

Foreign Sales Corporations (FSC): EU welcomes US repeal of illegal export subsidies – EU to lift sanctions and ask for check on WTO compatibility - Brussels, 25 October 2004

The European Commission strongly welcomed the signature, by the US President of the Bill repealing the illegal FSC/ETI export subsidies, which thus becomes US law. This is the latest act in an effort from the US to comply with several WTO rulings which had found the legislation in question to provide illegal subsidies to US exporters to the tune of \$US 4 billion per year. The law, however, provides that FSC/ETI benefits will still be available to US exporters up to the end of 2006 and in some cases for an unlimited period thereafter.

Upon signature of the Bill by the US President, EU Trade Commissioner Pascal Lamy said: "I am extremely pleased that this Bill now has become law. It is a victory for multilateralism and for the rule of law in foreign affairs and I want to thank leaders of the US Congress and Bob Zoellick for their efforts in this respect. Obviously, I am very satisfied that our efforts have been rewarded after five years, right before the end of the mandate of the current European Commission.

In recognition of the progress that has been made, I will now propose to the Council the lifting of the FSC sanctions currently in force. As there remain some problems with the Bill, which we have previously discussed both with the US Administration and Congress, we intend to resolve these issues in the WTO. ."

He added: "We have been trying to put FSC to bed for a long time. It is now in bed, but we need to just check before the lights go out".

The US law, which applies only as from next year, provides for a 2-year transitional period; during that period FSC/ETI benefits of more than \$US 4 billion and \$US 3 billion in 2005 and in 2006 respectively will still be available to US exporters. Furthermore, and more worryingly for EU operators, FSC/ETI benefits will continue to be available without any limitations to all exporters who have entered binding contracts before 17 September 2003 under the so-called grandfathering clause, favouring producers of large capital goods which have long delivery times.

While during discussions with US Congress the EU had signalled its willingness to accept a two year transition period provided all other aspects of the bill were satisfactorily addressed, the EU had also indicated that there remained other problems to resolve, such as the grandfathering clauses which the EU believes are incompatible with WTO rules. The EU will now go to the WTO dispute settlement system as regards the WTO compliance of the new legislation.

Background

The WTO found the FSC to constitute an illegal export subsidy under both the Subsidies Agreement and (in relation to agricultural products) the Agriculture Agreement. The US was given until 1 November 2000 to withdraw the FSC scheme.

On 15 November 2000, President Clinton signed the ETI Act, which meant to replace the FSC. The ETI Act, however, did not modify the substance of the export subsidy scheme and as a result the EU challenged it before the WTO. In January 2002, the WTO confirmed that the ETI Act also constituted a prohibited export subsidy and that the US had not, therefore, complied with its previous ruling.

On 7 May 2003 the WTO endorsed the EU request for countermeasures for a level roughly equal to the estimated annual US subsidy (i.e. US\$ 4 billion).

The Council Regulation imposing countermeasures was published on 17 December 2003 in OJ L 328 p.3. With the clear objective of obtaining withdrawal of the US measures, it provided for a gradual imposition of countermeasures as from 1 March 2004 at the level of 5%, followed by automatic, monthly increases of 1% up to a ceiling of 17% to be reached in March 2005. The current level is 12%. The targeted products cover a wide variety of sectors (e.g. steel, textiles, paper) with the exception of the civil aircraft sector.

Among the major beneficiaries of the FSC/ETI are: Boeing, Caterpillar, General Electric, Microsoft, Intel, Motorola. As a way of an example, Boeing, the major beneficiary, has received an average of \$US 178 mio in the period 2001-2003 while total benefit from 1992 through 2003 amounts to over \$US 1,6 billion. Boeing is also likely to be one of the beneficiaries of the grandfathering clause since long delivery times are common in the aircraft sector; for example, two mega-purchase orders placed with Boeing by General Electric's subsidiary GECAS in January 1996 and July 2000 respectively (covering nearly 400 aircraft of a total value of \$US 9.5 billion) provide for deliveries to take place as late as 2007 and 2008 or possibly even later if options are exercised.

The Commission will now propose to the Council to suspend the sanctions currently in place, as from 1 January 2005, date when the US repeal bill will enter into force. The Commission will also go to the WTO dispute settlement system as regards the WTO compliance of the new legislation.

For further information, read the press releases from [7 May 2003](#), [20 August 2001](#), [17 November 2000](#), [2 October 2000](#), [24 February 2000](#), and the Memo from [17 November 2000](#).