

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⁽¹⁾ (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⁽²⁾ 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 deter-

mined 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:

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

⁽¹⁾ OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96 (OJ L 317, 6. 12. 1996, p. 1).

⁽²⁾ 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).

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