



DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION
DIRECTORATE B
- POLICY DEPARTMENT -

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NOTE ON

BILATERAL TRADE AND RELATED ISSUES

Recent Improvements

On 1 February 2006, the US Congress passed the "Deficit Reduction Act 2005", thereby finally repealing the *Byrd Amendment* ("Continued Dumping and Subsidy Offset Act"). This was greatly welcomed both by the European Commission and the US administration, as the amendment, passed in October 2000, had been a source of considerable tension ever since. It provided for the redistribution of anti-dumping duties levied by US authorities to the US companies that brought the original anti-dumping case. It was hotly contested by the EU and 10 other WTO members, and declared impermissible by the WTO in January 2003. Since the US let the December 2003 deadline for compliance pass without any action, the EU had started in May 2005 to apply retaliatory measures.

On 1 March 2006, the US and the Union simultaneously withdrew sanctions on *government procurement* that had been in place since 1993. These had resulted from the EU Government Procurement Directive, which the US alleged discriminated against US bidders, especially in the telecom sector, prompting them to bar EU companies from certain US contracts. Since then, the EU telecoms market has been fully liberalized. As US sanctions are no longer justified, the US agreed with the EU that it would lift its sanctions on 1st March 2006, thereby enabling the EU to do the same with its counter-measures.

Under the terms of the *Transatlantic Economic Initiative* agreed at the June 2005 Transatlantic Summit, both sides committed to resolutely tackling any remaining regulatory and non-tariff barriers to the development of the transatlantic economy, acknowledging its crucial importance both bilaterally, with trade flows reaching € 1.7 billion a day and 14 million jobs depending on it, and to the world at large, where the two partners combined account for 57% of global GDP and about two-fifth of global trade.

Lingering Questions

Despite these encouraging prospects, a number of issues remain: *Transition clauses* in the repeal of the Byrd Amendment mean that duties levied *until September 2007* will still be distributed to companies,

which in turn can take several years. The EU Commission will monitor the resulting, enduring distortion very closely, and consult with the other complainants on the incremental reduction of sanctions.

The November 2005 Work Programme for the Transatlantic Economic Initiative provided for a wide-ranging catalogue of sectoral reviews and other activities, but presented *little tangible progress so far*, except in areas, such as financial services, where the regulatory dialogue is long established. Furthermore, the Commission's Annual Report on US Trade Barriers still identifies a number of difficulties both in bilateral trade and services and with WTO compliance:

The 2005 Report on US Trade Barriers

The European Commission's Report on US Trade Barriers for 2005 shows that *non-tariff barriers are now the major obstacle* to increased EU-US trade. Barriers to free and fair government procurement are particularly prevalent once again in this year's report. A wide variety of discriminatory *Buy America provisions* are highlighted as well as those impacting on federally funded infrastructure programmes.

Investment issues also remain important, given the huge flows of investment across the Atlantic. But US restrictions remain, notably in the shipping, energy and telecoms areas, where post-9/11 *security concerns* have sometimes prompted measures and requirements which appear to be far more restrictive than necessary. These problems are often compounded by the plethora of different state level laws and regulations which make overcoming US barriers a very complex operation.

In this context, the persisting non-reciprocity over *visa regimes* with most new EU Member States also has to be seen as a serious impediment to trade and investment, as it can harm the presence and therefore, competitiveness, of EU companies on the US market.

In the services sector, the current focus is on *air transport*, where it is hoped that US restrictions on foreign ownership will shortly be eased, thus allowing a bilateral agreement to be signed. Continuing, substantial government assistance to US carriers however needs to be addressed with some urgency.

Finally, in the interest of a credible multilateral system, *compliance with WTO rulings* is of key importance. US failure to comply with a number of WTO dispute settlement findings therefore continues to be a major EU concern. For instance, the repeal of the US FSC/ETI export-contingent tax scheme includes transitional and grandfathering provisions which have been repeatedly ruled WTO-incompatible. The EU will continue to raise compliance concerns with the US authorities. In addition, unfair anti-dumping measures taken by the United States against the EU continue to be a major trade irritant. In over 50 anti-dumping cases and reviews since 1995, US duties have been inflated using the zeroing methodology which has already been found WTO-incompatible and is currently subject to further litigation.