



EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: 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
COMMON GUIDELINES
Consultation deadline for Croatia: 5.12.2012

**REGULATION (EU) No .../2012
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

of

**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(2) 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 procedure¹,

¹ Position of the European Parliament of 25 October 2012 (not yet published in the Official Journal) and decision of the Council of ...

Whereas:

- (1) In Case C-249/10 P¹, the Court of Justice ruled that the sampling technique provided for in Article 17 of Council Regulation (EC) No 1225/2009² may not be applied for the purposes of determining claims for market economy treatment pursuant to subparagraph (c) of Article 2(7) of that Regulation.
- (2) The ruling by the 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, it is appropriate to amend Regulation (EC) No 1225/2009.

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.

- (3) Moreover, the use of the sampling technique provided for in Article 17 of Regulation (EC) No 1225/2009 for the purposes of determining claims for market economy treatment pursuant to subparagraph (c) of Article 2(7) of that Regulation is allowed under the rules of the World Trade Organisation. For example, the panel of the Dispute Settlement Body of the World Trade Organisation in the dispute DS405 'European Union — Anti-Dumping Measures on Certain Footwear from China'¹ (report adopted on 22 February 2012) found that China did not establish that the 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 were not part of the sample for the original investigation.
- (4) Therefore, taking into account that 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 Regulation (EC) No 1225/2009 also applies to the parties subject to an examination in accordance with subparagraphs (b) and (c) of Article 2(7) of that Regulation. Consequently, it is also appropriate to clarify that a determination under subparagraph (c) of Article 2(7) of that Regulation 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) thereof.

¹ WTO, Report of the Panel, WT/DS405/R, 28 October 2011.

- (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 of Regulation (EC) No 1225/2009 but were not included in the examination is not to 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 Article 2(1) to (6) or subparagraph (a) of Article 2(7) of that Regulation.
- (6) Finally, the three-month time-limit by which a determination pursuant to subparagraph (c) of Article 2(7) of Regulation (EC) No 1225/2009 should be made has proved impracticable, in particular in proceedings where sampling in accordance with Article 17 of that Regulation is applied. It is therefore considered appropriate to extend that time-limit.
- (7) In the interests of legal certainty and the principle of sound administration, it is necessary to provide that the amendments to Regulation (EC) No 1225/2009 provided for in this Regulation are to apply as soon as possible to all new and pending investigations.
- (8) Regulation (EC) No 1225/2009 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

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

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

(a) In the penultimate sentence of subparagraph (c) the words "shall be made within three months of the initiation of the investigation" are replaced by the words "shall normally be made within seven months of, but in any event not later than eight months after, the initiation of the investigation";

(b) The following subparagraph is added:

"(d) When the Commission has limited its examination in accordance with Article 17, a determination pursuant to subparagraphs (b) and (c) of this paragraph 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 Article 2(1) to (6) or subparagraph (a) of Article 2(7)."

Article 2

This Regulation shall apply to all new and pending investigations as from ... *

* OJ: please insert date of entry into force of this Regulation.

Article 3

This Regulation shall enter into force on the 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 ...,

For the European Parliament
The President

For the Council
The President
