

Information gathering under Article 9 of the EU Enforcement Regulation regarding planned EU commercial policy measures further to the adjudication of a trade dispute with the United States on Measures Affecting Trade in Large Civil Aircraft under the WTO Dispute Settlement Understanding (“DSU”)

The Commission seeks information and views regarding the EU's economic interests in accordance with Article 9 of Regulation (EU) No 654/2014 of the European Parliament and of the Council of 15 May 2014. The Commission expects to receive input from private stakeholders who may be affected by planned EU commercial policy measures.

The information gathering should provide the Commission with input to assist it in assessing the scope and parameters of planned commercial policy measures.

Your input is important in this process and we thank you in advance for your contribution. The Word document can be used to fill in your comments directly under the relevant points.

Context

On 11 April 2019, the WTO Dispute Settlement Body ("DSB") adopted its recommendations and rulings in *United States – Measures Affecting Trade in Large Civil Aircraft (Second complaint) – Recourse to Article 21.5 of the DSU by the European Union*, confirming that the United States has failed to bring its measures, found to be inconsistent with the Agreement on Subsidies and Countervailing Measures (“SCM Agreement”), into conformity with its obligations under that Agreement.

In accordance with paragraph 8 of the "Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding and Article 7 of the SCM Agreement"¹ between the European Union and the United States with respect to this dispute, the European Union is taking steps towards requesting the Article 22.6 arbitrator to resume its work.

Upon the completion of the arbitrator’s work the European Union will request the DSB for an authorisation to take countermeasures against the United States. In its original request pursuant to Article 22.2 of the DSU and Articles 4.10 and 7.9 of the SCM Agreement related to this dispute (dated 2 October 2012), the European Union sought authorization from the DSB to take countermeasures against the United States in an annual amount of USD 12 billion.

The European Union’s countermeasures would include suspension of tariff concessions and other related obligations under the *General Agreement of Tariffs and Trade 1994* and under the SCM Agreement on a list of selected US products.

Regulation (EU) No 654/2014 of the European Parliament and of the Council of 15 May 2014 (the Enforcement Regulation)² provides for the legal basis for the EU to suspend concessions

¹ WTO/DS353/14

² Regulation (EU) No 654/2014 of the European Parliament and of the Council of 15 May 2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules and amending Council Regulation (EC) No 3286/94 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization (OJ L 189, 27.6.2014, p. 50–58; 2014R0654 — EN — 05.11.2015 — 001.001)

or other obligations under the multilateral and plurilateral agreements covered by the WTO DSU following the adjudication of trade disputes under the WTO DSU.

Where action is necessary to safeguard the EU's interests in such cases, the Commission may take appropriate commercial policy measures.

In line with Article 4 (2) a) of the Enforcement Regulation, in determining the appropriate commercial policy measures where concessions or other obligations are suspended following the adjudication of a trade dispute under the WTO DSU, their level shall not exceed the level authorised by the WTO DSB.

Further to Article 4 (3) of the Enforcement Regulation, these commercial policy measures must be determined on the basis of the following criteria, where relevant, in light of available information and of the EU's general interest:

- a) effectiveness in inducing compliance of third countries with international trade rules;
- b) availability of alternative sources of supply for the goods concerned, in order to avoid or minimise any negative impact on downstream industries, contracting authorities or entities, or final consumers within the EU;
- c) avoidance of disproportionate administrative complexity and costs in the application of the measures;
- d) any specific criteria that may be established in international trade agreements.

Possible Commercial Policy Measures

In order to be in a position to promptly take action on the basis of and consistent with the decision of the arbitrator under Article 22 DSU, the Commission is required to take the respective steps under the Enforcement Regulation and the WTO DSU.

In this regard, the Commission is currently assessing the parameters of the planned commercial policy measures.

The Commission is considering commercial policy measures in the form of the imposition of increased customs duties, including additional *ad valorem* duties of up to 100 percent, on certain products from the United States.

The Commission services have identified products originating in the United States that could potentially be subject to increased customs duties. These products, or a subset of them, may be affected only if necessary and in a proportionate manner, in line with the requirements of the Enforcement Regulation described above.

The products can be consulted in the enclosed document 'List of Products' uploaded on the DG TRADE webpage under the current Information gathering exercise.

Information gathering procedure

In assessing the parameters of planned commercial policy measures, the Commission seeks input from private stakeholders who may be affected by the planned EU commercial policy measures, as outlined above, on the products listed in the document 'List of Products' uploaded on the DG TRADE webpage under the current Information gathering exercise.

Private stakeholders are invited to provide any views and information they consider relevant to EU economic interests in connection with the products which could be subject to possible EU commercial policy measures, as well as any other relevant input.

To receive full consideration, written comments should be as detailed as possible and include supporting documents.

Information received pursuant to Regulation (EU) No 654/2014 will be used only for the purpose for which it was requested.

Neither the European Parliament, nor the Council, nor the Commission, nor Member States, nor their respective officials shall reveal any information of a confidential nature received pursuant to Regulation (EU) No 654/2014, without specific permission from the supplier of such information.

The supplier of information may request that information supplied be treated as confidential. In such cases, it must be accompanied by a non-confidential summary which presents the information in a generalised form or a statement of the reasons why the information cannot be summarised. If it appears that a request for confidentiality is not justified and if the supplier is unwilling either to make the information public or to authorise its disclosure in generalised or summary form, the information in question may be disregarded. The confidential treatment will not preclude the disclosure of general information by the institutions of the EU and the authorities of the Member States. Such disclosure must take into account the legitimate interest of the parties concerned in not having their business secrets divulged.

Information received pursuant to Regulation (EU) No 654/2014 may be subject to a request for access to documents under EU Regulation 1049/2001 on public access to European Parliament, Council and Commission documents³. In such cases, the request will be assessed against the conditions set out in Regulation 1049/2001 and in accordance with applicable data protection rules.

Deadline

Please fill in the form and submit it at the latest **by 31 May 2019, 12:00 am (UTC+01:00), Brussels**, to the following e-mail address:

TRADE-REG-654-2014-INFOGATHERING@ec.europa.eu

For more information:

TRADE-REG-654-2014-INFOGATHERING@ec.europa.eu

³ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43)

INFORMATION GATHERING FORM

Please fill in this form and submit it at the latest by **31 May 2019, 12:00 am (UTC+01:00)**, **Brussels**, to the following e-mail address:

TRADE-REG-654-2014-INFOGATHERING@ec.europa.eu

1. Name: Nathalie Darge
2. Organisation: Confederation of European Cigarette Manufacturers (CECCM)
3. Contact details: nathalie.darge@ceccm.eu
4. Language of the submission: **English**
5. Your views and information regarding the EU economic interests in the products originating in the United States which could be subject to EU commercial policy measures, listed in the enclosed document 'List of Products':

The following points summarize CECCM's views on the public information gathering regarding planned EU commercial policy measures for import of goods originating in the United States into the EU:

- **The preliminary list of products includes US tobacco leaf classified under the customs Tariff heading 2401- "Unmanufactured tobacco; Tobacco refuse".**
- **US tobacco leaf cannot be substituted with tobacco leaf produced in other regions (e.g. Africa or the EU).**
- **Additional customs duties will be borne by EU manufacturers, and have no impact on US exports, as intended by these commercial policy measures.**
- **EU tobacco manufacturers may need to pass on the additional costs to consumers in the form of higher prices. These higher prices could result in a decline of a Member State excise revenues due to consumers switching to illicit products.**

A detailed position together with the relevant information for the public information is provided below in the "Response to the public information regarding planned EU commercial policy measures further to the adjudication of a trade dispute with the United States on Measures Affecting Trade in Large Civil Aircraft under the WTO Dispute Settlement Understanding".

6. Any other relevant input:

Not Applicable.

Response to the public information regarding planned EU commercial policy measures further to the adjudication of a trade dispute with the United States on Measures Affecting Trade in Large Civil Aircraft under the WTO Dispute Settlement Understanding

1. Introduction

The EU is currently assessing the parameters of the planned commercial policy measures in the form of the imposition of increased customs duties, including additional ad valorem duties of up to 100 percent, on certain products from the US.

The provisional list of products considered for additional import duties cover a range of items, including unmanufactured tobacco and tobacco refuse.

Due to the specific nature and characteristics of the US unmanufactured tobacco, the affected tobacco is not replaceable by tobacco from other sources. Additional import duties should therefore not be imposed on these products.

2. Impact of additional customs duties for imports of unmanufactured tobacco and tobacco refuse in the EU

The proposed additional customs duties for US leaf would have a negative impact on the EU tobacco industry without bringing a significant contribution towards the EU objective, namely to induce US compliance with the outcome in the Large Civil Aircraft dispute at the WTO.

2.1. Unmanufactured tobacco imported from the US cannot be substituted with unmanufactured tobacco produced in other countries (e.g. the EU)

The characteristics of unmanufactured tobacco largely depends on natural factors such as climate, soil, water, etc. There are significant differences between tobacco leaf aroma, taste and toxicological characteristics in tobacco from various origins. US tobacco leaf has a flavor and aroma which cannot be found in the tobacco leaf produced in other countries.

Therefore, a certain amount of US grown tobacco is needed to sustain the aroma, taste and toxicological characteristics of manufactured tobacco products produced in the EU. US leaf cannot be substituted/replaced with tobacco leaf produced in the EU.

2.2. The EU manufacturers cannot absorb the cost of the additional customs duties imposed for the US unmanufactured tobacco and tobacco refuse

As with any agricultural product, tobacco leaf becomes available once the tobacco crop can be collected (once per year). In order to allow the farmers to plan for the tobacco crop, the commercial agreements for tobacco leaf purchases tend to be agreed on a multi annual basis. EU manufacturers are bound by long term contracts which would contractually oblige EU businesses to continue buying US tobacco for the medium to long term.

The public consultations materials indicate that the additional customs duties can be up to 100% on certain goods from the United States. This would result in a substantial cost to EU based manufacturers. EU manufacturers will not be able to absorb this cost.

This will lead to a situation in which the costs incurred with the additional customs duties imposed for the US unmanufactured tobacco should be passed on to consumers through an increase of the finished product price.

2.3. Additional customs duties lead to higher prices for finished products

An increase in duties on US tobacco will have to be passed on to consumers, in the form of higher prices.

If EU based manufacturers pass on the higher customs duties to consumers in the form of higher product prices, this will result in a potential increase in duty-avoiding tobacco products, particularly from bordering non-EU Member States, given the increase in cigarette prices.

3. Conclusions

Additional customs duties should not be imposed for the US unmanufactured tobacco and tobacco refuse imported in the EU.

Due to the US tobacco leaf objective characteristics (taste, aroma), these cannot be substituted with tobacco leaf produced in other regions such as Africa or the EU.

The costs incurred through additional customs duties for US leaf will be passed on to EU consumers in the form of higher prices for finished products. An increase in prices will ultimately have a negative impact for the Member States tax revenues due to a significant decline in excise duty and boost illicit trade.