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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
►M2	Commission Regulation (EC) No 409/2007 of 16 April 2007	L 100	16	17.4.2007
►M3	Commission Regulation (EC) No 283/2008 of 27 March 2008	L 86	19	28.3.2008
►M4	Commission Regulation (EC) No 317/2009 of 17 April 2009	L 100	6	18.4.2009
►M5	Commission Regulation (EU) No 305/2010 of 14 April 2010	L 94	15	15.4.2010
►M6	Commission Implementing Regulation (EU) No 311/2011 of 31 March 2011	L 86	51	1.4.2011
►M7	Commission Implementing Regulation (EU) No 349/2013 of 17 April 2013	L 108	6	18.4.2013
►M8	Regulation (EU) No 37/2014 of the European Parliament and of the Council of 15 January 2014	L 18	1	21.1.2014
►M9	Regulation (EU) No 38/2014 of the European Parliament and of the Council of 15 January 2014	L 18	52	21.1.2014

Corrected by:

►C1 Corrigendum, OJ L 98, 10.4.2008, p. 28 (283/2008)

►C2 Corrigendum, OJ L 116, 26.4.2013, p. 13 (349/2013)

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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

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.

([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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(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.

(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]).

([1]) OJ L 184, 17.7.1999, p. 23.

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(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 [1] 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:

(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;

[1] 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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(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.

▼M9

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 4 to make adjustments and amendments under this Article.

Where information on the amount of disbursements made by the United States is made available late in the year, in such a way that it is not possible to meet WTO and statutory deadlines by using the procedure provided for in Article 4, and where, in the case of adjustments and amendments to the Annexes, imperative grounds of urgency so require, the procedure provided for in Article 4a shall apply to delegated acts adopted pursuant to the first subparagraph.

Article 4

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 3(3) shall be conferred on the Commission for a period of five years from 20 February 2014. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 3(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

▼M9

5. A delegated act adopted pursuant to Article 3(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 4a

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 4(5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or by the Council.

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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.

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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).

▼M7

▼C2

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] as replaced by Commission Regulation (EC) No 1810/2004 [2] as amended by Regulation (EC) No 493/2005 [3].

0710 40 00

9003 19 30

8705 10 00

6204 62 31

[1] OJ L 256, 7.9.1987, p. 1.
[2] OJ L 327, 30.10.2004, p. 1.
[3] OJ L 82, 31.3.2005, p. 1.

▼**M7**

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.