



Council of the
European Union

174532/EU XXVII. GP
Eingelangt am 23/02/24

Brussels, 23 February 2024
(OR. en)

6998/24

POLCOM 71
COMER 38
WTO 26
DELACTION 28

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	22 February 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2024) 1056 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 22.2.2024 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(2024) 1056 final.

Encl.: C(2024) 1056 final



EUROPEAN
COMMISSION

Brussels, 22.2.2024
C(2024) 1056 final

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

of 22.2.2024

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.

By applying the mandated formula to the latest CDSOA distribution of anti-dumping and anti subsidy duties collected during the Fiscal Year 2023 (1 October 2022 – 30 September 2023), the resulting level of retaliation to apply as from 1 May 2024 would amount to USD 34,98. That level of retaliation of USD 34,98 represents a decrease as compared to the current level of retaliation, which amounts to USD 317 877,22 and has been applied since 1 May 2023.

The level of retaliation resulting from disbursements made in the Fiscal Year 2023 is negligible. It would result in subjecting 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 0,00002% as from 1 May 2024. Applying such a low duty would have no trade impact and would impose a disproportionate administrative cost. For these reasons, the additional rate of duty as from 1 May 2024 should be set at 0%.

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.

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).

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.

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

of 22.2.2024

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 2023, the level of suspension was adjusted to 0,164% *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 2023 (1 October 2022 – 30 September 2023). 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 34,98.
- (3) The level of nullification or impairment and consequently of suspension has significantly decreased and is negligible. The resulting rate of additional import duty of 0,00002% would have no trade effect and would result in a disproportionate administrative cost for the Union. The rate of additional import duty should therefore be set at 0%.
- (4) 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.
- (5) Regulation (EU) 2018/196 should therefore be amended accordingly,

² OJ L 44, 16.2.2018, p. 1.

³ Commission Delegated Regulation (EU) 2023/858 of 23 February 2023 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 111, 26.4.2023, p. 15).

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% 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 2024.

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

Done at Brussels, 22.2.2024

For the Commission
The President
Ursula VON DER LEYEN