



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION

amending Council Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community and Council Regulation (EC) No 2026/97 on protection against subsidized imports from countries not members of the European Community

(presented by the Commission)

EXPLANATORY MEMORANDUM

There is a clear need to clarify the way decisions are reached between Member States when it comes to the imposition of definitive anti-dumping and anti-subsidy (countervailing) measures in the area of trade defence instruments (TDI).

The current situation allows rejecting the Commission proposal in the Council without clearly taking a position, i.e. not having to vote "no" if a Member State decides not to follow the Commission proposal. This potentially undermines the effectiveness of the TDI instrument and should therefore be addressed in a modification of the decision-making system.

The Basic Anti-dumping and Anti-subsidy Regulations (Council Regulations (EC) No 384/96 and 2026/97) already provide for a type of procedure where exactly this problem is addressed: The procedures for termination of an investigation.

Under this procedure, applied *mutatis mutandis* to the imposition of definitive measures, Member States would be consulted in the Advisory Committee on a draft regarding the imposition of definitive measures. If no objection is raised in the Advisory Committee, the definitive measures would be imposed. If an objection is raised, the draft would be forwarded to the Council and deemed to be adopted unless the Council decides otherwise by simple majority.

This new approach does not upset the balance of responsibilities under the current system, it tackles surgically the problem at hand by drawing from existing procedures while respecting the simple majority principle: It ensures that an affirmative position is required by Member States to overturn a Commission proposal, not more, not less.

Since the decision-making process should be applied in a consistent fashion throughout the various steps involved in the application of the anti-dumping and anti-subsidy instrument, this change should also be applied concerning decisions which follow the same procedure as the imposition of definitive measures, i.e. to review or suspend measures and to deal with absorption and circumvention of anti-dumping and countervailing measures.

It is therefore proposed that the Council adopt the attached proposal for a Council Regulation which should be published in the Official Journal of the European Union.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission¹,

Whereas:

- (1) By Regulation (EC) No 384/96² and Regulation (EC) No 2026/97³ the Council adopted common rules for protection against dumped, and, respectively, subsidised imports from countries which are not members of the European Communities (the 'Basic Regulations').
- (2) The Basic Regulations foresee, for the imposition of definitive anti-dumping and countervailing measures, a procedure under which the Council, acting by simple majority on a proposal by the Commission, imposes definitive measures.
- (3) In the light of recent experience of the application of the Basic Regulations and in order to preserve the transparency and efficiency of the trade defense instruments, it is considered necessary to revisit the way Community institutions work together in the process of the imposition of definitive anti-dumping and countervailing measures.
- (4) Under the current approach, a Commission proposal will only be adopted if a simple majority of Member States votes in favour of such a proposal. This has the effect that abstentions count effectively against the Commission proposal. This in turn can result in a situation where a Commission proposal will not be adopted by the Council because the necessary quorum is not reached although the number of Member States voting in favour of the Commission proposal is higher than the number of Member States voting explicitly against.

¹ OJ C ..., ..., p. ...

² OJ L 56, 6.3.1996, p. 1. Regulation last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).

³ OJ L 288, 21.10.1997, p. 1. Regulation last amended by Regulation (EC) No 1973/2002 (OJ L 305, 7.11.2002, p. 4).

- (5) The Basic Regulations already foresee procedures where this problem is effectively addressed, in particular in the procedures leading to the termination of investigations or the acceptance of undertakings, where the Commission consults Member States on a draft in the Advisory Committee. When no objection is raised, the Commission adopts the relevant measures. If an objection is raised, the draft is forwarded to the Council, together with a report of the consultations, and is deemed to be adopted unless the Council decides otherwise.
- (6) It is expedient to apply such a procedure also for the imposition of definitive anti-dumping and countervailing measures in order to streamline the Community's decision making process without changing the institutional balance between the Commission and the Council in the application of the Basic Regulations.
- (7) For reasons of consistent application of decisionmaking procedures under the Basic Regulations, the procedures for certain steps which foresee essentially the same procedure as the imposition of definitive measures should be aligned as well. Accordingly, the above approach should be adopted also for the procedures regarding reviews, reinvestigation, circumvention and suspension of measures,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 384/96 is hereby amended as follows:

1. Article 9 paragraph 4 shall be replaced by the following:

"4. Where the facts as finally established show that there is dumping and injury caused thereby, and the Community interest calls for intervention in accordance with Article 21, a definitive anti-dumping duty shall be imposed, after consultation, by the Commission provided that there is no objection raised within the Advisory Committee. In all other cases, the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a draft regarding the imposition of a definitive anti-dumping duty. The definitive anti-dumping duty shall be deemed to be imposed by the Commission if, within one month, the Council, acting by a simple majority, has not decided otherwise. Where provisional duties are in force, a draft regarding definitive action shall be submitted not later than one month before the expiry of such duties. The amount of the anti-dumping duty shall not exceed the margin of dumping established but it should be less than the margin if such lesser duty would be adequate to remove the injury to the Community industry."

2. Article 11 paragraph 6 shall be replaced by the following:

"6. Reviews pursuant to this Article shall be initiated by the Commission after consultation of the Advisory Committee. Where warranted by reviews, measures shall be repealed or maintained pursuant to paragraph 2, or repealed, maintained or amended pursuant to paragraphs 3 and 4, after consultation, by the Commission provided that there is no objection raised within the Advisory Committee. In all other cases, the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a draft regarding repealing, maintaining or amending the measures. The measures shall be deemed to be repealed, maintained or amended by the Commission if, within one month, the Council, acting by a simple majority,

has not decided otherwise. Where measures are repealed for individual exporters, but not for the country as a whole, such exporters shall remain subject to the proceeding and may, automatically, be reinvestigated in any subsequent review carried out for that country pursuant to this Article."

3. Article 12 paragraph 3 shall be replaced by the following:

"3. Where a reinvestigation pursuant to this Article shows increased dumping, the measures in force shall, after consultation, be amended by the Commission in accordance with the new findings on export prices, provided that there is no objection raised within the Advisory Committee. In all other cases, the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a draft regarding the amendment of the measures in force. The amendment shall be deemed to be imposed by the Commission if, within one month, the Council, acting by a simple majority, has not decided otherwise."

4. Article 13 paragraph 3 shall be replaced by the following:

"3. Investigations shall be initiated pursuant to this Article where the request contains sufficient evidence regarding the factors set out in paragraph 1. Initiations shall be made, after consultation of the Advisory Committee, by Commission Regulation which shall also instruct the customs authorities to make imports subject to registration in accordance with Article 14(5) or to request guarantees. Investigations shall be carried out by the Commission, which may be assisted by customs authorities and shall be concluded within nine months. When the facts as finally ascertained justify the extension of measures, this shall be done, after consultation, by the Commission provided that there is no objection raised within the Advisory Committee. In all other cases, the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a draft regarding the extension of measures. The extension shall be deemed to be imposed by the Commission if, within one month, the Council, acting by a simple majority, has not decided otherwise. The extension shall take effect from the date on which registration was imposed pursuant to Article 14(5) or on which guarantees were requested. The relevant procedural provisions of this Regulation with regard to initiations and the conduct of investigations shall apply pursuant to this Article."

5. Article 14 paragraph 4 shall be replaced by the following:

"4. In the Community interest, measures imposed pursuant to this Regulation may, after consultation of the Advisory Committee, be suspended by a decision of the Commission for a period of nine months. The suspension may be extended for a further period, not exceeding one year, after consultation, by the Commission provided that there is no objection raised within the Advisory Committee. In all other cases, the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a draft regarding the further extension of the suspension of measures. The further extension shall be deemed to be imposed by the Commission if, within one month, the Council, acting by a simple majority, has not decided otherwise. Measures may only be suspended where market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of the suspension, and provided that the Community industry has been given an opportunity to comment and these comments have been taken into account. Measures

may, at any time and after consultation, be reinstated if the reason for suspension is no longer applicable."

Article 2

Regulation (EC) No 2026/97 is hereby amended as follows:

1. Article 15 paragraph 1 shall be replaced by the following:

"1. Where the facts as finally established show the existence of countervailable subsidies and injury caused thereby, and the Community interest calls for intervention in accordance with Article 31, a definitive countervailing duty shall be imposed, after consultation, by the Commission provided that there is no objection raised within the Advisory Committee. In all other cases, the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a draft regarding the imposition of a definitive countervailing duty. The definitive countervailing duty shall be deemed to be imposed by the Commission if, within one month, the Council, acting by a simple majority, has not decided otherwise. Where provisional duties are in force, a draft regarding definitive action shall be submitted not later than one month before the expiry of such duties. No measures shall be imposed if the subsidy or subsidies are withdrawn or it has been demonstrated that the subsidies no longer confer any benefit on the exporters involved. The amount of the countervailing duty shall not exceed the amount of countervailable subsidies established but it should be less than the total amount of countervailable subsidies if such lesser duty would be adequate to remove the injury to the Community industry."

2. Article 22 paragraph 2 shall be replaced by the following:

"2. Reviews pursuant to Articles 18, 19 and 20 shall be initiated by the Commission after consultation of the Advisory Committee. Where warranted by reviews, measures shall be repealed or maintained pursuant to Article 18, or repealed, maintained or amended pursuant to Articles 19 and 20, after consultation, by the Commission provided that there is no objection raised within the Advisory Committee. In all other cases, the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a draft regarding repealing, maintaining or amending the measures. The measures shall be deemed to be repealed, maintained or amended by the Commission if, within one month, the Council, acting by a simple majority, has not decided otherwise. Where measures are repealed for individual exporters, but not for the country as a whole, such exporters shall remain subject to the proceeding and may be reinvestigated in any subsequent review carried out for that country pursuant to this Article."

3. Article 23 paragraph 2 shall be replaced by the following:

"2. Investigations shall be initiated pursuant to this Article where the request contains sufficient evidence regarding the factors set out in paragraph 1. Initiations shall be made, after consultation of the Advisory Committee, by Commission Regulation which shall also instruct the customs authorities to make imports subject to registration in accordance with Article 24 (5) or to request guarantees. Investigations shall be carried out by the Commission, which may be assisted by customs

authorities and shall be concluded within nine months. When the facts as finally ascertained justify the extension of measures, this shall be done, after consultation, by the Commission provided that there is no objection raised within the Advisory Committee. In all other cases, the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a draft regarding the extension of measures. The extension shall be deemed to be imposed by the Commission if, within one month, the Council, acting by a simple majority, has not decided otherwise. The extension shall take effect from the date on which registration was imposed pursuant to Article 24(5) or on which guarantees were requested. The relevant procedural provisions of this Regulation with regard to initiations and the conduct of investigations shall apply pursuant to this Article."

4. Article 24 paragraph 4 shall be replaced by the following:

"4. In the Community interest, measures imposed pursuant to this Regulation may, after consultation of the Advisory Committee, be suspended by a decision of the Commission for a period of nine months. The suspension may be extended for a further period, not exceeding one year, after consultation, by the Commission provided that there is no objection raised within the Advisory Committee. In all other cases, the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a draft regarding the further extension of the suspension of measures. The further extension shall be deemed to be imposed by the Commission if, within one month, the Council, acting by a simple majority, has not decided otherwise. Measures may only be suspended where market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of the suspension, and provided that the Community industry has been given an opportunity to comment and these comments have been taken into account. Measures may, at any time and after consultation, be reinstated if the reason for suspension is no longer applicable."

Article 3

This Regulation shall enter into force on the 7th day following that of its publication in the *Official Journal of the European Union*.

It shall apply to all investigations initiated pursuant to Regulation (EC) No 384/96 and Regulation (EC) No 2026/97, including pending investigations.

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

Done at Brussels,

*For the Council
The President*