

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION

COMMISSION IMPLEMENTING REGULATION (EU) .../... of XXX on certain commercial policy measures concerning certain products originating in the United States of America pursuant to Article 4(1) of Regulation (EU) No 654/2014

Submitted by the Department for International Trade on 08 May 2018.

SUBJECT MATTER

1. This regulation is being proposed as part of the EU's response to the US imposition of an increase in tariffs on certain steel and aluminium products following the national security investigation carried out under Section 232 of the US Trade Expansion Act 1962. It allows the EU to notify the WTO of the products originating in the United States on which it may decide to impose additional tariffs and their maximum level. In order then to apply these additional tariffs the Commission will need further agreement from the Member States in a subsequent implementing act.
2. On 8 March 2018 the US announced its intention to impose a 25 percent tariff on steel imports and a 10 percent tariff on aluminium imports, in order to protect US national security. The US has granted the EU an exemption from the tariffs until 1 May. The EU and the UK are both lobbying the US to secure a permanent exemption for the EU, but we do not know if this will be successful. The EU regards the US tariffs as safeguard measures (although the US has not described them as such), intended to protect their domestic industry from foreign competition for commercial reasons. Given that they are assumed to be safeguards, WTO law allows for the imposition of countermeasures to the equivalent value of the damage caused by the safeguards¹. The countermeasures must be notified to the WTO Council for Trade in Goods within 90 days of the safeguard measures, which must not disapprove.
3. The European Commission estimate that the proposed US tariffs would have affected at least €6.41bn (£5.66bn)² worth of EU imports into the US in 2017. The Commission intend to impose tariffs on certain products up to the same financial level, in line with the WTO agreement on safeguards.
4. The Commission selected the products on which additional tariffs may be imposed based on the criteria set out in Regulation (EU) No 654/2014. In particular it considered their potential to provide relief to the industries affected by the safeguard measures, and to minimise the negative economic impact on the EU, including with regard to the supply of essential raw

¹ Under Article 8 of the World Trade Organization (WTO) Agreement on Safeguards

² Converted using the monthly average spot exchange rate for March 2018 from the Bank of England

materials. It ran a public consultation in March 2018 seeking views on the proposed countermeasures.

5. Annex I of the draft regulation sets out the products originating from the US on which the EU will notify to the WTO it may apply a maximum tariff of 25% from 20 June 2018. This is in response to the US increase in tariffs of 25% on imports of certain steel products.
6. Annex II sets out the products on which the EU will notify to the WTO it may impose maximum tariffs of 10%, 25%, 35% or 50% from 20 March 2021. This is in response to the US increase in tariffs of 10% on imports of certain aluminium products and of 25% on imports of certain other steel products.
7. The regulations allow the EU to proceed to apply the tariffs on any subset of these products, depending in particular on any exemptions to be applied by the US.
8. The draft regulation was agreed in the Trade Barriers Committee on 17 April 2018.

SCRUTINY HISTORY

9. This is a new proposal, there is no previous scrutiny history.

MINISTERIAL RESPONSIBILITY

10. The Secretary of State for International Trade has primary responsibility for UK policy on trade. Other Secretaries of State with an interest include the Chancellor of the Exchequer, the Secretary of State for Foreign and Commonwealth Affairs, the Secretary of State for Exiting the European Union, the Secretary of State for Business, Energy and Industrial Strategy, and the Secretary of State for Environment, Food and Rural Affairs.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

11. Regulation of international trade is a reserved matter under the UK's devolution settlements. However as the regulation touches on devolved matters and is therefore of interest across the UK, the Devolved Administrations have been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

Legal basis

12. Regulation (EU) No 654/2014.
13. The Justice and Home Affairs opt-in is not a consideration.

European Parliament Procedure

14. This is a proposal for a Commission Regulation and has been agreed in a Commission Management Committee (the Trade Barriers Committee). This procedure does not involve the European Parliament.

Voting procedure

15. The draft Commission Regulation will be adopted under the Examination Procedure provided by Article 8(2) of Regulation (EU) No 654/2014 and Article 5 of Regulation (EU) No 182/2011.

Impact on United Kingdom Law

16. Yes, this is a Regulation and therefore will be directly applicable.

Application to Gibraltar

17. This legislation will not apply to Gibraltar as it is excluded from the Common Commercial Policy.

Fundamental rights analysis

18. No fundamental human rights issues arise.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

19. The regulation is not applicable to the European Economic Area (Norway, Iceland and Liechtenstein).

SUBSIDIARITY

20. The proposed regulation relates to an area falling within the European Union's exclusive competence, and therefore subsidiarity issues do not arise.

POLICY IMPLICATIONS (including Exit implications where appropriate)

21. On 23 June 2016, the EU referendum was held and the people of the United Kingdom voted to leave the European Union. The Government respected the result and triggered Article 50 of the Treaty of the European Union on 29 March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will also continue to negotiate, implement and apply EU legislation.
22. The UK Government supports the approach of the Commission and has voted in favour of this regulation. The vote at the Trade Barriers Committee will serve as leverage in negotiations with the US to secure the maximum possible exemption for the EU from the new tariffs.
23. The vote also demonstrates that in such cases the EU is willing and able to impose countermeasures where necessary, which may deter similar actions, and will strengthen the EU negotiating position in any subsequent cases.

24. The Commission is required to propose a further implementing regulation in order for the countermeasures to come into effect. The UK Government will determine its position on that regulation at the appropriate time.
25. The UK's policy position is that it is right to seek to defend our domestic industries from the direct and indirect impacts of the US tariffs, protecting both jobs and industrial capacity. We will also press for any response from the EU to be measured and proportionate. It is important that the UK and EU response works within the boundaries of the rules-based international trading system.

CONSULTATION

26. The European Commission ran a public consultation in March 2018 on the U.S. tariff increase on imports of certain steel and aluminium products and possible EU commercial policy measures in response, seeking views on the proposed list of countermeasures. The consultation was completed on 26 March 2018.
27. As a result of the consultation the Commission made several minor changes to the proposed list of products to which countermeasures may be applied, in specific limited cases where no substitute product was immediately available to the EU market.
28. The Government has engaged with UK business associations and companies who may be affected by the proposed list of products to which countermeasures may be applied.

IMPACT ASSESSMENT

29. The Commission estimates that the imports into the United States from the EU of the steel and aluminium products affected by the US measures were worth at least €6.41bn (£5.66bn³) in 2017 (of which €5.30bn (£4.68bn) were steel and €1.11bn (£0.98bn) aluminium).
30. The following paragraphs broadly outline the scale of the proposed countermeasures, noting that the imposition of tariffs will need the agreement of Member States in a subsequent implementing act.
31. The proposed EU countermeasures would impose tariffs on imports of certain products from the US covering 332 tariff lines. This includes iron and steel, clothing and footwear, food and drink, glass, boats, electrical products and cosmetic products. Based on 2017 Eurostat data, the value of EU imports from the US of all products on the countermeasures list totals around €5.75bn (£5.08bn) in 2017, of which UK imports were around €1.19bn (£1.05bn).

³ Converted using the monthly average spot exchange rate for March 2018 from the Bank of England

32. The proposed countermeasures list is split into two parts as explained at paragraphs 5 and 6. Annex I covers 182 tariff lines; EU imports of these products from the US in 2017 amounted to around €2.84bn (£2.50bn), of which UK imports were around €0.53bn (£0.47bn). Annex II covers the remaining proposed countermeasures. 8 tariff lines in Annex I also appear in Annex II alongside an additional 150 tariff lines.
33. The proposed tariffs would make imports of these products from the US more expensive, which could induce consumers and users to switch to alternative suppliers or reduce their consumption. Tariffs on intermediate products would increase their cost for businesses that use them as inputs. The impact will be larger where there are limited alternative sources of supply.
34. It is important to note that this list will be the maximum on which the EU can impose countermeasures. The European Commission has already made clear that if the US's product exclusion process for the US Section 232 measures reduces the injury caused to EU industry then the value of the EU countermeasures would be reduced accordingly.

FINANCIAL IMPLICATIONS

35. The Commission has not estimated the level of additional revenues to the EU budget from the increased tariffs.

TIMETABLE

36. The Commission intend to give notice of the proposed countermeasures to the WTO Council for Trade in Goods by 18 May 2018 in order to meet WTO timelines. The Commission has not specified a further timetable.



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