

Brussels, 29 October 2020

To: Commissioner Valdis DOMBROVSKIS  
Executive Vice-President of the European Commission  
Rue de la Loi, 200  
B-1049 Brussels  
Cc: Ms Elīna Melngāile, Member of Cabinet

**Subject: Concerns on additional import duties on unmanufactured tobacco leaf and tobacco refuse (CN 2401) from the US in the framework of the WTO US – Large Civil Aircraft case**

Dear Commissioner Dombrovskis

Tobacco Europe AISBL<sup>1</sup> represents the common views of major European-based tobacco and nicotine product manufacturers such as British American Tobacco (BAT), Imperial Brands (IMB), and Japan Tobacco International (JTI).

Tobacco Europe and its members would like to convey their concerns about the escalation of trade tensions between the European Union and the United States of America and the potential impact on our industry.

The tobacco industry is a significant contributor to the EU economy, employing over 1.5 million people. In the EU, there are more than 55,000 tobacco farms, 35 industrial leaf processing plants and over 300 factories for finished tobacco products. In 2018, total excise revenues from EU tobacco companies were €82,5 billion.

Following the recent arbitral award in the WTO US – Large Civil Aircraft case<sup>2</sup>, it is our understanding that the EU intends to apply additional import duties on unmanufactured tobacco leaf and tobacco refuse (CN 2401) from the US.

Importantly, due to the specific **nature and characteristics** of US unmanufactured tobacco, additional import duties should not be imposed on US tobacco leaf for the following reasons:

**(i) US leaf cannot be easily substituted/replaced with tobacco leaf produced in the EU or elsewhere.**

The objective characteristics of unmanufactured tobacco are influenced by natural factors such as climate, soil, water, etc. Considering the differences between the US and other countries (e.g. the EU's) **natural factors**, there are significant differences between tobacco leaf aroma and taste across regions. US leaf has a flavour and aroma which cannot be found in the tobacco leaf produced elsewhere and therefore cannot be easily substituted by EU manufacturers or other countries. In particular, we would like to draw to your attention to the fact that there is a very specific and distinct difference between Flue Cured Virginia (FCV) leaf type grown in the USA compared to that grown in Europe or other major exporting sources.

The US is the principle source of full flavor FCV tobacco. EU producing countries cannot produce flavored tobacco due to an environment that is not climatically conducive. European FCV is characterized as 'filler' style rather than 'flavour' style. Lower quality filler styles (much of the EU FCV production), already has reduced usage potential, following the introduction of restrictions in the use of casing and flavorings under TPD2 restrictions.

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<sup>1</sup> <https://www.tobacco-europe.eu/>

<sup>2</sup> United States - Measures Affecting Trade in Large Civil Aircraft (Second Complaint) - Recourse to article 7.9 of the SCM Agreement and article 22.7 of the DSU by the European Union. Doc. WT/DS353/35.



**ii) Additional duties on tobacco leaf will leave US producers unaffected which will not incentivise compliance with the WTO ruling.** The EU is a highly inter-connected economy with high foreign investments but also significant imports of raw materials (€80,6 billion in 2019).<sup>3</sup> It has therefore always cautiously approached levying high duties on raw materials given the impact of such policies on the EU manufacturing sector and on jobs. Considering US natural endowment and global market power in supplying specific types of tobacco leaf (e.g. high quality Flue Cured Virginia CN 24011085, CN 24012085), the measure is unlikely to affect US producers and is consequently impotent in inducing the desired compliance with the US – Large Civil Aircraft WTO ruling.

**(iii) The resulting additional costs arising from proposed duties would be imposed on the EU rather than on the US.** Aside from natural endowment and market power, as any agricultural product, tobacco leaf only becomes available once the tobacco crop can be collected (once per year). In order to allow farmers to plan for the tobacco crop, the commercial agreements for tobacco leaf purchases tend to be agreed on a multi-annual basis. Given complexity in substitution of supply, EU manufacturers cannot easily re-negotiate their contracts with US based suppliers given the medium- to long term nature of these contracts.

**(iv) Additional customs duties on US leaf will not translate into larger EU tobacco leaf production.** Following arrangements taken under Common Agricultural Policy, EU manufactures produce approximately 140,000 tonnes of dried tobacco leaves per year.<sup>4</sup> At least half of this production is currently exported to third countries. The EU tobacco manufacturing industry currently purchases the remaining quantities. Given the limited quantity of tobacco leaf produced and available in the EU, the additional customs duties on US tobacco leaf imports will not protect or bring any commercial benefits for EU tobacco leaf producers.

**(v) Higher prices on manufactured tobacco products will result in reduced amounts of excise duties/VAT for the EU Member States.** The higher costs linked to additional customs duties on US tobacco leaf will be passed on to consumers. This in turn may be amplified by higher prices which can deter consumers away from the legal market adding to further budgetary revenue loss. The EU excise tax structure for tobacco has an ad valorem component calculated as a percentage of the retail selling price. Additional customs duties will have even bigger impact (up to ten times the customs duties increase) on the retail selling prices in high ad valorem countries like France, Spain and Italy.

**In conclusion, additional customs duties should not be imposed on 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 the EU or other regions. Therefore, additional customs duties in this case cannot induce proper compliance with the WTO relevant ruling and will not be of benefit to EU tobacco leaf producers. The higher costs on manufactured tobacco may lead to volume and revenue losses arising and a probable shift of consumer to the illicit market.

We acknowledge the negotiating efforts of the EU to reduce trade tensions with the US so far, and we hope you will take into consideration our concerns as outlined above. We remain at your disposal should you need additional information.

Yours Sincerely,

Nathalie Darge  
Director Tobacco Europe AISBL

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<sup>3</sup> Eurostat: <https://ec.europa.eu/eurostat/statistics-explained/>

<sup>4</sup> [https://ec.europa.eu/info/food-farming-fisheries/plants-and-plant-products/plant-products/tobacco\\_en](https://ec.europa.eu/info/food-farming-fisheries/plants-and-plant-products/plant-products/tobacco_en)