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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	4 July 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2017) 361 final
Subject:	Amended proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on additional customs duties on imports of certain products originating in the United States of America (codification)

Delegations will find attached document COM(2017) 361 final.

The attention of delegations is drawn to the fact that the Working Party on Codification dealt with the previous three Commission proposals for codification of Council Regulation (EC) No 673/2005 of 25 April 2005 establishing additional customs duties on imports of certain products originating in the United States of America, mentioned in the explanatory memorandum of the present proposal, the last one of which was circulated to delegations by document ST 10802/16. The outcome of proceedings of the Working Party on Codification on that proposal appears in document ST 7461/17.

Delegations are invited to send their comments on the codification proposal by 10 September 2017 to the following addresses:

SECRETARIAT.Codification@consilium.europa.eu **AND** sj-codification@ec.europa.eu

Delegation's attention is drawn to the Practical Guide on Codification (doc. 14722/14 + COR1 of 24 October 2014).

Encl.: COM(2017) 361 final



Brussels, 4.7.2017
COM(2017) 361 final

2014/0175 (COD)

Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on additional customs duties on imports of certain products originating in the
United States of America (codification)**

EXPLANATORY MEMORANDUM

1. On 12 June 2014, the Commission presented a proposal for a Regulation of the European Parliament and of the Council codifying Council Regulation (EC) No 673/2005 of 25 April 2005 establishing additional customs duties on imports of certain products originating in the United States of America¹.

2. In its opinion of 17 September 2014 the Consultative Working Party of the legal services set up under the Interinstitutional Agreement of 20 December 1994 on an accelerated working method for official codification of legislative texts² has stated that the proposal referred to in point 1 does indeed confine itself to straightforward codification, without any substantive changes to the acts covered by it.

3. On 17 July 2015, the Commission presented a first amended proposal³ for the codification of Regulation (EC) No 673/2005, following subsequent amendments to it.

In its further opinion of 17 December 2015 the Consultative Working Party of the legal services has stated that that amended proposal does indeed confine itself to straightforward codification, without any substantive changes to the acts covered by it.

4. On 23 June 2016, the Commission presented a second amended proposal⁴ for the codification of Regulation (EC) No 673/2005, following further amendments to it.

In its further opinion of 20 December 2016 the Consultative Working Party of the legal services has stated that that amended proposal does indeed confine itself to straightforward codification, without any substantive changes to the acts covered by it.

5. Having regard to the amendments adopted⁵ in respect of Regulation (EC) No 673/2005 and in view of the work already carried out in the course of the legislative procedure, the Commission has decided to present – in accordance with Article 293(2) of the TFEU – another amended proposal for codification of the Regulation in question.

This amended proposal also takes account of the purely formal or editorial changes proposed by the Consultative Working Party of the legal services, where these changes are considered justified⁶.

6. The changes made in this amended proposal, compared with the proposal referred to in point 4, are the following:

(1) the wording of Article 2 is replaced by the following:

*‘An ad valorem duty of 4,3 % additional to the customs duty applicable under Regulation (EU) No 952/2013 of the European Parliament and of the Council’**

¹ COM(2014) 343 final of 12.6.2014.

² OJ C 102, 4.4.1996, p. 2.

³ COM(2015) 350 final of 17.7.2015.

⁴ COM(2016) 408 final of 23.6.2016.

⁵ OJ L 113, 29.4.2017, p. 12.

⁶ Cf. the opinion of the Consultative Working Party of 20 December 2016.

shall be imposed on the products originating in the United States listed in Annex I to this Regulation.

* *Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).’;*

- (2) the wording of Article 6 is replaced by the following:

‘The origin of any product to which this Regulation applies shall be determined in accordance with Regulation (EU) No 952/2013.’;

- (3) in Article 7, paragraph 3 is deleted;

- (4) the text of Annex I is replaced by the following:

‘The products on which additional duties are to apply are identified by their eight-digit CN codes. The description of products classified under these codes can be found in Annex I to Council Regulation (EEC) No 2658/87.*

0710 40 00

ex 9003 19 00 ‘frames and mountings of base metal’

8705 10 00

6204 62 31

* *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).’;*

- (5) in Annex III, the following entry is added:

‘Commission Delegated Regulation (EU) 2017//1750 (OJ L 113, 29.4.2017, p. 12)’;

- (6) in Annex IV, the reference to ‘Article 7(3)’ is replaced by ‘–’.

7. To facilitate reading and examination, the full text of the amended proposal for codification is attached hereto.

Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

⊗ 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,

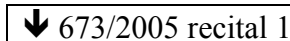
Having regard to the opinion of the European Economic and Social Committee⁷,

Acting in accordance with the ordinary legislative procedure,

Whereas:



- (1) Council Regulation (EC) No 673/2005⁸ has been substantially amended several times⁹. 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 report¹⁰ and the Panel report¹¹, 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.

⁷ OJ C [...], [...], p. [...].

⁸ Council Regulation (EC) No 673/2005 of 25 April 2005 establishing additional customs duties on imports of certain products originating in the United States of America (OJ L 110, 30.4.2005, p. 1).

⁹ See Annex III.

¹⁰ United States — Offset Act (Byrd Amendment), Appellate Body report (WT/DS217/AB/R, WT/DS234/AB/R, 16 January 2003).

¹¹ United States — Offset Act (Byrd Amendment), Panel report (WT/DS217/R, WT/DS234/R, 16 September 2002).

↓ 673/2005 recital 2 (adapted)

- (3) Since the United States failed to bring its legislation into conformity with the covered agreements, the 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 States¹². The United States objected to the level of suspension of tariff concessions and related obligations and the matter was referred to arbitration.

↓ 673/2005 recital 3 (adapted)

- (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 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.

↓ 673/2005 recital 4 (adapted)

- (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 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 from 1 May 2005.

↓ 673/2005 recital 5 (adapted)

- (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 Union at that time. The Commission should amend the list in Annex I or the rate of the additional import duty so that the effect of the additional duty on imports from the United States of the

¹² United States — Offset Act (Byrd Amendment), Recourse by the European Communities to Article 22(2) of the DSU (WT/DS217/22, 16 January 2004).

selected products represents, over one year, a value of trade that does not exceed the amount of nullification or impairment.

↓ 673/2005 recital 6 (adapted)

- (7) The Commission should respect the following criteria:
- (a) the Commission should amend the rate of the additional import duty when adding or removing products from the list in Annex I does not allow to adjust the level of suspension 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.
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↓ 38/2014 Art. 1 and Annex .4
(adapted)

- (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 should be delegated to the Commission in respect of amending the rate of the additional 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. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council,
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↓ 673/2005 (adapted)

HAVE ADOPTED THIS REGULATION:

Article 1

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

Article 2

An *ad valorem* duty of 4,3 % additional to the customs duty applicable under Regulation (EU) No 952/2013 of the European Parliament and of the Council¹³ shall be imposed on the products originating in the United States listed in Annex I to this Regulation.

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 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 made so 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;
- (e) the Commission shall amend the rate of the additional 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 the list in Annex II. The order of the products remaining in the list in Annex II shall not be modified.

¹³ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

↓ 38/2014 Art. 1 and Annex .4(1)

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 4 to make adjustments and amendments under 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.

↓ 38/2014 Art. 1 and Annex .4(2)

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

5. 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.

↓ 38/2014 Art. 1 and Annex .4(3)

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.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 4(5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or by the Council.

↓ 673/2005 (adapted)

Article 6

The origin of any product to which this Regulation applies shall be determined in accordance with Regulation (EU) No 952/2013.

Article 7

1. Products listed in Annex I for which an import licence with an exemption from, or a reduction of duty, was issued before ☒ 30 April 2005 ☒ shall not be subject to the additional duty.

2. Products listed in Annex I which are admitted free of import duties pursuant to Council Regulation (EC) No 1186/2009¹⁴ shall not be subject to the additional duty.

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Article 8

Regulation (EC) No 673/2005 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex IV.

¹⁴ Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty (OJ L 324, 10.12.2009, p. 23).

Article 9

This Regulation shall enter into force on the ☒ twentieth ☒ day ☒ following that ☒ 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.

Done at Brussels,

For the European Parliament
The President

For the Council
The President