Protection against dumped imports from countries not members of the European Community: investigations

2012/0145(COD) - 08/06/2012 - Legislative proposal

PURPOSE: to amend Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: in ***Case C-249/10 P - Brosmann and others v. Council*** (Judgement of 2 February 2012), the European Court of Justice ruled that the sampling technique provided for in Article 17 of Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community[4] 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.

The ruling by the European Court of Justice on the application of Council Regulation (EC) No 1225/2009 would require that the Commission examine all applications for market economy treatment filed by cooperating producers who are not part of the sample, irrespective of the number of producers. 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.

IMPACT ASSESSMENT: no impact assessment was carried out.

LEGAL BASIS: Article 207(2) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: in the light of the Court's judgement, the Commission proposes to amend Regulation (EC) No 1225/2009, in particular with regard to the **time limit of three months** for the Commission to decide on the applications for market economy treatment.

In addition, 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 producers by using samples on the basis of Article 17 of Council Regulation (EC) No 1225/2009 also applies to the parties subject to a market economy treatment examination, in accordance with Article 2(7)(b) and (c).

Lastly, the proposal clarifies that the anti-dumping duty to be applied to imports from 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).

BUDGETARY IMPLICATION: this proposal does not have any implications for the EU budget.