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

2012/0019(COD) - 13/06/2012 - Final act

PURPOSE: to amend Regulation (EC) No 1225/2009 in order to implement the recommendations of the Dispute Settlement Body of the World Trade Organisation

LEGISLATIVE ACT: Regulation (EU) No 765/2012 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

BACKGROUND: on 28 July 2011, the Dispute Settlement Body ('DSB') of the World Trade Organisation ('WTO') adopted certain reports in the dispute 'European Communities — Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China'. In the reports, it was found that Article 9(5) of Council Regulation (EC) No 1225/2009 ('Basic Anti-Dumping Regulation') was inconsistent with Articles 6.10, 9.2 and 18.4 of the WTO Anti-Dumping Agreement and Article XVI:4 of the WTO Agreement. Article 9(5) of the Basic Anti-Dumping Regulation provides that individual exporting producers in non-market economy countries which do not receive market economy treatment pursuant to the Basic Anti-Dumping Regulation will be subject to a countrywide duty rate unless such exporters can demonstrate that they meet the conditions for individual treatment (IT) set out in Article 9 (5) of that Regulation.

The WTO found that Article 9(5) of the Basic Anti-Dumping Regulation establishes a presumption that exporting producers operating in non-market economy countries are not entitled to IT and that in order to qualify for IT, the onus is on them to demonstrate that they satisfy the criteria of the IT test. However, it was found that no legal basis for such a presumption is provided for in the relevant WTO agreements.

On 18 August 2011, the Union notified the DSB that it intends to implement the recommendations and rulings of the DSB in this dispute in a manner that respects its WTO obligations.

CONTENT: Article 9(5) of Regulation (EC) No 1225/2009 is amended to state that an anti-dumping duty shall be imposed in the appropriate amounts in each case, on a non-discriminatory basis on imports of a product from all sources found to be dumped and causing injury, except for imports from those sources from which undertakings under the terms of the Regulation have been accepted.

The Regulation imposing anti-dumping measures shall specify the duty for each supplier or, if that is impracticable, the supplying country concerned. Suppliers which are legally distinct from other suppliers or which are legally distinct from the State may nevertheless be considered as a single entity for the purpose of specifying the duty. Account may be taken of factors such as the existence of structural or corporate links between the suppliers and the State or between suppliers, control or material influence by the State in respect of pricing and output, or the economic structure of the supplying country.

ENTRY INTO FORCE: 06/09/12. The Regulation shall apply to all investigations initiated pursuant to Regulation (EC) No 1225/2009.