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Contents

I *Legislative acts*

REGULATIONS

- ★ **Regulation (EU) No 765/2012 of the European Parliament and of the Council of 13 June 2012 amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community** 1

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I

(Legislative acts)

REGULATIONS

REGULATION (EU) No 765/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 13 June 2012****amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure ⁽¹⁾,

Whereas:

(1) On 28 July 2011, the Dispute Settlement Body ('DSB') of the World Trade Organisation ('WTO') adopted the Appellate Body Report and the Panel Report as modified by the Appellate Body Report ('the Reports') in the dispute 'European Communities — Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China' ⁽²⁾.

(2) In the Reports, it was found, inter alia, that Article 9(5) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽³⁾ ('Basic Anti-Dumping Regulation') was inconsistent with Articles 6.10, 9.2 and 18.4 of the WTO Anti-Dumping Agreement and Article XVI:4 of the WTO Agreement. Article 9(5) of the Basic Anti-Dumping Regulation provides that individual exporting producers in non-market economy countries which do

not receive market economy treatment pursuant to point (c) of Article 2(7) of the Basic Anti-Dumping Regulation will be subject to a countrywide duty rate unless such exporters can demonstrate that they meet the conditions for individual treatment ('IT') set out in Article 9(5) of the Basic Anti-Dumping Regulation.

(3) The Appellate Body found that Article 9(5) of the Basic Anti-Dumping Regulation establishes a presumption that exporting producers operating in non-market economy countries are not entitled to IT and that in order to qualify for IT, the onus is on them to demonstrate that they satisfy the criteria of the IT test. According to the Appellate Body, no legal basis for such a presumption is provided for in the relevant WTO agreements.

(4) However, the Appellate Body clarified that, when determining a single dumping margin and a single anti-dumping duty for a number of exporters, the consistency of that determination with Articles 6.10 and 9.2 of the WTO Anti-Dumping Agreement will depend on the existence of situations indicating that two or more exporters, albeit legally distinct, are in such a relationship that they should be treated as a single entity. Such situations may include: (i) the existence of corporate and structural links between the exporters, such as common control, shareholding and management; (ii) the existence of corporate and structural links between the State and the exporters, such as common control, shareholding and management; and (iii) control or material influence by the State in respect of pricing and output. In this regard, the terms in the proposed amendments to Article 9(5) of the Basic Anti-Dumping Regulation reflecting these situations should be read in the light of the Appellate Body's clarifications without prejudice to terms using the same or a similar wording in other provisions of the Basic Anti-Dumping Regulation.

(5) On 18 August 2011, the Union notified the DSB that it intends to implement the recommendations and rulings of the DSB in this dispute in a manner that respects its WTO obligations.

⁽¹⁾ Position of the European Parliament of 10 May 2012 (not yet published in the Official Journal) and decision of the Council of 30 May 2012.

⁽²⁾ WTO, Report of the Appellate Body, AB-2011-2, WT/DS397/AB/R, 15 July 2011. WTO, Report of the Panel, WT/DS397/R, 3 December 2010.

⁽³⁾ OJ L 343, 22.12.2009, p. 51.

- (6) For that purpose, it is necessary to amend the provisions of Article 9(5) of the Basic Anti-Dumping Regulation,

HAVE ADOPTED THIS REGULATION:

Article 1

Article 9(5) of Regulation (EC) No 1225/2009 is replaced by the following:

‘5. An anti-dumping duty shall be imposed in the appropriate amounts in each case, on a non-discriminatory basis on imports of a product from all sources found to be dumped and causing injury, except for imports from those sources from which undertakings under the terms of this Regulation have been accepted.

The Regulation imposing anti-dumping measures shall specify the duty for each supplier or, if that is impracticable, the

supplying country concerned. Suppliers which are legally distinct from other suppliers or which are legally distinct from the State may nevertheless be considered as a single entity for the purpose of specifying the duty. For the application of this subparagraph, account may be taken of factors such as the existence of structural or corporate links between the suppliers and the State or between suppliers, control or material influence by the State in respect of pricing and output, or the economic structure of the supplying country.’.

Article 2

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

It shall apply to all investigations initiated pursuant to Regulation (EC) No 1225/2009 following the entry into force of this Regulation.

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

Done at Strasbourg, 13 June 2012.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

N. WAMMEN

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