I

(Legislative acts)

REGULATIONS

REGULATION (EU) No 1168/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 12 December 2012
amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from
countries not members of the European Community

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European
Union, and in particular Article 207(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national
parliaments,

Acting in accordance with the ordinary legislative procedure (1),

Whereas:

(1) In Case C-249/10 P (2), the Court of Justice ruled that the
sampling technique provided for in Article 17 of Council
Regulation (EC) No 1225/2009 (3) may not be applied
for the purposes of determining claims for market economy
treatment pursuant to subparagraph (c) of Article 2(7) of
that Regulation.

(2) The ruling by the Court of Justice would require that the
Commission examine all applications for market economy
treatment filed by cooperating exporting

(3) Moreover, the use of the sampling technique provided for
in Article 17 of Regulation (EC) No 1225/2009 for the
purposes of determining claims for market economy
treatment pursuant to subparagraph (c) of Article 2(7) of
that Regulation is allowed under the rules of the World Trade Organisation. For example, the panel of
the Dispute Settlement Body of the World Trade Organis-
ation in the dispute DS405 'European Union — Anti-
Dumping Measures on Certain Footwear from China' (4)
(report adopted on 22 February 2012) found that China
did not establish that the Union acted inconsistently with
Articles 2.4 and 6.10.2 of the Anti-dumping Agreement,
paragraph 15(a)(ii) of China's Accession Protocol, and
paragraph 151(e) and (f) of China's Accession Working
Party Report, by failing to examine the market economy
treatment applications of the cooperating Chinese
exporting producers that were not part of the sample
for the original investigation.

(4) Therefore, taking into account that background and 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 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.

(1) Position of the European Parliament of 25 October 2012 (not yet
published in the Official Journal) and decision of the Council of
6 December 2012.
(2) Case C-249/10 P Brosmann Footwear (HK) and others v Council,
judgment of 2 February 2012.
Furthermore, it is considered appropriate to clarify 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.

Finally, the three-month time limit by which a determination pursuant to subparagraph (c) of Article 2(7) of Regulation (EC) No 1225/2009 should be made has proved impracticable, in particular in proceedings where sampling in accordance with Article 17 of that Regulation is applied. It is therefore considered appropriate to extend that time limit.

In the interests of legal certainty and the principle of sound administration, it is necessary to provide that the amendments to Regulation (EC) No 1225/2009 provided for in this Regulation are to apply as soon as possible to all new and to all pending investigations.

Regulation (EC) No 1225/2009 should therefore be amended accordingly.

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1225/2009 is hereby amended as follows:

(1) Article 2(7) is amended as follows:

(a) in the penultimate sentence of subparagraph (c) the words ‘shall be made within three months of the initiation of the investigation’ are replaced by the words ‘shall normally be made within seven months of, but in any event not later than eight months after, the initiation of the investigation’;

(b) the following subparagraph is added:

‘(d) When the Commission has limited its examination in accordance with Article 17, a determination pursuant to subparagraphs (b) and (c) of this paragraph shall be limited to the parties included in the examination and any producer that receives individual treatment pursuant to Article 17(3);’.

(2) in Article 9(6), the first sentence is replaced by the following:

‘When the Commission has limited its examination in accordance with Article 17, any anti-dumping duty applied to imports from exporters or 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 with respect to the parties in the sample, irrespective of whether the normal value for such parties is determined on the basis of Article 2(1) to (6) or subparagraph (a) of Article 2(7).’.

Article 2

This Regulation shall apply to all new and to all pending investigations as from 15 December 2012.

Article 3

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

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

Done at Strasbourg, 12 December 2012.

For the Parliament
The President
M. SCHULZ

For the Council
The President
A. D. MAVROYIANNIS