



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.5.2006
COM(2006) 229 final

2006/0072 (ACC)

Proposal for a

COUNCIL REGULATION

suspending and conditionally repealing Regulation (EC) No 2193/2003 establishing additional customs duties on imports of certain products originating in the United States of America

(presented by the Commission)

EXPLANATORY MEMORANDUM

The World Trade Organization (WTO), in a number of rulings issued upon application of the European Communities (“the EC”), has found the Foreign Sales Corporation subsidy scheme of the United States of America (“the US”), as such and as amended by the Foreign Sales Corporation and Extraterritorial Income (FSC-ETI) legislation to provide a prohibited export tax subsidy to US firms to the tune of roughly US \$ 4 billion per year (as of year 2000).

Following those rulings, on 7 May 2003 the EC was granted by the WTO the right to impose countermeasures, in the form of additional import tariffs of up to 100% *ad valorem* on imports of certain goods from the United States (selected after consultation of the public, Member States and the Commission services), up to the amount of the US illegal subsidy. Consequently, on 8 December 2003 the EC adopted Council Regulation (EC) No 2193/2003 establishing additional customs duties on imports of certain products originating in the United States of America¹.

Council Regulation (EC) No 2193/2003 provides for the repeal of the countermeasures upon the United States’ full implementation of the recommendation of the WTO Dispute Settlement Body².

Legislation foreseeing the repeal of the FSC-ETI legislation was adopted by the US on 22 October 2004 (The American JOBS Creation Act of 2004 – “the repeal Act”). The repeal of the FSC subsidy scheme represented a major and welcome step towards solving a long standing dispute.

The US repeal Act, however, included transitional and grandfathering provisions which appeared to be WTO incompatible. In particular, the repeal Act provided that FSC/ETI benefits would remain available to US exporters up to the end of 2006 (at the level of 80% and 60% for 2005 and 2006 respectively), and in some cases for an unlimited period thereafter under the grandfathering provisions. Consequently, the EC initiated a WTO dispute settlement procedure regarding the repeal Act to determine the WTO compatibility of the transitional and grandfathering provisions contained therein.

Pending the dispute settlement procedures, the application of EC countermeasures were suspended (despite the US refusal to do the same in respect of its retaliation against the EC on hormone beef). The suspension was operationalised by the adoption of Council Regulation (EC) No 171/2005 of 31 January 2005. The Regulation stipulates that countermeasures would only be reapplied on 1 January 2006 or 60 days after the WTO Dispute Settlement Body (DSB) (whichever date is later) had confirmed the WTO incompatibility of the challenged aspects of the US legislation. The Regulation further stipulates that countermeasures will be introduced at the level of a 14 % *ad valorem* duty.

On 14 March 2006, following the panel and Appellate Body rulings in favour of the EC, the DSB confirmed the WTO incompatibility of the challenged US legislation and (as calculated under the applicable EC Regulation) the 60-day period means the reintroduction of countermeasures on 16 May 2006. This, in accordance with Article 2.2 of Council Regulation (EC) No 171/2005 was announced by Commission Notice 2006/C/08 which appeared in the

¹ OJ No. L 328, 17.12.2003, p. 3.

² Article 3 of Council Regulation No. 2193/2003.

Official Journal (Section C) on 3 May 2006 as the US had yet to comply with the rulings and recommendations of the DSB.

On 11 May 2006, the US Congress adopted a Bill repealing the grandfathering provisions of the FSC/ETI legislation and the repeal Act for the next taxable years. As the transition rules of that legislation expire in 2006, it is appropriate to repeal Council Regulation (EC) No 2193/2003 as amended by Council Regulation (EC) No 171/2005, as the countermeasures introduced by that Regulation have achieved their objective to a sufficient extent and reintroduction of countermeasures would be unnecessarily disruptive.

It is, therefore, proposed to repeal Council Regulation (EC) No 2193/2003 as amended by Council Regulation (EC) No 171/2005. Since the President of the United States has to sign the Bill into law, the reintroduction of sanctions should continue to be suspended until such signature has taken place, and the repeal of countermeasures imposed under Council Regulation (EC) No 2193/2003 as amended by Council Regulation (EC) No 171/2005 should only become effective once this signature has taken place.

Repeal of the countermeasures requires action by the Council under Article 133 of the EC Treaty. A new Council Regulation, suspending and conditionally repealing Council Regulation (EC) No 2193/2003 as amended by Council Regulation (EC) No 171/2005 needs to be adopted following a proposal from the Commission.

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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 Commission³,

Whereas:

- (1) On 7 May 2003, the Community was authorised by the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) to impose countermeasures up to a level of USD 4,043 million in the form of additional 100% *ad valorem* duties on certain products originating in the United States of America. Consequently, on 8 December 2003 the Community adopted Council Regulation (EC) No 2193/2003 establishing additional customs duties on imports of certain products originating in the United States of America.⁴
- (2) The Community, pending the outcome of further WTO litigation regarding the WTO compatibility of the transition and grandfathering provisions of the FSC Repeal and Extraterritorial Income Act of 2000 (FSC-ETI Act) and of the American Jobs Creation Act of 2004 (JOBS Act), amended and suspended the application of Regulation (EC) No 2193/2003 by the adoption of Regulation (EC) No 171/2005.
- (3) Regulation 171/2005 stipulates that reintroduction of additional duties would only take effect again on 1 January 2006 or 60 days after the DSB confirms, whichever date is later, the incompatibility of certain aspects of the abovementioned Act with WTO law.
- (4) On 14 March 2006 the DSB confirmed the WTO incompatibility of the challenged US measures following a panel and Appellate Body ruling on the matter. The Commission on 3 May 2006 published a notice informing that an additional duty of 14 % *ad valorem* would become applicable on 16 May 2006.

³ OJ C , , p. .

⁴ OJ No. L 328, 17.12.2003, p. 3.

- (5) The US Congress has now adopted legislation repealing the grandfathering provisions of the FSC-ETI Act and of the JOBS Act for the next taxable years and therefore countermeasures imposed under Council Regulation (EC) No 2193/2003 as amended by Council Regulation (EC) No 171/2005 have achieved their objective to a sufficient extent and reintroduction of countermeasures would be unnecessarily disruptive.
- (6) Since the President of the United States has to sign the Bill into law, the reintroduction of sanctions should continue to be suspended until such signature has taken place, and the repeal of countermeasures imposed under Council Regulation (EC) No 2193/2003 as amended by Council Regulation (EC) No 171/2005 should only become effective once this signature has taken place.

HAS ADOPTED THIS REGULATION:

Article 1

1. The suspension of the application of additional duties provided in Articles 1 and 2 of Council Regulation (EC) 171/2005 is hereby extended until 24 May 2006.
2. In the event the President of the United States signs the Bill adopted by the Congress of the United States repealing the grandfathering provisions of the FSC-ETI Act and of the JOBS Act on or before 22 May 2006, Council Regulation (EC) No 2193/2003 as amended by Council Regulation (EC) No 171/2005 shall be repealed with effect from 24 May 2006.
3. After the abovementioned signature has taken place, the Commission shall promptly publish a notice in the *Official Journal of the European Union* announcing that such signature has taken place and that Council Regulation (EC) No 2193/2003 is repealed with effect from 24 May 2006.
4. In the event that no such signature takes place by 22 May 2006, the Commission shall promptly publish a notice in the *Official Journal of the European Union* announcing that no such signature has taken place and that countermeasures as provided in Council Regulation (EC) No 2193/2003 as amended by Council Regulation (EC) No 171/2005 become applicable again on 25 May 2006.

Article 2

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

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

Done at Brussels,

*For the Council
The President*