



COMMISSION OF THE EUROPEAN COMMUNITIES

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Amended 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.

In order to address this problem, the Basic Anti-dumping and Anti-subsidy Regulations (Council Regulations (EC) No 384/96 and 2026/97) will have to be amended by requiring a simple majority of Member States in the Council for rejecting a Commission proposal for imposing definitive measures. The respective proposal for such an amendment has been modified in the light of discussions with the Member States (original proposal COM(2003)380).

Under this procedure, Member States would still be consulted in the Advisory Committee on a proposal regarding the imposition of definitive measures. The proposal would then be forwarded to the Council and adopted unless the Council decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission.

This new approach does not upset the balance of responsibilities under the current system, it tackles surgically the problem at hand 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.

Furthermore, there is a clear need to ensure and even increase transparency and effectiveness of trade defence instruments. The amendments explained below complement the amendments concerning the way decisions are being made in this area.

1. Introduction of mandatory time limits for the completion of review investigations.

Under the present Basic Anti-dumping Regulation, new investigations are subject to a mandatory time limit of 15 months (13 months for the Basic Anti-subsidy Regulation). By contrast, the current 12 month deadline for review investigations is not mandatory but merely indicative. Experience gained since the entry into force of the Basic Regulations show that, in the absence of mandatory deadlines and the necessary human resources, it is very difficult to respect the above mentioned normal deadline of 12 months. In particular, the absence of strict deadlines makes it difficult to oblige interested parties to respect procedural requirements. As a result, reviews have often lasted longer than the normal timeframe.

Pending the conclusion of expiry review investigations, the measures under review continue to remain in force. Consequently, unusually lengthy review investigations may undermine legal certainty and cause adverse effects to interested parties.

The only solution to this problem is to introduce mandatory time limits for the completion of the review investigations. It is therefore proposed to introduce a mandatory deadline of 15 months for completion of interim and expiry review investigations, while maintaining the existing indicative timetable of 12 months. For newcomer reviews and anti-absorption reinvestigations, a mandatory time limit of 9 months is proposed. These deadlines are considered to be the adequate amount of time necessary to complete the various review investigations, giving due account to the relative complexity of each different type of review investigation.

It is also proposed to specify the consequences of non-compliance with these mandatory deadlines.

This proposed amendment is clearly an important step towards better administration. It will also further improve transparency of the review investigations as it will significantly enhance the foreseeability of their conclusion. It will, however, require the provision of the respective human resources to the Commission Services to deal with the resulting additional workload. Therefore, the provisions on deadlines will be phased in, starting with deadlines on expiry reviews, and after 2 years, deadlines for other reviews.

2. Minimum period for sending relevant information to the Advisory Committee

The Advisory Committee is the main interface between the Commission and the Member States in the context of anti-dumping and anti-subsidy investigations. Due to the nature of the subject, the relevant information provided to Member States is often of a highly technical nature and consists of an elaborate economic and legal analysis. In order to allow for a proper consideration of this information by Member States, it is considered necessary to provide for a minimum period of 10 days before a meeting of the Advisory Committee for transmitting information to Member States.

3. Withdrawal of undertakings

Furthermore, in the light of the experiences gained up to now, the current practice of withdrawal of acceptance of undertakings is unnecessarily time-consuming. Indeed, the current system requires the approval of a Commission Decision withdrawing acceptance of the undertaking and a Council Regulation imposing duties.

Given that the provisions of Article 8(9) of the Basic Anti-dumping Regulation and Article 13(9) of the Basic Anti-Subsidy Regulation do not leave any discretion to the Council as to the duty level to be imposed following the breach or withdrawal of an undertaking, there is no need for the Council to re-introduce the original duty level, as the same effect can be obtained by simply lifting the exemption of the payment of the duty by a Commission Decision.

The amendment therefore provides for a streamlined legal procedure. It clarifies that the Commission is the Institution responsible for accepting and withdrawing undertakings. It clarifies further that the duty rates imposed by the Council Regulation applies to all companies not mentioned in the Commission Decision accepting undertakings.

In order to implement the new system, the operative part of future Council Regulations imposing measures has to be modified so that, instead of listing companies benefiting from an undertaking, it makes reference to the parallel Commission Decision accepting undertakings and any subsequent amendment of such decision.

4. Absorption

Article 12(1) of the Basic Anti-dumping Regulation indicates that anti-absorption investigations are initiated on the basis of evidence submitted by the Community industry. There could be cases, however, where the Community industry has no compelling reasons to request the initiation of the above-mentioned investigations, or simply has not yet detected the actual nature/dimension of the problem, whilst other interested parties may be affected notably by the lack of efficiency of the measures. It is therefore felt necessary to amend the text of Article 12(1) of the Basic Anti-dumping Regulation in order to explicitly mention that the Commission, the Member States and all other interested parties may request the initiation of an anti-absorption investigation.

According to the current text of Article 12 of the Basic Anti-dumping Regulation, absorption exists when it is shown that “..measures have led to no movement or insufficient movement in resale prices or subsequent selling prices in the Community”. It could therefore be argued that where it is not possible to show evidence of this lack in movement, the existence of absorption cannot be proved, either at initiation stage or determination stage. Recent cases have shown however that resale prices or subsequent selling prices may not be available, obviously when the importers of the product concerned are also final users, or because of insufficient cooperation from importers. In this context, it is proposed to modify the wording of Article 12 of the Basic Anti-dumping Regulation in order to also include the decrease in export prices into the notion of movement in prices, in order to assess whether absorption exists or not.

The above considerations apply *mutatis mutandis* to the relevant provisions of the Basic Anti-subsidy Regulation.

It seems also desirable to clarify that any increase of the anti-dumping duty pursuant to Article 12(2) of the Basic Anti-dumping Regulation cannot exceed the amount of the duty absorbed.

5. Circumvention

The problem of circumvention of anti-dumping duties formed part of the negotiations which preceded the adoption of the WTO Anti-dumping Agreement, but Members were divided on the issue and no provision was eventually included in that Agreement. Instead, in a Ministerial Decision on Anti-Circumvention attached to the WTO Anti-dumping Agreement, WTO Members noted the problem, recorded the desirability of uniform rules in this area as soon as possible, and referred this matter to the WTO Committee on Anti-dumping Practices for resolution.

The Community included anti-circumvention provisions in its 1994 Regulation providing for the extension of anti-dumping duties to imports from third countries of like products, or parts thereof, when circumvention is taking place. Circumvention is defined as a change in the pattern of trade between third countries and the Community which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and may include an assembly operation in the Community or a third country.

These provisions have so far been used by the Community in one case concerning products from Brazil shipped via Argentina (in which the circumvention measures were at the same time suspended, remedial action having been taken); in one case against products from the People's Republic of China shipped via Malaysia ; and in four cases against products from the People's Republic of China, including products shipped via Hong Kong, Taiwan and Vietnam. There are also three pending cases against products from the People's Republic of China, Ukraine and Russia, shipped via Moldavia.

To-date, WTO case law has developed but the matter has not yet been resolved by the WTO Committee on Anti-dumping Practices, nor has it been addressed under the Dispute Settlement Body system.

It is now proposed to render the provisions of Article 13 more operational, clarifying them and ensuring more legal certainty with the identification of practices like, notably, transshipment, slightly modified products, and re-channelling of sales via the producers or exporters with the lowest duties. These issues were not dealt with in the negotiating text proposed in December 1991 by the then GATT Director General (the “Dunkel draft”). In all the circumstances, whatever the litigation risk might be, if any, such provisions have been operational, and would, if necessary, be defended by the Community with the same vigour and conviction it has demonstrated in the past.

Although Article 13(3) of the Basic Anti-dumping Regulation does not expressly mention the parties who have the right to request the initiation of an anti-circumvention investigation, such requests have so far only been submitted by the Community industry. As mentioned above for absorption, there could be cases, however, where the Community industry has no compelling reasons to request the initiation of the above-mentioned investigations, or simply has not yet detected the actual nature/dimension of the problem, whilst other parties may have an interest in an effective enforcement of the measures. It seems therefore preferable to clarify the text of Article 13(3) of the Basic Anti-dumping Regulation in order to explicitly mention the Commission, the Member States and all other interested parties as parties which may request the initiation of an anti-circumvention investigation.

The question has recently arisen whether anti-circumvention investigations can address situations whereby a product normally subject to anti-dumping duties is slightly modified (normally by adding other substances) in order to declare it “legally” under customs codes which do not justify the application of anti-dumping measures. This illegal practice is already implicitly covered by the current text of Article 13 of the Basic Anti-dumping Regulation. However, for the sake of clarity, it is considered preferable to clarify the text of Article 13 of the Basic Anti-dumping Regulation, so as to explicitly mention the practice of slightly modifying products as a circumvention practice.

There have been cases whereby exporters subject to higher individual duties or to the country residual duty export their goods through companies benefiting from lower individual duties. Such “company” circumvention practices are not explicitly addressed by Article 13 of the Basic Anti-dumping Regulation. However, it is clear that these practices undermine the remedial effects of the measures, and it should therefore be made possible to sanction this behaviour. It is therefore proposed to lift the individual duties of those companies which are found to follow these practices, and apply to them the country residual duty rate.

Article 13(4) of the Basic Anti-dumping Regulation provides for the exemption of the duties (extended) on importation of goods that are not subject to circumvention. It also states that requests should be accompanied by a customs certificate, issued to importers, declaring that the importation of the goods does not constitute circumvention. However, in cases in which circumvention takes place outside the Community (i.e. the circumvention practices put in place by exporting producers in third countries) any exemption from the duties would make sense only if it is granted to exporting producers in the countries concerned that do not circumvent the measures. According to the most recent practice, exemptions are granted by means of a Council Regulation to exporting producers in third countries. It is proposed to modify Article 13(4) of the Basic Anti-dumping Regulation so as to make it clear the difference in exemption when circumvention practices take place inside or outside the Community, and when requests for exemption are submitted during or after the anti-circumvention investigation.

The above considerations apply *mutatis mutandis* to the relevant provisions of the Basic Anti-subsidy Regulation.

6. Other issues relating to enforcement

Article 19(6) of the Basic Anti-dumping Regulation – “information received pursuant to this Regulation shall be used only for the purpose for which it was requested” – is unclear as to whether the information gathered in the context of one investigation can be used, for example, for the purposes of initiating another investigation concerning the same like product. It seems therefore useful to clarify that this is possible within the same proceeding.

Articles 6(3) and 6(4) of the Basic Anti-dumping Regulation give the Commission the possibility to request Member States to supply information, when so needed. However, it would be extremely useful if the provisions contained in these articles, which only apply to the anti-dumping investigations when they are on-going, could be extended to also cover the period after the imposition of measures, so as to be used for monitoring undertakings and verifying the level of effectiveness of the measures. Of course, any such data provided would be subject to the provisions of confidentiality contained in the Regulation. It is proposed to insert a new paragraph for this purpose under Article 14 of the Basic Anti-dumping Regulation.

The above considerations apply *mutatis mutandis* to the relevant provisions of the Basic Anti-subsidy Regulation.

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.

Amended proposal for a

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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

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 (the 'Basic Anti-dumping Regulation') and Regulation (EC) No 2026/97³ (the 'Basic Anti-subsidy Regulation') 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 Anti-Dumping Regulation and the Basic Anti-Subsidy Regulation are hereinafter jointly referred to as 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 defence 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 due to the number of abstentions.

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) In order to address this problem effectively, the Basic Regulations have to be amended by requiring a simple majority of Member States in the Council to reject a Commission proposal for imposing definitive measures. Under this procedure, measures shall be deemed to be adopted unless the Council decides by a simple majority to reject the proposal, within a period of one month after submission of the proposal by the Commission.
- (6) It is expedient to apply such a procedure in order to streamline the Community's decision-making process without changing the respective roles of the Commission and the Council in the application of the Basic Regulations.
- (7) For reasons of consistent application of decision-making procedures under the Basic Regulations, the procedures for other decisions by Council under the Basic Regulations which foresee essentially the same procedure as for 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.
- (8) The Basic Anti-dumping Regulation establishes mandatory time limits for the completion of investigation procedures initiated pursuant to Article 5(9) of the Basic Anti-dumping Regulation while review investigations initiated pursuant to Articles 11(2), (3) and (4) and reinvestigations pursuant to Article 12 of the Basic Anti-dumping Regulation, are subject to an indicative time limit only.
- (9) Anti-dumping measures remain in force pending the outcome of a review pursuant to Article 11(2) of the Basic Anti-dumping Regulation. Consequently, unusually lengthy review investigations pursuant to such Article may undermine legal certainty and cause adverse effects for interested parties. Similar non desirable effects may result from overly lengthy investigations in the context of reviews pursuant to Articles 11(3) and (4) and reinvestigations pursuant to Article 12 of the Basic Anti-dumping Regulation.
- (10) It is therefore appropriate to introduce mandatory time limits also for the completion of review investigations pursuant to Articles 11(2), (3) and (4) and reinvestigations pursuant to Article 12 of the Basic Anti-dumping Regulation.
- (11) The various types of review investigations have different potential scopes and degrees of complexity. Due account should be given to these differences when setting the appropriate time limits for completion.
- (12) First, reviews pursuant to Articles 11(2) and (3) of the Basic Anti-dumping Regulation may, in certain circumstances, present the same complexity as new proceedings pursuant to Article 5(9), for instance in terms of the scope of the investigation or the number of interested parties concerned. Consequently, while these review investigations should normally be completed within the existing indicative time limit of 12 months, the mandatory time limit for completion should be equal, but not longer, than that of the 15 month period set for the completion of new proceedings.

- (13) Second, reviews pursuant to Article 11(4) and reinvestigations pursuant to Article 12 of the Basic Anti-dumping Regulation present a lesser degree of complexity than reviews pursuant to Articles 11(2) and (3) of the Basic Anti-dumping Regulation. Accordingly, the time limit for the completion of such reviews should be shorter. For review investigations pursuant to Article 11(4), it is considered that the time limit for completion should be set to 9 months. This limit is in line with the maximum period allowed for registration of imports under Article 14(5) of the Basic Anti-dumping Regulation. As imports are registered pending the completion of a review pursuant to Article 11(4), the time limit for the completion of such a review should not be longer than the time frame during which the imports concerned by the review may be subject to registration.
- (14) Third, while reinvestigations pursuant to Article 12 should normally be completed within the existing indicative time limit of 6 months, it is considered appropriate to set the mandatory time limit at 9 months, as a longer period may be necessary to complete the investigation if revised normal values have to be considered. In addition, imports subject to reinvestigation pursuant to Article 12 may, like imports subject to 11(4) reviews, also be subject to registration pursuant to Article 14(5). Consequently, the same maximum time limit of nine months as for registration should apply to reinvestigations pursuant to Article 12.
- (15) Recitals 8 through 14 above apply, *mutatis mutandis*, to reviews under Articles 18, 19 and 20 of the Basic Anti-subsidy Regulation.
- (16) It is considered prudent to provide for a phase-in of deadlines in reviews, in view of the resulting demands for the meeting of such deadlines on human resources. Such a phase-in period will facilitate the appropriate allocation of resources over time.
- (17) Information provided to Member States in the Advisory Committee is often of a highly technical nature and involves an elaborate economic and legal analysis. In order to provide Member States with sufficient time to consider this information, it should be sent at the latest 10 days before the date of a meeting set by the Chairman of the Advisory Committee.
- (18) Article 8(9) of the Basic Anti-Dumping Regulation stipulates, *inter alia*, that in case of withdrawal of undertakings by any party, a definitive duty shall be imposed in accordance with Article 9, on the basis of the facts established within the context of the investigation which led to the undertakings. This provision has led to a time-consuming double proceeding consisting of both a Commission Decision withdrawing the acceptance of the undertaking and a Council Regulation re-imposing the duty. Taking into account that this provision does not leave any discretion to the Council as to the introduction of a duty to be imposed following the breach or withdrawal of an undertaking or as to its level, it is considered appropriate to modify the provisions in Articles 8(1), (5) and (9) in order to clarify the Commission's responsibility and to allow withdrawal of an undertaking and application of the duty by one single legal act. It is also necessary to ensure that the withdrawal procedure is terminated within a time limit of normally six months and in no case more than nine months in order to ensure a proper enforcement of the measure in force.

- (19) Recital 18 above applies, *mutatis mutandis*, to undertakings under Article 13 of the Basic Anti-subsidy Regulation.
- (20) Article 12(1) of the Basic Anti-Dumping Regulation indicates that reinvestigations pursuant to this article are initiated on the basis of evidence submitted by the Community industry. Other interested parties may equally have an interest in such reinvestigations which are aiming at correcting the effects of the absorption of the duty by the exporter. It is therefore necessary to amend this article in order to extend the possibility of requesting the initiation of anti-absorption investigations to any other interested party. It is also necessary, in order to assess whether absorption exists or not, to include into the notion of movement of prices the decrease of export prices since this is one of the possible situations in which, by lowering the price level on the Community market, the remedial effect of the measure may be undermined.
- (21) Recital 20 above applies, *mutatis mutandis*, to Article 19(3) of the Basic Anti-subsidy Regulation.
- (22) Moreover, it has to be clarified that the increase in the amount of the anti-dumping duty imposed following a reinvestigation pursuant to Article 12(2) of the Basic Anti-dumping Regulation has to be limited to the maximum amount that could have possibly been absorbed, which is the amount of the duty in force prior to that reinvestigation.
- (23) Given that Article 13(3) of the Basic Anti-Dumping regulation does not expressly mention the parties who have the right to request the initiation of anti-circumvention investigations, it is desirable to clarify which parties have this right.
- (24) Past experience has shown that it is also desirable to clarify which practices constitute circumvention of the measures in place. Circumvention practices may take place either inside or outside the Community. It is consequently necessary to provide that exemptions from the extended duties which may already be granted to importers under the current Basic Anti-dumping Regulation may also be granted to exporters when duties are being extended to address circumvention taking place outside the Community.
- (25) In order to ensure proper enforcement of measures, it is advisable to amend the terms of Article 19(6) of the Basic Anti-Dumping Regulation as regards the use of information gathered in the context of an investigation, for the purposes of initiating another investigation within the same proceeding.
- (26) Recitals 23 through 25 above apply, *mutatis mutandis*, to Articles 23 and 29(6) of the Basic Anti-subsidy Regulation.
- (27) In order to ensure a better enforcement of measures, it is necessary to provide, in a new paragraph of Article 14 of the Basic Anti-dumping Regulation, for the possibility for the Commission to request Member States to supply, subject to the respect of confidentiality rules contained in the Basic Regulations, information to be used for monitoring price undertakings and verifying the level of effectiveness of the measures in force. Similar provisions need also be introduced by a new paragraph within Article 24 of the Basic Anti-subsidy Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. Article 8(1) shall be replaced by the following:

“1. Upon condition that a provisional affirmative determination of dumping and injury has been made, the Commission may accept satisfactory voluntary undertaking offers submitted by any exporter to revise its prices or to cease exports at dumped prices, if, after consultation, it is satisfied that the injurious effect of the dumping is thereby eliminated. In such a case and as long as such undertakings are in force, the provisional duties imposed by the Commission in accordance with Article 7(1) or the definitive duties imposed by the Council in accordance with Article 9(4) as the case may be shall not apply to the relevant imports of the product concerned manufactured by the companies referred to in the Commission decision accepting undertakings, as subsequently amended. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping and they should be less than the margin of dumping if such increases would be adequate to remove the injury to the Community industry.”

2. Article 8(9) shall be replaced by the following:

“9. In case of breach or withdrawal of undertakings by any party to the undertaking, or in case of withdrawal of acceptance of the undertaking by the Commission, the acceptance of the undertaking shall, after consultation, be withdrawn by Commission Decision or Commission Regulation, as appropriate, and the provisional duty which has been imposed by the Commission in accordance with Article 7 or the definitive duty which has been imposed by the Council in accordance with Article 9(4) shall automatically apply, provided that the exporter concerned has, except where he himself has withdrawn the undertaking, been given an opportunity to comment.

Any interested party or Member State may submit information, showing *prima facie* evidence of a breach of an undertaking. The subsequent monitoring of whether or not a breach of an undertaking has occurred shall normally be concluded within six months, but in no case later than nine months following a duly substantiated request. The Commission may request the assistance of the competent authorities of the Member States in the monitoring of undertakings.”

3. Article 9(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 by the Council, acting on a proposal submitted by the Commission after consultation of the Advisory Committee. The proposal shall be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission. Where provisional duties are in force, a proposal for 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."

4. Article 12(1) shall be replaced by the following:

"1. Where the Community industry or any other interested party submit, within two years from the entry into force of the measures, sufficient information showing that, after the imposition of measures, export prices have decreased or that there has been no movement, or insufficient movement in the resale prices or subsequent selling prices of the imported product in the Community, the investigation may, after consultation, be reopened to examine whether the measure has had effects on the above mentioned prices.

The investigation may also be reopened, under the conditions set out above, at the initiative of the Commission or at the request of a Member State."

5. Article 12(2), last sentence, shall be replaced by the following:

"Where it is considered that the conditions of Article 12(1) are met due to a fall in export prices which has occurred prior to or following the imposition of measures, dumping margins may be recalculated to take account of such lower export prices.

6. Article 12(3) shall be replaced by the following:

"3. Where a reinvestigation pursuant to this Article shows increased dumping, the measures in force may, after consultation, be amended by the Council, acting on a proposal from the Commission in accordance with the new findings on export prices. The proposal shall be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission. The amount of the anti-dumping duty imposed pursuant to this Article shall not exceed twice the amount of the duty imposed initially by the Council."

7. Article 13(1) shall be replaced by the following:

"1. Anti-dumping duties imposed pursuant to this Regulation may be extended to imports from third countries, of the like product, whether slightly modified or not; or to imports of the slightly modified like product from the country subject to measures; or parts thereof, when circumvention of the measures in force is taking place. Anti-dumping duties not exceeding the residual anti-dumping duty imposed in accordance with Article 9(5) of this Regulation may be extended to imports from companies benefiting from individual duties in the countries subject to measures when circumvention of the measures in force is taking place. Circumvention shall be defined as a change in the pattern of trade between third countries and the Community or between individual companies in the country subject to measures and the Community, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product, and where there is evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of Article 2.

The practice, process or work referred to in paragraph 1 includes, *inter alia*, the slight modification of the product concerned to make it fall under customs codes which are normally not subject to the measures, provided that the modification does not alter its essential characteristics; the consignment of the product subject to measures via third countries; the reorganisation by exporters or producers of their patterns and channels of sales in the country subject to measures in order to eventually have their products exported to the Community through producers benefiting from an individual duty rate lower than that applicable to the products of the manufacturers; and, in the circumstances indicated below under article 13(2), the assembly of parts by an assembly operation in the Community or a third country."

8. Article 13(3) shall be replaced by the following:

"3. Investigations shall be initiated pursuant to this Article on the initiative of the Commission or at the request of a Member State or any interested party on the basis of sufficient evidence regarding the factors set out in paragraph 1. Initiations shall be made, after consultation of the Advisory Committee, by Commission Regulation which may 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 by the Council, acting on a proposal submitted by the Commission, after consultation of the Advisory Committee. The proposal shall be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission. 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."

9. Article 13(4) shall be replaced by the following:

"4. Imports shall not be subject to registration pursuant to Article 14(5) or measures where they are traded by companies which benefit from exemptions. Requests for exemptions duly supported by evidence shall be submitted within the time limits established in the Commission Regulation initiating the investigation. Where the circumventing practice, process or work takes place outside the Community, exemptions may be granted to producers of the product concerned that can show that they are not related to any producer subject to the measures and that are found not to be engaged in circumvention practices as defined in Article 13(1) and 13(2). Where the circumventing practice, process or work takes place inside the Community, exemptions may be granted to importers that can show that they are not related to producers subject to the measures.

These exemptions are granted by decision of the Commission after consultation of the Advisory Committee and shall remain valid for the period and under the conditions set down therein.

Provided that the conditions set in Article 11(4) are met, exemptions may also be granted after the conclusion of the investigation leading to the extension of the measures.

Provided that at least one year has lapsed from the extension of the measures, and in case the number of parties requesting or potentially requesting an exemption is significant, the Commission may decide to initiate a review of the extension of the measures. Any such review shall be conducted in accordance with the provisions of Article 11(5) as applicable to reviews pursuant to Article 11(3)."

10. Article 14(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, if the Council so decides, acting on a proposal from the Commission. The proposal shall be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission. 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."

11. A new Article 14(7) shall be inserted:

"7. Without prejudice to paragraph 6, the Commission may request Member States to supply information necessary to monitor efficiently the application of measures. In this respect, the provisions of Articles 6(3) and 6(4) shall apply. Any data submitted by Member States pursuant to this Article shall be covered by the provisions of Article 19(6)."

12. Article 15(2) shall be replaced by the following:

"2. The Committee shall meet when convened by its chairman. He shall provide the Member States, as promptly as possible, but no later than 10 working days before the meeting, with all relevant information."

13. Article 19(6) shall be replaced by the following:

"6. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested. This provision shall not preclude the use of information received in the context of one investigation for the purpose of initiating other investigations within the same proceeding concerning the same like product."

Article 2

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

1. Article 13(1) shall be replaced by the following:

“1. Upon condition that a provisional affirmative determination of subsidization and injury has been made, the Commission may accept satisfactory voluntary undertakings offers under which

(a) the country of origin and/or export agrees to eliminate or limit the subsidy or take other measures concerning its effects; or

(b) any exporter undertakes to revise its prices or to cease exports to the area in question as long as such exports benefit from countervailable subsidies, so that the Commission, after consultation, is satisfied that the injurious effect of the subsidies is thereby eliminated.

In such a case and as long as such undertakings are in force, the provisional duties imposed by the Commission in accordance with Article 12(3) and the definitive duties imposed by the Council in accordance with Article 15(1) shall not apply to the relevant imports of the product concerned manufactured by the companies referred to in the Commission decision accepting undertakings and in any subsequent amendment of such decision.

Price increases under such undertakings shall not be higher than is necessary to offset the amount of countervailable subsidies, and should be less than the amount of countervailable subsidies if such increases would be adequate to remove the injury to the Community industry.”

2. Article 13(9) shall be replaced by the following:

“9. In case of breach or withdrawal of undertakings by any party to the undertaking, or in case of withdrawal of acceptance of the undertaking by the Commission, the acceptance of the undertaking shall, after Consultation, be withdrawn by Commission Decision or Commission Regulation, as appropriate, and the provisional duty which has been imposed by the Commission in accordance with Article 12 or the definitive duty which has been imposed by the Council in accordance with Article 15(1), shall apply, provided that the exporter concerned, or the country of origin and/or export has, except in the case of withdrawal of the undertaking by the exporter or such country, been given an opportunity to comment.

Any interested party or Member State may submit information, showing *prima facie* evidence of a breach of an undertaking. The subsequent monitoring of whether or not a breach of an undertaking has occurred shall normally be concluded within six months, but in no case later than nine months following a duly substantiated request. The Commission may request the assistance of the competent authorities of the Member States in the monitoring of undertakings.”

3. Article 15(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 by the Council, acting on a proposal submitted by the Commission after consultation of the Advisory Committee. The proposal shall be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission. Where provisional duties are in force, a proposal 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."

4. Article 19(3) shall be replaced by the following :

"3. Where the countervailing duties imposed are less than the amount of countervailable subsidies found, an interim review may be initiated if the Community producers or any other interested party submit, within two years from the entry into force of the measures, sufficient evidence that, after the imposition of measures, export prices have decreased or that there has been no movement, or insufficient movement of resale prices of the imported product in the Community. If the investigation proves the allegations to be correct, countervailing duties may be increased to achieve the price increase required to remove injury; however, the increased duty level shall not exceed the amount of the countervailable subsidies.

The interim review may also be initiated, under the conditions set out above, at the initiative of the Commission or at the request of a Member State."

5. Article 23(1) shall be replaced by the following:

"1. Countervailing duties imposed pursuant to this Regulation may be extended to imports from third countries, of the like product, whether slightly modified or not; or to imports of the slightly modified like product from the country subject to measures; or parts thereof, when circumvention of the measures in force is taking place. Countervailing duties not exceeding the residual countervailing duty imposed in accordance with Article 15(2) of this Regulation may be extended to imports from companies benefiting from individual duties in the countries subject to measures when circumvention of the measures in force is taking place. Circumvention shall be defined as a change in the pattern of trade between third countries and the Community or between individual companies in the country subject to measures and the Community, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product and that the imported like product and/or parts thereof still benefit from the subsidy.

The practice, process or work referred to in paragraph 1 includes, *inter alia*, the slight modification of the product concerned to make it fall under customs codes which are normally not subject to the measures, provided that the modification does not alter its essential characteristics; the consignment of the product subject to measures via third countries; and the reorganisation by exporters or producers of their patterns and channels of sales in the country subject to measures in order to eventually have their products exported to the Community through producers benefiting from an individual duty rate lower than that applicable to the products of the manufacturers."

6. Article 23(2) shall be replaced by the following:

"2. Investigations shall be initiated pursuant to this Article on the initiative of the Commission or at the request of a Member State or of any interested party on the basis of sufficient evidence regarding the factors set out in paragraph 1. Initiations shall be made, after consultation of the Advisory Committee, by Commission Regulation which may 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 by the Council, acting on a proposal submitted by the Commission after consultation of the Advisory Committee. The proposal shall be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission. 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.

Imports shall not be subject to registration pursuant to Article 24(5) or measures where they are traded by companies which benefit from exemptions. Requests for exemptions duly supported by evidence shall be submitted within the time limits established in the Commission Regulation initiating the investigation. Where the circumventing practice, process or work takes place outside the Community, exemptions may be granted to producers of the product concerned that can show that they are not related to any producer subject to the measures and that are found not to be engaged in circumvention practices as defined in Article 23(1). Where the circumventing practice, process or work takes place inside the Community, exemptions may be granted to importers that can show that they are not related to producers subject to the measures.

These exemptions are granted by decision of the Commission after consultation of the Advisory Committee and shall remain valid for the period and under the conditions set down therein.

Provided that the conditions set in Article 20 are met, exemptions may also be granted after the conclusion of the investigation leading to the extension of the measures.

Provided that at least one year has lapsed from the extension of the measures, and in case the number of parties requesting or potentially requesting an exemption is significant, the Commission may decide to initiate a review of the extension of the measures. Any such review shall be conducted in accordance with the provisions of Article 22(1) as applicable to reviews under Article 19."

7. Article 24(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, if the Council so decides, acting on a proposal from the Commission. The proposal shall be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission. 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."

8. A new Article 24(7) shall be inserted:

"7. Without prejudice to paragraph 6, the Commission may request Member States to supply information necessary to monitor efficiently the application of measures. In this respect, the provisions of Articles 11(3) and 11(4) shall apply. Any data submitted by Member States pursuant to this Article shall be covered by the provisions of Article 29(6)."

9. Article 25(2) shall be replaced by the following:

"2. The Committee shall meet when convened by its chairman. He shall provide the Member States, as promptly as possible, but no later than 10 working days before the meeting, with all relevant information."

10. Article 29(6) shall be replaced by the following:

"6. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested. This provision shall not preclude the use of information received in the context of one investigation for the purpose of initiating other investigations within the same proceeding concerning the same like product."

Article 3

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

1. Article 11(5) shall be replaced by the following:

"5. The relevant provisions of this Regulation with regard to procedures and the conduct of investigations, excluding those relating to time limits, shall apply to any review carried out pursuant to paragraphs 2, 3 and 4 of this Article. Reviews carried out pursuant to paragraphs 2 and 3 shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review. In any event, reviews pursuant to paragraphs 2 and 3 shall in all cases be concluded within 15 months of initiation. Reviews pursuant to paragraph 4 shall in all cases be concluded within 9 months of the date of initiation. If a review carried out pursuant to paragraph 2 is initiated while a review under paragraph 3 is ongoing in the same proceeding, the review pursuant to paragraph 3 shall be concluded at the same time as foreseen above for the review pursuant to paragraph 2.

The Commission shall submit a proposal for action to the Council not later than one month before the expiry of the above deadlines.

If the investigation is not completed within the above deadlines, the measures shall expire in investigations pursuant to paragraph 2 of this Article or remain unchanged in investigations pursuant to paragraphs 3 and 4 of this Article. A notice announcing the actual expiry or maintenance of the measures pursuant to this paragraph shall then be published in the *Official Journal of the European Union*."

2. Article 12(4) shall be replaced by the following:

"4. The relevant provisions of Article 5 and 6 shall apply to any reinvestigation carried out pursuant to this Article, except that such reinvestigation shall be carried out expeditiously and shall normally be concluded within six months of the date of initiation of the reinvestigation. In any event, such reinvestigations shall in all cases be concluded within 9 months of initiation of the reinvestigation.

The Commission shall submit a proposal for action to the Council not later than one month before the expiry of the above deadline.

If the reinvestigation is not completed within the above deadlines, measures shall remain unchanged. A notice announcing the maintenance of the measures pursuant to this paragraph shall be published in the *Official Journal of the European Union*."

Article 4

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

Article 22(1) shall be replaced by the following:

"1. The relevant provisions of this Regulation with regard to procedures and the conduct of investigations, excluding those relating to time limits, shall apply to any review carried out pursuant to Article 18, 19 and 20. Reviews carried out pursuant to Articles 18 and 19 shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review. In any event, reviews pursuant to Article 18 and 19 shall in all cases be concluded within 15 months of initiation. Reviews pursuant to Article 20 shall in all cases be concluded within 9 months of the date of initiation. If a review carried out pursuant to Article 18 is initiated while a review under Article 19 is ongoing in the same proceeding, the review pursuant to Article 19 shall be concluded at the same time as foreseen above for the review pursuant to Article 18.

The Commission shall submit a proposal for action to the Council not later than one month before the expiry of the above deadlines.

If the investigation is not completed within the above deadlines, the measures shall expire in investigations pursuant to Article 18 or remain unchanged in investigations pursuant to Articles 19 and 20. A notice announcing the actual expiry or maintenance of the measures pursuant to this paragraph shall be published in the *Official Journal of the European Union*."

Article 5

This Regulation shall apply to all investigations initiated pursuant to Regulation (EC) No 384/96 and Regulation (EC) No 2026/97 after the entry into force of this Regulation with the exception of

- Articles 1(3), (6), (8), (10), (12) and 2(3), (6), (7) and (9) of this Regulation which shall apply also to pending investigations

And

- Articles 3 and 4 of this Regulation which shall only apply two years after the entry into force of this Regulation to investigations initiated pursuant to Articles 11(3), 11(4) and 12 of Regulation (EC) No 384/96 and Articles 19 and 20 of Regulation (EC) No 2026/97.

Article 6

This Regulation shall enter into force on the 7th 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 Brussels,

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

Policy area(s): External trade relations, including access to markets of non-Community countries

Activit(y/ies): anti-dumping and anti-subsidy investigations

TITLE OF ACTION: AMENDMENT TO 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

1. BUDGET LINE(S) + HEADING(S)

20.01.01.01 Expenditure related to staff in active employment of Policy area Trade

20.01.02.11 Other management expenditure of DG Trade

2. OVERALL FIGURES

2.1. Total allocation for action (Part B): € million for commitment

Not applicable

2.2. Period of application:

The proposed expenditure is foreseen to be of unlimited duration.

2.3. Overall multiannual estimate of expenditure:

(a) Schedule of commitment appropriations/payment appropriations (financial intervention) *(see point 6.1.1)*

Not applicable

€ million *(to three decimal places)*

	Year [n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5 and subs. Years]	Total
Commitments							
Payments							

- (b) Technical and administrative assistance and support expenditure *(see point 6.1.2)*

Not applicable

Commitments							
Payments							

Not applicable

Subtotal a+b							
Commitments							
Payments							

- (c) Overall financial impact of human resources and other administrative expenditure *(see points 7.2 and 7.3)*

€ million *(to three decimal places)*

	2004	2005	2006	2007	2008	2009 and subs. Years	Total
Commitments/ payments	0	0,575	1,150	1,725	1,725	1,725/ year	

TOTAL a+b+c							
Commitments	0	0,575	1,150	1,725	1,725	1,725/ year	
Payments	0	0,575	1,150	1,725	1,725	1,725/ year	

2.4. Compatibility with financial programming and financial perspective

☒ [X] Proposal is compatible with existing financial programming.

☐ [] Proposal will entail reprogramming of the relevant heading in the financial perspective.

Proposal may require application of the provisions of the Interinstitutional Agreement.

2.5. Financial impact on revenue:⁴

[X] Proposal has no financial implications (involves technical aspects regarding implementation of a measure).

The financial revenue depends on the level of AD or AS measures which in turn is governed by the substantive law contained in the two above-mentioned Regulations. The proposal does not affect the substantive provisions but only changes the procedural provisions.

OR

Proposal has financial impact – the effect on revenue is as follows:

(NB All details and observations relating to the method of calculating the effect on revenue should be shown in a separate annex.)

(€ million to one decimal place)

Budget line	Revenue	Prior to action [Year n-1]	Situation following action					
			[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5]
	a) Revenue in absolute terms							
	b) Change in revenue	Δ						

(Please specify each budget line involved, adding the appropriate number of rows to the table if there is an effect on more than one budget line.)

3. BUDGET CHARACTERISTICS

Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
Non-comp	Non Diff	NO	NO	NO	No 5

4. LEGAL BASIS

Article 133 of the Treaty

Council Regulation (EC) No 384/96

Council Regulation (EC) No 2026/97

Proposal for an amendment to Council Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community and Council

⁴ For further information, see separate explanatory note.

Regulation (EC) No 2026/97 on protection against subsidized imports from countries not members of the European Community

5. DESCRIPTION AND GROUNDS

5.1. Need for Community intervention ⁵

5.1.1. Objectives pursued

Introduction of mandatory time limits for the completion of review investigations.

The introduction of mandatory time limits in reviews is an essential part of the set of amendments which complements the amendments contained in the original Commission proposal concerning the way decisions are made by Member States in the area of anti-dumping and anti-subsidy. Indeed, this has been a long-standing request by a large number of Member States. The introduction of deadlines would therefore be considered as an integral part of the overall "package" which ensures a balance between the different aspects covered by the various amendments.

Under the present Basic anti-dumping Regulation, new investigations are subject to a mandatory time limit of 15 months (13 months for the Anti-subsidy Basic Regulation). By contrast, the current 12 month deadline for review investigations is not mandatory but merely indicative. Experience gained since the entry into force of the Basic Regulations show that, in the absence of mandatory deadlines and the necessary human resources, it is very difficult to respect the above mentioned normal deadline of 12 months. In particular, the absence of strict deadlines makes it difficult to oblige interested parties to respect procedural requirements. As a result, reviews have often lasted longer than the normal timeframe.

Pending the conclusion of expiry review investigations, the measures under review continue to remain in force. Consequently, unusually lengthy review investigations may undermine legal certainty and cause adverse effects to interested parties.

The only solution to this problem is to introduce mandatory time limits for the completion of the review investigations. It is therefore proposed to introduce a mandatory deadline of 15 months for completion of interim and expiry review investigations, while maintaining the existing indicative timetable of 12 months. For newcomer and anti-absorption review investigations, a mandatory time limit of 9 months is proposed. These deadlines are considered to be the adequate amount of time necessary to complete the various review investigations, giving due account to the relative complexity of each different type of review investigation.

5.1.2. Measures taken in connection with ex ante evaluation

(This involves:

⁵ For further information, see separate explanatory note.

- (a) *explaining how and when the ex ante evaluation was conducted (author, timing and where the report(s) is/are available) or how the corresponding information was gathered;*⁶
- (b) *describing briefly the findings and lessons learnt from the ex ante evaluation.)*

Following the presentation of the "19th Annual Report from the Commission to the European Parliament on anti-dumping and anti-subsidy activities", the European Parliament, on its own initiative, adopted in October 2002 a report prepared by MEP Michel Hansenne (Ref. A5-0323/2002, PE 316-244). In this report, the EP suggested a number of improvements to current practices, such as, *inter alia*, the introduction of deadlines in reviews. In this respect, the EP is of the opinion that the means should be granted to the Commission in order to commensurate to the needs deriving from this (anticipated increase of workload).

Furthermore, the Member States - through the Anti-dumping/Anti-subsidy Advisory Committee and the Council Commercial Questions Group - have insisted at several occasions on the shortening of the investigation periods in reviews.

The Commission has studied this proposal and now submits a proposal for a Council Regulation which deals with this question. Moreover, it continued to stress the need to assess the effect on its resources.

5.1.3. *Measures taken following ex post evaluation*

(Where a programme is being renewed the lessons to be learned from an interim or ex post evaluation should also be described briefly.)

Not applicable

5.2. **Action envisaged and budget intervention arrangements**

(This point should describe the logic behind the proposal. It should specify the main actions to achieve the general objective. Each action should have one or more specific objectives. These should indicate the progress expected over the proposed period. They should also look beyond immediate outputs but be sufficiently precise to allow concrete results to be identified. Specify for each main action:

- *the target population(s) (specify number of beneficiaries if possible);*

The Community producers, importers, users and traders, as well as the third country producers and exporters, will benefit from the consequences of setting mandatory deadlines in reviews. All these parties have voiced concern in the past related to the time it takes to conclude investigations and have highlighted that the uncertainty related to it is detrimental to their activities.

- *the specific objectives set for the programming period (in measurable terms);*

Based on the objectives set out under point 5.1.1., the introduction of mandatory deadlines in reviews has the following specific objectives :

⁶ For minimum information requirements relating to new initiatives, see SEC 2000 (1051)

- increase transparency of trade defence instruments
- increase effectiveness of the instrument
- avoid to cause adverse economic effects to interested parties

– *the concrete measures to be taken to implement the action ;*

In order to deal with the resulting additional workload following the setting of deadlines in reviews, it is required that additional human resources be foreseen. The number of additional casehandlers needed to cope with the additional workload involved in setting out a 15-month deadline for interim and expiry reviews is 14 (7 A and 7 B), in addition to a C post for secretarial support tasks.

This figure has been calculated on the basis of the number and type of currently ongoing new cases and reviews, the number of currently available case-handlers and the average length of reviews in recent years.

In measurable terms : interim and expiry review investigations account for 69% of the total investigation months, resulting in 53 casehandlers dealing exclusively with those reviews. In view of coping with the shorter deadlines proposed (from an average of 19 months to the proposed 15 months), an additional 14 casehandlers should be added to the existing 53. Note that this calculation reflects the situation on 31 October 2003. The result was cross-checked by making the same calculation for the situation on 31 December 1998, 1999, 2000, 2001 and 2002. All these calculations have indeed fully backed up the number of necessary additional staff as the relative importance of these types of investigations in DG Trade's workload has also been confirmed.

The application of deadlines for reviews will be phased in by a 2-step approach. Together with the entry into force of the amendments, all new expiry review investigations will be subject to mandatory deadlines. 2 years after the entry into force of the amendments, also interim reviews will become subject to deadlines. In other words, the additional workload resulting from the introduction of deadlines will be gradually building up. Hence also the proposal to receive the additional staff in 3 "instalments" of an additional 5 posts per year for 3 years. As far as 2004 is concerned, it will be possible to cope with existing staff. This reflects the fact that the additional workload foreseen for 2004 is limited, given that a considerable part of the reviews which will be processed in that year will have had an initiation date prior to the entry into force of the amendments. Note that an expiry review initiated for instance in October 2003 will normally have been concluded in April 2005. Obviously, as time goes on, more and more expiry reviews and from 2006 onwards also interim reviews will be subject to strict deadlines and therefore, the additional staff resources are needed gradually over the aforementioned 3 year period.

	2004	2005	2006	2007
Number of additional staff	0	5	5	5

For information, the number of cases for which an expiry review under articles 11(2) or 18 might be requested is 23 in 2004 and 64 for 2005.

Furthermore, a complementary budget will be needed to cope with the extra missions during a certain timeframe (until now, missions could be re-scheduled to fall under the budget of the following year as there were no deadlines to deal with).

DG Trade has opted both for the 2 step approach (i.e. gradual phasing in of mandatory deadlines) as well as for the request of additional staff in order to absolutely ensure that mandatory deadlines are respected once they are in place. Indeed, the non-respect by the Commission of these deadlines would have serious consequences, both for economic operators and for the Commission. In the case of expiry reviews, existing AD/AS measures would automatically expire. Thus, the Community industry would no longer be protected by AS/AD duties although it would be entitled to such measures. This in turn would make the Commission legally liable (payment of damages, claims of maladministration). In the case of interim reviews, the measures would remain unchanged if the deadline is not met. This in turn could have e.g. as a consequence that exporters and importers are still subject to AD/AS duties although such duties should have been lowered or repealed on the basis of the information submitted in the interim review. Again, the adverse financial consequences for exporters and importers of such a failure are quite obvious, as is the Commission's liability resulting therefrom.

- *the immediate outputs of each action; and*

Reviews under articles 11(2) and 18 of the Basic anti-dumping and anti-subsidy regulations will immediately fall under the provisions of the proposal, including pending investigations. In measurable terms, this means that for 2004, 23 AD/AS cases could be subject to a request for such review.

- *the contribution of these outputs to the expected outcomes in terms of satisfying needs or solving problems*

The output described above will directly satisfy the objective of the amendment to the Basic Regulations.

Information should also be given on the budget intervention arrangements (rate and form of the required financial assistance).)

5.3. Methods of implementation

(Specify the methods to be used to implement the planned actions: direct management by the Commission using either regular or outside staff or by externalisation. In the latter case, give details of the arrangements envisaged for this externalisation (TAO, Agencies, Offices, decentralised executive units, management shared with Member States - national, regional and local authorities.)

Indicate the effect of the externalisation model chosen on the financial intervention, management and support resources and on human resources (seconded officials, etc.).)

Under Article 133 of the Treaty, the Community has exclusive competence for commercial policy, and in particular for the trade defence instruments. The Community Institutions will be responsible for the implementation and management of the proposed regulation.

As the investigations carried out by the Commission are "confidential" and of a quasi-judicial nature, the work must be carried out by regular staff (officials, END, ..).

As far as confidentiality is concerned, 2 aspects have to be underlined. First of all, AD and AS decisions are market sensitive in that any leaks about their precise date of adoption would in particular give to exporters in 3rd countries and importers in the Community the opportunity to engage in adverse short-term operations undermining the efficiency of such measures. Secondly, and perhaps even more importantly, in all AD/AS investigations, information of a highly sensitive nature is routinely collected. This information covers the core business data of the economic operators affected (comprehensive transaction-by transaction sales listings, cost of production broken down to individual product types, sales channels, sourcing patterns, etc.). Unauthorized release of this type of information would directly engage the financial liability of the Commission.

As far as the quasi-judicial nature is concerned, it should be noted that the investigations in questions affect normally a fairly high number of parties with adverse interests. All these parties enjoy a number of procedural rights which are not only imposed on the Institution by reason of the Treaty, but also by WTO obligations. Many of these procedural rights govern in detail the complex information collection process. Thus, not only the final conclusions reached in such investigations, but also the numerous preceding steps are ruled by various legal rules.

6. FINANCIAL IMPACT

6.1. Total financial impact on Part B - (over the entire programming period)

(The method of calculating the total amounts set out in the table below must be explained by the breakdown in Table 6.2.)

6.1.1. Financial intervention

Not applicable

Commitments (in € million to three decimal places)

Breakdown	[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5 and subs. Years]	Total
Action 1							
Action 2							
etc.							
TOTAL							

6.1.2. *Technical and administrative assistance, support expenditure and IT expenditure (commitment appropriations)*

Not applicable

	[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5 and subs. years]	Total
1) Technical and administrative assistance							
a) Technical assistance offices							
b) Other technical and administrative assistance: - intra muros: - extra muros: <i>of which for construction and maintenance of computerised management systems</i>							
Subtotal 1							
2) Support expenditure							
a) Studies							
b) Meetings of experts							
c) Information and publications							
Subtotal 2							
TOTAL							

6.2. Calculation of costs by measure envisaged in Part B (over the entire programming period)⁷

Not applicable

(Where there is more than one action, give sufficient detail of the specific measures to be taken for each one to allow the volume and costs of the outputs to be estimated.)

Commitments (in € million to three decimal places)

Breakdown	Type of outputs (projects, files)	Number of outputs (total for years 1...n)	Average unit cost	Total cost (total for years 1...n)
	1	2	3	4=(2X3)
<u>Action 1</u>				
- Measure 1				
- Measure 2				
<u>Action 2</u>				
- Measure 1				
- Measure 2				
- Measure 3				
etc.				
TOTAL COST				

If necessary explain the method of calculation

⁷

For further information, see separate explanatory note.

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

7.1. Impact on human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources		Total	Description of tasks deriving from the action
		Number of permanent posts	Number of temporary posts		
Officials or temporary staff	A	7		7	<i>Casehandlers to carry out AD and AS investigations (A and B) + secretarial support (C).</i>
	B	7		7	
	C	1		1	
Other human resources					
Total					

The needs for human and administrative resources shall be covered within the allocation granted to the managing DG in the framework of the annual allocation procedure.

7.2. Overall financial impact of human resources

Type of human resources	Amount (€)	Method of calculation *
Officials Temporary staff	540.000 in 2005 1.080.000 in 2006 1.620.000 from 2007 onwards	15 staff at an average of € 108.000 per staff member per year
Other human resources (specify budget line)		
Total		

The amounts are total expenditure for twelve months.

7.3. Other administrative expenditure deriving from the action

Budget line (number and heading)	Amount €	Method of calculation
Overall allocation (Title A7) A0701 – Missions A07030 – Meetings A07031 – Compulsory committees ¹ A07032 – Non-compulsory committees ¹ A07040 – Conferences A0705 – Studies and consultations Other expenditure (specify)	± 7.000/person/year (= 2005 : 35.000; 2006 : 70.000; 2007 : 105.000)	Budget 2003 of the investigating teams divided by no of A/B officials in place, times 5 for 2005.
Information systems (A-5001/A-4300)		
Other expenditure - Part A (specify)		
Total		

The amounts are total expenditure for twelve months.

¹ Specify the type of committee and the group to which it belongs.

I.	Annual total (7.2 + 7.3)	€ 1.725.000 from 2007 onwards (575.000 and 1.150.000 in 2005 and 2006 respectively)
II.	Duration of action	unlimited
III.	Total cost of action (I x II)	Not applicable

(In the estimate of human and administrative resources required for the action, DGs/Services must take into account the decisions taken by the Commission in its orientation/APS debate and when adopting the preliminary draft budget (PDB). This means that DGs must show that human resources can be covered by the indicative pre-allocation made when the PDB was adopted.

Exceptional cases (i.e. those where the action concerned could not be foreseen when the PDB was being prepared) will have to be referred to the Commission for a decision on whether and how (by means of an amendment of the indicative pre-allocation, an ad hoc redeployment exercise, a supplementary/amending budget or a letter of amendment to the draft budget) implementation of the proposed action can be accommodated.)

The requirement for additional staff could not be foreseen. Indeed, at the origin of the proposals to change the above-mentioned Regulation was the need, as evidenced by a number of events in March 2003, to improve the decision making process within the Council and thus safeguard the effectiveness, credibility and transparency of this important Community activity. However, Member States took this opportunity to insist also on a number of other changes which would enhance would effectiveness, credibility and transparency. By doing so, they addressed concerns which had already before been voiced by economic operators and by the European Parliament.

8. FOLLOW-UP AND EVALUATION

8.1. Follow-up arrangements

(Adequate follow-up information must be collected, from the start of each action, on the inputs, outputs and results of the intervention. In practice this means (i) identifying the indicators for inputs, outputs and results and (ii) putting in place methods for the collection of data).

Not applicable

8.2. Arrangements and schedule for the planned evaluation

(Describe the planned schedule and arrangements for interim and ex post evaluations to be carried out in order to assess whether the intervention has achieved the objectives set. In the case of multiannual programmes, at least one thorough evaluation in the life cycle of the programme is needed. For other activities ex post or mid-term evaluations should be carried out at intervals not exceeding six years.)

Not applicable

9. ANTI-FRAUD MEASURES

(Article 3(4) of the Financial Regulation: "In order to prevent risk of fraud or irregularity, the Commission shall record in the financial statement any information regarding existing and planned fraud prevention and protection measures.")

Not applicable