

Anti-dumping measures

Regulation (EC) No [384/96](#) aims to transpose the provisions of the new agreement on the implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (1994 Anti-dumping Agreement) into Community law with a view to ensuring appropriate and transparent application of the new anti-dumping rules.

ACT

Council Regulation (EC) No [384/96](#) of 22 December 1995 on protection against dumped imports from countries not members of the European Community

SUMMARY

Scope

From a geographical point of view, the Regulation applies to all countries that are not members of the European Community (EC). However, the Community may adopt specific provisions in relation to countries without a market economy or whose economy is in transition. The Regulation also stipulates that its provisions do not preclude the application of any special rules laid down in agreements concluded between the Community and third countries.

From a physical point of view, the Regulation applies to all products. However, with regard to agricultural products, particularly products where common market organisations protect Community production through the use of levies, the provisions of the anti-dumping regulation may be applied by way of complement to and in derogation from any provisions which preclude the application of anti-dumping duties.

The Regulation lays down two conditions for the application of anti-dumping duties: the existence of dumping and proof of injury to the Community industry as a result of this dumping.

Definition of dumping

Dumping must be distinguished from simple practices of low-price sales resulting from lower costs or greater productivity. The key criterion in this respect is not, in fact, the relationship between the price of the exported product and that on the market of the country of import, but the relationship between the price of the exported product and its normal value. Thus, a product is considered to be dumped if its export price to the Community is less than the comparable price for a like product established in the ordinary course of trade within the exporting country.

The normal value to be taken into account to determine if there is dumping is usually based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country.

However, where the exporter in the exporting country does not produce or does not sell a like product, the normal value may be established on the basis of prices of other sellers or producers. In addition, when there are no or insufficient sales of the like product in the ordinary course of trade (for example, sales by a company with a monopoly) or where because of the particular market situation such sales do not permit a proper comparison, the normal value may be calculated on the basis of the cost of production in the country of origin.

In the case of imports from non-market economy countries, the normal value is determined on the basis of the price or constructed value in a market economy third country, or the price from this country to other countries, or where those are not possible, on any other reasonable basis.

The second basis of comparison, the relationship with the normal value in the country of origin which determines the dumping margin, is the export price. This is the price actually paid or payable for the product when sold for export to the Community.

In cases where there is no export price or where the price is set under an association or a compensatory arrangement between the exporter and the importer or a third party, any reference to the export price becomes impossible. It may thus be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or, if the products are not resold to an independent buyer, or are not resold in the condition in which they were imported, on any reasonable basis. In these cases, adjustments are made to take account of all costs incurred between importation and resale as well as for profits accruing.

Dumping margin

The dumping margin is the amount by which the normal value exceeds the export price. The comparison is made between sales at the same commercial stage and on dates which are as close to each other as possible. The necessary adjustments are made to take account of differences in sales conditions, taxation and other differences which affect price comparability.

Injury

The application of any anti-dumping duty presupposes the presence of a second key element: significant injury to a Community industry, be it injury caused to an industry established in the Community, the threat of injury or substantial retardation of the establishment of such an industry.

The determination of injury must be based on positive evidence and involve an objective examination of the following elements:

- the volume of the dumped imports, particularly where there has been a significant increase, either in absolute terms or relative to production or consumption in the Community;
- the price of dumped imports, in particular to determine whether there has been significant price undercutting as compared with the price of a like product of the Community industry, or whether the effect has been to depress prices or prevent price increases;
- the consequent impact on the Community industry concerned, particularly in relation to production and utilisation of capacity, stocks, sales, market share, price changes, profits, return on investments, cash flow and employment.

The Regulation stipulates that there must be a causal link between dumping and injury. Known factors other than the dumped imports which at the same time are injuring the Community industry must also be examined.

Moreover, the effect of the dumping must be assessed in relation to the production of the like product by the Community industry, taking into account the narrowest production sector.

The term "Community industry" means the Community producers as a whole or those of them whose collective output constitutes a major proportion of the total Community production. However, when producers are themselves importers of a dumped product, the term "Community industry" may be interpreted as referring to the other producers in this sector.

Initiation of proceedings

Proceedings are initiated upon a written complaint by any natural or legal person, or any association not having legal personality, acting on behalf of a Community industry. Where, in the absence of any complaint, a Member State is in possession of sufficient evidence of dumping and of resultant injury to the Community industry, it shall immediately communicate such evidence to the Commission.

The complaint must include evidence of dumping, injury and a causal link between these two elements. It shall contain such information on the following: identity of the complainant and a description of the volume and value of the Community production concerned, a complete description of the allegedly dumped product, the country of origin, the identity of each known producer/exporter and importer, information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country of origin or export, export price of the product, volume of imports of the product concerned and effect of those imports on prices of the like product.

The complaint is considered to have been made by or on behalf of the Community industry if it is supported by those Community producers whose collective output constitutes more than 50% of the total Community production.

The complaint is examined by the Advisory Committee, which consists of representatives of each Member State, with a representative of the Commission as chairman. If this consultation reveals that the complaint does not contain sufficient evidence to justify initiating a proceeding, the complaint is rejected and the complainant duly informed.

Where, after consultation within the Committee, it is apparent that there is sufficient evidence to justify initiating a proceeding, the Commission must do so within 40 days. The Commission publishes in the Official Journal of the European Communities a notice of initiation of the investigation, indicating the product and countries concerned, giving a summary of the information received and stating the period within which interested parties may make themselves known and present their views.

The complaint may be withdrawn prior to initiation of the investigation.

Investigations

The investigation carried out by the Commission, in cooperation with the Member States, covers both dumping and injury simultaneously. An investigation period is selected which normally constitutes a period of not less than six months immediately prior to the initiation of the proceeding. The Commission sends questionnaires to the parties involved, who are given at least 30 days to reply.

The Commission may request Member States to supply information, carry out checks and inspections, particularly amongst importers, traders and Community producers, as well as carry out investigations in third countries (provided that the firms concerned give their consent and that the government of the country in question raises no objection). Officials from the Commission may be authorised to assist the officials of Member States in carrying out their duties. More commonly, the Commission may carry out visits to examine the records of the parties concerned; it may also carry out investigations in third countries involved.

The Commission may meet with interested parties who request such a meeting. It may also organise meetings between these parties so that opposing views may be presented. The interested parties may examine all information provided to the Commission, with the exception of confidential documents.

An investigation is concluded with termination of the proceeding or with the adoption of a definitive measure. It should normally be concluded within 15 months of the initiation of the proceeding.

Termination of the proceeding without measures

The final outcome of the proceeding may be negative. Where, after consultation, protective measures are considered unnecessary and there is no objection raised within the Advisory Committee, the proceeding is terminated. If there are any objections, the Commission shall immediately submit to the Council a report on the results of the consultation, together with a proposal that the proceeding be terminated. The proceeding shall be deemed terminated if, within one month, the Council has not decided otherwise.

A proceeding is terminated where the dumping and injury are considered to be negligible. A proceeding may also be terminated without the imposition of provisional or definitive duties when commitments are undertaken and are considered acceptable by the Commission. These commitments may take the form of a price review or a freeze on exports such as is required to eliminate the injurious effects of the dumping.

Imposition of provisional anti-dumping duties

Provisional duties may be imposed if a provisional affirmative determination has been made of dumping and injury, and if the Community interest calls for immediate intervention to prevent such injury.

The amount of the duty must not exceed the margin of dumping, and it should be less than the margin if such lesser duty would be sufficient to remove the injury.

The duties must be imposed no more than nine months after the initiation of the proceeding. They are normally imposed for a period of six months.

These duties are imposed by the Commission, after consultation of the Committee or, in cases of extreme urgency, after informing the Member States. The Commission informs the Council and the Member States of these provisional measures. The Council may decide to take a different course of action.

Imposition of definitive anti-dumping duties

Where the facts as finally established show that there is dumping and injury caused thereby, and the Community interest calls for intervention, a definitive anti-dumping duty is imposed by the Council.

As with the provisional measures, the definitive duty may not exceed the dumping margin and should be less than the margin if it would be adequate to remove the injury.

The duty must be imposed on a non-discriminatory basis on imports of a product found to be dumped and causing injury. The regulation imposing the duty specifies the amount of duty applied to each supplier or, if that is impracticable, to the supplying country concerned.

Provisional and definitive duties may not be applied retroactively. However, a definitive duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of the provisional measures.

Community interest

Anti-dumping measures may not be applied if it is concluded that their imposition is not in the Community interest. To this end, all the various interests are taken into account as a whole, including the interests of the Community industry and of the users and consumers. All the parties concerned are given the opportunity to make their views known.

Duration and Review

The duties shall expire five years after their date of imposition or five years after the conclusion of the review of the measures concerned. This review is carried out on the initiative of the Commission or at the request of the Community producers. The duties shall remain in force during the period of the review.

Refund of duties

Duties collected may be refunded where the importer can show that the dumping margin has been eliminated or reduced to a level below the anti-dumping duty.

The importer must request a refund within six months of the date on which the amount of the definitive duties to be levied was duly determined or within six months of the date on which a decision was made definitively to collect the provisional duties. The application must be submitted via the Member State in which the product was released for free circulation. The Member State shall forward the application to the Commission, which comes to a decision after consultation of the Committee.