

WORLD TRADE ORGANIZATION

G/ADP/N/1/EEC/2/Suppl.2
3 August 2001

(01-3867)

Committee on Anti-dumping Practices

Original: English/
French/
Spanish

NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLE 18.5 OF THE AGREEMENT

EUROPEAN COMMUNITIES

Supplement

The following communication, dated 24 July 2001, has been received from the Permanent Delegation of the European Communities.

Pursuant to Article 18(5) of the WTO/GATT Anti-Dumping Agreement, please find attached a copy of Council Regulation (EC) N° 2238/2000 of 9 October 2000, which amends Regulation (EC) N° 384/96 on protection against dumped imports from countries not members of the European Community. In order to facilitate the understanding of the notified provisions also attached is a copy of Council Regulation (EC) N° 905/98 of 30 April 1998 which only affected non-WTO Members.

Also attached are copies of Commission Decision N° 1000/1999/ECSC of 11 May 1999 and Commission Decision N° 434/2001/ECSC of 2 March 2001, both of which amend Decision N° 2277/96/ECSC on protection against dumped imports from countries not members of the European Coal and Steel Community.

**COUNCIL REGULATION (EC No 2238/2000
of 9 October 2000
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 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) By Regulation (EC) No 384/96⁽¹⁾ the Council adopted common rules for protection against dumped imports from countries which are not members of the European Community.
- (2) Article 2(7) of Regulation (EC) No 384/96 lays down that, in the case of imports from non-market-economy countries and, in particular, those listed in a footnote to that provision, normal value shall, *inter alia*, be determined on the basis of the price or constructed value in an analogous market-economy third country.
- (3) Article 2(7) of Regulation (EC) No 384/96 further lays down that, in the case of imports from the Russian Federation and the People's Republic of China, 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.
- (4) The process of reform in the Ukraine, Vietnam and Kazakhstan has fundamentally altered the economies of those countries and has led to the emergence of firms for which market-economy conditions prevail. These three countries have as a result moved away from the economic circumstances which inspired the use of the analogue-country method.
- (5) It is appropriate to revise the Community's anti-dumping practice in order to be able to take account of the changed economic conditions in the Ukraine, Vietnam and Kazakhstan.
- (6) It is also appropriate to grant similar treatment to imports from such countries which are members of the World Trade Organisation (WTO) at the date of the initiation of the relevant anti-dumping investigation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 2(7) of Regulation (EC) No 384/96 is amended as follows:

- paragraph (b) is replaced by:

¹ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30.4.1998, p. 18).

‘(b) In anti-dumping investigations concerning imports from the Russian Federation, the People’s Republic of China, the Ukraine, Vietnam and Kazakhstan and any non-market-economy country which is a member of the WTO at the date of the initiation of the investigation, 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 accordance with the criteria and procedures set out in paragraph (c) 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 subparagraph (a) shall apply.’,

– the footnote is replaced by:

‘(*) Including Albania, Armenia, Azerbaijan, Belarus, Georgia, North Korea, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Turkmenistan, Uzbekistan.’

Article 2

This Regulation applies to all anti-dumping investigations initiated after the date of its entry into force. In the case of imports from non-market-economy countries which become members of the WTO after the entry into force of this Regulation, it applies to all anti-dumping investigations concerning products originating in those countries which are initiated after the date of their accession to the WTO.

Article 3

This Regulation enters into force on the day following its publication in the *Official Journal of the European Communities*.

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

Done at Luxembourg, 9 October 2000.

For the Council
The President
H. VÉDRINE

**COUNCIL REGULATION (EC) No 905/98
of 27 April 1998
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 Commission,

Whereas by Regulation (EC) No 384/96 ⁽²⁾ (hereafter referred to as ‘the Basic Anti-dumping 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 519/94 ⁽³⁾ the Council has adopted common rules for imports for certain third countries which are listed in Annex I thereto;

Whereas Article 2(7) of Regulation (EC) No 384/96 lays down that, in the case of imports from non-market economy countries and, in particular those 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 for which market economy conditions prevail; whereas 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 anti-dumping practice in order to be able to take account of the changed economic conditions in Russia and in the People’s Republic of China; whereas, 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 Anti-dumping 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:

² OJ L 56, 6.3.1996, p. 1. Regulation is amended by Regulation (EC) No 2331/96 (OJ L 317, 6.12.1996, p. 1).

³ OJ L 67, 10.3.1994, p. 89. Regulation as last amended by Regulation (EC) No 847/97 (OJ L 122, 14.5.1997, p. 1).

Article 1

Article 2(7) of Regulation (EC) No 384/96 shall be replaced by the following:

7. (a) In the case of imports from non-market economy countries (*), 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.

- (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 accordance with the criteria and procedures set out in subparagraph (c) 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 subparagraph (a) shall apply.

- (c) A claim under subparagraph (b) must be made in writing and contain sufficient evidence that the producer operates under market economy conditions, that is if:

- decisions of firms regarding prices, costs and inputs, including for instance raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand, and without significant State interference in this regard, and costs of major inputs substantially reflect market values,
- firms have one clear set of basic accounting records which are independently audited in line with 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 subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of firms, and
- exchange rate conversions are carried out at the market rate.

A determination whether the producer meets the abovementioned criteria shall be made within three months of the initiation of the investigation, after specific consultation of the Advisory Committee

and after the Community industry has been given an opportunity to comment. This determination shall remain in force throughout the investigation.

(*) Including Albania, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, North Korea, Kyrgyzstan, Moldavia, Mongolia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam.'

Article 2

This Regulation shall enter into force on 1 July 1998.

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 Luxembourg, 27 April 1998.

For the Council
The President
R. COOK

**COMMISSION DECISION No 1000/1999/ECSC
of 11 May 1999
amending Decision No 2277/96/ECSC on protection against dumped imports
from countries not members of the European Coal and Steel Community**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 74 thereof,

(1) Whereas the Commission, by Decision No 2277/96/ECSC ⁽¹⁾, adopted common rules for protection against dumped imports from countries which are not members of the European Coal and Steel Community;

(2) Whereas the Council, by Regulation (EC) No 519/94 ⁽²⁾, as last amended by Regulation (EC) No 1138/98 ⁽³⁾, has adopted common rules for imports for certain third countries which are listed in Annex I thereto;

(3) Whereas Article 2(7) of Decision No 2277/96/ECSC lays down that, in the case of imports from non-market-economy countries and, in particular, those 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;

(4) 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 for which market-economy conditions prevail; whereas both countries have consequently moved away from the economic circumstances which prompted the use of the analogue country method;

(5) Whereas the Community's anti-dumping practice under Council Regulation (EC) No 384/96 ⁽⁴⁾, as last amended by Regulation (EC) No 905/98 ⁽⁵⁾, was amended by that Regulation in order to be able to take account of the changed economic conditions to Russia and in the People's Republic of China; whereas, in particular, Regulation (EC) No 384/96 provides 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;

(6) Whereas Article 2(10) of Decision No 2277/96/ECSC provides for a limited number of allowances which can be made to the normal value and export prices before these are compared to establish whether dumping is taking place; whereas, since it is conceivable that differences in selling expenses, other than those listed in that Decision, may in certain circumstances affect price comparability, it is prudent to eliminate the exclusive nature of this provision in relation to allowances;

(7) Whereas the Community's anti-dumping practice under Regulation (EC) No 384/96 was amended by Regulation (EC) No 2331/96 ⁽⁶⁾ in order to clarify the requirements for an adjustment for differences in levels of trade when information on price effects for two levels of trade does not exist

¹ OJ L 308, 29.11.1996, p. 1.

² OJ L 67, 10.3.1994, p. 89.

³ OJ L 159, 3.6.1998, p. 1.

⁴ OJ L 56, 6.3.1996, p. 1.

⁵ OJ L 128, 30.4.1998, p. 18.

⁶ OJ L 317, 6.12.1996, p. 1.

for the market concerned, as well as to provide for an adjustment in order to fine-tune the allocation of costs between different levels of trade on the domestic market of the exporting country;

(8) Whereas it is therefore desirable to align the relevant provisions of Decision No 2277/96/ECSC on those of Regulation (EC) No 384/96 as a matter of urgency, in order to ensure consistency in the application of the anti-dumping rules provided under the EC Treaty and the ECSC Treaty respectively,

HAS ADOPTED THIS DECISION:

Article 1

Article 2 of Decision No 2277/96/ECSC is amended as follows:

1. Paragraph 7 is replaced by the following:

- ‘7. (a) In the case of imports from non-market-economy countries (*), 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 that is 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.

- (b) In anti-dumping investigations concerning imports from Russia and the People's Republic of China, normal value shall 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 accordance with the criteria and procedures set out in subparagraph (c), 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 subparagraph (a) shall apply.
- (c) A claim under subparagraph (b) shall be made in writing and shall contain sufficient evidence that the producer operates under market-economy conditions, that is if:
- decisions of firms regarding prices, costs and inputs, including for instance raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand, and without significant State interference in this regard, and costs of major inputs substantially reflect market values,
 - firms have one clear set of basic accounting records which are independently audited in line with 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 subject to bankruptcy and property law which guarantee legal certainty and stability for the operation of firms, and
- exchange-rate conversions are carried out at the market rate.

A determination whether the producer meets the abovementioned criteria shall be made within three months of the initiation of the investigation, after specific consultation of the Advisory Committee and after the Community industry has been given an opportunity to comment. This determination shall remain in force through out the investigation.

(*) Including Albania, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, North Korea, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam.'

2. Paragraph 10 is amended as follows:

(a) Subparagraph (d) is replaced by the following:

‘(d) Level of trade

- (i) An adjustment for differences in levels of trade, including any differences which may arise in OEM (original equipment manufacturer) sales, shall be made where, in relation to the distribution chain in both markets, it is shown that the export price, including a constructed export price, is at a different level of trade from the normal value and the difference has affected price comparability which is demonstrated by consistent and distinct differences in functions and prices of the seller for the different levels of trade in the domestic market of the exporting country. The amount of the adjustment shall be based on the market value of the difference.
- (ii) However, in circumstances not envisaged under (i), when an existing difference in level of trade cannot be quantified because of the absence of the relevant levels on the domestic market of the exporting countries, or where certain functions are shown clearly to relate to levels of trade other than the one which is to be used in the comparison, a special adjustment may be granted.’

(b) The following subparagraph is added:

‘(k) Other factors

An adjustment may also be made for differences in other factors not provided for under subparagraphs (a) to (j) if it is demonstrated that they affect price comparability as required under this paragraph, in particular that customers consistently pay different prices on the domestic market because of the difference in such factors.’

Article 2

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

It shall apply to all anti-dumping investigations initiated after the date of its entry into force.

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

Done at Brussels, 11 May 1999.

For the Commission
Leon BRITTAN
Vice-President

**COMMISSION DECISION No 435/2001/ECSC
of 2 March 2001
amending Decision No 2277/96/ECSC on protection against dumped imports from
countries not members of the European Coal and Steel Community**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Community, and in particular Article 74 thereof,

Whereas:

(1) Commission Decision No 2277/96/ECSC ⁽¹⁾, as amended by Decision No 1000/1999/ECSC ⁽²⁾, sets out common rules for protection against dumped imports from countries not members of the European Coal and Steel Community.

(2) Article 2(7)(a) of Decision No 2277/96/ECSC provides that, in the case of imports from non-market-economy countries and, in particular those listed in a footnote to that paragraph, normal value is, *inter alia*, to be determined on the basis of the price or constructed value in an analogue market economy third country.

(3) Article 2(7)(b) of Decision No 2277/96/ECSC further provides that, in the case of imports from the Russian Federation and the People's Republic of China normal value is to be determined in accordance with the rules applicable to market economy countries in cases where it can be shown that market economy conditions prevail for one or more producers subject to investigation in respect of the manufacture and sale of the like product concerned.

(4) The process of reform in Ukraine, Vietnam and Kazakhstan has fundamentally altered their economies and has led to the emergence of firms for which market economy conditions prevail. Those three countries have, as a result, moved away from the economic circumstances which inspired the use of the analogue country method.

(5) The European Community's anti-dumping practice under Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽³⁾, as last amended by Regulation (EC) No 2238/2000 ⁽⁴⁾ now takes account of the changed economic conditions in Ukraine, Vietnam and Kazakhstan. Regulation (EC) No 384/96 now also provides for similar treatment to be granted to imports from such countries which are members of the World Trade Organisation (WTO) at the date of the initiation of the relevant anti-dumping investigation.

(6) The relevant provisions of Decision No 2277/96/ECSC should be aligned with those of Regulation (EC) No 384/96 as a matter of urgency, in order to ensure consistency in the application of the anti-dumping rules provided under the EC Treaty and the ECSC Treaty respectively. Decision No 2277/96/ECSC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

¹OJ L 308, 29.11.1996, p. 11.

²OJ L 122, 12.5.1999, p. 35.

³OJ L 56, 6.3.1996, p. 1.

⁴OJ L 257, 11.10.2000, p. 2.

Article 1

Article 2(7) of Decision No 2277/96/ECSC is amended as follows:

1. The footnote relating to the first subparagraph of subparagraph (a) is replaced by the following:

‘(*) Including Albania, Armenia, Azerbaijan, Belarus, Georgia, North Korea, Kyrgyzstan, Moldavia, Mongolia, Tajikistan, Turkmenistan and Uzbekistan.’

2. Subparagraph (b) is replaced by the following:

‘(b) In anti-dumping investigations concerning imports from the Russian Federation, the People’s Republic of China, Ukraine, Vietnam and Kazakhstan and any other non-market economy country which is a member of the World Trade Organisation (WTO) at the date of the initiation of the investigation, normal value shall 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 in accordance with the criteria and procedures set out in subparagraph (c), 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 in subparagraph (a) shall apply.’

Article 2

This Decision shall apply to all anti-dumping investigations initiated after the date on which it enters into force.

In the case of imports from non-market economy countries which become members of the WTO after the date on which it enters into force, this Decision shall apply to all anti-dumping investigations concerning products originating in those countries which are initiated after the date of their accession to the WTO.

Article 3

This Decision shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

This Decision shall be binding in its entirety and directly applicable in all member States.

Done at Brussels, 2 March 2001.

For the Commission
Pascal LAMY
Member of the Commission
