COMMISSION IMPLEMENTING REGULATION (EU) 2020/132

of 30 January 2020

laying down an emergency measure in the form of a derogation from Article 45(3) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards Union contribution to the promotion measure in the wine sector

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ([1]), and in particular Article 221(1) thereof,

Whereas:

(1) On 2 October 2019, the World Trade Organization (WTO) issued the arbitration decision in European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft, WT/DS316/ARB. The arbitration decision entitled the United States of America (USA) to request an authorisation to impose countermeasures at a level not exceeding USD 7,5 billion annually in response to Union subsidies to Airbus. On 18 October 2019, the USA imposed a 25 % *ad valorem* import duty on, among others, still wines exported to the USA by Germany, Spain, France and the United Kingdom. This exceptional, inequitable and unpredictable situation is having a severe and detrimental impact on the global trade of all Union wines. The USA have further threatened to apply 100 % ad valorem import duties on French sparkling wines in response to the French Digital Services Tax (GAFA tax).

(2) The import duties imposed by the USA are having a direct and severe impact on the Union wine trade on the USA market, which is the Union's largest export market for agricultural products, and for wine in particular, both in terms of value and volume of exports. In 2018, Union wine exports to the USA totalled 6,5 million hectolitres, accounting for EUR 4 billion. Union wine exports to the USA typically represents between 30 and 40 % of the global Union wine export value.

(3) The increased import duties imposed by the USA are having a damaging effect on all Union wine, not only on still wines originating from the four Member States that are subject to the increased import duties. The reputation and trade of all Union wine present in the USA market is adversely impacted as a result. The reputation of wine is determined not only by its quality but also by its price and the perceived price-quality ratio. This is particularly the case for the lower to middle range priced wines, which, in absolute terms, are impacted more by a 25 % import duty than more expensive wines that are purchased by connoisseurs for whom a price increase does not operate as a deterrent. Union wines compete in the USA market with wines from other origins such as South America, Australia or South Africa. In the light of such fierce and intense competition, perception of overall price levels plays a significant role. Where the consumer is aware that the price of wine from certain origins within the Union is subject to an increased import duty, this will have a negative impact on the overall perception of the price level of Union wines and thus divert consumer demand to products of other origins. In the light of the identified resulting market conditions and decrease in overall returns to producers, immediate measures to address the effects of the import duties are warranted covering all wines originating in all Member States and not only in those directly targeted by the import duties.

(4) From a market stability perspective, the import duty regime imposed by the USA does not represent an isolated national measure with effects limited to the trade with the USA. The world wine market is a global market on which single measures taken by important economic players such as the USA have far-reaching repercussions affecting the international trade in wine as a whole. Any negative change in the conditions in a major destination market for Union wines, such as the USA, inevitably affects other markets since the products that cannot be sold in the USA, having become too expensive, need to be diverted elsewhere. Consequently, consumers in those other markets,

([1]) OJ L 347, 20.12.2013, p. 671.

being well aware of the market conditions, will exert additional pressure on prices and competition will also be much fiercer than normal. The current import duties imposed by the USA are therefore likely to cause stagnation in Union wine exports worldwide. Reports from the wine sector have shown that significant orders of French wines on the USA market have already been cancelled.

(5) The Union wine market has been subject to aggravating conditions throughout 2019 and wine stocks are at their highest level since 2009. This development is due primarily to a combination of the record harvest in 2018 and decreasing wine consumption in the Union. If the wines affected by the import duties imposed by the USA are not sold on the export markets outside the Union, this will only serve to amplify the urgency and seriousness of the situation in the Union market. Furthermore, the urgency of the situation is aggravated by the timing of the application of the import duty tariffs. The tariffs are applicable from 18 October 2019, which falls right in the middle of the 2019 wine harvest and production campaign and just before the end of year festive season; two of the most important sale periods of the year for the Union wine sector. Against this background, it is therefore necessary to take immediate measures to address the situation.

(6) Among the support measures in the wine sector set out in Article 43 of Regulation (EU) No 1308/2013, only the promotion measure under Article 45(1)(b) of that Regulation is directly targeted on promoting Union wines in third countries in order to improve their competitiveness. Over the years, the promotion measure has proved remarkably effective to conquer and consolidate markets in third countries. It proved to be the most effective tool to support Union wines on third country markets by enhancing their reputation and raising awareness on their quality. The international wine market is a global market and any promotion operation of Union wine on third country markets is beneficial to all Union wines. It opens opportunities for operators who will subsequently enter the market in question with other Union wines. The individual promotions have a “multiplier” effect on sales as they cover whole ranges of wines or entire winemaking regions and not just one individual brand or type of wine. It is therefore essential to continue, launch and intensify promotion activities in all markets in order to find outlets for the wines that will not be sold on the USA market and to preserve the reputation of Union wines in those other markets as well as to counter pressure on prices.

(7) Therefore, to help operators respond to the current exceptional circumstances in export markets all over the world following the import duty regime imposed by the USA and address this unpredictable and precarious situation, it is appropriate to allow further flexibility in implementing the promotion measure under Article 45(1)(b) of Regulation (EU) No 1308/2013. It is therefore necessary, as an exceptional measure, to provide for a derogation from Article 45 (3) of that Regulation and temporarily increase the maximum Union contribution to promotion measures under Article 45(1)(b) of that Regulation from 50 % to 60 % of the eligible expenditure.

(8) This measure is necessary because operators will inevitably incur additional costs arising from the need to divert promotions to different countries or to organise new promotions in other countries, all of which will need to be executed in urgency to ensure stocks are sold. Increasing the Union contribution for promotion measures to 60 % and consequently decreasing the beneficiary’s contribution would allow beneficiaries to undertake more ambitious actions and preserve hard-won positions on the foreign markets. It will also provide an incentive to new operators to apply for support for promotion operations in circumstances they might not otherwise have done were the Union contribution to remain at 50 %, in particular as concerns those operators who previously could not afford to do so. Reducing their financial burden to 40 % will help them to cope with the impact of the import duties imposed by the USA.

(9) The flexibility introduced by increasing the Union contribution represents a form of financial support, which, however, does not require additional Union financing since the budgetary limits for the national support programmes in the wine sector laid down in Annex VI to Regulation (EU) No 1308/2013 continue to apply. Member States may thus decide to allocate higher amounts to the promotion measure only within the yearly budget provided for in Annex VI to that Regulation. The measure is aimed, therefore, at providing support to the sector in the given unstable market situation without having to mobilise additional funds in the first place. Furthermore, this flexibility should not have a negative impact on the budget allocated to other support measures under that Regulation, since some of the measures, such as restructuring and conversion of vineyards, are becoming less relevant and less budget consuming for Member States. In addition, the statistics of the recent years show an underspending of the maximum budget available per Member State.

(10) The import duties imposed by the USA and the resulting difficulties for the trade in Union wine constitute a specific problem within the meaning of Article 221 of Regulation (EU) No 1308/2013. This specific problem cannot be addressed by measures taken pursuant to Article 219 or 220 of that Regulation. On the one hand, it is not linked to an already existing market disturbance since the import duties imposed by the USA are currently severely impacting the reputation of Union wine and are likely to cause a rapid deterioration of wine market conditions in the future if the situation is not addressed immediately. This specific problem is currently also not linked to a sufficiently specific threat of a market disturbance that is likely to continue in its current form since the import duty tariffs by the USA are expected to change over time and as such are likely to have further unpredictable effects on the global wine market. On the other hand, this specific problem is also not linked to measures for combating the spread of diseases of animals or a loss of consumer confidence due to public, animal or plant health risks as required by Article 220 of that Regulation.

(11) Furthermore, this measure together with an increased flexibility in the implementation of the promotion measure set out in Article 45(1)(b) of Regulation (EU) No 1308/2013, is a part of a series of measures intended to help at Union level operators affected by the import duties imposed on Union wines by the USA. However, among those measures, this measure is the only one providing some financial relief that is necessary address the situation of operators affected by the import duties imposed by the USA as a result of income losses and increased expenses triggered by the need to find new markets for their wines.

(12) The measure should be strictly limited to what is necessary to address the current exceptional circumstances in export markets both as regards the scope and the period of application.

(13) The Union contribution can only be granted by Member States on the basis of an application which is selected under the promotion measure set out in Article 45(1)(b) of Regulation (EU) No 1308/2013 from the date of entry into force of this Regulation. It should be available to all operators selected under the measure in disregard of the specific wine category or the origin of Union wine, given the fact that the application of the import duty tariffs by the USA is damaging to all Union wine exports. In this context, it is necessary to adopt measures to improve the export competitiveness of all Union wines. To ensure that, the present emergency measure should thus apply to all beneficiaries regardless of the markets targeted in their operations. It should be equally available to the operators envisaging to target the USA market but also the ones who would direct their efforts to another third country market in the current exceptional circumstances on the world wine market. In addition, it would be very difficult to separate within one promotion operation the actions concerning still wines from the actions concerning other wines since the promotion operations are typically designed to promote a whole range of products and not just a specific category. Many promotion campaigns concern all wines of a region or a broad variety of wines sold by a given operator. To separate the actions concerning other wines from the actions concerning still wines within a promotion campaign would represent a heavy administrative burden and would undermine the positive effects of the promotion operation.

(14) The emergency measure should be limited to a maximum period of 12 months starting from the date of entry into force of this Regulation. This period is necessary to allow promotion campaigns to be set up. The process includes several administrative steps such as changes to the national support programmes, the preparation and launch of calls for submissions, the selection of applications and conclusion of contracts, and it typically lasts more than 6 months Therefore, in order for the derogation to be implemented efficiently, the duration of the derogation should be 12 months. Applications selected after the 12 month period should not benefit from the increased Union contribution.

(15) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Categories of products covered

This Regulation shall apply to the promotion of wine within the meaning of points (1) to (9), (15) and (16) of Part II of Annex VII to Regulation (EU) No 1308/2013.

Article 2

Union contribution to promotion measures

By way of derogation from Article 45(3) of Regulation (EU) No 1308/2013, the Union contribution to promotion measures referred to in Article 45(1)(b) of Regulation (EU) No 1308/2013 shall not exceed 60 % of the eligible expenditure.

Article 3

Entry into force and application

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall apply during a period of 12 months from its date of entry into force.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 January 2020.

For the Commission

The President

Ursula VON DER LEYEN