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(Acts whose publication is obligatory)

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.

(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.

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[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).

(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:

(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).

[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).

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.

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 [2] 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.

Done at Luxembourg, 25 April 2005.

For the Council
The President
J. ASSELBORN

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

[2] 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).

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

[1] OJ L 256, 7.9.1987, p. 1. Regulation as last amended by Council Regulation (EC) No 493/2005 (OJ L 82, 31.3.2005, p. 1).

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.

6301 40 10	6110 12 10	6403 19 00	6102 30 90
6301 30 10	6110 11 10	6105 20 90	6201 92 00
6301 30 90	6110 30 10	6105 20 10	6101 30 90
6301 40 90	6110 12 90	6106 10 00	6202 93 00
4818 50 00	6110 20 10	6206 40 00	6202 11 00
9009 11 00	6110 11 30	6205 30 00	6201 13 90
9009 12 00	6110 11 90	6206 30 00	6201 93 00
8467 21 99	6110 90 90	6105 10 00	6201 12 90
4803 00 31	6110 30 91	6205 20 00	6204 42 00
4818 30 00	6110 30 99	9406 00 11	6104 43 00
4818 20 10	6110 20 99	9406 00 38	6204 49 10
9403 70 90	6110 20 91	6101 30 10	6204 44 00
6110 90 10	9608 10 10	6102 30 10	6204 43 00
6110 19 10	6402 19 00	6201 12 10	6203 42 31
6110 19 90	6404 11 00	6201 13 10	6204 62 31