

Information gathering under Article 9 of the EU Enforcement Regulation regarding planned EU commercial policy measures further to the adjudication of a trade dispute with the United States on Measures Affecting Trade in Large Civil Aircraft under the WTO Dispute Settlement Understanding (“DSU”)

The Commission seeks information and views regarding the EU's economic interests in accordance with Article 9 of Regulation (EU) No 654/2014 of the European Parliament and of the Council of 15 May 2014. The Commission expects to receive input from private stakeholders who may be affected by planned EU commercial policy measures.

The information gathering should provide the Commission with input to assist it in assessing the scope and parameters of planned commercial policy measures.

Your input is important in this process and we thank you in advance for your contribution. The Word document can be used to fill in your comments directly under the relevant points.

Context

On 11 April 2019, the WTO Dispute Settlement Body ("DSB") adopted its recommendations and rulings in *United States – Measures Affecting Trade in Large Civil Aircraft (Second complaint) – Recourse to Article 21.5 of the DSU by the European Union*, confirming that the United States has failed to bring its measures, found to be inconsistent with the Agreement on Subsidies and Countervailing Measures (“SCM Agreement”), into conformity with its obligations under that Agreement.

In accordance with paragraph 8 of the "Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding and Article 7 of the SCM Agreement"¹ between the European Union and the United States with respect to this dispute, the European Union is taking steps towards requesting the Article 22.6 arbitrator to resume its work.

Upon the completion of the arbitrator’s work the European Union will request the DSB for an authorisation to take countermeasures against the United States. In its original request pursuant to Article 22.2 of the DSU and Articles 4.10 and 7.9 of the SCM Agreement related to this dispute (dated 2 October 2012), the European Union sought authorization from the DSB to take countermeasures against the United States in an annual amount of USD 12 billion.

The European Union’s countermeasures would include suspension of tariff concessions and other related obligations under the *General Agreement of Tariffs and Trade 1994* and under the SCM Agreement on a list of selected US products.

Regulation (EU) No 654/2014 of the European Parliament and of the Council of 15 May 2014 (the Enforcement Regulation)² provides for the legal basis for the EU to suspend concessions

¹ WTO/DS353/14

² 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 and amending Council Regulation (EC) No 3286/94 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization (OJ L 189, 27.6.2014, p. 50–58; 2014R0654 — EN — 05.11.2015 — 001.001)

or other obligations under the multilateral and plurilateral agreements covered by the WTO DSU following the adjudication of trade disputes under the WTO DSU.

Where action is necessary to safeguard the EU's interests in such cases, the Commission may take appropriate commercial policy measures.

In line with Article 4 (2) a) of the Enforcement Regulation, in determining the appropriate commercial policy measures where concessions or other obligations are suspended following the adjudication of a trade dispute under the WTO DSU, their level shall not exceed the level authorised by the WTO DSB.

Further to Article 4 (3) of the Enforcement Regulation, these commercial policy measures must be determined on the basis of the following criteria, where relevant, in light of available information and of the EU's general interest:

- a) effectiveness in inducing compliance of third countries with international trade rules;
- b) 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;
- c) avoidance of disproportionate administrative complexity and costs in the application of the measures;
- d) any specific criteria that may be established in international trade agreements.

Possible Commercial Policy Measures

In order to be in a position to promptly take action on the basis of and consistent with the decision of the arbitrator under Article 22 DSU, the Commission is required to take the respective steps under the Enforcement Regulation and the WTO DSU.

In this regard, the Commission is currently assessing the parameters of the planned commercial policy measures.

The Commission is considering commercial policy measures in the form of the imposition of increased customs duties, including additional *ad valorem* duties of up to 100 percent, on certain products from the United States.

The Commission services have identified products originating in the United States that could potentially be subject to increased customs duties. These products, or a subset of them, may be affected only if necessary and in a proportionate manner, in line with the requirements of the Enforcement Regulation described above.

The products can be consulted in the enclosed document 'List of Products' uploaded on the DG TRADE webpage under the current Information gathering exercise.

Information gathering procedure

In assessing the parameters of planned commercial policy measures, the Commission seeks input from private stakeholders who may be affected by the planned EU commercial policy measures, as outlined above, on the products listed in the document 'List of Products' uploaded on the DG TRADE webpage under the current Information gathering exercise.

Private stakeholders are invited to provide any views and information they consider relevant to EU economic interests in connection with the products which could be subject to possible EU commercial policy measures, as well as any other relevant input.

To receive full consideration, written comments should be as detailed as possible and include supporting documents.

Information received pursuant to Regulation (EU) No 654/2014 will be used only for the purpose for which it was requested.

Neither the European Parliament, nor the Council, nor the Commission, nor Member States, nor their respective officials shall reveal any information of a confidential nature received pursuant to Regulation (EU) No 654/2014, without specific permission from the supplier of such information.

The supplier of information may request that information supplied be treated as confidential. In such cases, it must be accompanied by a non-confidential summary which presents the information in a generalised form or a statement of the reasons why the information cannot be summarised. If it appears that a request for confidentiality is not justified and if the supplier is unwilling either to make the information public or to authorise its disclosure in generalised or summary form, the information in question may be disregarded. The confidential treatment will not preclude the disclosure of general information by the institutions of the EU and the authorities of the Member States. Such disclosure must take into account the legitimate interest of the parties concerned in not having their business secrets divulged.

Information received pursuant to Regulation (EU) No 654/2014 may be subject to a request for access to documents under EU Regulation 1049/2001 on public access to European Parliament, Council and Commission documents³. In such cases, the request will be assessed against the conditions set out in Regulation 1049/2001 and in accordance with applicable data protection rules.

Deadline

Please fill in the form and submit it at the latest **by 31 May 2019, 12:00 am (UTC+01:00), Brussels**, to the following e-mail address:

TRADE-REG-654-2014-INFOGATHERING@ec.europa.eu

For more information:

TRADE-REG-654-2014-INFOGATHERING@ec.europa.eu

³ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43)

INFORMATION GATHERING FORM

Please fill in this form and submit it at the latest **by 31 May 2019, 12:00 am (UTC+01:00), Brussels**, to the following e-mail address:

TRADE-REG-654-2014-INFOGATHERING@ec.europa.eu

1. Name: Anna BOULOVA
1. Organisation: FRUCOM - European Federation of the Trade in Dried Fruit, Edible Nuts, Processed Fruit & Vegetables, Processed Fishery Products
2. Contact details: info@frucum.eu; +32 2 230 03 33
3. Language of the submission: EN
4. Your views and information regarding the EU economic interests in the products originating in the United States which could be subject to EU commercial policy measures, listed in the enclosed document 'List of Products':

FRUCOM represents the interests of European traders in dried fruits, edible nuts, processed fruits & vegetables, and processed fishery products.

A large number of dried fruit, nuts and fishery products is included in the EU list. **The EU is highly dependent on imports** of these products from third countries in order to supply both the EU processing industries and consumers, as they are either not grown in the EU or not grown in sufficient quantities.

For many products, the US is a **key origin** due to a large share of imports coming from the US, difficulty of substituting this origin for reasons of availability, food safety, quality, other specifications, quotas for industrial processing or sustainability certification.

We also draw the attention of the Commission to the **low or zero import duty rates** currently applicable on our products. Examples are shelled pistachios 1.6% MFN, raisins 2.4% or raw inshell or kernel peanuts 0%. While an additional import duty of up to 100% is being discussed, even a single digit additional tariff may be **prohibitive** for the trade.

Finally, the supply contracts are **long term**, typically for 1 year. Changes to signed contracts are generally not accepted by our clients and losses will be for our members, the traders, who are nearly all SMEs. At the moment, it is impossible to factor the future situation in the contracts.

For these reasons, FRUCOM is opposed to the inclusion of dried fruit, nuts and fishery products on the sanction list.

Here below we focus on the products **crucial for our trade** based on above factors:

Chapter 8 Nuts and Dried fruit

Pistachios, dried prunes and raisins **all originate in California.**

- **080252 Pistachios, shelled**

US is the #2 supplier to the EU with 38% market share in 2018. In 2017, The EU's 28 Member State imports for shelled pistachios from Iran and the US were: Iran: 3 847 MT; US: 3 081 MT.

The US kernels are different and cannot be replaced by other origins in many product applications:

They are tree ripened and more golden in colour than other origin pistachios and consequently are used differently by industry to those from other origins. US pistachios are used in high end dried fruit and nut mixes, sold as ingredients to the ice cream and other industries and also sold as cooking ingredients in retail outlets across the EU. EU food producers would suffer financially if a tariff was imposed on shelled pistachios from the US as other origins are not able to supply the desired golden colour pistachios. In addition to colour, the U.S. produces significantly larger nuts than both Iran and Turkey, which is an advantage when used in high-end fruit and nut mixes. In addition, U.S. pistachio kernels tend to remain crunchier after being roasted due to their lower oil content, which consumers prefer.

The largest supplier of pistachios to the EU is Iran. Iranian pistachios, which are green in colour, are mainly sold as ingredients. **Many EU importers are unable to transfer funds to Iranian entities** due to the restrictions imposed on them by their banks due to US sanctions. This situation makes it virtually impossible for those companies to safely engage in the importation of Iranian produce.

The third largest supplier to the EU is Turkey. Turkish pistachios have an elongated shape, being long and thin with a small opening. They are primarily used as ingredients for desserts (eg Baklava), for baking or as cooking ingredients. It is questionable whether Turkey would have the necessary production to provide the volume that the US supplies.

Both Iran and Turkey are included in the Regulation 884/2014 on safeguard measures due to aflatoxin presence and **50% of consignments must be tested on arrival** to the EU. This **strongly affects supplies.**

Another factor affecting supplies is that pistachio trees tend to bear larger crops every second year, **which further limits availability on the market.**

- **0813 2000 Dried Prunes and Raisins (several customs codes)**

The US is regarded as **one of the leading producers of raisins and prunes in the world** with a reputation for high quality and reliability. Although the bulk of dried vine fruits imported into the EU come from other origins such as Turkey and prunes from Chile, in our opinion

Californian raisins and prunes are important commodities for both the EU retail and manufacturing trades. Californian raisins are imported in bulk 12.5kg packs as well as in prepacked retail packs including the famous 42.5 gram “Sunmaid” snack pack which is an important natural ingredient for many children’s lunch boxes in some EU countries.

Dried prunes cannot be replaced in the same quality and quantity by other origins. There is only reliable quality from the USA with very little residual core content. This is very important for the industry in terms of food safety. This could be proven with specifications (residual core content 0.001% versus 0.5%). These are important criteria for the yoghurt and chocolate industry.

Raisins are available from other origins, but the food industry buys partly special qualities/sizes that are not or only with difficulty available from other origins. US raisins are found in numerous mixes (for example, trail mix) from which they cannot easily be exchanged for reasons of specification.

Chapter 12 **peanuts**

There is **minimal EU production of peanuts** so the EU must import to meet manufacturing demand.

The U.S. is the **third largest producer of peanuts in the world** and **is the only origin able to consistently supply the volume of high-quality kernels needed in the European market not under increased import controls for aflatoxins.**

- **120241 Peanuts, inshell**

There is a lack of credible alternative suppliers of inshell peanuts for the quantity needed to meet demand. US is the #2 supplier after Egypt. The third largest supplier to the EU of inshells is China but there are issues with aflatoxin contamination and a shorter shelf life of product (faster oxidization of product, leading to rancidity and off taste of product). Israel is 4th largest supplier but at a much higher cost per metric ton which would financially disadvantage importers if they had to purchase more from that origin to replace US supply.

Recognising the superior taste of US origin peanuts, some inshell roasters/packers have heavily promoted the US origin of their product, including on-pack origin promotion and identification. Should tariffs be attached to US inshell peanut imports, it would most likely lead to roasted/packers having to look to other origins. This would result in costs to replace current packaging and there would be the added burden of disposing of existing packaging. There would also be a detrimental environment impact due to the plastic components of packaging. Additionally, there would be an added negative impact for companies on their brand identity since US origin is seen as a unique selling proposition.

120242 Peanuts, shelled

The US is the #2 supplier to the EU. Other main suppliers have recognised quality issues (aflatoxin) and are on increased controls on import. If the price of raw US peanuts was to increase significantly, manufacturers would have to switch to other origins in order not to pay

much higher prices, but they would then be faced with increased import controls and consequently increased costs (demurrage and sampling/testing costs) and delays in their supply chain. Additionally, **there is not enough production in other origins** to cover the amount imported from US, or where there is enough production, not enough quality peanuts to meet EU standards.

Peanuts are a nutritious and affordable food and increased costs passed onto the end consumer would make them a less affordable food choice.

Finally, recent allergy research has concluded that early introduction of 'peanut' into the diet will help reduce the number of people who suffer from peanut allergy. Any increased costs resulting from tariffs would be detrimental to EU consumers.

Chapter 15 oils

- **15162096 Peanut & other oils**

While the US is the #4 supplier, there does not appear to be sufficient availability from other origins to cover a deficit if EU importers are faced with increased prices on US origin.

Chapter 3

Fishery products

- **03047500 Alaska Pollack filets**

This product is supplied mostly for the industry, but also for the retail market.

For many years, the EU has had in place a system of autonomous tariff quotas for fishery products for industrial processing. The purpose is to **guarantee supplies of raw material** and manufacturing in the EU.

This code for Alaska Pollack **is the largest** in the order 09.2777 under the autonomous quota system, and it is duty-free. In 2018 the EU imported +/- 284 000 tons out of which +/-91 000 tons from the US. It is **impossible to replace such large quantity from another source**. In addition, fishing is regulated, and **fishing quotas cannot be easily switched**; filleting depends on the capacity in place and cannot be transferred to another flag vessel.

An important increase of the tariff will **impact the competitiveness of the EU industries**, buying this product as a raw material and processing it for the consumer. Other suppliers are China/Russia, but they provide mostly double frozen product when Alaska is 100% single frozen.

The supply of this product is historically linked to its main origin: Alaska, reflected in the name and reputed as quality product due to single freezing and additionally the sole origin being MSC (sustainability) certified.

- **03048100 Salmon from Alaska**

Frozen salmon fillets is **the only available single frozen, wild, MSC certified product reference.**

The market has large supplies of farmed salmon originating from Norway, but only Alaska can offer wild single frozen salmon certified MSC, which is a quality product.

Here again an increase of the duties might impact access for the consumer to this product.

Ends