



Brussels, 18.1.2019  
COM(2019) 16 final

Recommendation for a

**COUNCIL DECISION**

**authorising the opening of negotiations of an agreement with the United States of  
America on the elimination of tariffs for industrial goods**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE RECOMENDATION

- **Reasons for and objectives of the recommendation**

On 25 July 2018, the President of the European Commission and the President of the United States of America reached agreement to launch a new phase in the trade relationship between the United States and the European Union, with a view to facilitate trade and avoid an escalation of trade tensions.

A Joint Statement was adopted on 25 July 2018, providing for the elimination of tariffs for industrial goods; increased cooperation on regulatory issues and standards; facilitation of trade in soybeans; and increased trade in liquefied natural gas (LNG) to allow the European Union to better diversify its energy supply. They also agreed to join forces to better protect European and US companies from unfair global trade practices and to work closely with like-minded partners to reform the World Trade Organisation (WTO).

An Executive Working Group was set up to carry this joint agenda forward, and asked inter alia to identify short-term measures to facilitate commercial exchanges. It was agreed that during the process of implementing the Joint Statement the European Union and the United States would fully respect the spirit of this agreement, unless either party terminates the negotiations. Both sides also agreed that they want to resolve the steel and aluminium tariff issues.

The European Commission is committed to implement the Joint Statement of 25 July 2018 in good faith. The Commission shall suspend the negotiations with the United States, in case the United States does not respect the commitment made on 25 July 2018 to abstain from adopting new measures against the EU under Section 232 of the Trade Expansion Act. The Commission may also suspend negotiations in case the US adopts trade restrictions against EU exports on the basis of Section 301 of the 1974 Trade Act or under any other similar United States law.

The goal of the negotiations on the elimination of tariffs will be to eliminate all duties for industrial goods, on a reciprocal basis, with the objective of achieving a substantial elimination of tariffs upon entry into force and a phasing out of such tariffs in a short time frame. Industrial goods encompass all goods other than those included in Annex I of the WTO Agreement on Agriculture. Account may be taken of the particular sensitivities of certain products. In this connection, the EU is ready to take into account potential US sensitivities for certain automotive products.

The EU and the US are the largest and most integrated economies in the world, with a long, shared history of trade and a similar level of economic development. The US is the main export destination of EU exports in industrial goods and is the second largest exporter of industrial goods to the EU (after China). EU-US trade in goods amounted to EUR 633 billion in 2017, composed mostly of industrial goods (EUR 598 billion, of which EUR 166 billion trade in machinery and equipment). Around 4.7 million EU jobs are associated with production for exports to the US. Industrial goods account for most of our trade in goods with the US (94 % of EU exports and 95 % of imports). EU-US trade in goods has been growing consistently over the last 10 years.

In general, both the EU and the US have low tariffs on industrial goods. The simple average applied MFN tariff rates on non-agricultural products are 4.2% and 3.1% respectively. While applied tariffs levels are relatively low, the sheer size of our trade relationship means that the elimination of all tariffs of industrial goods will have an important impact on businesses and consumers on both sides of the Atlantic.

An internal analysis with the computable general equilibrium model MIRAGE shows that the elimination of tariffs on industrial goods would benefit both partners about equally in terms of an increase in bilateral trade. EU exports of goods to the US would increase by 10%, US exports to the EU would increase by 13%.

The removal of tariffs on industrial goods should in particular result in important economic benefits for small and medium-sized enterprises (SMEs) who are disproportionately affected by the costs of placing a product on the market. Reductions in costs, including through the elimination of tariffs can help make exports from SMEs more competitive, thus making the difference between exporting or not.

- **Consistency with existing policy provisions in the policy area**

The scope of this recommendation only relates to the part of the Joint Statement of 25 July 2018 covering the elimination of tariffs for industrial goods. The Joint Statement was adopted under exceptional circumstances, in order to avoid an escalation of trade tensions between the EU and the United States.

The objective to de-escalate trade tensions with the US is fully consistent with the Treaty on European Union (TEU), which enshrines that the EU should encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade.<sup>1</sup>

The recommendation for the opening of negotiations with the US on the elimination of tariffs should by no means be construed as an indication that the Commission would be willing to derogate from existing trade and investment policies as provided for under the Commission Communication on 'Trade for All: Towards a more responsible trade and investment policy'.<sup>2</sup>

- **Consistency with other Union policies**

The recommendation is consistent with other Union policies.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

Article 207(3) and (4) first sub-paragraph in conjunction with Article 218(3) and (4) of the Treaty on the Functioning of the European Union (TFEU).

### **Subsidiarity (for non-exclusive competence)**

According to Article 5(3) of the TEU, the subsidiarity principle does not apply in areas of exclusive EU competence. The common commercial policy is listed among the areas of exclusive competence of the Union in Article 3 of the TFEU. This policy includes the negotiation of trade agreements pursuant to, inter alia, Article 207 TFEU.

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<sup>1</sup> Article 21 paragraph 2 (e) TEU.

<sup>2</sup> [http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153846.pdf](http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf)

- **Proportionality**

The Commission recommendation is in line with the principle of proportionality, and necessary in light of our objective to de-escalate trade tensions with the US.

- **Choice of the instrument**

Decision of the Council of the European Union.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable

- **Stakeholder consultations**

A considerable amount of stakeholder consultations have taken place about the possible gains from the elimination of tariffs since 2012. Several hearings and Civil Society Dialogue meetings have been organised. This is in addition to public debates in or organised by the European Parliament and in EU Member States.

- **Collection and use of expertise**

Considerable expertise about the possible gains from the elimination of tariffs between the EU and US was already gathered in previous consultation activities since 2012 (please see links and documents on the following website:

[http://trade.ec.europa.eu/doclib/cfm/doclib\\_section.cfm?sec=146](http://trade.ec.europa.eu/doclib/cfm/doclib_section.cfm?sec=146) .

- **Impact assessment**

Due to the political imperative to move ahead quickly in order to lower trade tensions between the EU and the US, as expressed by the President of the Commission after his meeting with the US President, and endorsed by the European Council in its informal meeting of 16 May 2018 in Sofia, the formal impact assessment process has been waived.

- **Fundamental rights**

The recommendation is consistent with the EU Treaties and the Charter of Fundamental Rights of the European Union.

### **4. BUDGETARY IMPLICATIONS**

The agreement on the elimination of tariffs will have a negative impact on the budget of the EU in the form of foregone customs duties due to tariff elimination for industrial goods, representing some EUR 2.2 billion (data for 2017). Indirect positive impacts are expected in terms of increases in resources linked to value added and other taxes and increases of gross national income.

## **5. OTHER ELEMENTS**

- **Procedural aspects**

The Commission will negotiate on behalf of the EU. In accordance with Article 218(4) TFEU, it is suggested that the Council of the European Union designates the Trade Policy Committee as the committee in consultation with which the negotiations must be conducted.

The European Parliament will be informed at all stages of the procedure, in line with Article 218(10) TFEU.

The Commission will make this Recommendation and its Annex public immediately after its adoption.

The Commission recommends that the negotiating directives be made public immediately after their adoption by the Council.

Recommendation for a

## COUNCIL DECISION

### **authorising the opening of negotiations of an agreement with the United States of America on the elimination of tariffs for industrial goods**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 (3) and (4) first sub-paragraph in conjunction with Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The Commission is hereby authorised to open negotiations, on behalf of the European Union, with the United States of America for an agreement on the elimination of tariffs for industrial goods.

#### *Article 2*

The negotiations shall be conducted on the basis of the negotiating directives of the Council set out in the Annex.

#### *Article 3*

The Commission shall conduct negotiations in consultation with [name of the special committee to be inserted by the Council].

#### *Article 4*

This Decision and its Annex will be made public immediately after their adoption.

#### *Article 5*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*



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ANNEX

**ANNEX**

**to the**

**Recommendation for a Council Decision**

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## ANNEX

# **DIRECTIVES FOR THE NEGOTIATION OF AN AGREEMENT WITH THE UNITED STATES OF AMERICA ON THE ELIMINATION OF TARIFFS FOR INDUSTRIAL GOODS**

### **Nature and Scope of the Agreement**

1. The Agreement should contain provisions on the elimination of tariffs for industrial goods<sup>1</sup>, between the Parties, thus providing for the reciprocal elimination of tariffs.
2. The Agreement should be fully consistent with World Trade Organisation (WTO) rules and obligations.

### **Objectives**

3. The objective of the Agreement is to increase trade between the European Union and the United States with a view to generating new economic opportunities that create jobs and growth as a result of increased market access due to the reciprocal tariff elimination for industrial goods.

### **Content of the Agreement**

#### *Duties and other requirements regarding imports and exports*

4. The goal of the Agreement should be to eliminate all duties for industrial goods on a reciprocal basis, with the objective of achieving a substantial elimination of tariffs upon entry into force and a phasing out of such tariffs in a short time frame. Account should be taken of the particular sensitivities for certain goods in line with the Joint Statement of 25 July 2018. All customs duties, taxes, fees, or charges on exports and quantitative restrictions or authorisation requirements on exports to the other Party which are not justified by exceptions under the Agreement should be abolished upon the application of the Agreement. The Agreement should be without prejudice to either Party's right to take appropriate safeguard, anti-dumping or countervailing measures in accordance with the WTO Agreement.

#### *Rules of origin*

5. Negotiations should aim at reconciling the European Union's and the United States' approaches to rules of origin including the origin procedures in a manner that facilitates trade between the Parties and that takes into account the latest developments in the preferential rules of origin of the European Union and the interests of the European Union economic operators.

#### *Institutional framework*

6. The Agreement should set up an institutional structure to monitor the implementation of the Agreement.

#### *Dispute settlement*

7. The Agreement should include an appropriate dispute settlement mechanism to ensure that the Parties observe mutually agreed rules.

#### *Final provisions*

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<sup>1</sup> Industrial goods encompass all goods other than those included in Annex I of the WTO Agreement on Agriculture.



8. The Agreement should include a provision allowing the European Union to suspend unilaterally the application of substantially equivalent concessions or obligations, if the United States adopts against the European Union any measures, under Section 232 of the Trade Expansion Act, Section 301 of the 1974 Trade Act or under any other similar United States law.
9. The Agreement should be equally authentic in all official European Union languages and shall include a language clause to that effect.

#### **Conduct of the negotiations**

10. The Commission shall suspend the negotiations with the United States, if the United States does not respect the commitment made on 25 July 2018 to abstain during the course of the negotiations from adopting new measures, against the European Union under Section 232 of the Trade Expansion Act of 1962. The Commission may also suspend negotiations if the United States adopts trade restrictions against European Union exports on the basis of Section 301 of the 1974 Trade Act or under any other similar United States law.
11. Prior to the conclusion of negotiations, the Commission will confirm that the United States has removed any measures on exports of steel and aluminium originating in the European Union pursuant to Section 232 of the US Trade Expansion Act of 1962.