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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

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Subject: **REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT
AND THE COUNCIL on the exercise of the power to adopt delegated
acts conferred on the Commission pursuant to Regulation (EU)
2018/196 of the European Parliament and the Council of 7 February
2018 on additional custom duties on imports of certain products
originating in the United States of America**

Delegations will find attached document COM(2019) 118 final.

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I. Introduction

In 2018, the European Union (EU) adopted Regulation (EU) 2018/196¹ of the European Parliament and of the Council of 7 February 2018 on additional custom duties on imports of certain products originating in the United States of America (“the EU Regulation” hereinafter). The Regulation entered into force on 8 March 2018.

The EU Regulation is a codification of Council Regulation (EC) No 673/2005 establishing additional custom duties on imports of certain products originating in the United States of America. This Council Regulation sets out the procedure for adjusting 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 States on a yearly basis, adjusting the level of retaliation proportionately to the amount disbursed from duties collected on EU products pursuant to the most recent distribution. A Commission delegated regulation laying down the revised duty rate is adopted before 1st of May of every calendar year.

Following the codification of Council Regulation (EC) No 673/2005, the power to adopt delegated acts was conferred upon the Commission for a period of five years from 20 February 2014. Also, the Commission is under an obligation to draw up a report in respect of the delegation of power no later than nine months before the end of the five year period.

II. Legal Basis

In line with Article 4(2) of the Regulation (EU) 2018/196 of the European Parliament and of the Council of 7 February 2018, the Commission shall draw up a report to the Council and the European Parliament regarding the respect of the delegation of power.

¹ OJ L 44, 16.2.2018, p. 1.

III. Exercise of the Delegation

The EU Regulation confers powers upon the Commission in order to implement some of the provisions of that Regulation in particular:

- as regards the calculation of the level of nullification or impairment 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;
- as regards the adaptation of Annexes I and II of the EU Regulation when the level of suspension increases by adding products listed in Annex II to Annex I;
- as regards the adaptation of Annexes I and II of the EU Regulation when the level of suspension decreases by removing products listed in Annex I, in the order specified by the EU Regulation;
- as regards the modification of the rate of the additional import 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.

As the EU Regulation entered into force on 8 March 2018, no delegated acts have been adopted so far. We will duly inform the European Parliament and the Council as soon as the 2019 delegated regulation is adopted by the College.

However, since 20 February 2014 the Commission has adopted four (4) delegated acts based on the Council Regulation (EC) No 673/2005 (the predecessor of the EU Regulation) as follows:

- Commission Delegated Regulation (EU) 2015/675 of 26 February 2015 amending Council Regulation (EC) No 673/2005 establishing additional customs duties on imports of certain products originating in the United States of America establishing an additional import duty of 1.5% on the products listed in Annex I;
- Commission Delegated Regulation (EU) 2016/654 of 26 February 2016 amending Council Regulation (EC) No 673/2005 establishing additional customs duties on imports of certain products originating in the United States of America establishing an additional import duty of 0.45% on the products listed in Annex I;
- Commission Delegated Regulation (EU) 2017/750 of 24 February 2017 amending Council Regulation (EC) No 673/2005 establishing additional customs duties on imports of certain products originating in the United States of America establishing an additional import duty of 4.3% on the products listed in Annex I; and
- Commission Delegated Regulation (EU) 2018/632 of 19 February 2018 amending Council Regulation (EC) No 673/2005 establishing additional customs duties on imports of certain products originating in the United States of America establishing an additional import duty of 0.3% on the products listed in Annex I.

The power to adopt each of the delegated acts listed above was exercised in order to accurately adjust the yearly level of additional import duty to the actual amount of

nullification and impairment calculated based on the amount of duties collected on EU products in the most recent yearly distributions by the United States under the CDSOA. In each of the above cases, this adjustment led to a modification of the additional applied duty rate on the limitative list of products listed in Annex 1 to the EU Regulation.

IV. Conclusions

The Commission invites the European Parliament and the Council to take note of this report in the context of proper exercise by the Commission of the powers delegated by the EU Regulation.