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COMMUNICATION FROM THE COMMISSION
TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

on
the treatment of former non-market economies in anti-dumping proceedings and
a proposal for a Council Regulation amending Council Regulation (EC) No
384/96.

Proposal for a

COUNCIL REGULATION (EC)

amending Council Regulation (EC) No 384/96 on protection against
dumped imports from countries not members of the European
Community.

(presented by the Commission)

EXECUTIVE SUMMARY

At present, EU Anti Dumping legislation categorises a large number of third countries as Non Market Economies (NMEs). In NME countries, it is considered to be impossible to calculate normal value according to standard domestic price information because of the significant distorting effect of heavy state control and the absence of meaningful market signals. Thus, the so called analogue country system was developed so that normal value in NMEs is established by reference to prices and costs in a comparable market economy in a third country. For countries labelled as Market Economies, on the other hand, the problem does not arise, and normal value is calculated according to the domestic economic information of the country in question.

The special treatment of NMEs under the antidumping rules dates from the 1950s, and the practice associated with NME status was codified by the EU in 1979. Since that time, however, the fall of Communism in Central and Eastern Europe and the former Soviet Union and the unprecedented launch of economic reform in China and elsewhere has significantly altered the economic circumstances in many of the countries labelled as Non Market Economies. In recognition of their economic transformation and the progress towards European Union membership, the countries of Central and Eastern Europe have already been removed from the NME list and are now treated as market economies under the EU antidumping rules.

In the cases of Russia and China, however, the remarkable advances brought about by economic reform remain unrecognised in EU Anti Dumping legislation. As a result the price calculation methods automatically applied to all investigations relating to these two countries are no longer always appropriate, and there is clear economic justification to adapt EU antidumping practice so as to reflect their present conditions.

Both Russia and China are vitally important trading partners for the EU and present enormous potential markets for the future. The volume of trade between the Community and these two countries has increased rapidly over the last decade and

will no doubt continue to do so as they grow in economic stature. Anti-dumping rules have of course played a key role in maintaining equilibrium in the trading relationships where unfair pricing has taken place. But despite the fact that a small part of trade is covered by anti dumping measures (for eg, approximately only 1% of imports from both countries was affected by anti-dumping measures in the European Union in 1996), both Russia and China have attached great political significance to EU antidumping policy, in particular their status as NMEs.

The purpose of this proposal is to introduce specific adjustments to EU antidumping practice based on an objective assessment of existing economic conditions in Russia and China without weakening the EU's commercial defence instruments. In particular, this proposal will allow a degree of flexibility on a case by case basis to accommodate instances where the existence of verifiable market economic conditions prevail. It will also remove the labelling of Russia and China as NMEs and it will introduce a more systematic approach to the calculation of individual treatment and comparative advantage.

In this way, the proposed changes will be a recognition of the efforts made so far by China and Russia to transform their economies. They will also act as an important incentive for continued and accelerated reform in those enterprises in Russia and China which do not yet operate in a market economic environment and will bolster the efforts of the Russian and Chinese Governments to advance reform at a microeconomic level. Finally they will bring the EU anti dumping rules into line with those of some of our main trading partners (eg US, Australia, Canada) all of whom have the ability to adjust their anti dumping instruments to match the economic realities on the ground.

This Communication sets out the following:

- the background to, and implications of, the treatment currently applied vis-à-vis non-market economies in anti-dumping proceedings;
- the implications of the process of economic reform in Russia and China for anti-dumping;

a proposal for changes to the current anti-dumping practice.

**COMMUNICATION TO THE COUNCIL AND THE EUROPEAN
PARLIAMENT ON THE TREATMENT OF FORMER NON MARKET
ECONOMIES IN ANTI-DUMPING PROCEEDINGS**

A. Introduction

1. According to EU Anti Dumping legislation, third countries are either categorised as 'Market Economies' (ME) or 'Non Market Economies' (NME). The countries regarded by the EU as non-market economies are not listed in the Basic anti-dumping regulation itself, but in an annex to Council Regulation 519/94 on the common rules for imports from certain third countries¹. All other countries are considered to be market economies. The main practical difference between these two categories is related to the way in which 'normal value' (the price at which exporters sell goods on their domestic market), and hence the existence of dumping, is determined for the purpose of anti dumping investigations.
2. Dumping occurs when a producer sells goods on an export market at a price which is lower than the normal value, that is the price of the goods on the producer's home market. In anti-dumping proceedings concerning 'market economy' countries, normal value is usually based on the domestic prices in the exporting country. Where domestic prices do not truly reflect normal value, because for instance domestic sales are not sufficient, the costs of production in the exporting country are used instead.
3. In the case of NMEs it is considered to be impossible to calculate normal value according to domestic standard price information because of the significant distorting effect of heavy state control and the absence of meaningful market

¹ Countries considered as non-market economies are Albania, Armenia, Azerbaijan, Belarus, P.R. China, Georgia, Kazakhstan, North Korea, Kyrgyzstan, Moldavia, Mongolia, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam

signals. For this reason, the Antidumping Regulation contains special provisions for the calculation of normal value², automatically applicable to all countries listed as non-market economies. According to these provisions, instead of domestic prices or costs, prices or costs in an analogue market economy third country are used. In selecting an analogue country, the Community's approach is to seek a market economy in which prices and costs are not excessive in comparison with a world average for the product concerned. This is determined on the basis of a host of factors, including the conditions of competition in the candidate analogue country and the characteristics of its domestic industry, such as the degree of its rationalisation and modernisation and its cost-consciousness.

4. In order to fully understand the reasoning behind the treatment of NMEs, it is useful to look at its origins and historical development. In order to define dumping, Article VI of the GATT places emphasis on the concept of transactions made in the 'ordinary course of trade'. This means that in order to be reliable, prices and costs must be determined on the basis of market signals reflecting supply and demand conditions. In 1955, this was clearly not the case with regard to a number of command economies in which state control over the means of production and state intervention in the economy were so substantial that prices and costs could be significantly distorted. In acknowledgement of these difficulties, an interpretative note to Article VI of the GATT was adopted stating that: "It is recognised that, in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purposes of paragraph 1, and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate".
5. While the interpretative note highlighted the potential difficulties with price and cost data in NMEs, it did not suggest any alternative criteria on the basis of which

² Article 2, paragraph 7 of Council Regulation (EC) No 384/96 of 22 December 1995

normal value should be established. In the absence of regulation, a solution had therefore to be found, and the analogue third country system was developed by the US after the end of the Kennedy round. The objective of this system was clear: in order to be able to compare prices in the exporting country with the normal value of the goods in the ordinary course of trade, an undistorted benchmark had to be sought outside the NME country of the exporters, and prices and costs in a comparable surrogate market economy third country had to be used. This approach was soon taken up by other signatories to the GATT, and in 1979 the EU introduced specific rules codifying its practice in this area.

6. Another difference between the treatment of NMEs and MEs in anti-dumping proceedings is the manner in which the antidumping duty is determined. In the case of MEs, individual duties are established for each exporter, while in the case of a NME a single average rate of duty is applied to all imports from that country. The inability to distinguish between individual producers in a NME country stems from the fact that all the means of production and natural resources belong to one entity, the State. All imports from NMEs are therefore considered to emanate from a single producer, and the application of a single rate is necessary to avoid circumvention of the duties, that is the channelling of exports through the exporter with the lowest duty rate. Current EU practice allows for derogations from this general rule where warranted by the economic circumstances of the companies involved. Individual duties may therefore be applied in the exceptional cases where a company can show that it operates independently from the State. In March 1997, the administrative rules on individual treatment were revised in order to introduce more flexibility. In order to qualify for such treatment, exporters are now required to meet five core criteria (see (i), (iv), (vi), (vii) and (viii) of Annex) while a certain discretion is left to the Commission regarding the remaining three criteria.

7. China and Russia are two of the countries traditionally treated as non-market economies under the antidumping rules. The provisions outlined above were designed to meet the conditions prevailing in command economies, and they reflected the situation of these two countries at the time when the interpretative

note to Article VI of the GATT was adopted. In the meantime, however, although both China and Russia have clearly moved away from the paradigm of a command or centrally-planned economy, the EU antidumping rules remained the same. This situation has prompted an internal review of the EU antidumping policy with a view to determining whether any adaptations had to be made.

B. Changes in Russia and China

8. It is not always easy to measure the precise level of reform in order to see if a country has evolved 'enough' to warrant market economy treatment; and since former non-market economies often take their own very distinct routes in the reform process, their level of achievements will vary in different areas. Different countries do not therefore easily lend themselves to a direct comparison. In the case of Russia and China, for example, China has pursued slow but steady reform since 1979, experimenting first on a limited basis in the coastal zones and only then expanding the reforms to cover the whole country. Russia, on the other hand, has proceeded quickly since 1992.
9. What is clear, however, is that both countries have definitely moved away from a command economy: output is no longer primarily determined by central planning; most restrictions on import and export trade have been lifted; prices have been extensively liberalised; the national currency has been made convertible under the current account; privatisation has proceeded apace; and private enterprise has been encouraged. In parallel, legal and institutional structures are being reformed and new tax laws and fiscal regimes are under elaboration.
10. On the microeconomic level, the structure of enterprises is changing. Alongside the State owned enterprises, which are being encouraged to merge and restructure, there is an emergence of new companies which operate autonomously of the State and in increasingly competitive conditions. One noticeable factor is the increasing number of foreign owned firms which operate in these countries on the basis of market economy principles. It is clear that, for these operators, the extent to which their own prices and costs can be used in anti-dumping investigations is increasing.

11. The following facts illustrate the economic changes in Russia and China:

Russia

- At a macroeconomic level, the Russian economy has stabilised to a significant degree over the last two years. The reform process has been further reinforced by the establishment of a new Cabinet in March 1997, building on the mandate for reform won by president Yeltsin in the 1996 elections. The government has followed a consistently tight monetary policy: the exchange rate has been stabilised; inflation is down to between 1%-2% per month; and Russia's growing ability to draw from international capital markets has helped to bring real interest rates down to 24% in June 1997, compared with 120% in June 1996. Output may finally be on the upturn.
- The withdrawal of the state is well established for example state subsidies have been drastically cut back and wages have been liberalised. The rouble is fully convertible. The outcome of the Tax Code debate, and the passing of a budget allowing Russia to stay within the IMF budget deficit target of close to 5% of GDP will be key.
- Prices were liberalised extensively for the first time in 1992. Prices of tradable goods have been brought towards market levels, and even exceeded them in some cases. Prices for services remain in most cases lower than world levels, though are rising at a faster rate, as they are commercialised. In the case of housing and utilities, for example, cost-recovery ratios are being adjusted with a view to phasing out associated price subsidies.
- Privatisation took place in two waves. In 1992, major state-owned companies were obliged to issue shares in the form of "vouchers" that were made available to the entire population for free. Since 1994, the privatisation programme has focused on the transfer of the remaining blocks of shares to the private sector through auctions or tenders, including the "shares for loans" scheme selling

shares in 29 leading companies to banks and consortia. While criticised for the extent of insider dealing, later privatisation programmes have nevertheless been broadly carried out on a commercial basis. By mid-1997 the total of 128.000 firms of all sizes and in all sectors have been privatised. The privatisation programme is picking up again at the end of 1997, partly in response to the budget revenue crisis.

- **Banking and interest rate regime:** Commercial banking and financial markets have developed rapidly over the past two years, supported by a much-improved regulatory structure. In particular two laws of 1995 on corporations and securities markets have significantly increased protection for shareholders. However, the development of the stock market is still at an early stage, and regulation and supervision are under preparation. Restrictions still apply to foreign applicants.
- **Trade liberalisation:** In line with its application to join the WTO, Russia has substantially liberalised its foreign trade regime. The end of the foreign trade monopoly was heralded in 1991; and the reforms of 1994 to 95 completed the transition to a broadly open regime.

In conclusion, economic reform at a macroeconomic level is well established in Russia. Some internal contradictions remain, however, with divergences between legislation and practice: between federal intention and regional application; and from company to company. The Russian government has, this year, embarked on a series of policy reforms to translate intentions into practice; the campaign to bring "natural monopolies" under control; parallel to the ongoing debate on the new Tax Code it has intensified efforts to recoup arrears of payments; and at the microeconomic level, the nation-wide introduction of accounting and auditing reform are evidence of the government's determined efforts to accelerate the reform process.

China

- China has taken significant steps to liberalise its economy since Deng Xiaoping set about gradually dismantling the command economy in 1979. The process of reform is already well-established, and the political will to sustain it was confirmed by Jiang Zemin at the 15th Party Congress last September.
- By freeing up prices, creating a convertible currency, removing trade restrictions and encouraging private enterprise, including through foreign investment, market principles have gradually been introduced into the Chinese economy. In large pockets of that economy, not least in the many 'special economic zones', foreign and domestic companies already operate along market lines.
- Price liberalisation. According to the World Bank in 1996, 90% of retail prices and 80% of prices for agriculture and raw materials are determined by the market. This compares to 1978 when 97% of retail prices, 94.4% of farm prices and 99.7% of raw material prices were state controlled. In 1993, crude oil and steel prices were liberalised. State-controlled prices have now been eliminated in all areas except for gas, water and electricity for civil use. Even here, price liberalisation is under way, for example in Beijing, where water and fuel charges have increased significantly.
- The enterprise system. An effective international corporate model already exists in China (*World Bank country study on China, 1997*). Where state-owned enterprises have already been incorporated, it has helped make profits and losses more transparent, while establishing book values for assets and clarifying rights over real estate. As regards private and semi-private companies, they now account for over two thirds of economic production in China, and this percentage is increasing every year. Furthermore, the share of foreign companies in import and export jumped from 21% in 1991 to 47% in 1996 (*market access database, European Commission*). Foreign-funded production companies now account for a large portion of China's exports to Europe.

- Currency issues and capital markets. China introduced full convertibility for current account transactions in 1996, foregoing the right ever to reimpose any currency restrictions on current account activities without the approval of the International Monetary Fund. Inflation has been effectively tackled - it was over 25% in the early '90s and is down to single digits today (in retail price terms inflation was on average 1.8% from January to June 1997, while average consumer price inflation was 5% in the same year). China's growing integration with global capital markets is reflected by the fact that it now accounts for 40% of foreign investment flows, 10% of bank lending and a growing amount of portfolio investment in developing countries. Furthermore, gradual reform across the entire financial sector was launched in 1993, and includes strengthening the central bank tightening control on government lending and transforming four specialised banks into genuinely commercial banks.
- Special economic zones. In addition to reforms designed to encourage domestic private enterprise, the growth of the private sector is due to Beijing's active policy of attracting foreign firms to set up joint ventures in China's five 'Special Economic Zones', namely Shenzhen (where much of Hong Kong's outsourcing is located), Zhuhai, Shantou, Xiamen and Hainan. The regulatory framework, designed to attract high technology and encourage production for export, offers the right to establish wholly-owned companies and to export independently without the obligatory use of state trading companies, and without prior approval from the State. It also offers preferential rates on customs duties, income tax, product tax and VAT under certain conditions. In many cases those reforms have taken root, spreading beyond the bounds of the zones themselves. The SEZs enjoy substantial autonomy from the Central Government and benefit from the growth of an enterprise culture within them, induced by foreign investors, connections with Taiwan and Hong Kong, and government schemes to introduce a modern corporate structure. A number of foreign banks already carry out substantial operations within many of these areas.

In addition to the SEZ, 14 major coastal cities were opened up to free enterprise in 1984, followed by a number of border cities, several inland provincial capitals and number of cities along the banks of the Yangtse river. Open coastal cities have since joined together to create larger development areas such as the Pearl River Delta in Guangdong and the Yangtse delta (which includes Shanghai). Many companies in these zones are effectively operating under market conditions already. 350 million people live in China's coastal zones, where market reforms have progressed furthest.

- Trade liberalisation. The Chinese leadership believes that the gradual removal of trade and investment barriers is a necessary complement to its own internal reform programme, and China has already substantially liberalised its trade regime. In 1979 there were 14 state-owned trading corporations. Today there are over 12,000 companies with foreign trading rights. In the context of WTO accession negotiations China has already offered to cut its import tariffs from an average of 17% today to 10% by 2005 (in 1994 the average was 34%) and to remove all remaining quotas by 2005.

In conclusion, economic reform has firmly taken root in China. The process of reform is not yet complete everywhere in China, for instance, in relation to the determination of wages and working conditions, but the political will is there to carry through the necessary changes. In particular, the Chinese government is making concerted efforts to spread the benefits of economic reform to all regions and to accelerate the restructuring of State-owned enterprises. Furthermore, the development of new welfare and labour policies is under way in order to respond inter alia to the growth in migrant labour and to a transitional rise in unemployment as the workforce is shifted from traditional industries to new areas of economic activities.

12. Detailed reflection within the Commission prompted both by the evidence of substantial economic reform in Russia and China and by the positive impact that the treatment of the issue may have on the relationship between the EU and Russia and China, has led to the development of this proposal. It represents a move away

from NME status (whilst still stopping short of full market economy status) based on a more flexible, case by case analysis of the economic conditions relevant to each anti dumping investigation.

13. Importantly, such an approach will support the policy initiatives pursued by governments to encourage fundamental restructuring at the company level, including the introduction of modern accounting and auditing systems and modern management techniques, effective competition and bankruptcy legislation, and solutions to non-repayment problems. As such, this proposal represents an incentive for sustained reform in both Russia and China, a goal which the EU will continue to encourage by providing appropriate assistance.

14. The proposed changes will bring the EU antidumping provisions into line with those of some of our major trading partners which already have the ability to adjust their anti dumping practice to match the economic realities on the ground. In this context, the anti-dumping practice of other GATT signatories was also examined.

15. Australia and Canada already have legislative provisions which allow the use of domestic prices and costs for countries in a transition phase should market conditions be deemed to exist - Australia recently used such domestic economic data in two cases involving China. The US also has similar provisions in its legislation and decisions are taken in accordance with a pre-defined list of criteria which can be applied on a case-by-case basis. In particular, United States legislation permits normal values to be based on the prices and costs in countries in transition, if it is shown that the goods under investigation are produced by a "market oriented industry" (MOI). In determining whether a MOI exists, the US examines to what extent input costs are market-determined and the degree of state interference in business decisions concerning production and pricing. This provision has not been extensively invoked by the companies subject to antidumping investigations in the US, and its application has therefore been very limited. The US is currently re-examining the MOI test with a view to increasing transparency and understanding in the application of the criteria. Furthermore,

the US grants individual treatment in almost every case. Their approach in this regard is pro-active and it is based on systematic on-spot visits..

C. Proposal to amend EU anti-dumping policy vis-à-vis Russia and China

16. The EU antidumping system is presently unable to take account of the changes in the Russian and Chinese economies because of the inflexibility of the analogue country rule: if a country is listed as a NME the EU has no alternative but to use analogue country data, even if it can be shown that economic conditions make this choice unnecessary or inappropriate. In order to insert a degree of flexibility into the EU practice so that it can accommodate instances where verifiable market economy conditions prevail, the following adaptations to the current treatment of these countries have been identified. These are:

- (i) Russia and China will be deleted from the list of countries to which NME treatment applies.
- (ii) The EU will be given the possibility to derogate from the analogue country method in those cases in Russia and China where the economic circumstances justify it. In particular:

A specific provision will be introduced into the basic anti-dumping regulation which will allow the EU to examine, on a case-by-case basis, whether one or more producers subject to an antidumping investigation operate in a manner which will make the use of their domestic prices and costs meaningful in the establishment of normal value. This determination will be made on the basis of properly substantiated requests by the producer or producers concerned and in the light of the criteria included in annex I of the attached proposal for a Council Regulation³.

³ This will not prevent the EU industry from submitting a complaint on the basis of analogue country data. If it is, however, shown subsequently, in the course of the antidumping

- For example, in order to be able to use domestic prices and costs in anti-dumping proceedings, the accounting records of the company should accurately reflect the costs of production for the product concerned. Moreover, costs of inputs such as land, raw materials, labour etc. should be valued on a reasonable basis. The same applies to the cost of utilities such as energy and to the cost of technology (including intellectual property rights). In situations where the costs of certain inputs appear distorted, these inputs will be replaced by their corresponding value in a market analogue third country. Account will be taken of whether the company is financed by borrowings or properly acquired capital. The company should also be free to determine its prices and quantities so as to achieve the goal of maximising returns on assets.⁴

- The Commission will, upon initiation of the case, duly inform the producers concerned that they have the possibility to submit such claims. The onus of proof will lie with the exporting producer or producers concerned. In its examination of such claims, the Commission will use all information available to it. To the extent that market conditions prevail, domestic data will be used, and individual dumping margins for the companies concerned will be established. This approach will apply only to antidumping investigations initiated after the entry into force of the relevant legislative changes.

- The additional work required by the examination of market economy status will have to be completed early enough in the investigation in order to allow the existing mandatory time limits to be met. In this respect it will be crucial that an irrevocable decision on the market economy status of individual firms is taken at the earliest possible stage in the proceeding ie. within one month of initiation.

investigation, that market economy conditions prevail with regard to these firms, the EU will use domestic prices or costs of production as a basis for calculating normal value.

(iii) If it cannot be shown that market conditions prevail, analogue country data will be used, same as at present. However, improvements to our practice will be introduced in the following respects:

- Under current practice, the Commission examines whether the “analogue country” normal value needs to be adjusted to take due account of overall natural comparative advantages that Russian or Chinese producers may have in comparison to the producers in the analogue country⁵. In this regard, the Commission will in future take the initiative to inform the producers concerned of their rights in this respect, it will send questionnaires to them, and it will verify the data provided by means of on-spot visits. Adjustments will be made where appropriate. The normal value thus established will accurately reflect the real conditions of production and sale in Russia and China.

- Finally improvements will be introduced with regard to individual treatment, that is the determination of individual dumping margins which apply as an exception from the single country-wide margin. Under current practice, individual treatment can be granted where a producer can show that it operates independently from the State, on the basis of the criteria listed in Annex 1 of this Communication, and according to the administrative practice described in Paragraph 6 of this Communication. The Commission will continue using the same criteria as before. In this context emphasis will be put on whether or not there is a risk of circumvention of the duties. The Commission will examine by means of on-spot visits, any evidence submitted to substantiate requests for

⁴ The full list of criteria is included in Annex 1 of the attached proposal for a Council Regulation.

⁵ According to the case law of the European Courts, in antidumping investigation account must be taken of natural comparative advantages enjoyed by producers in NME countries, *Case C-16/90, Detlef Nölle v. Hauptzollamt Bremen-Freihafen*. Express reference to “comparative advantages is made in the Joint Declaration in relation to Article 18 of the EU Russia PCA, where it was agreed that due account shall be taken overall of natural comparative advantages shown by the manufacturers involved to be held with regard to factors such as access to raw materials, production process, proximity of production to customers, and special characteristics of the product.

such treatment in order to be able to decide on the basis of a global assessment of the degree of independence of the company or companies concerned.

The above adaptations provide the basis for a balanced package which should now be implemented as an appropriate reaction to the economic changes in the two countries concerned.

17. To the extent that market economy conditions prevail with regard to certain companies in Russia or in China the proposal will lead to the application of domestic prices and costs where analogue third country data would have otherwise been used. The impact of the proposal will therefore depend on the extent of the reforms realised by these countries, and it will reflect the specific behaviour and operating conditions of individual firms. It will not thus weaken in any respect the effectiveness of the EU antidumping instrument. Obviously antidumping action will continue to be taken where justified.

18. This proposal does not prejudice the negotiations taking place concerning the accession of these countries to the WTO. While it is hoped that this proposal will interact positively with the on-going WTO accession negotiations by further stimulating reforms, it will not ease or reduce the EU requirements for WTO membership of these countries. As regards other countries presently listed as NMEs, the Commission will keep developments in these countries under review, and it will regularly report on progress made towards market economy in the context of the on-going reform processes with a view to adapting accordingly their treatment in anti-dumping proceedings.

CRITERIA ON INDIVIDUAL TREATMENT

- i) The majority of the shares should belong to genuinely private companies and no State officials should appear on the board or in a key management position; the fact that the company concerned is controlled by a foreign investor will be considered a relevant indication of independence.
- ii) The land on which the facilities of the company are built should be rented from the State at conditions comparable to those in a market economy country or purchased (e.g. proper contractual lease).
- iii) The company should have the right to hire and dismiss employees and the right to fix salaries.
- iv) The company should have full control over its supply of raw materials and inputs in general.
- v) The supply of utilities should be guaranteed on the basis of proper contractual terms.
- vi) Proof is given that profit can be exported and capital invested can be repatriated (only in case of foreign investment, e.g. joint ventures).
- vii) The export prices should be determined freely; the fact that export sales are made to a related party located outside the country in question will be a decisive factor.
- viii) Freedom to carry out business activities should be guaranteed, in particular in respect of the following :
 - there should be no restrictions on selling on the domestic market;
 - the right to do business cannot be withdrawn outside proper contractual terms;
 - quantities produced for export should be determined freely by the company in accordance with the traditional demand of its export markets.

PROPOSAL

FOR A COUNCIL REGULATION (EEC) NO /97.

**amending Council Regulation (EC) No 384/96 on protection against
dumped imports from countries not members of the European
Community.**

Council Regulation (EC) No/97
amending Regulation (EC) No 384/96 on protection against dumped
imports from countries not members of the European Community

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission⁶,

Having regard to the opinion of the European Parliament⁷

Whereas by Regulation (EC) No 384/96⁸ ("the Basic Antidumping Regulation") the Council has adopted common rules for protection against dumped imports from countries which are not members of the European Community;

Whereas by Regulation (EC) No 519/94⁹ the Council has adopted common rules for imports for certain third countries which are listed in its Annex I;

⁶ OJ No

⁷ OJ No

⁸ OJ No

⁹ OJ No

Whereas paragraph 7 of Article 2 of Council Regulation (EC) No 384/96 prescribes that, in the case of imports from non-market economy countries and, in particular these countries to which Regulation (EC) No 519/94 applies, normal value shall be determined on the basis of the price or constructed value in an analogue market economy third country;

Whereas the process of reform in Russia and the People's Republic of China has fundamentally altered their economies and has led to the emergence of firms or sectors where market economy rules prevail; both countries have as a result moved away from the economic circumstances which inspired the use of the analogue country method;

Whereas it is appropriate to revise the Community's antidumping practice in order to be able to take account of the changed economic conditions in Russia and in the People's Republic of China; in particular, it is appropriate to specify that normal value may be determined in accordance with the rules applicable to market economy countries in cases where it can be shown that market conditions prevail for one or more producers subject to investigation in relation to the manufacture and sale of the product concerned;

Whereas it is appropriate to specify that an examination of whether market conditions prevail will be carried out on the basis of properly substantiated claims by one or more producers subject to investigation who wish to avail themselves of the possibility to have normal value determined on the basis of rules applicable to market economy countries;

Whereas, in order to introduce the revised practice without affecting the common rules for imports in respect of Russia and the People's Republic of China, it is appropriate to remove from Article 2.7 of the Basic Antidumping

Regulation the reference to the list of countries attached to Regulation (EC) No 519/94, and to add instead, in a footnote, the revised list of the countries concerned;

HAS ADOPTED THIS REGULATION :

Article 1

Article 2.7 of Regulation (EC) No 384/96 shall be amended as follows :

“(a) In the case of imports from non-market economy countries⁽¹⁾, normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including the Community, or where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Community for the like product, duly adjusted if necessary to include a reasonable profit margin.

An appropriate market economy third country shall be selected in a not unreasonable manner, due account being taken of any reliable information made available at the time of selection. Account shall also be taken of time limits; where appropriate, a market economy third country which is subject to the same investigation shall be used.

The parties to the investigation shall be informed shortly after its initiation of the market economy third country envisaged and shall be given 10 days to comment.

⁽¹⁾ including Albania, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, North Korea, Kyrgyzstan, Moldavia, Mongolia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam

(b) In anti-dumping investigations concerning imports from the Russian Federation and the People's Republic of China, normal value will be determined in accordance with paragraphs 1 to 6, if it is shown, on the basis of properly substantiated claims by one or more producers subject to the investigation and in the light of the criteria contained in annex I of this Regulation, that market economy conditions prevail for this producer or producers in respect of the manufacture and sale of the like product concerned. When this is not the case, the rules set out under sub-paragraph (a) shall apply.

Article 2

1. This Regulation shall enter into force on It shall apply to all anti-dumping investigations initiated after the date of its entry into force.

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

Done at Brussels

Criteria to be applied in deciding whether domestic prices and costs should be used in anti-dumping proceedings involving former NMEs

Decisions as to whether, or to what extent, domestic prices and costs in former NME countries can serve as the basis for determining normal value in anti-dumping investigations shall be based on the following criteria:

- Decisions of firms regarding prices, costs and inputs, including for instance raw materials, cost of technology and labour, output and investment, are made in response to market signals reflecting supply and demand, and without significant State interference in this regard; costs of major inputs substantially reflect market values.
- Firms have one clear set of basic accounting records which are in line with adequately supervised international accounting standards and are applied for all purposes.
- The production costs and financial situation of firms are not subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts.
- The firms concerned are assured of appropriate application of bankruptcy laws and of property laws which guarantee legal certainty and stability for the operation of firms.
- Exchange rate conversions are carried out at the market rate.

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