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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on measures that the Union may take in relation to the combined effect of anti-dumping  
or anti-subsidy measures with safeguard measures (codification)**

## **EXPLANATORY MEMORANDUM**

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying the law of the Union so as to make it clearer and more accessible to citizens, thus giving them new opportunities and the chance to make use of the specific rights it gives them.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if the law is to be clear and transparent.

2. On 1 April 1987 the Commission decided<sup>1</sup> to instruct its staff that all acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that their provisions are clear and readily understandable.

3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this<sup>2</sup>, stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal procedure for the adoption of acts of the Union.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of Council Regulation (EC) No 452/2003 of 6 March 2003 on measures that the Community may take in relation to the combined effect of anti-dumping or anti-subsidy measures with safeguard measures<sup>3</sup>. The new Regulation will supersede the various acts incorporated in it<sup>4</sup>; this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.

- .5. The codification proposal was drawn up on the basis of a preliminary consolidation, in 22 official languages, of Regulation (EC) No 452/2003 and the instrument amending it, carried out by the Publications Office of the European Union, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table set out in Annex II to the codified Regulation.

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<sup>1</sup> COM(87) 868 PV.

<sup>2</sup> See Annex 3 to Part A of the Conclusions.

<sup>3</sup> Entered in the legislative programme for 2014.

<sup>4</sup> See Annex I to this proposal.

Proposal for a

## REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on measures that the ☒ Union ☒ may take in relation to the combined effect of anti-dumping or anti-subsidy measures with safeguard measures (codification)**

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,

Having regard to the opinion of the European Economic and Social Committee<sup>5</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:



- (1) Council Regulation (EC) No 452/2003<sup>6</sup> has been substantially amended<sup>7</sup>. In the interests of clarity and rationality, that Regulation should be codified.

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↓ 452/2003 recital 1 (adapted)

- (2) By Council Regulation (EC) No 1225/2009<sup>8</sup>, common rules ☒ were laid down ☒ for protection against dumped imports from countries which are not members of the ☒ Union ☒.

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↓ 452/2003 recital 2 (adapted)

- (3) By Council Regulation (EC) No 597/2009<sup>9</sup>, common rules ☒ were laid down ☒ for protection against subsidised imports from countries which are not members of the ☒ Union ☒.

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<sup>5</sup> OJ C [...], [...], p. [...].

<sup>6</sup> Council Regulation (EC) No 452/2003 of 6 March 2003 on measures that the Community may take in relation to the combined effect of anti-dumping or anti-subsidy measures with safeguard measures (OJ L 69, 13.3.2003, p. 8).

<sup>7</sup> See Annex I.

<sup>8</sup> Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

<sup>9</sup> Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community (OJ L 188, 18.7.2009, p. 93).

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↓ 452/2003 recital 3 (adapted)

- (4) By Council Regulation (EC) No 260/2009<sup>10</sup> and Council Regulation (EC) No 625/2009<sup>11</sup>, common rules ☒ were laid down ☒ for the adoption of safeguard measures against imports from certain countries which are not members of the ☒ Union ☒. Safeguard measures may take the form of tariff measures applicable either to all imports or to those imports in excess of a pre-determined quantity. Such safeguard measures imply that the goods are eligible to enter the ☒ Union ☒ market upon payment of the relevant duties.
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↓ 452/2003 recital 4

- (5) The importation of certain goods may be subject to both anti-dumping or anti-subsidy measures on the one hand and safeguard tariff measures on the other. The objectives of the former are to remedy market distortions created by unfair trading practices, whilst the objectives of the latter are to grant relief against greatly increased imports.
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↓ 452/2003 recital 5 (adapted)

- (6) However, the combination of anti-dumping or anti-subsidy measures with safeguard tariff measures on one and the same product could have an effect greater than that intended or desirable in terms of the ☒ Union's ☒ trade defence policy and objectives. In particular, such a combination of measures could place an undesirably onerous burden on certain exporting producers seeking to export to the ☒ Union ☒, which may have the effect of denying them access to the ☒ Union ☒ market.
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↓ 452/2003 recital 6 (adapted)

- (7) Consequently, exporting producers seeking to export to the ☒ Union ☒ should not be subject to undesirably onerous burdens and should continue to have access to the ☒ Union ☒ market.
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↓ 452/2003 recital 7 (adapted)

- (8) It is therefore desirable to ensure that the objectives of the safeguard tariff measures and anti-dumping and/or anti-subsidy measures can be met without denying those exporting producers access to the ☒ Union ☒ market.
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↓ 452/2003 recital 8 (adapted)

- (9) Therefore, specific provisions should be ☒ laid down ☒ to enable the Commission, where ☒ it considers ☒ it appropriate, to take action with a view to ensuring that a combination of anti-dumping or anti-subsidy measures with safeguard tariff measures on the same product does not have such an effect.

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<sup>10</sup> Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports (OJ L 84, 31.3.2009, p. 1).

<sup>11</sup> Council Regulation (EC) No 625/2009 of 7 July 2009 on common rules for imports from certain third countries (OJ L 185, 17.7.2009, p. 1).

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↓ 452/2003 recital 9 (adapted)

- (10) While it may be foreseeable that both the safeguard duty and the anti-dumping or anti-subsidy measures may become simultaneously applicable to the same product, it is not always possible to determine in advance at which precise point in time this may occur. Therefore, the Commission should be in a position to provide for such a situation in a manner ensuring sufficient predictability and legal certainty for all operators concerned.

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↓ 452/2003 recital 10 (adapted)

- (11) The Commission may consider it appropriate to amend, suspend or repeal anti-dumping and/or anti-subsidy measures or to provide for exemptions in whole or in part from any anti-dumping or countervailing duties which would otherwise be payable, or to adopt any other special measures. Any suspension or amendment of, or exemption from, anti-dumping or anti-subsidy measures should be granted only for a limited period of time.

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↓ 452/2003 recital 11

- (12) Any measures taken under this Regulation should be applicable from the date of their entry into force, unless otherwise specified therein, and should therefore not provide a basis for the reimbursement of duties collected prior to that date.

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↓ 37/2014 Art. 1 and Annex .10  
(adapted)

- (13) In order to ensure uniform conditions for ☒ the ☒ implementation ☒ of this Regulation ☒, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>12</sup>,

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↓ 452/2003

HAVE ADOPTED THIS REGULATION:

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*Article 1*

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↓ 37/2014 Art. 1 and Annex  
.10(1)

1. Where the Commission considers that a combination of anti-dumping or anti-subsidy measures with safeguard tariff measures on the same imports could lead to effects greater than is desirable in terms of the Union's trade defence policy, it may adopt such of the following

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<sup>12</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

measures as it deems appropriate, in accordance with the examination procedure referred to in Article 3(2):

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↓ 452/2003

- (a) measures to amend, suspend or repeal existing anti-dumping and/or anti-subsidy measures;
- (b) measures to exempt imports in whole or in part from anti-dumping or countervailing duties which would otherwise be payable;
- (c) any other special measures considered appropriate in the circumstances.

2. Any amendment, suspension or exemption pursuant to paragraph 1 shall be limited in time and shall apply only when the relevant safeguard measures are in force.

#### *Article 2*

Any measure adopted pursuant to this Regulation shall apply from its date of entry into force. It shall not serve as basis for the reimbursement of duties collected prior to that date unless otherwise provided in that measure.

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↓ 37/2014 Art. 1 and Annex  
.10(2)

#### *Article 3*

1. The Commission shall be assisted by the Committee established by Article 15(1) of Regulation (EC) No 1225/2009. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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#### *Article 4*

Regulation (EC) No 452/2003 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

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↓ 452/2003 (adapted)

#### *Article 5*

This Regulation shall enter into force on the ☒ twentieth ☒ 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 [...],

*For the European Parliament*  
*The President*

*For the Council*  
*The President*