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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)
No. prev. doc.:	6639/25
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending 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 - Confirmation of the final compromise text with a view to agreement

1. On 3 February 2025, the European Commission submitted the above-mentioned proposal (ST 5897/25) to the Council.

2. The proposal aims to amend Regulation (EU) 2018/196 by including a *de minimis* threshold for the imposition of retaliation applied in relation to the WTO dispute on the United States' Continued Dumping and subsidy Offset Act of 2000, known as Byrd Amendment.

3. At its meeting on 12 March 2025, the Permanent Representatives Committee granted the Polish Presidency a mandate for negotiations with the European Parliament on the proposed Regulation, as set out in document ST 6639/25.

4. Coreper will find in annex to this note the full text of the Presidency's compromise text. Changes compared to the Commission proposal are marked with ***bold italic*** and ~~strikethrough~~ for deletions.

5. The European Parliament's Committee on International Trade (INTA) intends to use a simplified procedure with no vote in its committee. The European Parliament aims to adopt its position at first reading in its plenary session in April 2025.

6. The Permanent Representatives Committee is therefore invited:

- to confirm agreement on the compromise text as set out in document ST 6639/25 and in the annex to this note with a view to reaching an agreement at first reading with the European Parliament;

- to authorise the Chair of the Permanent Representatives Committee to send a letter to inform the Chair of the European Parliament's Committee on International Trade (INTA) that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the exact form as set out in Annex to this note, and subject to revision of that text by the lawyer-linguists of both institutions, the Council will, in accordance with Article 294 paragraph 4 of the Treaty, approve the European Parliament's position and the act will be adopted in the wording which corresponds to the European Parliament's position.

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ANNEX

2025/0012 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending 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

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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,

Whereas:

(1) On 27 January 2003, the Dispute Settlement Body ('DSB') of the World Trade Organization ('WTO') adopted the Appellate Body report[1] and the Panel report[2], 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.

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

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

(2) Since the United States failed to bring its legislation into conformity with the WTO 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[3]. The United States objected to the level of suspension of tariff concessions and related obligations, and the matter was referred to arbitration.

(3) 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.

(4) As a result of the United States' failure to bring the CDSOA in compliance with its obligations under the WTO agreements, pursuant to Regulation (EU) 2018/196 of the European Parliament and of the Council[4] a 4,3 % ad valorem additional customs duty was imposed on imports of certain products originating in the United States. 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 Union at that time.

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

4 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) (OJ L 44, 16.2.2018, p. 1, ELI: http://data.europa.eu/eli/reg/2018/196/oj).

(5) In recent years, the level of nullification or impairment caused to the Union on the basis of the data published by the United States' Customs and Border Protection has decreased. For example, in 2024, it was calculated at USD 34,98 resulting in a rate of additional import duty of 0,00002 %. As collecting this additional import duty would have no trade effect but result in a disproportionate administrative cost for the Union, the rate of additional import duty was set at 0 % by Commission Delegated Regulation (EU) 2024/1239[5] , which amended Regulation (EU) 2018/196 accordingly.

(6) Given that the CDSOA was effectively repealed on 1 October 2007, it is expected that the level of nullification or impairment and, consequently, of suspension will stay at this significantly decreased and economically negligible level.

(7) To ensure efficient processes and avoid disproportionate administrative costs for the Union, Regulation (EU) 2018/196 should be amended by including a de minimis -threshold below which ~~no~~ ***the*** additional import duty should be ~~imposed~~ ***suspended, and the Commission should not be required to adjust the level of suspension***.

(8) The de minimis threshold should be set at USD 30 000 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 (U.S. Customs and Border Protection). Below such threshold, the additional import duty, as resulting from the formula mandated by the WTO authorisation, would have no trade impact and would thus be economically negligible. It would also cause disproportionate administrative costs for the Union.

[5] Commission Delegated Regulation (EU) 2024/1239 of 22 February 2024 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 (OJ L, 2024/1239, 29.4.2024, ELI: http://data.europa.eu/eli/reg_del/2024/1239/oj).

(9) Additionally, Article 3(3) of Regulation (EU) 2018/196 should be amended and aligned to the standard clauses contained in the Interinstitutional Agreement on Better Law-Making[6].

(9a) In order to avoid disproportionate administrative effort and allow for the prompt application of the envisaged derogation by the Commission, this Regulation should enter into force on the day following that of its publication in the Official Journal of the European Union.

(10) Regulation (EU) 2018/196 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) 2018/196

Article 3 of the Regulation (EU) 2018/196 is amended as follows:

(1) The following paragraph is added:

‘4. ~~Notwithstanding~~ ***By way of derogation from*** paragraph 1 of this Article, ~~the application of the additional duty shall be suspended if~~ ***where*** 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, is USD 30 000 or less***, the Commission shall not adjust the level of suspension and the application of the additional import duty referred to in Article 2 shall be suspended. The Commission shall publish a notice in the Official Journal of the European Union to that effect.’’***

[6] Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p. 1, ELI: http://data.europa.eu/eli/agree_interinstit/2016/512/oj).

(2) The first sentence of paragraph 3 is replaced by the following:

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

Article 2

Entry into force

This Regulation shall enter into force on the 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	*For the Council*
The President	*The President*

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