

COMMISSION IMPLEMENTING REGULATION (EU) 2018/724**of 16 May 2018****on certain commercial policy measures concerning 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) 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 ⁽¹⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) On 8 March 2018 the United States of America ('United States') adopted safeguard measures in the form of a tariff increase on imports of certain steel and aluminium products, effective from 23 March 2018 and with an unlimited duration. On 22 March the effective date of the tariff increase with respect to the European Union was deferred to 1 May 2018.
- (2) Notwithstanding the United States' characterisation of these measures as security measures, they are in essence safeguard measures. They consist of remedial action that disturbs the balance of concessions and obligations resulting from the World Trade Organisation ('WTO') Agreement and restricts imports for the purpose of protecting domestic industry against foreign competition, for the sake of that industry's commercial prosperity. The security exceptions of the General Agreement on Tariffs and Trade 1994 ('GATT 1994') do not apply to or justify such safeguard measures, and have no bearing on the right of rebalancing under the relevant provisions of the WTO Agreement.
- (3) The WTO Agreement on Safeguards provides for the right of any exporting Member affected by a safeguard measure to suspend the application of substantially equivalent concessions or other obligations to the trade of the WTO Member applying the safeguard measure, provided that no satisfactory solution is reached in consultations and the WTO Council for Trade in Goods does not disapprove.
- (4) Consultations between the United States and the Union as envisaged in Articles 8 and 12.3 of the WTO Agreement on Safeguards did not reach any satisfactory solution ⁽²⁾.
- (5) The suspension by the Union of substantially equivalent concessions or other obligations should take effect following the expiration of 30 days after its notification to the Council for Trade in Goods, unless the Council for Trade in Goods disapproves. The WTO Agreement allows for the right of suspension to be exercised (a) immediately, provided that the safeguard measure has not been taken as a result of an absolute increase in imports, or does not conform to the relevant provisions of the WTO Agreement; or (b) after the expiry of a period of three years as from the application of the safeguard measure.
- (6) The Commission exercises the right to suspend the application of substantially equivalent concessions or other obligations with the intention of rebalancing concessions or other obligations in the trade relations with third countries, on the basis of Article 4(1) of Regulation (EU) No 654/2014. The appropriate action takes the form of commercial policy measures which may consist of, inter alia, the suspension of tariff concessions and the imposition of new or increased customs duties.
- (7) In designing and selecting appropriate commercial policy measures, the Commission applies objective criteria in accordance with Article 4(2)(c) and Article 4(3) of Regulation (EU) No 654/2014, including as relevant the proportionality of any measures, their potential to provide relief to the Union industries affected by the safeguard measures, and the aim of minimising negative economic impact on the Union, including with regard to essential raw materials.

⁽¹⁾ OJ L 189, 27.6.2014, p. 50.

⁽²⁾ Consultations were requested by the Union on 16 April 2018. Agreement has not been reached and the 30-day period for consultations referred to in Article 8 of the WTO Safeguards Agreement has expired.

- (8) In accordance with Article 9 of Regulation (EU) No 654/2014, the Commission provided an opportunity for stakeholders to express their views and submit information regarding the Union's economic interests in this respect ⁽³⁾.
- (9) The United States' safeguard measures are capable of having a considerable negative economic impact on the Union industries concerned. They would significantly limit Union exports of the steel and aluminium products concerned to the United States. The affected Union imports of the relevant steel and aluminium products into the United States are worth at least EUR 6,41 billion in 2017 (of which EUR 5,30 billion is total steel imports and EUR 1,11 billion is total aluminium imports).
- (10) Therefore, a suspension of trade concessions on certain products up to a level which reflects and does not exceed the amount that would result from the application of the United States' duties to the imports of the steel and aluminium products from the Union into the United States represents an appropriate suspension of the application of substantially equivalent trade concessions in line with the WTO Agreement on Safeguards.
- (11) Subsequently, with a separate implementing act, the Commission may decide to implement the suspension of the application of trade concessions, if necessary or to the extent necessary, through the application of additional customs duties on certain products originating in the United States imported into the Union. The Commission should decide on the scope of the application, and reflecting the timing requirements described in recital (5), depending on whether the United States excludes certain products or companies from the safeguard measures.
- (12) Reflecting the timing requirements described in recital (5), the additional customs duties should apply, if necessary or to the extent necessary, in two stages. At the first stage, *ad valorem* duties of a maximum rate of 25 % on imports of the products listed in Annex I, may be applied immediately and until the United States ceases to apply its safeguard measures to products from the Union.
- (13) The total amount of *ad valorem* duties at the first stage reflects the United States' tariff increase of 25 % on imports of 'carbon and alloy flat products' and 'carbon and alloy long products' ⁽⁴⁾ from the Union into the United States (EUR 2,83 billion total value of Union imports into the United States in 2017). These are the steel products for which the United States' safeguard measures have not been taken as a result of an absolute increase in imports.
- (14) At the second stage, further additional *ad valorem* duties of a maximum rate of 10 %, 25 %, 35 % and 50 % on imports of the products listed in Annex II, may be applied as from 23 March 2021 or upon the adoption by, or notification to, the WTO Dispute Settlement Body of a ruling that the United States' safeguard measures are inconsistent with the relevant provisions of the WTO Agreement, if that is earlier, until the United States' safeguard measures cease to apply.
- (15) The total amount of *ad valorem* duties at the second stage reflects the United States' tariff increase of 10 % on imports of the aluminium products ⁽⁵⁾ and of 25 % on imports of 'carbon and alloy pipe and tube products', 'carbon and alloy semi-finished products' and 'stainless steel products' ⁽⁶⁾ from the Union into the United States (EUR 3,58 billion total value of Union imports into the United States in 2017 of which EUR 2,47 billion is steel imports and EUR 1,11 billion is aluminium imports). These are the products for which there appears to have been an absolute increase in imports.
- (16) The commercial policy measures and the products concerned have been selected in accordance with the criteria of Article 4(2)(c) and (3) of Regulation (EU) No 654/2014.
- (17) By not exceeding the value of the Union imports affected by the United States' safeguard measures as described in recitals (9) and (10), the commercial policy measures are proportionate to the effect of the United States' safeguard measures and not excessive. It is also noted that only a fraction of the total value available will be initially exercised, as described in recitals (12) and (13).
- (18) The commercial policy measures should provide some relief to the steel and aluminium Union industries affected by the United States' safeguard measures.

⁽³⁾ http://trade.ec.europa.eu/consultations/index.cfm?consul_id=253

⁽⁴⁾ Products referred to by the U.S. Department of Commerce Report of 11 January 2018 (https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf).

⁽⁵⁾ Products referred to by the U.S. Department of Commerce Report of 17 January 2018 (https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_aluminum_on_the_national_security_-_with_redactions_-_20180117.pdf).

⁽⁶⁾ *Ibid* footnote 4.

- (19) The commercial policy measures should apply to imports of products originating in the United States on which the Union is not substantially dependent for its supply. The commercial policy measures may also apply with respect to the steel and aluminium sectors. This approach avoids as much as possible a negative impact on the various actors on the Union market, including consumers.
- (20) Products for which an import licence with an exemption from or a reduction of duty has been issued prior to the date entry into force of this regulation should not be subject to these additional customs duties.
- (21) Products for which the importers can prove that they have been exported from the United States to the Union prior to the date of application of the additional customs duties should not be subject to the additional customs duties.
- (22) This Regulation is without prejudice to the question of the consistency of the United States' safeguard measures with the relevant provisions of the WTO Agreement.
- (23) In light of the applicable WTO time limits and the preliminary nature of this act, it is appropriate that it should enter into force on the day on which it is published in the *Official Journal of the European Union*.
- (24) The measures provided for in this Regulation are in accordance with the opinion of the Trade Barriers Committee, established by Regulation (EU) 2015/1843 of the European Parliament and of the Council ⁽⁷⁾,

HAS ADOPTED THIS REGULATION:

Article 1

The Commission shall immediately, and in any event no later than 18 May 2018, give written notice to the WTO Council for Trade in Goods that, absent disapproval by the Council for Trade in Goods, the Union suspends, from 20 June 2018, the application to the trade of the United States of import duty concessions under the GATT 1994 in respect of the products listed in Annex I and Annex II, so as to allow for an application of additional customs duties on the importation of these products originating in the United States.

Article 2

The application of additional customs duties on these products, through a subsequent Commission implementing act, shall be effected within the following parameters, and take into account any subsequent exclusion of certain products or companies from the safeguard measures by the United States:

- (a) At the first stage, additional *ad valorem* duty of a maximum rate of 25 % may be applied on imports of products listed in Annex I from 20 June 2018.
- (b) At the second stage, further additional *ad valorem* duty of a maximum rate of 10 %, 25 %, 35 % or 50 % may be applied on imports of products listed in Annex II:
- from 23 March 2021, or
 - from the fifth day following the date of the adoption by, or notification to, the WTO Dispute Settlement Body of a ruling that the United States' safeguard measures are inconsistent with the relevant provisions of the WTO Agreement, if that is earlier. In the latter event, the Commission shall publish in the *Official Journal of the European Union* a notice indicating the date on which such ruling is adopted or notified.

Article 3

The suspension provided for in Article 1 may be exercised as long as, and to the extent that, the United States applies or re-applies its safeguard measures in a manner that would affect products from the Union. The Commission shall publish in the *Official Journal of the European Union* a notice indicating the date on which the United States has ceased to apply its safeguard measures.

⁽⁷⁾ Regulation (EU) 2015/1843 of the European Parliament and of the Council of 6 October 2015 laying down Union procedures in the field of the common commercial policy in order to ensure the exercise of the Union's rights under international trade rules, in particular those established under the auspices of the World Trade Organization (codification) (OJ L 272, 16.10.2015, p. 1).

Article 4

1. Products listed in the Annexes for which an import licence with an exemption from or a reduction of duty has been issued prior to the date of entry into force of this regulation shall not be subject to additional duty.
2. Products listed in the Annexes for which the importers can prove that they have been exported from the United States to the Union prior to the date on which an additional duty is applied with respect to that product shall not be subject to the additional duty.

Article 5

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, 16 May 2018.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

Products that may be subject to additional duties from 20 June 2018

CN 2018 ⁽¹⁾	Additional duty
0710 40 00	25 %
0711 90 30	25 %
0713 33 90	25 %
1005 90 00	25 %
1006 30 21	25 %
1006 30 23	25 %
1006 30 25	25 %
1006 30 27	25 %
1006 30 42	25 %
1006 30 44	25 %
1006 30 46	25 %
1006 30 48	25 %
1006 30 61	25 %
1006 30 63	25 %
1006 30 65	25 %
1006 30 67	25 %
1006 30 92	25 %
1006 30 94	25 %
1006 30 96	25 %
1006 30 98	25 %
1006 40 00	25 %
1904 10 30	25 %
1904 90 10	25 %
2001 90 30	25 %
2004 90 10	25 %
2005 80 00	25 %
2008 11 10	25 %
2009 12 00	25 %
2009 19 11	25 %
2009 19 19	25 %
2009 19 91	25 %

CN 2018 (1)	Additional duty
2009 19 98	25 %
2009 81 11	25 %
2009 81 19	25 %
2009 81 31	25 %
2009 81 59	25 %
2009 81 95	25 %
2009 81 99	25 %
2208 30 11	25 %
2208 30 19	25 %
2208 30 82	25 %
2208 30 88	25 %
2402 10 00	25 %
2402 20 10	25 %
2402 20 90	25 %
2402 90 00	25 %
2403 11 00	25 %
2403 19 10	25 %
2403 19 90	25 %
2403 91 00	25 %
2403 99 10	25 %
2403 99 90	25 %
3304 20 00	25 %
3304 30 00	25 %
3304 91 00	25 %
6109 10 00	25 %
6109 90 20	25 %
6109 90 90	25 %
6203 42 31	25 %
6203 42 90	25 %
6203 43 11	25 %
6204 62 31	25 %
6204 62 90	25 %
6302 31 00	25 %
6403 59 95	25 %
7210 12 20	25 %

CN 2018 (1)	Additional duty
7210 12 80	25 %
7219 12 10	25 %
7219 12 90	25 %
7219 13 10	25 %
7219 13 90	25 %
7219 32 10	25 %
7219 32 90	25 %
7219 33 10	25 %
7219 33 90	25 %
7219 34 10	25 %
7219 34 90	25 %
7219 35 90	25 %
7222 20 11	25 %
7222 20 21	25 %
7222 20 29	25 %
7222 20 31	25 %
7222 20 81	25 %
7222 20 89	25 %
7222 40 10	25 %
7222 40 50	25 %
7222 40 90	25 %
7223 00 11	25 %
7223 00 19	25 %
7223 00 91	25 %
7226 92 00	25 %
7228 30 20	25 %
7228 30 41	25 %
7228 30 49	25 %
7228 30 61	25 %
7228 30 69	25 %
7228 30 70	25 %
7228 30 89	25 %
7228 50 20	25 %
7228 50 40	25 %
7228 50 69	25 %

CN 2018 (1)	Additional duty
7228 50 80	25 %
7229 90 20	25 %
7229 90 50	25 %
7229 90 90	25 %
7301 20 00	25 %
7304 31 20	25 %
7304 31 80	25 %
7304 41 00	25 %
7306 30 11	25 %
7306 30 19	25 %
7306 30 41	25 %
7306 30 49	25 %
7306 30 72	25 %
7306 30 77	25 %
7306 30 80	25 %
7306 40 20	25 %
7306 40 80	25 %
7307 11 10	25 %
7307 11 90	25 %
7307 19 10	25 %
7307 19 90	25 %
7308 30 00	25 %
7308 40 00	25 %
7308 90 51	25 %
7308 90 59	25 %
7308 90 98	25 %
7309 00 10	25 %
7309 00 51	25 %
7309 00 59	25 %
7310 29 10	25 %
7310 29 90	25 %
7311 00 13	25 %
7311 00 19	25 %
7311 00 99	25 %
7314 14 00	25 %

CN 2018 (1)	Additional duty
7314 19 00	25 %
7314 49 00	25 %
7315 11 10	25 %
7315 11 90	25 %
7315 12 00	25 %
7315 19 00	25 %
7315 89 00	25 %
7315 90 00	25 %
7318 14 10	25 %
7318 14 91	25 %
7318 14 99	25 %
7318 16 40	25 %
7318 16 60	25 %
7318 16 92	25 %
7318 16 99	25 %
7321 11 10	25 %
7321 11 90	25 %
7322 90 00	25 %
7323 93 00	25 %
7323 99 00	25 %
7324 10 00	25 %
7325 10 00	25 %
7325 99 10	25 %
7325 99 90	25 %
7326 90 30	25 %
7326 90 40	25 %
7326 90 50	25 %
7326 90 60	25 %
7326 90 92	25 %
7326 90 96	25 %
7606 11 10	25 %
7606 11 91	25 %
7606 12 20	25 %
7606 12 92	25 %
7606 12 93	25 %

CN 2018 ⁽¹⁾	Additional duty
8711 40 00	25 %
8711 50 00	25 %
8903 91 10	25 %
8903 91 90	25 %
8903 92 10	25 %
8903 92 91	25 %
8903 92 99	25 %
8903 99 10	25 %
8903 99 91	25 %
8903 99 99	25 %
9504 40 00	25 %

⁽¹⁾ The nomenclature codes are taken from the Combined Nomenclature as defined in Article 1(2) of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1) and as set out in Annex I thereto, which are valid at the time of publication of this Regulation and mutatis mutandis as amended by subsequent legislation, including most recently Commission Implementing Regulation (EU) 2017/1925 of 12 October 2017 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 282, 31.10.2017, p. 1).

ANNEX II

Products that may be subject to further additional duties from 23 March 2021 or upon determination of WTO inconsistency of the US safeguard measures

CN 2018 ⁽¹⁾	Additional duty
2008 93 11	25 %
2008 93 19	25 %
2008 93 29	25 %
2008 93 91	25 %
2008 93 93	25 %
2008 93 99	25 %
2208 30 11	25 %
2208 30 19	25 %
2208 30 82	25 %
2208 30 88	25 %
3301 12 10	10 %
3301 13 10	10 %
3301 90 10	10 %
3301 90 30	10 %
3301 90 90	10 %
3302 90 10	10 %
3302 90 90	10 %
3304 10 00	10 %
3305 30 00	10 %
4818 20 10	25 %
4818 20 91	35 %
4818 20 99	25 %
4818 30 00	25 %
4818 50 00	35 %
4818 90 10	25 %
4818 90 90	35 %
5606 00 91	10 %
5606 00 99	10 %
5907 00 00	10 %
5911 10 00	10 %
5911 20 00	10 %

CN 2018 (1)	Additional duty
5911 31 11	10 %
5911 31 19	10 %
5911 31 90	10 %
5911 32 11	10 %
5911 32 19	10 %
5911 32 90	10 %
6203 42 11	50 %
6203 42 33	50 %
6203 42 35	50 %
6203 42 51	50 %
6203 42 59	50 %
6203 43 19	50 %
6203 43 31	50 %
6203 43 39	50 %
6203 43 90	50 %
6204 62 11	50 %
6204 62 33	50 %
6204 62 39	50 %
6204 62 51	50 %
6204 62 59	50 %
6205 30 00	50 %
6301 30 10	50 %
6301 30 90	50 %
6402 19 00	25 %
6402 99 10	50 %
6402 99 31	25 %
6402 99 39	25 %
6402 99 50	25 %
6402 99 91	25 %
6402 99 93	25 %
6402 99 96	25 %
6402 99 98	25 %
6403 59 05	25 %
6403 59 11	25 %
6403 59 31	25 %

CN 2018 (1)	Additional duty
6403 59 35	25 %
6403 59 39	25 %
6403 59 50	25 %
6403 59 91	25 %
6403 59 99	25 %
6601 10 00	50 %
6911 10 00	50 %
6911 90 00	50 %
6912 00 21	50 %
6912 00 23	50 %
6912 00 25	50 %
6912 00 29	50 %
6912 00 81	50 %
6912 00 83	50 %
6912 00 85	50 %
6912 00 89	50 %
6913 10 00	50 %
6913 90 10	50 %
6913 90 93	50 %
6913 90 98	50 %
6914 10 00	50 %
6914 90 00	50 %
7005 21 25	25 %
7005 21 30	25 %
7005 21 80	25 %
7007 19 10	10 %
7007 19 20	10 %
7007 19 80	10 %
7007 21 20	10 %
7007 21 80	10 %
7007 29 00	10 %
7009 10 00	25 %
7009 91 00	10 %
7013 28 10	10 %
7013 28 90	10 %

CN 2018 (1)	Additional duty
7102 31 00	10 %
7113 11 00	25 %
7113 19 00	25 %
7113 20 00	25 %
7228 50 61	25 %
7326 90 98	10 %
7604 29 90	25 %
7606 11 93	25 %
7606 11 99	25 %
8422 11 00	50 %
8450 11 11	50 %
8450 11 19	50 %
8450 11 90	50 %
8450 12 00	50 %
8450 19 00	50 %
8506 10 11	10 %
8506 10 18	10 %
8506 10 91	10 %
8506 10 98	10 %
8506 90 00	10 %
8543 70 01	50 %
8543 70 02	50 %
8543 70 03	50 %
8543 70 04	50 %
8543 70 05	50 %
8543 70 06	50 %
8543 70 07	50 %
8543 70 08	50 %
8543 70 09	50 %
8543 70 10	50 %
8543 70 30	50 %
8543 70 50	50 %
8543 70 60	50 %
8543 70 90	25 %
8704 21 10	10 %

CN 2018 ⁽¹⁾	Additional duty
8704 21 31	10 %
8704 21 39	10 %
8704 21 91	10 %
8704 21 99	10 %
8711 40 00	25 %
8711 50 00	25 %
8901 90 10	50 %
8901 90 90	50 %
8902 00 10	50 %
8902 00 90	50 %
8903 10 10	10 %
8903 10 90	10 %
8903 92 91	25 %
8903 92 99	25 %
9401 61 00	50 %
9401 69 00	50 %
9401 71 00	50 %
9401 79 00	50 %
9401 80 00	50 %
9404 90 10	25 %
9404 90 90	25 %
9405 99 00	25 %

⁽¹⁾ The nomenclature codes are taken from the Combined Nomenclature as defined in Article 1(2) of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1) and as set out in Annex I thereto, which are valid at the time of publication of this Regulation and mutatis mutandis as amended by subsequent legislation, including most recently Commission Implementing Regulation (EU) 2017/1925 of 12 October 2017 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 282, 31.10.2017, p. 1).