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2014/0175 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on additional customs duties on imports of certain products originating in the
United States of America (codification)**

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying the law of the Union so as to make it clearer and more accessible to citizens, thus giving them new opportunities and the chance to make use of the specific rights it gives them.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if the law is to be clear and transparent.

2. On 1 April 1987 the Commission decided¹ to instruct its staff that all acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that their provisions are clear and readily understandable.
3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this², stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal procedure for the adoption of acts of the Union.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of Council Regulation (EC) No 673/2005 of 25 April 2005 establishing additional customs duties on imports of certain products originating in the United States of America³. The new Regulation will supersede the various acts incorporated in it⁴; this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.
5. The codification proposal was drawn up on the basis of a preliminary consolidation, in 22 official languages, of Regulation (EC) No 673/2005 and the instruments amending it, carried out by the Publications Office of the European Union, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table set out in Annex IV to the codified Regulation.

¹ COM(87) 868 PV.

² See Annex 3 to Part A of the Conclusions.

³ Entered in the legislative programme for 2014.

⁴ See Annex III to this proposal.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

⊗ on ⊗ additional customs duties on imports of certain products originating in the United States of America (codification)

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,
Having regard to the opinion of the European Economic and Social Committee⁵,
Acting in accordance with the ordinary legislative procedure,
Whereas:



- (1) Council Regulation (EC) No 673/2005⁶ has been substantially amended several times⁷. In the interests of clarity and rationality, that Regulation should be codified.

↓ 673/2005 recital 1

- (2) On 27 January 2003, the Dispute Settlement Body ('DSB') of the World Trade Organisation ('WTO') adopted the Appellate Body report⁸ and the Panel report⁹, 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.

↓ 673/2005 recital 2 (adapted)

- (3) Since the United States failed to bring its legislation ⊗ into ⊗ conformity with the covered agreements, the Community requested ⊗ authorisation from ⊗ the DSB to

⁵ OJ C [...], [...], p. [...].

⁶ Council Regulation (EC) No 673/2005 of 25 April 2005 establishing additional customs duties on imports of certain products originating in the United States of America (OJ L 110, 30.4.2005, p. 1).

⁷ See Annex III.

⁸ United States — Offset Act (Byrd Amendment), Appellate Body report (WT/DS217/AB/R, WT/DS234/AB/R, 16 January 2003).

⁹ United States — Offset Act (Byrd Amendment), Panel report (WT/DS217/R, WT/DS234/R, 16 September 2002).

suspend the application of its tariff concessions and related obligations under the General Agreement on Tariffs and Trade ('GATT') 1994 to the United States¹⁰. The United States objected to the level of suspension of tariff concessions and related obligations and the matter was referred to arbitration.

↓ 673/2005 recital 3 (adapted)

- (4) 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 the application to the United States of tariff concessions and related obligations under GATT 1994 in accordance with the decision of the Arbitrator.
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↓ 673/2005 recital 4 (adapted)

- (5) The CDSOA disbursements for the most recent year for which data were available at that time relate to the distribution of anti-dumping and countervailing duties collected during the Fiscal Year 2004 (1 October 2003 to 30 September 2004). On the basis of the data published by the United States' Customs and Border Protection, the level of nullification or impairment caused to the Community was calculated at USD 27,81 million. The Community was, therefore, authorised to suspend the application of its tariff concessions to the United States at an equivalent amount. The effect of a 15 % *ad valorem* additional import duty on imports of the products in Annex I originating in the United States represented, over one year, a value of trade that did not exceed USD 27,81 million. In respect of those products, the Community suspended the application of its tariff concessions to the United States from 1 May 2005.
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↓ 673/2005 recital 5 (adapted)

- (6) If the non-implementation of the DSB ruling and recommendation persists, the Commission should adjust annually the level of suspension to the level of nullification or impairment caused by the CDSOA to the Union at that time. The Commission should amend the list in Annex I or the rate of the additional import duty so that the effect of the additional duty on imports from the United States of the selected products represents, over one year, a value of trade that does not exceed the amount of nullification or impairment.

¹⁰ United States — Offset Act (Byrd Amendment), Recourse by the European Communities to Article 22(2) of the DSU (WT/DS217/22, 16 January 2004).

↓ 673/2005 recital 6 (adapted)

- (7) The Commission should respect the following criteria:
- (a) the Commission should amend the rate of the additional import duty when adding or removing products from the list in Annex I does not allow to adjust the level of suspension to the level of nullification or impairment; otherwise, the Commission should add products to the list in Annex I if the level of suspension increases or withdraw products from that list if the level of suspension decreases;
 - (b) if products are added, the Commission should select the products from the list in Annex II in an automatic fashion following the order in which the products are listed; as a consequence, the Commission should also amend the list in Annex II by removing from it the products added to the list in Annex I;
 - (c) if products are withdrawn, the Commission should, first, remove products that were added to the list in Annex I after 1 May 2005 ; the Commission should then remove products that were in the list in Annex I on 1 May 2005 following the order of that list.
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↓ 38/2014 Art. 1 and Annex .4
(adapted)

- (8) In order to make the necessary adjustments to the measures provided for in this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of amending the rate of the additional duty or the lists in Annexes I and II under the conditions laid down in this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council,
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↓ 673/2005 (adapted)

HAVE ADOPTED THIS REGULATION:

Article 1

The tariff concessions and related obligations under GATT 1994 of the Union are suspended in respect of products originating in the United States listed in Annex I to this Regulation.

↓ 303/2014 Art. 1(1) (adapted)

Article 2

An *ad valorem* duty of 0,35 % additional to the customs duty applicable under Council Regulation (EEC) No 2913/92¹¹ shall be imposed on the products originating in the United States listed in Annex I to this Regulation.

↓ 673/2005 (adapted)

Article 3

1. The Commission shall adjust the level of suspension annually to the level of nullification or impairment caused by the United States' Continued Dumping and Subsidy Offset Act ('CDSOA') to the Union at that time. The Commission shall amend the rate of the additional duty or the list in Annex I under the following conditions:

- (a) the level of nullification or impairment shall be equal to 72 % of 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;
- (b) the amendment shall be made so that the effect of the additional import duty on imports of the selected products originating in the United States represents, over one year, a value of trade that does not exceed the level of nullification or impairment;
- (c) except in circumstances set out in point (e), when the level of suspension increases, the Commission shall add products to the list in Annex I; those products shall be selected from the list in Annex II following the order of that list;
- (d) except in circumstances set out in point (e), when the level of suspension decreases, products shall be withdrawn from the list in Annex I; the Commission shall remove, first, products that were in the list in Annex II on 1 May 2005 and were added to the list in Annex I at a later stage; the Commission shall then remove products that were in the list in Annex I on 1 May 2005 following the order of that list;
- (e) the Commission shall amend the rate of the additional duty when 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.

2. When products are added to the list in Annex I, the Commission shall, at the same time, amend the list in Annex II by removing those products from the list in Annex II. The order of the products remaining in the list in Annex II shall not be modified.

↓ 38/2014 Art. 1 and Annex .4(1)

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 4 to make adjustments and amendments under this Article.

¹¹ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1)).

Where information on the amount of disbursements made by the United States is made available late in the year, in such a way that it is not possible to meet WTO and statutory deadlines by using the procedure provided for in Article 4, and where, in the case of adjustments and amendments to the Annexes, imperative grounds of urgency so require, the procedure provided for in Article 5 shall apply to delegated acts adopted pursuant to the first subparagraph.

↓ 38/2014 Art. 1 and Annex .4(2)

Article 4

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
 2. The power to adopt delegated acts referred to in Article 3(3) shall be conferred on the Commission for a period of five years from 20 February 2014. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
 3. The delegation of power referred to in Article 3(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
 4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
 5. A delegated act adopted pursuant to Article 3(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.
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↓ 38/2014 Art. 1 and Annex .4(3)

Article 5

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.
2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 4(5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or by the Council.

↓ 673/2005 (adapted)

Article 6

The origin of any product to which this Regulation applies shall be determined in accordance with Regulation (EEC) No 2913/92.

Article 7

1. Products listed in Annex I for which an import licence with an exemption from, or a reduction of duty, was issued before ☒ 30 April 2005 ☒ shall not be subject to the additional duty.
2. Products listed in Annex I which are admitted free of import duties pursuant to Council Regulation (EC) No 1186/2009¹² shall not be subject to the additional duty.
3. Products listed in Annex I may be placed under the customs procedure ‘Processing under Customs Control’ in accordance with the first subparagraph of Article 551(1) of Commission Regulation (EEC) No 2454/93¹³ only where the examination of the economic conditions has taken place in the Committee of the Customs Code unless the products and operations are mentioned in Part A of Annex 76 to that Regulation.

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Article 8

Regulation (EC) No 673/2005 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex IV.

↓ 673/2005 (adapted)

Article 9

This Regulation shall enter into force on the ☒ twentieth ☒ day ☒ following that ☒ 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.

¹² Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty (OJ L 324, 10.12.2009, p. 23).

¹³ Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

Done at

For the European Parliament
The President

For the Council
The President