

This article was published on *The Daily Bugle* on Friday June 08, 2007.

## EU Revises Sanctions to Counter U.S. Byrd Amendment

*Counsel Comment (L. Catrain & C. Buchanan)*

Friday, June 08, 2007

**The EU has revised the levels of sanctions applied to certain U.S. products in response to the U.S. Continued Dumping and Subsidy Offset Act (Byrd Amendment). The WTO authorised retaliatory sanctions take the form of an additional 15% duty, with 32 new products added to the target list, including paper products, plastic furniture, textile products, pens, footwear and mobile homes<sup>1</sup>. The revision of the EU sanctions is a direct reflection of a rise in payments to U.S. companies made under the Byrd Amendment.**

By way of background, the Byrd Amendment, enacted in October 2000, provides for proceeds from anti-dumping and countervailing duties to be paid to the U.S. companies responsible for bringing the particular case (provided that they meet certain limited criteria). In 2001, the EU and 10 other WTO members (Australia, Brazil, Canada, Chile, India, Indonesia, Japan, Korea, Mexico and Thailand) brought a complaint before the WTO challenging the legality of this system. In January 2003, the WTO ruled that the Byrd Amendment is inconsistent with the WTO Agreement because it effectively applies a double penalty on EU exporters: a duty on the imports which is then passed to competitors. Following the U.S. failure to comply with the WTO ruling, the WTO authorised retaliatory sanctions which were subsequently adopted by the EU, Mexico and Canada. EU sanctions were imposed on 1 May 2005<sup>2</sup> and are revised annually to reflect the U.S. disbursements under the Byrd Amendment in the previous year. Out of the US\$ 380 million distributed in 2006, US\$ 113 million are duties collected on EU products.

On 8 February 2006, the U.S. enacted legislation to repeal the Byrd Amendment with a transition period. The repeal does not affect the distribution of anti-dumping and countervailing duties on imports that enter the U.S. prior to 1 October 2007.

Moreover, as collection of duties in the U.S. does not take place at the time of

---

<sup>1</sup> Commission Regulation (EC) No 409/2007 of 16 April 2007 replacing Annexes I and II to Council Regulation (EC) No 673/2005 establishing additional customs duties on imports of certain products originating in the United States of America, OJ L100 of 17.4.2007

<sup>2</sup> 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 L110 of 30.4.2005

imports, the Congressional Budget Office foresees that the repeal of the Byrd Amendment will not produce effects before 1 October 2009. EU sanctions are therefore expected to continue until the final disbursements are made.

LOURDES CATRAIN  
[lcatrain@hhlaw.com](mailto:lcatrain@hhlaw.com)  
Brussels, Belgium: +32.2.505.0933

CAMILLA BUCHANAN  
[cbuchanan@hhlaw.com](mailto:cbuchanan@hhlaw.com)  
Brussels, Belgium: +32.2.505.0944