



Council of the
European Union

131986/EU XXVII. GP
Eingelangt am 24/02/23

Brussels, 24 February 2023
(OR. en)

6854/23

POLCOM 38
COMER 20
WTO 27
DELACTION 32

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	23 February 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2023) 1207 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 23.2.2023 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

Delegations will find attached document C(2023) 1207 final.

Encl.: C(2023) 1207 final



EUROPEAN
COMMISSION

Brussels, 23.2.2023
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COMMISSION DELEGATED REGULATION (EU) .../...

of 23.2.2023

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

This 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.

Given the large number of modifications of the initial legal basis (i.e. Council Regulation (EC) No 673/2005) via delegated acts, a codification exercise was undertaken in February 2018. A codified version of the legal basis, Regulation (EU) 2018/196, was adopted by the European Parliament and the Council on 7 February 2018.

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

1. The new level of retaliation to apply as from 1 May 2023 amounts to USD 317 877,22 and has been established on the basis of the latest CDSOA distribution of anti-dumping and anti-subsidy duties collected during the Fiscal Year 2022 (1 October 2021 – 30 September 2022).
2. The new level of retaliation of USD 317 877,22 represents an increase as compared to the current level of retaliation, which amounts to USD 3 095,94 and has been applied since 1 May 2022. Since the level of suspension for the year beginning 1 May 2023 cannot be adjusted to the level of nullification or impairment by adding or removing products from Annex I, Article 3(1)(e) of Regulation (EU) 2018/196 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 0,001% to 0,164% in order to adjust to the level of retaliation.

¹ Regulation (EU) 2018/196 (the "*Byrd Regulation*") establishing additional customs duties of 4,3 % on imports of certain products originating in the United States of America (OJ L 44, 16.2.2018, p. 1).

3. Consequently and in accordance with Article 3(1)(e) of Regulation (EU) 2018/196, the Delegated Regulation subjects sweet corn, frames and mountings for spectacles, crane lorries, and certain items of women's or girls' apparel in denim that originate in the US to an *ad valorem* additional rate of duty of 0,164% as from 1 May 2023.
4. The effect of a 0,164% *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 317 877,22 (see Articles 3(1)(a) and (b) of Regulation (EU) 2018/196). Annex II to Regulation (EU) 2018/196 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 Regulation (EU) 2018/196 on additional customs duties on imports of certain products originating in the United States of America.

Article 1 of Regulation (EU) 2018/196 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 is to adjust the level of suspension annually to the level of nullification or impairment caused by the Byrd Amendment to the EU at that time.

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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

THE EUROPEAN COMMISSION,

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

Having regard to 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 America², and in particular Article 3(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, pursuant to Regulation (EU) 2018/196 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. In 2022, the level of suspension was adjusted to 0,001% *ad valorem* additional customs duty and Regulation (EU) 2018/196 was amended accordingly³.
- (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 2022 (1 October 2021 – 30 September 2022). 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 317 877,22.
- (3) The level of nullification or impairment and consequently of suspension has increased. 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 (EU) 2018/196. 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

² OJ L 44, 16.2.2018, p. 1.

³ Commission Delegated Regulation (EU) 2022/682 of 25 February 2022 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 126, 29.4.2022, p. 4).

maintained on the list and the rate of additional import duty should be amended and set at 0,164%.

- (4) The effect of a 0,164% *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 317 877,22.
- (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 (EU) 2018/196 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Article 2 of Regulation (EU) 2018/196 is replaced by the following, formatting the asterisk and the text linked to it in the manner of a footnote:

Article 2

An *ad valorem* duty of 0,164% additional to the customs duty applicable under Regulation (EU) No 952/2013 of the European Parliament and of the Council* shall be imposed on the products originating in the United States listed in Annex I to the present 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).'

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 2023.

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

Done at Brussels, 23.2.2023

For the Commission
The President
Ursula VON DER LEYEN