

Brussels, 31 April 2005

US Byrd Amendment: Commission proposes sanctions on US products

In application of a WTO ruling, the Commission has today adopted a proposal to impose sanctions on certain products from the United States. The Commission took this latest step in the dispute over the Byrd Amendment in light of the continuing failure of the United States to bring its legislation in conformity with its international obligations. The Commission proposes that an additional duty of 15% applies as of 1 May 2005 on a range of products which include paper, agricultural, textile and machinery products. In taking this action the Commission has acted in close coordination with seven other co-complainants.

The Commission's proposal comes in application of the authorisation granted in November 2004 by the WTO to impose retaliatory measures against the United States for its failure to respect its international obligations. The *Byrd Amendment* which was first ruled illegal by the WTO in January 2003 should have been repealed by 27 December 2003. More than a year later, the United States has still not respected its international obligations.

The sanctions would take the form of additional duties imposed on a list of products imported from the US.

The level of retaliation applied as from 1 May 2005 is based on the latest distribution of duties made under the *Byrd Amendment* and is slightly below US \$ 28 million.

This level will be revised annually to adjust to the level of damage caused to EU companies. This is motivated by the important variation in the Byrd disbursement made each year by the United States. The Commission's proposal includes a first list of products that would be subject to the additional duty as from 1 May 2005. In order to allow for eventual revision in the amount of sanctions, a 'reserve list' has been added. The products included in this reserve list could become subject to the additional import duty in case the level of suspension increases in the future.

Background

The Continued Dumping and Subsidy Offset Act of 2000 (so-called *Byrd Amendment*) provides that anti-dumping and countervailing duties collected following a complaint from US companies are distributed to those companies that brought or supported the complaints.

In the four annual distributions that have taken place since 2000, more than US \$1 billion has been distributed. The main recipients have been in the bearing, steel and other metal, household item and food (in particular pasta) sectors. A substantial increase is foreseen for the next distribution that could start on 1 October 2005 if the Byrd Amendment is not repealed. That distribution alone could amount to US \$1,6 billion.

A Panel in September 2002 and the Appellate Body in January 2003 confirmed that the *Byrd Amendment* is an illegal response to dumping and subsidisation. The US had until 27 December 2003 to bring its legislation into conformity with the WTO rules. Eight WTO members (Brazil, Canada, Chile, the EU, India, Japan, Korea and Mexico) then requested the WTO to authorise retaliation on 26 January 2004. Following an arbitration decision on the appropriate level of retaliation, the eight complainants were authorised at the end of 2004 to apply sanctions to the United States. It is the first time that so many members have been authorised to apply retaliation in the same dispute. The eight members represent altogether 71% of total US exports and 64% of total US imports.

The EU and the seven other WTO members are maintaining a close cooperation. To this end, the EU understands that Canada will be announcing retaliatory measures against certain products from the United States and expects that other co-complainants will soon join it in applying retaliation.

Despite calls by the US administration to repeal the law, the US Congress has not yet implemented the WTO ruling and repealed the Byrd legislation.