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COUNCIL REGULATION (EC) No 673/2005

of 25 April 2005

establishing additional customs duties on imports of certain products originating in the United States of America

(OJ L 110, 30.4.2005, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Commission Regulation (EC) No 632/2006 of 24 April 2006	L 111	5	25.4.2006

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COUNCIL REGULATION (EC) No 673/2005

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establishing additional customs duties on imports of certain products originating in the United States of America

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) On 27 January 2003, the Dispute Settlement Body (DSB) of the World Trade Organisation (WTO) adopted the Appellate Body report ([1]) and the Panel report ([2]), as upheld by the Appellate Body report, finding that the Continued Dumping and Subsidy Offset Act (CDSOA) was incompatible with the United States' obligations under the WTO agreements.

(2) Since the United States failed to bring its legislation in conformity with the covered agreements, the Community requested to the DSB the authorisation to suspend the application of its tariff concessions and related obligations under the General Agreement on Tariffs and Trade (GATT) 1994 to the United States ([3]). The United States objected to the level of suspension of tariff concessions and related obligations and the matter was referred to arbitration.

(3) On 31 August 2004, the Arbitrator determined that the level of nullification or impairment caused every year to the Community was equal to 72 % of the amount of CDSOA disbursements relating to anti-dumping or countervailing duties paid on imports from the Community for the most recent year for which data are available at that time, as published by the United States' authorities. The Arbitrator concluded that the suspension by the Community of concessions or other obligations, in the form of the imposition of an additional import duty above bound custom duties, on a list of products originating in the United States covering, on a yearly basis, a total value of trade not exceeding the amount of nullification or impairment would be consistent with WTO rules. On 26 November 2004, the DSB granted the authorisation to suspend the application to the United States of tariff concessions and related obligations under GATT 1994 in accordance with the decision of the Arbitrator.

(4) The CDSOA disbursements for the most recent year for which data are available relate to the distribution of anti-dumping and countervailing duties collected during the Fiscal Year 2004 (1 October 2003 to 30 September 2004). On the basis of the data published by the United States' Customs and Border Protection, the level of nullification or impairment caused to the Community is calculated at USD 27,81 million. The Community may, therefore, suspend the application of its tariff concessions to the United States at an equivalent amount. The effect of a 15 % *ad valorem* additional import duty on imports of the products in Annex I originating in the United States represents, over one year, a value of trade that does not exceed USD 27,81 million. In respect of these products, the Community should suspend the application of its tariff concessions to the United States from 1 May 2005.

([1]) United States — Offset Act (Byrd Amendment), Appellate Body report (WT/DS217/AB/R, WT/DS234/AB/R, 16 January 2003).
([2]) United States — Offset Act (Byrd Amendment), Panel report (WT/DS217/R, WT/DS234/R, 16 September 2002).
([3]) United States — Offset Act (Byrd Amendment), Recourse by the European Communities to Article 22(2) of the DSU (WT/DS217/22, 16 January 2004).

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(5) If the non-implementation of the DSB ruling and recommendation persists, the Commission should adjust annually the level of suspension to the level of nullification or impairment caused by the CDSOA to the Community at that time. The Commission should amend the list in Annex I or the rate of the additional import duty so that the effect of the additional duty on imports from the United States of the selected products represents, over one year, a value of trade that does not exceed the amount of nullification or impairment.

(6) The Commission should respect the following criteria:

(a) The Commission should amend the rate of the additional import duty when adding or removing products from the list in Annex I does not allow to adjust the level of suspension to the level of nullification or impairment. Otherwise, the Commission should add products to the list in Annex I if the level of suspension increases or withdraw products from this list if the level of suspension decreases.

(b) If products are added, the Commission should select the products from the list in Annex II in an automatic fashion by following the order in which the products are listed. As a consequence, the Commission should also amend the list in Annex II by removing from it the products added to the list in Annex I.

(c) If products are withdrawn, the Commission should, first, remove products that were added to the list in Annex I at a later stage. The Commission should then remove products presently in the list in Annex I by following the order of that list.

(7) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ([1]).

(8) To avoid circumvention of the additional duty, this Regulation should enter into force on the day of its publication,

HAS ADOPTED THIS REGULATION:

Article 1

The tariff concessions and related obligations under GATT 1994 of the Community are hereby suspended in respect of products originating in the United States of America listed in Annex I to this Regulation.

Article 2

An *ad valorem* duty of 15 % additional to the customs duty applicable under Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ([2]) shall be imposed on the products originating in the United States of America listed in Annex I to this Regulation.

Article 3

1. The Commission shall adjust the level of suspension annually to the level of nullification or impairment caused by the United States' Continued Dumping and Subsidy Offset Act (CDSOA) to the Community at that time. The Commission shall amend the rate of the additional duty or the list in Annex I under the following conditions:

([1]) OJ L 184, 17.7.1999, p. 23.
([2]) OJ L 302, 19.10.1992, p. 1. Regulation as last amended by the 2003 Act of Accession (OJ L 236, 23.9.2003, p. 33).

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(a) The level of nullification or impairment shall be equal to 72 % of the amount of disbursements under the CDSOA relating to anti-dumping and countervailing duties paid on imports from the Community for the most recent year for which data are available at that time, as published by the United States' authorities;

(b) The amendment shall be made so that the effect of the additional import duty on imports of the selected products originating in the United States represents, over one year, a value of trade that does not exceed the level of nullification or impairment;

(c) Except in circumstances set out in point (e), when the level of suspension increases, the Commission shall add products to the list in Annex I. These products shall be selected from the list in Annex II following the order of that list;

(d) Except in circumstances set out in point (e), when the level of suspension decreases, products shall be withdrawn from the list in Annex I. The Commission shall remove, first, products that are presently in the list in Annex II and were added to the list in Annex I at a later stage. The Commission shall then remove products that are presently in the list in Annex I following the order of that list;

(e) The Commission shall amend the rate of the additional duty when the level of suspension cannot be adjusted to the level of nullification or impairment by adding or removing products from the list in Annex I.

2. When products are added to the list in Annex I, the Commission shall, at the same time, amend the list in Annex II by removing those products from the list in Annex II. The order of the products remaining in the list in Annex II shall not be modified.

3. The decisions under this Article shall be adopted in accordance with the procedure laid down in Article 4(2).

Article 4

1. The Commission shall be assisted by a Committee.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at one month.

3. The Committee shall adopt its rules of procedure.

Article 5

The origin of any product to which this Regulation applies shall be determined in accordance with the provisions of Regulation (EEC) No 2913/92.

Article 6

1. Products listed in Annex I for which an import licence with an exemption from, or a reduction of duty, was issued before the date of entry into force of this Regulation shall not be subject to the additional duty.

2. Products listed in Annex I for which it can be demonstrated that they are already en route to the Community on the date of application of this Regulation, and whose destination cannot be changed, shall not be subject to the additional duty.

3. Products listed in Annex I which are admitted free of import duties pursuant to Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty ([1]) shall not be subject to the additional duty.

([1]) OJ L 105, 23.4.1983, p. 1. Regulation as last amended by the 2003 Act of Accession.

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4. Products listed in Annex I may be placed under the customs procedure 'Processing under Customs Control' in accordance with the first subparagraph of Article 551(1) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ([1]) only where the examination of the economic conditions has taken place in the Committee of the Customs Code unless the products and operations are mentioned in Annex 76, Part A of that Regulation.

Article 7

The Council, acting by qualified majority on a proposal from the Commission, shall decide on the repeal of this Regulation once the United States of America has fully implemented the recommendation of the WTO Dispute Settlement Body.

Article 8

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

It shall apply from 1 May 2005.

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

([1]) OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 2286/2003 (OJ L 343, 31.12.2003, p. 1).

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ANNEX I

The products on which additional duties are to apply are identified by their eight-digit CN codes. The description of products classified under these codes can be found in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff ([1]).

4820 10 90

4820 50 00

4820 90 00

4820 30 00

4820 10 50

6204 63 11

6204 69 18

6204 63 90

6104 63 00

6203 43 11

6103 43 00

6204 63 18

6203 43 19

6204 69 90

6203 43 90

0710 40 00

9003 19 30

8705 10 00

6301 40 10

6301 30 10

6301 30 90

6301 40 90

4818 50 00

9009 11 00

9009 12 00

8467 21 99

([1]) OJ L 256, 7.9.1987, p. 1. Regulation as last amended by Regulation (EC) No 486/2006 (OJ L 88, 25.3.2006, p. 1).

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ANNEX II

The products in this Annex are identified by their eight-digit CN codes. The description of products classified under these codes can be found in Annex I to Regulation (EEC) No 2658/87.

4803 00 31

4818 30 00

4818 20 10

9403 70 90

6110 90 10

6110 19 10

6110 19 90

6110 12 10

6110 11 10

6110 30 10

6110 12 90

6110 20 10

6110 11 30

6110 11 90

6110 90 90

6110 30 91

6110 30 99

6110 20 99

6110 20 91

9608 10 10

6402 19 00

6404 11 00

6403 19 00

6105 20 90

6105 20 10

6106 10 00

6206 40 00

6205 30 00

6206 30 00

6105 10 00

6205 20 00

9406 00 11

9406 00 38

6101 30 10

6102 30 10

6201 12 10

6201 13 10

6102 30 90

6201 92 00

6101 30 90

6202 93 00

6202 11 00

6201 13 90

6201 93 00

6201 12 90

6204 42 00

6104 43 00

6204 49 10

6204 44 00

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6204 43 00

6203 42 31

6204 62 31