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

2012/0145(COD) - 12/12/2012 - Final act

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

LEGISLATIVE ACT: Regulation (EU) No 1168/2012 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.

CONTENT: the Council adopted an amending regulation on protection against dumped imports from countries not members of the European Community following an agreement at first reading with the European Parliament.

To recall, in ***Case C-249/10 P Brosmann and others v. Council*** (Judgment of 2 February 2012), the Court of Justice of the European Union 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 may not be applied for the purposes of the determination of claims of market economy treatment to be made under that Regulation.

The ruling by the Court of Justice of the European Union 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, taking into account the Court's ruling and for reasons of legal certainty, Regulation (EC) No 1225/2009 has been amended as follows:

- introducing 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;
- clarifying 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.

Lastly, the Regulation extends from **three to seven months** the time limit for the Commission to decide on the applications for market economy treatment.

ENTRY INTO FORCE: 15/12/2012. This Regulation shall apply to all new and to all pending investigations from this date.