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INFORMATION NOTE

from: General Secretariat
to: Permanent Representatives Committee/Council

Subject: Proposal for a Regulation of the European Parliament and of the Council
amending Council Regulation (EC) No 1225/2009 on protection against dumped
imports from countries not members of the European Community
– Outcome of the European Parliament's first reading
(Strasbourg, 25 to 26 October 2012)

I. INTRODUCTION

The Rapporteur, Mr Vital MOREIRA (S&D - PT), presented a report consisting of one amendment to the proposal for a Regulation, on behalf of the Committee on International Trade.

II. DEBATE

No debate took place.

III. VOTE

When it voted on 25 October 2012, the Parliament adopted the single amendment.

The Commission's proposal as thus amended and the legislative resolution constitute the European Parliament's position at first reading, they are set out in the Annex hereto. The amendment is presented in the form of a consolidated text, the change to the Commission's proposal is highlighted in *bold and italics*.

Protection against dumped imports from countries not members of the European Community *I**

European Parliament legislative resolution of 25 October 2012 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community (COM(2012)0270 – C7-0146/2012 – 2012/0145(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0270),
 - having regard to Article 294(2) and Article 207 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0146/2012),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rules 55 and 46(1) of its Rules of Procedure,
 - having regard to the report of the Committee on International Trade (A7-0243/2012),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 25 October 2012 with a view to the adoption of Regulation (EU) No .../2012 of the European Parliament and of the Council amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In Case C-249/10 P¹, the European Court of Justice ruled that the sampling technique provided for in Article 17 of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community² may not be applied for the purposes of the determination of claims of market economy treatment to be made under Article 2(7)(c) of that Regulation.

¹ Case C-249/10 P *Brosmann Footwear (HK) and Others v Council*, judgment of 2 February 2012.

² OJ L 343, 22.12.2009, p. 51.

- (2) The ruling by the European Court of Justice would require that the Commission examine all applications for market economy treatment filed by cooperating exporting producers who are not part of the sample, irrespective of whether the number of cooperating producers is large. However, such a practice would impose a disproportionate administrative burden on the investigating authorities of the Union. Therefore, is it appropriate to amend Council Regulation (EC) No 1225/2009.
- (3) Moreover, the use of the sampling technique provided for in Article 17 of Council Regulation (EC) No 1225/2009 for the purposes of the determination of claims of market economy treatment to be made under Article 2(7)(c) of that Regulation is allowed under the rules of World Trade Organisation. For example, the panel of the Dispute Settlement Body of the World Trade Organisation in dispute DS405 (*European Union — Anti-Dumping measures on Certain Footwear from China*, report adopted on 22 February 2012) found that China did not establish that the European Union acted inconsistently with Articles 2.4 and 6.10.2 of the Anti-dumping Agreement, Paragraph 15(a)(ii) of China's Accession Protocol, and Paragraphs 151(e) and (f) of China's Accession Working Party Report, by failing to examine the market economy treatment applications of the cooperating Chinese exporting producers that are not part of the sample for the original investigation.

- (4) Therefore, taking into account this background and for reasons of legal certainty, it is considered appropriate to introduce a provision clarifying that the decision to limit the investigation to a reasonable number of parties by using samples on the basis of Article 17 of Council Regulation (EC) No 1225/2009 also applies to the parties subject to an examination in accordance with Article 2(7)(b) and (c). Consequently, it is also appropriate to clarify that a determination under Article 2(7)(c) should not be made for exporting producers that are not part of the sample, unless such producers request and obtain individual examination in accordance with Article 17(3).
- (5) Furthermore, it is considered appropriate to clarify that the anti-dumping duty to be applied to imports from exporters or producers which have made themselves known in accordance with Article 17, but were not included in the examination shall not exceed the weighted average margin of dumping established for the parties in the sample, irrespective of whether the normal value established for such parties was determined on the basis of Articles 2(1) to 2(6) or Article 2(7)(a).
- (6) Lastly, the three month time-limit by which a determination pursuant to Article 2(7)(c) should be made has proved impracticable, in particular in proceedings where sampling in accordance with Article 17 is applied. It is therefore considered appropriate to remove this time-limit.

- (7) In the interests of legal certainty and the principle of sound administration, it is necessary to provide that these amendments should apply as soon as possible to all new and pending investigations.
- (8) Council Regulation (EC) No 1225/2009 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Council Regulation (EC) No 1225/2009 is amended as follows:

- (1) Article 2(7) is amended as follows:

- (a) The penultimate sentence of subparagraph (c) is modified as follows:

The terms "within three months of the initiation of the investigation" are ***replaced by the following:***

"within normally seven months but not later than within eight months of the initiation of the investigation".[Am. 1]

- (b) The following subparagraph (d) is added:

"(d) When the Commission has limited its examination in accordance with Article 17, a determination pursuant to subparagraphs (b) and (c) shall be limited to the parties included in the examination and any producer that receives individual treatment pursuant to Article 17(3).";

(2) In Article 9(6), the first sentence is replaced by the following:

"When the Commission has limited its examination in accordance with Article 17, any anti-dumping duty applied to imports from exporters or producers which have made themselves known in accordance with Article 17 but were not included in the examination shall not exceed the weighted average margin of dumping established with respect to the parties in the sample, irrespective of whether the normal value for such parties is determined on the basis of Articles 2(1) to 2(6) or Article 2(7)(a).".

Article 2

This Regulation shall apply to all new and pending investigations at the time of entry into force of this Regulation.

Article 3

This Regulation shall enter into force on the first day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President