



# Adventures in Advocacy

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## Bye, Bye Byrd-ie

by Sean D. Shields

It has become an annual rite for Congress to lay off the onerous task of passing federal government appropriations bills until the last days of a legislative session. This process of putting off the inevitable is, unfortunately, human nature. In this case, it is exacerbated by political pressures and the possibility that if they were considered any earlier in the session, no other piece of legislation would ever pass. One could argue that would be a good thing.

However, in 2000 this situation was taken advantage of in a most extreme way. In fact, Hollywood spin-doctors would be hard pressed to write a better script. During a late conference committee meeting, language was added to the Agriculture Appropriations Act that, once signed by President Clinton, became formally known as the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA). This language was not part of the versions of the appropriations bill passed by either the House or Senate, and none of the Congressional committees with jurisdiction over trade ever saw this language either.

It is not surprising that most lawmakers were not aware of the inclusion of this language when they passed the conference committee (compromised) version of the bible-length appropriations bill—one of many such bills they passed in the waning days of session that year. It was not until Clinton was signing the bill in late October, and he raised his objections to this provision, that lawmakers were fully aware they'd been hoodwinked. The unlikely author of this language was one Senator Robert Byrd (D-WV), which is why the CDSOA is commonly referred to as the "Byrd Amendment."

What is the Byrd Amendment and what is its relevance to component manufacturers? Simply put, it allows for money collected through countervailing and anti-dumping duties (CVD/AD) imposed on products from foreign countries to be funneled directly to the companies that originally petitioned the government to impose such duties.

Why is this problematic? Two reasons: one, it creates a double-subsidy situation where the petitioning companies benefit from both the higher prices artificially created by the particular CVD and AD, as well as the direct payment of the collected duties from government coffers. Two, it creates an almost irresistible incentive for U.S. companies to petition for CVD and AD against competing foreign producers, whether or not there is a clear case of dumping or subsidization.

The numbers are telling. According to the World Trade Organization (WTO), as recently as 1997, only 15 anti-dumping cases were filed in the U.S., and only nine in the entire first half of 2000. However, since the Byrd Amendment took effect, the numbers have climbed to 76 in 2001, 35 in 2002, and 37 in 2003. Forty-four U.S. companies have each collected at

least \$1 million through the Byrd Amendment in 2004, and total assessed duties were over \$284.1 million. From 2001 through 2004, U.S. companies have benefited from more than \$1.04 billion through this trade law.

In early 2003, the WTO ruled that the Byrd Amendment was an illegal trade remedy and called for its immediate repeal. Congress responded by doing absolutely nothing. In 2004, the WTO gave up on Congress and granted approval for Canada, the EU, and others to punish U.S. exports by \$150 million annually—which as it turns out is a minor sanction in comparison to the dollars enjoyed through the Byrd Amendment.

The Byrd Amendment's real effect can be seen readily in the current softwood lumber dispute between the U.S. and Canada. Currently, Canadian softwood accounts for nearly 36 percent of domestic use, and the CVD/AD duties collected on its importation since 2001 is nearing \$4 billion!

The dispute over softwood lumber between these two countries has been going on for centuries, but this time an agreement is proving harder to reach. One major reason is because the Byrd Amendment now allows for the collected duties to go directly to one side of the negotiating table, creating a significant disincentive to reach a resolution. It is also important to note this situation is further muddled on the U.S. side due to the fact nearly 50 percent of U.S. softwood lumber producers did not petition for the CVD/AD duties, and will not receive a dime of the \$4 billion collected by virtue of the Byrd Amendment.

While the Bush Administration appears willing to get directly involved in resolving the softwood lumber dispute, its actions most likely will mean very little in the long-term while the Byrd Amendment remains in effect. With such a strong financial incentive, U.S. softwood lumber producers will not hesitate to continue petitioning for the imposition of new CVD and AD duties on Canadian timber.

It is becoming evident resolution of the softwood lumber dispute starts with a full repeal of the Byrd Amendment. Fortunately the Bush Administration and some members of Congress are embracing this approach. In the House, Jim Ramstad (R-MN) and Clay Shaw (R-FL) are sponsoring an amendment that would fully repeal the Byrd Amendment. In a surprise move, Congressman Shaw announced his Subcommittee on Trade, part of the House Ways & Means Committee, would consider this piece of legislation.

Perhaps even more noteworthy, Senator Chuck Grassley (R-IA), Chairman of the Senate Finance Committee (which has primary jurisdiction over U.S. trade law), has joined in the fray. Grassley has greased the wheels to repeal the Byrd Amendment by introducing three amendments to the Commerce Justice State Appropriations bill. The Senator, it appears, is not without his sense of irony. **SBC**

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