



19.12.2018

NOTICE TO MEMBERS

Subject: Petition No 0524/2018 by Chris Neville (British) to abandon proposals to increase tariffs on American whiskey imported into the EU

1. Summary of petition

The petitioner is calling on the EU to abandon proposals to increase tariffs on American whiskey imported into the EU. These tariffs were proposed in retaliation for the tariffs the USA implemented on steel and aluminium products imported from the EU. The petitioner claims that many European companies rely on the sale of American whiskey and that a 25% tariff would put the future of those companies at risk, with consequent job losses.

2. Admissibility

Declared admissible on 16 October 2018. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 19 December 2018

The Commission's observations

State of play of the measures

The EU tariffs referred to by the petitioner are, in fact, EU rebalancing measures, currently in force in the form of additional import duties between 10% and 50% on over 300 products originating in the US, including whiskey, designed to respond to the US import tariffs on EU steel and aluminium exports in a measured, proportionate and WTO-compatible manner. More specifically, Articles 3(c), 4(1) and 5(1) of Regulation (EU) No 654/2014 of the European Parliament and of the Council¹ and Article 8 of the World Trade Organization

¹ 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 (OJ L 189, 27.6.2014, p. 50).

(WTO) Agreement on Safeguards give the EU the right to respond to the specific US measures on steel and aluminium by making use of rebalancing measures.

It is recalled that the US measures became effective with respect to the EU on 1 June 2018, for an indefinite period of time.

Subsequently, the first tranche of EU rebalancing measures entered into force on 22 June 2018, in accordance with Regulation 2018/866¹. If the US measures remain, another tranche will become effective as of 1 June 2021 or from the fifth day following the adoption by, or notification to, the WTO Dispute Settlement Body of a ruling that the US measures are inconsistent with the relevant provisions of the WTO Agreement, if that is earlier, also in accordance with Regulation 2018/866.

These measures will be applicable as long as the US measures on steel and aluminium products are effective and will be removed as and when the US measures cease to exist². It must be highlighted that it is not exactly correct to define such measures as retaliatory because these measures are solely designed and used as an adequate means of rebalancing of trade concessions for the adverse effects of the US measures on EU exports.

The process preceding the entry into force of the measures

It is regrettable that by its decision to impose unjustified additional duties on imports from the EU, the US has effectively left the EU with no other option than to defend European commercial interests by responding in this firm but measured manner. Indeed, over the months preceding the imposition of the EU rebalancing measures, the EU had engaged in a detailed and intensive dialogue with the US on the challenges facing the steel and aluminium sectors, as well as on a wider set of issues in an attempt to avoid trade restrictions.

Moreover, Presidents Juncker and Trump agreed to work together toward zero tariffs on industrial goods and to refrain from going against the spirit of their Joint Statement of 25 July 2018. Both parties also continue addressing the steel and aluminium tariffs and rebalancing tariffs put in place. The Commission is engaging in the implementation of the Statement, aiming at re-establishing a positive engagement and trade relationship with the US.

Selection of products subject to the measures

With respect to the range of products on which the EU rebalancing measures apply, it is to be noted that these products, including whiskey, were selected in a transparent, rules-based and consultative process.

The products were selected in light of available information and of the EU's general interest,

¹ Commission Implementing Regulation (EU) 2018/886 of 20 June 2018 on certain commercial policy measures concerning certain products originating in the United States of America and amending Implementing Regulation (EU) 2018/724 (OJ L 158, 21.6.2018, p. 5–18), Articles 1 and 2.

² Commission Implementing Regulation (EU) 2018/886 of 20 June 2018 on certain commercial policy measures concerning certain products originating in the United States of America and amending Implementing Regulation (EU) 2018/724 (OJ L 158, 21.6.2018, p. 5–18), recital 4 and Article 3; and 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 (OJ L 122, 17.5.2018, p. 14–28), Recital 12 and Article 3.

in accordance with the specific applicable criteria set out in Article 4 of Regulation (EU) No 654/2014, among which:

- a) the potential to provide relief to economic operators within the EU, affected by third country measures;
- b) the availability of alternative sources of supply for the goods concerned, in order to avoid or minimise any negative impact on downstream industries, contracting authorities or entities, or final consumers within the EU.

To that end, through a stakeholders' consultation, which took place between 16 and 26 March 2018¹, the Commission collected input from the general public which it duly took into account in assessing the necessity and the parameters of the EU rebalancing measures. The Commission has carefully taken note of the sector-specific information and concerns which notably companies and associations, including from the EU spirits sector, shared throughout the process.

The process of selection was also grounded in political level guidance. This process involved extensive contacts with EU Member States and stakeholders, in line with the specific procedural steps set out in Regulation (EU) No 654/2014 and of the WTO Agreement on Safeguards, as well as on the basis of the favourable opinion of EU Member States in the applicable comitology examination procedure. The EU Member States formally endorsed the proposal on 14 June 2018.

Relevant developments – the WTO cases

In parallel, the EU launched a WTO dispute against the US measures on 1 June 2018². The EU is ready to demonstrate that the US measures are WTO-inconsistent and to obtain a ruling that condemns the US and through the US's implementation brings relief to the EU industry. As WTO litigation may take longer to produce an outcome, it was equally important to introduce more immediate rebalancing measures to protect the European interests in a proportionate manner, as explained above.

On 16 July 2018, the US launched a WTO dispute against the EU rebalancing measures³. The EU sees this as a normal and expected use of the WTO dispute settlement system aimed at resolving differences over the legality of the respective measures.

Both WTO disputes are currently pending and the EU will be setting out its views in the appropriate form first before the WTO panel. As always, the EU will make public its submissions afterwards.

Previous communications to the European Parliament

Finally, for completeness, the Commission wishes to refer to its answers to Written Questions E-004089/2018 and E-003223/2018.

¹ http://trade.ec.europa.eu/consultations/index.cfm?consul_id=253

² DS548 – United States — Certain Measures on Steel and Aluminium Products.

³ DS559 – European Union — Additional Duties on Certain Products from the United States.

Conclusion

Given the above, the Commission considers that the inclusion of US whiskey in the scope of the rebalancing measures responding to the US import tariffs on EU steel and aluminium occurred in a transparent and balanced manner, under the political guidance of and with the support of the EU Member States, after duly consulting stakeholders, and in strict adherence to the specific criteria and conditions set out in Regulation (EU) No 654/2014 of the European Parliament and of the Council, and of the WTO Agreement on Safeguards.

The Commission closely monitors developments and is ready to remove the rebalancing measures as soon as the US measures cease, or to proceed as appropriate with adjustments of the rebalancing measures to reflect any new developments¹.

¹ Commission Implementing Regulation (EU) 2018/886 of 20 June 2018 on certain commercial policy measures concerning certain products originating in the United States of America and amending Implementing Regulation (EU) 2018/724 (OJ L 158, 21.6.2018, p. 5–18), and 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 (OJ L 122, 17.5.2018, p. 14–28).