorisation from the WTO Dispute Settlement Body to take countermeasures with respect to the United States of America ('United States'), at a level not exceeding USD 3 993 212 564 annually. These countermeasures may take the form of (a) suspension of tariff concessions and other related obligations under the GATT 1994; (b) suspension of

concessions and other obligations under the SCM Agreement; and (c) suspension of horizontal or sectoral commitments contained in the consolidated European Union's services schedule with regard to all principal sectors identified in the Services Sectoral Classification List.

(4) In line with Article 22.7 of the DSU, the parties shall accept the arbitrator's decision as final. On 26 October 2020 the European Union has been authorised by the WTO Dispute Settlement Body to take countermeasures against the United States consistent with the arbitrator's decision. The countermeasures will consist of the suspension of tariff concessions and the imposition of new or increased customs duties.

(5) In designing and selecting appropriate measures, the Commission has taken into consideration and applied all of the objective criteria in accordance with Article 4(2)(a) and Article 4(3) of Regulation (EU) No 654/2014. 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[(5)].

(6) The Commission has ensured that the additional customs duties do not exceed the level authorised by the WTO Dispute Settlement Body. At present, the amount is considered appropriate to effectively induce compliance and provide relief to EU economic operators because, in the current economic climate, it permits measures to be imposed on US large civil aircraft and other products that are considered sufficiently similar to the countermeasures imposed by the United States.

(7) These measures concern imports of products originating in the United States on which the European 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.

(8) The commercial policy measures in the form of additional *ad valorem* duties on the products listed in Annex I and Annex II should be applied as follows:

(a) additional *ad valorem* duties of a rate of 15 % for products specified in Annex I;

(b) additional *ad valorem* duties of a rate of 25 % for products specified in Annex II.

(9) Negotiations between the European Union and the United States aiming at a balanced settlement of the WTO disputes on large civil aircraft have so far not yielded results. At the same time, the United States continues to apply countermeasures in the amount of USD 7,5 bn on imports of products from the European Union. The Commission intends to amend this Regulation, to take into account relevant developments, including with respect to US compliance or lack thereof. In particular, the Commission intends to suspend the application of the implementing Regulation, if the United States suspends its countermeasures against imports from the European Union, or change the level of customs duties, as necessary, to mirror the countermeasures applied by the United States.

(10) This act should enter into force on the day following the day on which it is published in the *Official Journal of the European Union*.

(11) 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[(6)],

HAS ADOPTED THIS REGULATION:

Article 1

Following the adjudications in the WTO dispute DS353 United States – Measures Affecting Trade in Large Civil Aircraft, and following the authorisation of the WTO Dispute Settlement Body, the European Union shall suspend 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 to this Regulation.

Article 2

As a consequence, the Union shall apply additional customs duties on imports into the Union of the products listed in Annex I and II to this Regulation and originating in the United States.

Article 3

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 4

This Regulation shall enter into force on the day following 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.

Done at Brussels, 7 November 2020.

For the Commission

The President

Ursula VON DER LEYEN

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2020/1646. (See end of Document for details)*

ANNEX I

Products subject to additional duties

TARIC codes[ab]	Additional duty
8802 40 00 13	15 %
8802 40 00 15	15 %
8802 40 00 17	15 %
8802 40 00 19	15 %
8802 40 00 21	15 %

a The nomenclature codes are taken from the integrated tariff, based on the combined nomenclature, as defined in Article 2 of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

b For the avoidance of doubt, these tariff headings are intended to cover all aircraft within the identified weight parameters imported to the European Union (entered into free circulation) and to be operated by any entity located in the European Union for any economically significant period of time, either in the European Union or between the European Union and any third country, irrespective of any formal financing arrangements that may be in place (such as leasing arrangements) and having regard to criteria such as the following (no one of which is determinative): place of incorporation of the operator; centre of operations of the operator; external painting and internal design and configuration of the aircraft in line with the branding of the operator; and intended flagging.

ANNEX II

Products subject to further additional duties

CN 2020[a]	Additional duty
0301 11 00	25 %
0301 19 00	25 %
0303 13 00	25 %
0304 81 00	25 %
0305 41 00	25 %
0307 22 90	25 %
0406 10 50	25 %
0406 90 21	25 %
0406 90 86	25 %
0714 20 10	25 %
0714 20 90	25 %

a The nomenclature codes are taken from the Combined Nomenclature as defined in Article 1(2) of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1) and as set out in Annex I thereto, which are valid at the time of publication of this Regulation and *mutatis mutandis* as amended by subsequent legislation, including most recently Commission Implementing Regulation (EU) 2019/1776 of 9 October 2019 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 280, 31.10.2019, p. 1).

0802 90 85	25 %
0804 10 00	25 %
0805 40 00	25 %
0810 40 50	25 %
0811 90 50	25 %
0811 90 70	25 %
0905 10 00	25 %
0905 20 00	25 %
1001 99 00	25 %
1202 41 00	25 %
1202 42 00	25 %
1212 29 00	25 %
1302 19 70	25 %
1302 39 00	25 %
1515 90 11	25 %
1515 90 29	25 %
1515 90 39	25 %
1515 90 40	25 %
1515 90 51	25 %
1515 90 59	25 %
1515 90 60	25 %
1515 90 91	25 %
1515 90 99	25 %
1703 10 00	25 %
1806 10 15	25 %
1806 10 20	25 %
1806 10 30	25 %
1806 10 90	25 %
1806 20 10	25 %
1806 20 30	25 %
1806 20 50	25 %

a The nomenclature codes are taken from the Combined Nomenclature as defined in Article 1(2) of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1) and as set out in Annex I thereto, which are valid at the time of publication of this Regulation and *mutatis mutandis* as amended by subsequent legislation, including most recently Commission Implementing Regulation (EU) 2019/1776 of 9 October 2019 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 280, 31.10.2019, p. 1).