COUNCIL REGULATION (EC) No 1973/2002

of 5 November 2002

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) By Regulation (EC) No 2026/97 [1], the Council adopted common rules for protection against subsidised imports from countries which are not members of the European Community.

(2) Article 6 of Regulation (EC) No 2026/97 sets forth certain guidelines for the calculation of the benefit to the recipient, including the market benchmark against which the amount of benefit is measured. It is prudent to provide for a clarification as to what rules should be followed in cases where a market benchmark does not exist in the country concerned. In such a situation the benchmark should be determined by adjusting the terms and conditions prevailing in the country concerned on the basis of actual factors available in that country. If this is not practicable because, *inter alia*, such prices or costs do no exist or are unreliable, then the appropriate benchmark should be determined by resorting to terms and conditions in other markets.

(3) Article 4 of Regulation (EC) No 2026/97 provides that certain subsidies for environment, research and regional development are non-countervailable. Furthermore, Article 10(5) and (6) of that Regulation state that investigations may be initiated in order to determine whether subsidies have such non-countervailable status, and that investigations are not to be initiated if they relate to certain non-countervailable subsidies. The corresponding provisions in the WTO Agreement on Subsidies and Countervailing Measures were due to expire on 31 December 1999 unless the Members of the WTO decided otherwise. No such decision has been taken and therefore the relevant provisions do not apply anymore. Accordingly, it is necessary to assess whether the provisions on non-countervailable subsidies in Regulation (EC) No 2026/97 should be maintained. In this respect, major trading partners of the Community no longer apply these provisions in their countervailing investigations. In view of this, and in order to maintain the balance of rights and obligations under the said WTO Agreement, it is considered appropriate to repeal the provisions of Regulation (EC) No 2026/97 relating to non-countervailable subsidies.

(4) Article 28(5) of Regulation (EC) No 2026/97 specifies that, in case of use of facts available, the information used are to be checked by reference to information from a number of sources. It is considered useful to specify that such sources can, where appropriate, also pertain to data concerning the world market or other representative markets.

(5) It is considered appropriate in the interests of legal certainty to provide that these amendments should apply as soon as possible to all new investigations,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. In Article 6(d), the following text shall be added:

   'If there are no such prevailing market terms and conditions for the product or service in question in the country of provision or purchase which can be used as appropriate benchmarks, the following rules shall apply:

   (i) the terms and conditions prevailing in the country concerned shall be adjusted, on the basis of actual costs, prices and other factors available in that country, by an appropriate amount which reflects normal market terms and conditions; or

   (ii) when appropriate, the terms and conditions prevailing in the market of another country or on the world market which are available to the recipient shall be used.'

2. Article 4 and Article 10(5) and (6) shall be repealed.

3. In Article 28(5), the following sentence shall be added:

   'Such information may include relevant data pertaining to the world market or other representative markets, where appropriate.'

Article 2

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

It shall apply to all investigations initiated pursuant to Regulation (EC) No 2026/97 after the date of entry into force of this Regulation.

[1] OJ L 288, 21.10.1997, p. 1.