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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**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

This proposal seeks 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 ('CDSOA', or the *Byrd Amendment*). It also seeks to align the regulation to what is provided in the Interinstitutional Agreement on Better Law-Making.

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 Union 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 Union for the most recent year for which data are available. Since 1 May 2005, the Union applies an *ad valorem* additional customs duty on imports of certain products originating in the United States<sup>1</sup> on a yearly basis, adjusting the level of retaliation proportionately to the amount disbursed from duties collected on Union 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 amounted to USD 34,98. That level of retaliation of USD 34,98 represented a significant decrease as compared to the previous level of retaliation and was economically negligible. It would have resulted 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. As applying such a low duty would have had no trade impact and would have imposed a disproportionate administrative cost to the Union, with Commission Delegated Regulation (EU) 2024/1239 the additional rate of duty as from 1 May 2024 was set at 0 %. In order to set the duty to 0 % and respect the obligations imposed by the basic Regulation on the Commission, a Delegated Regulation had to enter into force.

The Byrd Amendment was repealed in 2006, but the US created a transitional period whereby disbursements would continue as long as they concerned duties collected before 1 October 2007. Given that the mandated formula is based on the amount of disbursements made in one fiscal year and that the last remaining imports subject to the CDSOA have been liquidated in Fiscal Year 2023, it is expected that in the future the authorised level of retaliation will continue to remain low and will go towards exhaustion. However, it is not possible to determine when the distribution process will end, as disbursements connected to these final imports and amounts held pending litigation are still expected to be made.

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<sup>1</sup> 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).

Having to adopt a Commission Delegated Regulation each year, even when retaliation is negligible, is not an efficient use of resources. Thus, in order to promote efficiency and proportionality, a *de minimis* threshold below which additional import duties should not be imposed should be added to Regulation (EU) 2018/196. This threshold should be set at USD 30 000 of CDSOA disbursements made by US authorities in relation to Union imports in one fiscal year (which would correspond to an authorised level of retaliation of USD 21 600).

Disbursement amounting to USD 30 000, keeping the current list of goods in Annex I, would result in an additional rate of duty of about 0,01 %. Additional custom duties equal or below 0,01 % that would apply in the absence of a *de minimis* provision on the few tariff lines currently included in Annex I do not appear to justify the administrative costs that would be incurred by the Union if these duties were imposed. Below this threshold the duties have no trade impact and are thus economically negligible.

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

The proposal is consistent with existing Union trade policy insofar as it preserves the Union's rights under WTO law while ensuring an efficient use of the Union's resources.

- **Consistency with other Union policies**

The proposal is consistent with the Union policies that strive for a more efficient use of human and administrative resources.

## 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for this Regulation Amendment is Article 207(2) of the Treaty on the Functioning of the European Union.

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

The common commercial policy, in accordance with Article 3(1), point (e) of the TFEU, is defined as an exclusive Union competence. Therefore, the subsidiarity principle does not apply.

- **Proportionality**

This proposal is proportionate as it is necessary in order to ensure an efficient use of the Union's resources. Having to adopt a Commission Delegated Regulation when retaliation is negligible is not an efficient use of resources.

- **Choice of the instrument**

This proposal is in accordance with Article 207(2) TFEU, which envisages common commercial policy measures.

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

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

Not applicable.

- **Stakeholder consultations**

Not applicable.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

The legislative proposal is not supported by an impact assessment. This is in line with the better regulation toolbox, which provides that an impact assessment may not be necessary for ‘policy initiatives that propose limited changes based on a thorough evaluation, which has clearly identified the necessary amendments to a policy or legislation’. The Commission considers that the proposed regulation fulfils these criteria.

- **Regulatory fitness and simplification**

The measure does not increase the regulatory burden of companies.

- **Fundamental rights**

The proposal has no consequences for the protection of fundamental rights.

#### **4. BUDGETARY IMPLICATIONS**

Whenever the *de minimis* would apply, the European Union would see a loss of maximum USD 21 600 (which is the authorised level of retaliation corresponding to USD 30 000 of CDSOA related disbursements) of customs revenue in one fiscal year. On the other hand, the human and administrative resources necessary to adjust and impose the additional customs duty would not be used. Therefore, the impact on Union’s own resources will be very limited.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not envisaged.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

This proposal introduces a *de minimis* threshold below which additional import duties should not be imposed. This threshold should be set at USD 30 000 of relevant disbursements made by US authorities in one fiscal year. Disbursement amounting to USD 30 000, keeping the current list of goods in Annex I, would result in an additional rate of duty of about 0,01 %. Additional custom duties equal or below 0,01 % that would apply in the absence of a *de minimis* provision on the few tariff lines currently included in Annex I do not appear to justify the administrative costs that would be incurred by the Union if these duties were imposed. Below this threshold the duties have no trade impact and are thus economically negligible.

Moreover, this proposal adjusts the language of Article 3(3) of Regulation (EU) 2018/196 in order to align it to the standard clauses contained in the Interinstitutional Agreement on Better Law-Making.

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**

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<sup>1</sup> and the Panel report<sup>2</sup>, 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.
- (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<sup>3</sup>. 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

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

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

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

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<sup>4</sup> 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.
- (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<sup>5</sup>, 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 additional import duty should be imposed.
- (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.
- (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<sup>6</sup>.
- (10) Regulation (EU) 2018/196 should therefore be amended accordingly,

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<sup>4</sup> 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>).

<sup>5</sup> 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](http://data.europa.eu/eli/reg_del/2024/1239/oj)).

<sup>6</sup> 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\\_interinst/2016/512/oj](http://data.europa.eu/eli/agree_interinst/2016/512/oj)).

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 paragraph 1 of this Article, the application of the additional duty shall be suspended if 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.

(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 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*  
*The President*

*For the Council*  
*The President*

**LEGISLATIVE FINANCIAL STATEMENT 'REVENUE'- FOR PROPOSALS  
HAVING BUDGETARY IMPACT ON THE REVENUE SIDE OF THE BUDGET**

**1. NAME OF THE PROPOSAL:**

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

**2. BUDGET LINES:**

Revenue line (Chapter/Article/Item): Chapter 12, Article 120

Amount budgeted for 2025: EUR 21 082 004 566

*(only in case of assigned revenues):*

The revenues will be assigned to the following expenditure line (Chapter/Article/Item): n/a

**3. FINANCIAL IMPACT**

Proposal has no financial implications

Proposal has no financial impact on expenditure but has a financial impact on revenue

Proposal has a financial impact on assigned revenue

The effect is as follows:

Revenue line	Impact on revenue <sup>12</sup>	XX months period starting dd/mm/yyyy (if applicable)	Year N
Chapter 12/Article 120	n/a	n/a	

Situation following action					
Revenue line	2026	2027	2029	2029	2030
Chapter 12/Article 120	n/a	n/a	n/a	n/a	n/a

(Only in case of assigned revenues, under the condition that the budget line is already known):

Expenditure line <sup>3</sup>	Year N	Year N+1
Chapter/Article/Item ...		
Chapter/Article/Item ...		

Expenditure line	[N+2]	[N+3]	[N+4]	[N+5]
Chapter/Article/Item ...				
Chapter/Article/Item ...				

#### 4. ANTI-FRAUD MEASURES

n/a

#### 5. OTHER REMARKS

The method used for the estimation of impact on revenue was the following:

- a. The legislative proposal introduces a *de minimis* of USD 30 000 of US relevant disbursements.

<sup>1</sup> The amounts per year need to be an estimation based on the formula or method defined under section 5. For the starting year, the yearly amount is normally paid without a reduction or prorata.

<sup>2</sup> In the case of traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % for collection costs.

<sup>3</sup> To be used only if necessary.

- b. USD 30 000 of US relevant disbursements correspond to an authorised level of additional duties of USD 21 600.
- c. Thus, if the threshold of the *de minimis*, were not to be met, the highest possible loss of revenue in one fiscal year would be USD 21 599.
- d. To this amount (that would have otherwise been collected as customs duty) 25 % was deducted for collection costs, resulting in USD 16 199,25.
- e. The resulting amount was then converted into euro (conversion rate of 26/12/2024), resulting in EUR 15.586,69.

Given that the maximum possible impact of revenue (i.e., EUR 15.586,69) is negligible, the proposal is considered to have no financial impact.