COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.11.2005
COM(2005) 623 final

2005/0243 (ACC)

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

Ukraine completed a reform process aiming at functioning according to market economy rules and should thus now be granted market economy status (MES) for the purpose of anti-dumping investigations. This requires an amendment of Council Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community (the 'Basic Anti-Dumping Regulation').

- **General context**

Ukraine lodged its documented request to the European Union for graduation to MES for the purpose of trade defence investigations in May 2002.

Ukraine's request was examined in the light of the following cumulative criteria, which seem pertinent in order to assess whether a country as a whole can be treated as a market economy country for the purpose of anti-dumping investigations:

1. Low degree of government influence over the allocation of resources and decisions of enterprises, whether directly or indirectly (e.g. public bodies), for example through the use of State-fixed prices, or discrimination in the tax, trade or currency regimes.

2. Absence of State-induced distortions in the operation of enterprises linked to privatisation (i.e. "carry over" from the old system). Absence of use of non-market trading or compensation systems (such as barter trade).

3. Existence and implementation of a transparent and non-discriminatory company law which ensures adequate corporate governance (application of international accounting standards, protection of shareholders, public availability of accurate company information).

4. Existence and implementation of a coherent, effective and transparent set of laws which ensure the respect of property rights and the operation of a functioning bankruptcy regime.

5. Existence of a genuine financial sector which operates independently from the State and which in law and practice is subject to sufficient guarantee provisions and adequate supervision.

In order to determine whether Ukraine fulfilled these criteria, the Commission services examined the information provided by the Ukrainian authorities and compared it also with information obtained from a number of authoritative external sources (OECD, IMF, EBRD, World Bank etc.) as well as from its own anti-dumping investigations involving Ukrainian exports.

In March 2003 the Commission issued its preliminary assessment of Ukraine's MES request, concluding that, despite progress, the five MES criteria had not been met. The Ukrainian authorities were thus requested to implement certain actions and provide additional information in respect of all five criteria. In a new assessment issued in May 2004, the Commission concluded that three of the criteria could be considered as

solved, and that only two areas remained where further progress and/or respectively further information was needed in order for Ukraine to be graduated to MES: bankruptcy legislation and price interference by the State. After Ukraine has taken further steps to improve its bankruptcy legislation and to solve the issue of price interference by the State, the Commission now considers that Ukraine fulfils all the criteria in order to be granted MES for the purpose of trade defence investigations.

- **Existing provisions in the area of the proposal**

Council Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community.

- **Consistency with the other policies and objectives of the Union**

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

The Commission informed the industry and consulted Member States in the relevant trade committees about the proposed amendments.

Summary of responses and how they have been taken into account

The Commission has considered the comments and suggestions received.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The MES graduation of Ukraine will trigger a change in the methodology used to establish the dumping margin for Ukrainian exporters subject to anti-dumping investigations. This change is automatic whenever a third country is being granted MES.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

It is proposed to remove Ukraine from the list of economies in transition in the Basic Anti-Dumping Regulation.

- **Legal basis**

Treaty establishing the European Community, and in particular Article 133.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

The Basic Anti-Dumping Regulation foresees a form of action which does not leave scope for national decision. The proposed amendment does not change anything in that respect.

An indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable as the proposal does not entail any financial or administrative burdens.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason: the current proposal is an amendment of an existing Regulation.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

2005/0243 (ACC)

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

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[1],

Whereas:

(1) By Regulation (EC) No 384/96[2] (the 'Basic Anti-Dumping Regulation') the Council adopted common rules for protection against dumped imports from countries which are not members of the European Communities.

(2) In view of the very significant progress made by Ukraine towards the establishment of market economy conditions, as recognised by the conclusions of the Ukraine-European Union Summit on 1 December 2005, it is appropriate to allow normal value for Ukrainian exporters and producers to be established in accordance with the provisions of Article 2(1) to (6) of the Basic Anti-dumping Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

In Regulation (EC) No 384/96, as last amended by Regulation (EC) No 461/2004, in the first sentence of paragraph (b) of Article 2(7), the term “the Ukraine” is deleted.

Article 2

This Regulation shall apply to all investigations initiated pursuant to Regulation (EC) No 384/96 after the date of entry into force of this Regulation on the basis of an application for initiation lodged after such date.

---

1 OJ C , , p. .

2 OJ L 56, 6.3.1996, p. 1. Regulation last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

Article 3

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