Commission Delegated Regulation (EU) 2020/1173 of 4 June 2020 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union as regards the duration of the period of pre-disclosure

COMMISSION DELEGATED REGULATION (EU) 2020/1173

of 4 June 2020

amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union as regards the duration of the period of pre-disclosure

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 290(1) thereof,

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union[(1)], and in particular Articles 7(1) and 23a thereof,

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union[(2)], and in particular Articles 12(1) and 32b thereof,

Whereas:

(1) On 7 June 2018, Regulation (EU) 2018/825 of the European Parliament and the Council[(3)] was published, amending Regulation (EU) 2016/1036 (hereafter 'the basic anti-dumping Regulation') and Regulation (EU) 2016/1037 (hereafter 'the basic anti-subsidy Regulation').

(2) In order to improve the transparency and predictability of anti-dumping and countervailing duty investigations, parties which will be affected by the imposition of provisional anti-dumping and countervailing measures, in particular importers, should be made aware of the impending imposition of such measures. In addition, in investigations where it is not appropriate to impose provisional measures, it is desirable that parties are aware sufficiently in advance of such non-imposition. Therefore, a pre-disclosure period of three weeks was introduced.

(3) According to Article 7(1) of the basic anti-dumping Regulation and Article 12(1) of the basic anti-subsidy Regulation, the Commission had to review by 9 June 2020, whether a substantial rise in imports occurred during the period of pre-disclosure and whether, if such rise did occur, that that rise caused additional injury to the Union industry, despite possible registration or adjustment to the injury margin.

(4) Based on this review, the Commission is required to amend the duration of the period of pre-disclosure to two weeks in the case of a substantial rise of imports which caused additional injury and to four weeks where that did not prove to be the case.

(5) As set out in Articles 7(1) and 23a(2) of the basic anti-dumping Regulation and Article 12(1) and 32b(2) of the basic anti-subsidy Regulation, this review is an obligation for the Commission that could only be exercised once.

(6) Since the entry into force of Regulation (EU) 2018/825 on 8 June 2018, the Commission initiated 19 investigations[(4)] according to Article 5 of the basic anti-dumping Regulation and six investigations according to Article 10 of the basic anti-subsidy Regulation.

(7) For twelve of these investigations, they both passed the provisional stage and there are also import data available for the pre-disclosure period. They could therefore be analysed to review whether a substantial rise in imports occurred during the period of pre-disclosure[(5)].

(8) The number of cases at the Commission's disposal to base its assessment on whether a substantial rise in imports has occurred during the period of pre-disclosure, is therefore, and as expected at the time when Regulation (EU) 2018/825 was agreed, limited. However, a clear trend can be seen in those cases.

(9) In six of these twelve investigations, the Commission decided to impose provisional measures. In the other six, parties were informed three weeks before the deadline to impose provisional measures of the Commission's intention not to do so.

(10) On the basis of statistical data summarised in Table 1 below, the Commission found that the volume of imports from the countries concerned into the Union increased in only two investigations. In the other investigations, a substantial decrease occurred.

TABLE 1

Import volumes per case

Case name and number	Decision to impose provisional measures	Imports originating from	Imports during IP (tonnes)	Imports during pre-disclosure (tonnes)	Rise in imports
Mixtures of urea and ammonium nitrate (AD649)	Yes	Russia	35 297	8 497	– 76 %
		USA	42 700	0	– 100 %
		Trinidad	21 183	0	– 100 %
		total	**99 180**	**8 498**	**– 91 %**
Biodiesel (AS650)	Yes	Indonesia	29 693	24 045	– 19 %

Steel road wheels (AD652)	Yes	PRC	13 763	914	– 93 %
Glass fibre fabrics (AD653)	No	Egypt	882	4	– 100 %
		PRC	2 161	1 724	– 20 %
		total	**3 043**	**1 728**	**– 43 %**
Continuous filament glass fibre products (AD655)	No	Egypt	8 295	3 076	– 63 %
		Bahrein	1 350	327	–76 %
		total	**9 644**	**3 403**	**– 65 %**
Glass fibre fabrics (AS656)	No	Egypt	882	37	– 96 %
		PRC	2 161	2 500	16 %
		total	**3 043**	**2 537**	**– 17 %**
Continuous filament glass fibre products (AS657)	Yes	Egypt	8 295	11 574	38 %

Source: Eurostat, verified data provided by the Union industry, and Surveillance II

(11) No substantial rise occurred in the majority of reviewed cases. Moreover, in one of the two cases where a rise did occur, the imports were ultimately not the result of pre-disclosure but the result of the fact that the Commission did not impose provisional duties. Indeed, also under the previous system without pre-disclosure, imports could, in any event, enter the Union without attracting a duty once it was clear to all interested parties that no provisional duties would be imposed due to the expiry of the applicable deadline.

(12) This leaves one case where a further increase incurred in the period of pre-disclosure before the imposition of provisional measures.

(13) Consequently, the Commission concluded that overall no additional injury to the Union industry had been caused by the imports during the pre-disclosure period. Accordingly, the duration of the period of pre-disclosure should be amended to four weeks.

(14) In the absence of any other specific transitional rules regulating the matter, it is appropriate to clarify that all investigations initiated subject to a notice of initiation pursuant to Article 5(9) of Regulation (EU) 2016/1036 or Article 10(11) of Regulation (EU) 2016/1037 prior to the date of publication in the *Official Journal of the European Union* of this Regulation should be unaffected by the prolonged pre-disclosure period. That should ensure legal certainty, provide a reasonable opportunity for interested parties to adapt themselves to the expiry of the old rules and the entry into force of