

Brussels, 13 February 2006

WTO condemns US tax subsidies; EU calls on US to end illegal tax breaks for Boeing, others

The WTO Appellate Body has today backed EU condemnation of US federal tax subsidies for exporters in the FSC dispute. A WTO Panel had previously found in favour of the EU by concluding that despite some changes to its domestic legislation the US has yet to abide by earlier rulings and recommendations of the WTO Dispute Settlement Body on its payments of export tax subsidies preserved in the “transition” and “grand-fathering” provisions of the revised Jobs Act that have been judged to violate WTO rules. Once the Appellate Body report has been adopted by the WTO in thirty days time the US will have 60 days to bring its legislation into line with its WTO obligations. After that time EU retaliatory measures will be re-imposed, unless the US has complied in the meantime. .

EU Trade Commissioner Peter Mandelson said, “The US now has three months to act to avoid the re-imposition of retaliatory measures in this case. The tax benefits preserved by the Jobs Act have been repeatedly declared in violation of WTO rules. The responsibility now lies squarely with the US. I stand ready to work closely with the US toward finding a solution to this dispute. But the EU will not accept a system of tax benefits which give US exporters including Boeing an unfair advantage against their European competitors. We are seeking nothing more than the reestablishment of a level playing field.”

Biggest beneficiaries of illegal tax subsidies include Boeing and GE...

The American Jobs Creation Act (“Jobs Act”) contains a ‘Grandfathering Clause’ that says that the repeal of the Foreign Sales Corporation and Extra Territorial Income legislation “shall not apply to any transaction in the ordinary course of a trade which occurs pursuant to a binding contract” entered into before 17 September 2003 and contains the following clarification: “a binding contract shall include a purchase option, renewal option, or replacement option which is included in such contract and which is enforceable against the seller or lessor.”

Consequently, in practice all standard commercial contracts are covered as all such contracts bind their signatories and are enforceable. It should also be noted that the clause applies to both sales and lease contracts (and their options) which typically run for a number of years from the moment they are signed until final delivery of the goods.

The aim of the grandfathering clause is to ensure that certain US exporters will continue to obtain WTO-prohibited FSC/ETI export subsidies many years into the future on products that have not yet been built or exported, even beyond the expiry of the FSC/ETI transitional period in 2006. Some of the biggest beneficiaries of the grandfathered tax-breaks include Boeing and General Electric.

The WTO has repeatedly condemned the measures...

The US FSC/ETI tax subsidies have been declared in violation of WTO rules by a WTO panel, the two WTO Appellate Body reports and two WTO compliance panels. On 7 May 2003, the WTO authorised the EU to impose trade sanctions at the level of US \$ 4 billion (the estimated value of the subsidy in 2000) by increasing the customs duties on certain selected products up to 100%. Countermeasures on certain US products gradually started entering into force on 1 March 2004 from a much lower level (5%).

On 31 January 2005 the EU Council adopted a regulation¹ suspending sanctions as from 1 January 2005 when the EU initiated a second compliance panel following the passing of the American Jobs Creation Act. That panel found that the Jobs Act continued to breach WTO rules: a finding that the Appellate Body has now endorsed.

That 2005 Council Regulation provides for the reintroduction of customs duties at a 14% level 60 days following a final WTO ruling that the Jobs Act is WTO incompatible. Those 60 days will begin when the WTO Dispute Settlement Body adopts the Appellate Body report in about one month from now.

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¹ *Council Regulation 171/2005*