Regulation (EU) 2018/825 of the European Parliament and of the Council of 30 May 2018 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

REGULATION (EU) 2018/825 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 30 May 2018

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

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) The common rules for protection against dumped and subsidised imports from countries which are not members of the Union are contained in Regulations (EU) 2016/1036[(2)] and (EU) 2016/1037[(3)] of the European Parliament and the Council (hereinafter jointly referred to as the 'Regulations'). The Regulations were initially adopted in 1968 and last significantly amended in 1996 following the conclusion of the Uruguay Round conducted within the framework of the General Agreement on Tariffs and Trade (GATT). Given that a number of amendments had been made to the Regulations since 1996, the legislators decided to codify the Regulations in the interest of clarity and rationality.

(2) While the Regulations have been amended and codified, there has not been a fundamental review of their functioning. The Commission launched a review of the Regulations in order, inter alia, to better reflect the needs of business at the beginning of the 21st century.

(3) Following that review, certain provisions of the Regulations should be amended in order to improve transparency and predictability, to provide for effective measures to fight against retaliation by third countries, to improve effectiveness and enforcement, and to optimise review practice. In addition, certain practices that have been applied in recent years in the context of anti-dumping and countervailing duty investigations should be included in the Regulations.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2018/825 of the European Parliament and of the Council. (See end of Document for details)*

(4) 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 antidumping 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. In order to limit the risk of a substantial rise in imports in the period of pre-disclosure, the Commission should register imports where possible. When providing for registration of imports during the period of pre-disclosure, it is necessary to consider that it requires a prospective analysis of the risks associated and the likelihood that these circumstances would undermine the remedial effects of the measures. Furthermore, the Commission should collect additional statistical information at the level of the Integrated Tariff of the European Union (TARIC) to ensure a proper factual basis of the analysis of the imports. Where registration is not possible, and a further substantial rise in imports takes place during the period of pre-disclosure, the Commission should reflect this additional injury in the injury margin.

(5) A short period of time in advance of the imposition of provisional measures should be allowed for exporters or producers to check the calculation of their individual dumping margin or amount of the countervailable subsidy and the margin adequate to remove injury to the Union industry. Calculation errors could then be corrected in advance of the imposition of measures.

(6) In order to ensure that measures to fight against retaliation are effective, Union producers should be able to rely on the Regulations without fear of retaliation by third countries. Existing provisions, under special circumstances, provide for the initiation of an investigation without having received a complaint, where sufficient evidence exists of dumping or countervailable subsidies, and of injury and causal link. Such special circumstances should include the threat of retaliation by third countries.

(7) Where an investigation is not initiated by a complaint, the Commission should request Union producers to provide the information necessary for the investigation to proceed, in order to ensure that sufficient information is available for carrying out the investigation in case of threats of retaliation by third countries.

(8) Third countries increasingly interfere in the trade of raw materials with a view to keeping raw materials in those countries for the benefit of domestic downstream users, for instance by imposing export taxes or operating dual pricing schemes. Such interference creates additional distortions of trade. As a result, the costs of raw materials do not reflect the operation of normal market forces of supply and demand for a given raw material. As a result, Union producers are not only harmed by dumping, but suffer from additional distortions of trade compared to third-country downstream producers which engage in such practices. In order to adequately protect trade, due regard should be had to such distortions when determining the level of duties to be imposed.

(9) The Commission should verify the existence of distortions on raw materials on the basis of the complaint received and the Organisation for Economic Co-operation and Development (OECD) ‘Inventory on export restrictions on industrial raw materials’ or

any other OECD database which replaces that database and identifies distortions on raw materials.

(10) Within the Union, countervailable subsidies are in principle prohibited pursuant to Article 107(1) of the Treaty on the Functioning of the European Union (TFEU). Therefore, countervailable subsidies granted by third countries are particularly distortive of trade. The amount of State aid authorised by the Commission has steadily been reduced over time. When determining the level of countervailing measures, it is, in general, no longer possible to apply the lesser duty rule.

(11) Where measures are not prolonged after the conclusion of an expiry review investigation because the conditions required for the continuation have not been found to exist during the investigation, duties collected during the investigation on goods that were customs-cleared should be reimbursed to importers.

(12) The Commission should initiate interim reviews, where appropriate, in cases where the Union industry faces increased costs resulting from higher social and environmental standards. Furthermore, the Commission should also initiate interim reviews in cases of changed circumstances in exporting countries relating to social and environmental standards. For instance, if a country under measures withdraws from multilateral environmental agreements, and protocols thereunder, to which the Union is a party, or from International Labour Organisation (ILO) Conventions listed in Annex Ia to the Regulations, the interim review investigation could result in the withdrawal of acceptance of the undertakings in force. The scope of the review would depend on the precise nature of the change. Such interim reviews could be also initiated *ex officio*.

(13) It is possible for the Commission to adopt interpretative notices providing general guidance to possible interested parties on the application of the Regulations. In accordance with the established case-law of the Court of Justice of the European Union, such notices are not legally binding and do not modify mandatory rules of Union law. On the basis of the general principles of equal treatment and legitimate expectations, the Commission applies such notices but it cannot waive by their adoption the discretion it enjoys in the area of the common commercial policy. Prior to adopting such notices, the Commission should carry out consultations in line with Article 11(3) of the Treaty on European Union (TEU). It is also possible for the European Parliament and the Council to express their views.

(14) Union industry should no longer be defined by reference to the initiation thresholds set out in the Regulations.

(15) The Commission should ensure that all interested parties have the best possible access to information by putting in place an information system whereby interested parties are notified when new non-confidential information is added to the investigation files and by making such information accessible to those parties through a web-based platform.

(16) In initial investigations where the dumping margin or the amount of the countervailable subsidy has been found to be less than the *de minimis* thresholds, the investigation should be immediately terminated in relation to the exporters concerned and such exporters will not be subject to subsequent review investigations.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2018/825 of the European Parliament and of the Council. (See end of Document for details)*

(17) The Commission should only accept an offer for an undertaking where it is satisfied, based on a prospective analysis, that it effectively eliminates the injurious effect of dumping.

(18) Where the conditions exist for the initiation of an anti-circumvention investigation, imports should in all cases be made subject to registration.

(19) Experience in anti-circumvention investigations has shown that, sometimes, although producers of the product concerned are found not to be engaged in circumvention practices themselves, they are found to be related to a producer that is subject to the original measures. In such cases, producers should not be denied an exemption merely on the grounds that they are related to a producer that is subject to the original measures. Therefore, the condition that in order to be granted an exemption from registration or extended duties, producers of the product concerned should not be related to any producer that is subject to the original measures, should be removed. In addition, where the circumvention practice takes place in the Union, the fact that importers are related to producers that are subject to the measures should not be decisive in determining whether the importer may be granted an exemption.

(20) Where the number of Union producers is so large that resort must be made to sampling, a sample of producers should be chosen from among all Union producers and not just those producers submitting the complaint.

(21) In cases of distortions on raw materials as identified in Article 7(2a) of Regulation (EU) 2016/1036, as amended by this Regulation, the Commission should conduct a Union-interest test as laid out in Article 7(2b) of that Regulation. If the Commission decides, when establishing the level of duties subject to Article 7 of that Regulation, to apply Article 7(2) of that Regulation, it should carry out the Union-interest test in accordance with Article 21 of that Regulation on the basis of the measures determined pursuant to Article 7(2).

(22) In applying the Union-interest test, the opportunity to provide comments should be given to all Union producers and not just those producers submitting the complaint.

(23) The annual report by the Commission to the European Parliament and to the Council on its implementation of the Regulations allows for the regular and timely monitoring of the trade defence instruments. There should be an exchange of views about that report in the European Parliament and such exchange should also cover the functioning of the trade defence instruments. It should be possible for the Council to attend such exchange.

(24) The Commission should extend the application and collection of anti-dumping and countervailing duties to the continental shelf of a Member State or the exclusive economic zone declared by a Member State pursuant to the United Nations Convention on the Law of the Sea (UNCLOS), provided that the product subject to measures is used in any of both places with the purpose of exploring or exploiting of the non-living natural resources of the seabed and its subsoil or in order to produce energy from the water, currents and winds, and provided that the product subject to measures is consumed there in significant quantities. The intention to extend the application in that manner should be set out in the notice of initiation of proceedings, and should be

supported by sufficient evidence in the request. In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to specify the arrangements for the application and collection of anti-dumping and countervailing duties. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[(4)].

(25) In order to update the list identifying distortions on raw materials by adding further distortions on raw materials if the OECD 'Inventory on export restrictions on industrial raw materials', or any OECD database which replaces that inventory, identifies distortions on raw materials in addition to those included in the list, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amending the list of distortions on raw materials referred to in Article 7(2a) of Regulation (EU) 2016/1036. Furthermore, in order to address appropriately a substantial rise in imports in the event it occurs during the period of pre-disclosure, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of increasing or decreasing the duration of the period of pre-disclosure. The period of pre-disclosure should be decreased if the substantial rise in imports occurs but the Commission is not able to address it. Nevertheless, if a substantial rise in imports has not occurred or if the Commission is able to address it, the period of pre-disclosure should be increased in order to ensure predictability for Union operators. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[(5)]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(26) Regulations (EU) 2016/1036 and (EU) 2016/1037 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2016/1036 is amended as follows:

(1) in Article 4(1), the introductory wording is replaced by the following:

1. For the purposes of this Regulation, the term "Union industry" shall be interpreted as referring to the Union producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total Union production of those products, except that:.

(2) Article 5 is amended as follows:

(a) in paragraph 1, a subparagraph is inserted after the first subparagraph as follows: