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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.:	C(2017) 1202 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 24.2.2017 amending Council Regulation (EC) No 673/2005 establishing additional customs duties on imports of certain products originating in the United States of America

Delegations will find attached document C(2017) 1202 final.

Encl.: C(2017) 1202 final



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COMMISSION DELEGATED REGULATION (EU) .../...

of 24.2.2017

**amending Council Regulation (EC) No 673/2005 establishing additional customs duties
on imports of certain products originating in the United States of America**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

This draft Commission Delegated Regulation aims to adjust the annual level of retaliation applied in the WTO dispute on the United States' Continued Dumping and Subsidy Offset Act of 2000 ('CDSOA', or the *Byrd Amendment*).

The CDSOA mandates the yearly distribution of the anti-dumping and countervailing duties collected during the previous fiscal year to US companies. The CDSOA was found incompatible with the United States' WTO obligations in January 2003.

Given that the United States failed to bring itself in compliance with its obligations under the WTO agreements, the EU was authorised to impose an additional import duty above bound customs duties on a list of US products covering on a yearly basis a total value of trade not exceeding the amount of 72% of the CDSOA disbursement from duties collected on imports from the EU for the most recent year for which data are available. Since 1 May 2005, the EU applies an *ad valorem* additional customs duty on imports of certain products originating in the United States¹ on a yearly basis, adjusting the level of retaliation proportionately to the amount disbursed from duties collected on EU products in the most recent distribution.

This draft Commission Delegated Regulation does not involve any discretionary choice, but is entirely constrained by legal obligations imposed by the Council:

1. The new level of retaliation to apply as from 1 May 2017, i.e. USD 8 165 179, has been established on the basis of the latest CDSOA distribution of anti-dumping and anti-subsidy duties collected during the Fiscal Year 2016 (1 October 2015 – 30 September 2016) as well as the additional distribution anti-dumping and countervailing duties collected during the Fiscal Years 2011, 2012, 2013, 2014 and 2015. On the basis of the data published by the United States' Customs and Border Protection, the level of nullification or impairment caused to the Union is calculated at USD 8 165 179.
2. The new level of retaliation of USD 8 165 179 represents an increase as compared to the current level of retaliation, which amounted to USD 887 696 and that has been applied since 1 May 2016. Since this year the level of suspension cannot be adjusted to the level of nullification or impairment by adding or removing products from Annex I, Article 3(1)(e) of Council Regulation (EU) No 673/2005 applies:
 - (a) Accordingly, no products are added to or removed from Annex I and therefore, the list of products therein remains unchanged.
 - (b) On the other hand, the rate of additional duty to which Annex I products are subjected is amended, i.e. it increases from last year's 0,45% to 4,3% in order to adjust to the level of retaliation.

¹ Council Regulation (EC) No 673/2005 (the "*Byrd Regulation*") establishing additional customs duties of 15% on imports of certain products originating in the United States of America (OJ L 110, 30.4.2005, p. 1), as amended with Commission Delegated Regulation (EU) No 2016/654 of 26 February 2016, (OJ L 114, 28.4.2016, p. 1), applying 0,45% additional duty.

3. Consequently and in accordance with Article 3(1)(e) of Council Regulation (EC) No 673/2005, the draft Delegated Regulation subjects sweet corn, frames and mountings for spectacles, crane lorries, and women's denim trousers and breeches originating in the US to an ad valorem additional rate of duty of 4,3% as from 1 May 2017.
4. The effect of a 4,3% ad valorem additional duty on imports from the United States of the four products listed in Annex I represents, over one year, a value of trade that does not exceed USD 8 165 179 (see Articles 3(1)(a) and (b) of Regulation (EC) No 673/2005). Annex II to Regulation (EC) No 673/2005 remains unchanged, as all of the products of that list have already been added to Annex I.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

A consultation was carried out in line with paragraph 4 of the Common Understanding on delegated acts between the European Parliament, the Council and the European Commission. No additional consultations with interested parties or stakeholders, or a preparation of an impact assessment are necessary.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The legal basis for this Delegated Regulation is Article 3(3) of Council Regulation (EC) No 673/2005 establishing additional customs duties on imports of certain products originating in the United States of America, as amended by Regulation (EU) No 38/2014 of the European Parliament and of the Council amending certain regulations relating to the common commercial policy as regards the granting of delegated and implementing powers for the adoption of certain measures.

Article 1 of Council Regulation (EC) No 673/2005 mandates the suspension of the tariff concessions and related obligations under GATT 1994 in respect of products originating in the United States of America listed in Annex I to that Regulation. Article 3(1) defines the criteria under which the Commission shall adjust the level of suspension annually to the level of nullification or impairment caused by the Byrd Amendment to the EU at that time.

COMMISSION DELEGATED REGULATION (EU) .../...

of 24.2.2017

amending Council Regulation (EC) No 673/2005 establishing additional customs duties on imports of certain products originating in the United States of America

THE EUROPEAN COMMISSION,

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

Having regard to 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 America², and in particular Article 3 thereof,

Whereas:

- (1) As a result of the United States' failure to bring the Continued Dumping and Subsidy Offset Act (CDSOA) in compliance with its obligations under the World Trade Organization (WTO) agreements, Regulation (EC) No 673/2005 imposed a 15% *ad valorem* additional customs duty on imports of certain products originating in the United States of America as from 1 May 2005. In conformity with the WTO authorisation to suspend the application of concessions to the United States, the Commission is to adjust the level of suspension annually to the level of nullification or impairment caused by the CDSOA to the European Union at that time.
- (2) The CDSOA disbursements for the most recent year for which data are available relate to the distribution of anti-dumping and countervailing duties collected during the Fiscal Year 2016 (1 October 2015 – 30 September 2016) as well as the additional distribution anti-dumping and countervailing duties collected during the Fiscal Years 2011, 2012, 2013, 2014 and 2015. On the basis of the data published by the United States' Customs and Border Protection, the level of nullification or impairment caused to the Union is calculated at USD 8 165 179.
- (3) The level of nullification or impairment and consequently of suspension has increased. However, 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 to Regulation (EC) No 673/2005. As a consequence, in accordance with Article 3(1)(e) of that Regulation, the Commission should keep the list of products in Annex I unchanged and amend the rate of the additional duty in order to adjust the level of suspension to the level of nullification or impairment. The four products listed in Annex I should therefore be maintained on the list and the rate of additional import duty should be amended and set at 4,3%.

² OJ L 110, 30.4.2005, p. 1; as amended by Regulation of the European Parliament and the Council (EU) No 38/2014 (OJ L 18, 21.1.2014, p. 52).

- (4) The effect of a 4,3% *ad valorem* additional import duty on imports from the United States of the products in Annex I represents, over one year, a value of trade that does not exceed USD 8 165 179.
- (5) To make sure that there are no delays in the application of the amended rate of additional import duty, this Regulation should enter into force on the day of its publication.
- (6) Regulation (EC) No 673/2005 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Article 2 of Council Regulation (EC) No 673/2005 is replaced by the following:

"Article 2

An *ad valorem* duty of 4,3% additional to the customs duty applicable under Council Regulation (EEC) No 2913/92* shall be imposed on the products originating in the United States of America listed in Annex I to this Regulation.

* OJ L 302, 19.10.1992, p. 1."

Article 2

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

It shall apply from 1 May 2017.

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

Done at Brussels, 24.2.2017

For the Commission
The President
Jean-Claude JUNCKER