

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: Jukka Likitalo
2. Organisation: Eucolait
3. Contact details: jukka.likitalo@eucolait.eu
4. Language of the submission: English
5. 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':

Eucolait welcomes the opportunity to submit feedback on the planned commercial policy measures further to the adjudication a trade dispute with the US, namely the list of products considered for additional import duties published on 17 April.

In general, we do not consider the inclusion of agricultural products on the EU list to be appropriate since the dispute at hand concerns aircraft manufacturing support. The inclusion of cheeses will unnecessarily attract further attention to dairy in the linked WTO dispute on subsidies granted to Airbus and will not have no effect whatsoever in terms of inducing the US to comply with international trade rules.

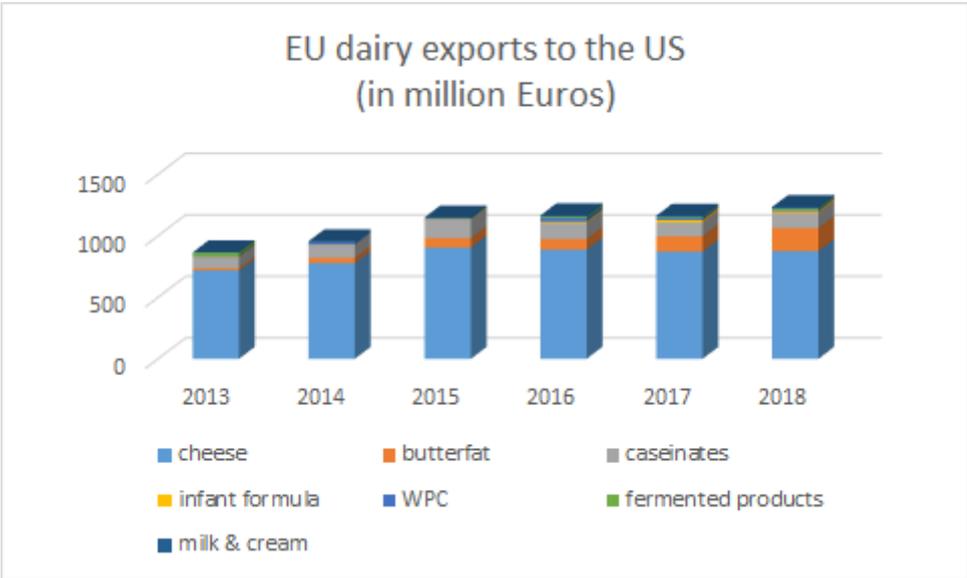
The US are the second largest cheese exporter in the world after the EU, with exports reaching 350 000 tonnes (or almost 1,5 billion USD). EU cheese imports from the US amounted to just 558 tonnes in 2018. This corresponds to only 0,16% of total US cheese exports. The 3 cheese lines included in the planned retaliation list account for 512 of these 558 tonnes. EU imports of US cheddar were at 314 tonnes in 2018 whereas the US exported 47 000 tonnes of cheddar in total. The EU is in general not a large importer of cheese in comparison to our domestic production and exports and what we import comes almost exclusively from Switzerland. Imports from the US account for less than 1% of EU imports, meaning that imports of US cheese are neither important from a US, nor from an EU perspective. In addition, our existing tariffs are quite effective in limiting imports. There are WTO “erga omnes” tariff rate quotas with reduced duties covering the cheeses in question but these quotas are used to a very limited extent.

Targeting cheeses as a product category potentially subject to additional tariffs therefore does not seem sensible or effective.

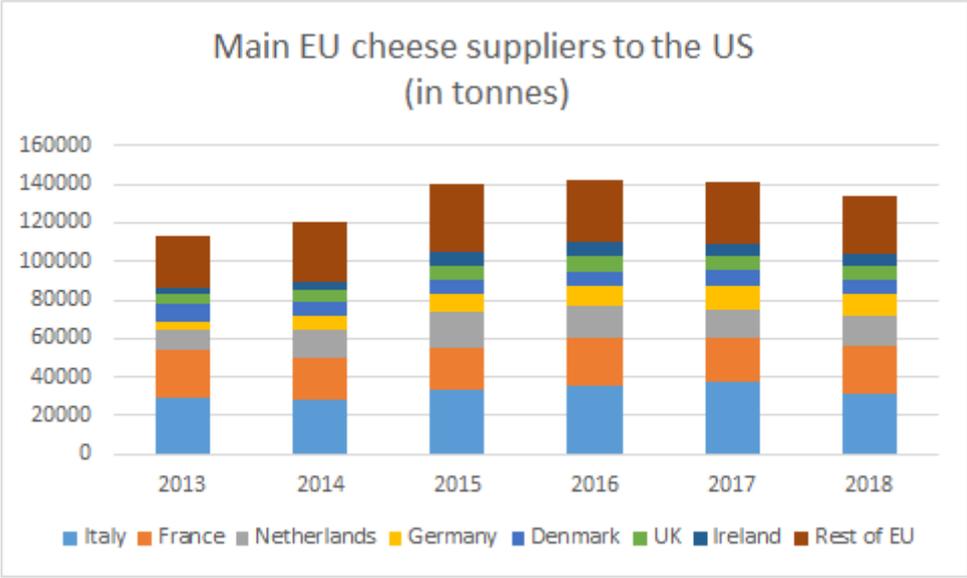
6. Any other relevant input:

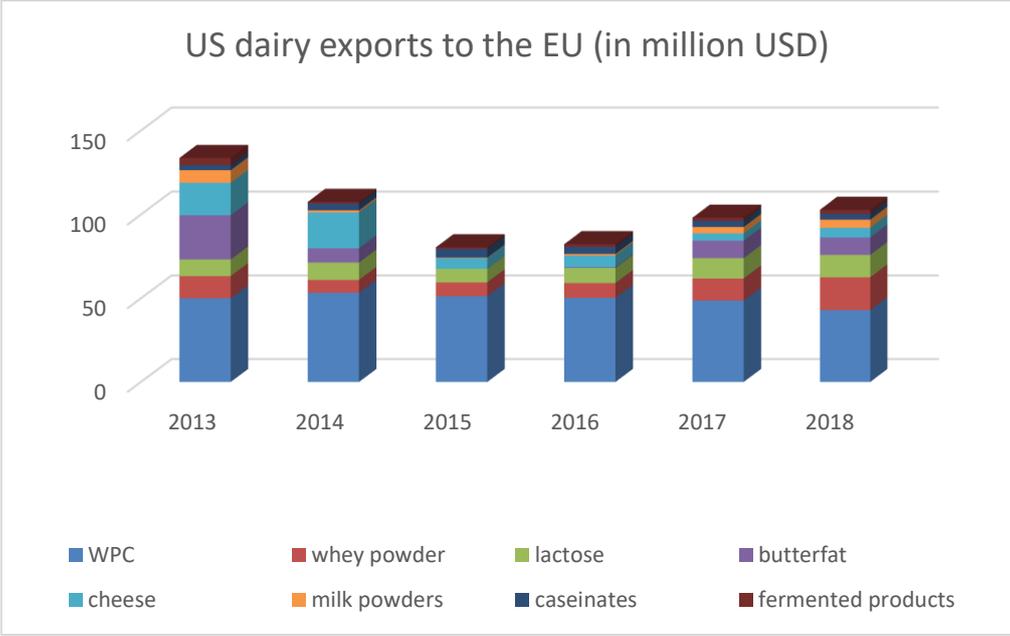
The US is the most important export market for European cheese and butter with exports worth more than 1 billion euros in 2018. In the context of the WTO case concerning EU subsidies on large civil aircraft, the US list of products considered for additional import duties of up to 100% includes most cheeses, butter and yogurt. Approximately 70% of EU cheese exports and all butter exports to the US would be affected. Depending on the level of duties, the impact could be disastrous. We call on the Commission to do everything in its power to de-escalate the situation and to prevent the dairy sector from suffering the collateral damage in an aircraft dispute. A ‘tit for tat’ trade war is certainly in neither side’s interest and seems particularly inappropriate with free trade negotiations on industrial products about to be launched.

Please find below an overview of EU – US dairy trade flows, in particular cheese.

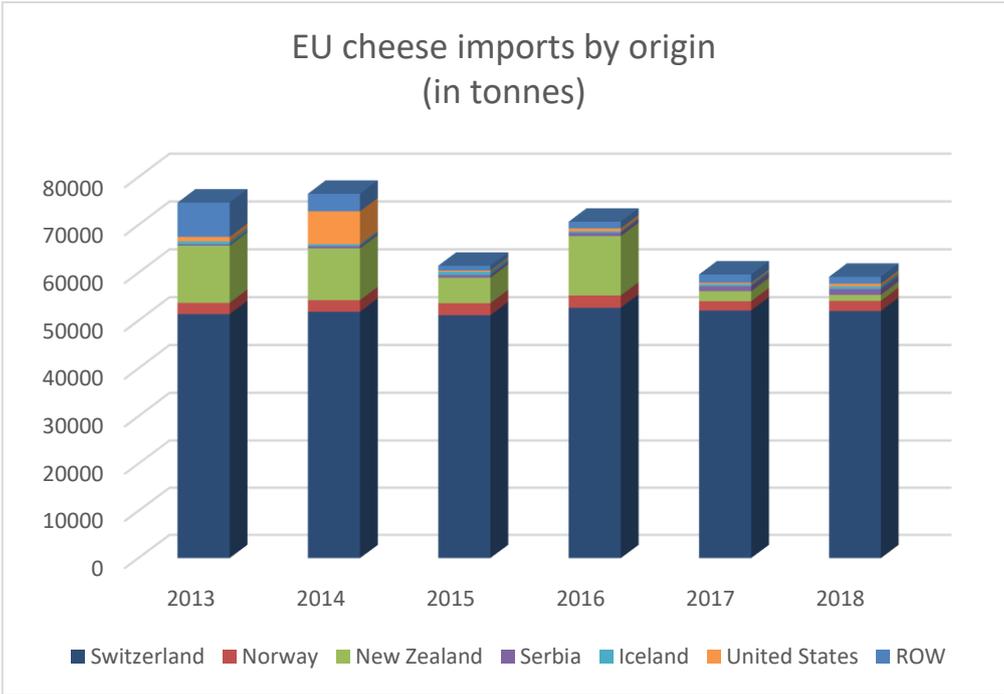


The importance of the US for EU dairy exports cannot be overstated. In value terms, about 11% of EU exports go to the US. The two most important product groups are cheese and butter. For cheese, the US account for 22% of EU exports and for butter the share is 24%.





By comparison, US dairy exports to the EU are negligible.



US product currently accounts for less than 1% of EU cheese imports.