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 (codification)

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(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[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Council Regulation (EC) No 597/2009[(3)] has been substantially amended[(4)]. In the interests of clarity and rationality, that Regulation should be codified.

(2) Annex 1A to the Agreement establishing the World Trade Organisation ('the WTO Agreement') contains, inter alia, the General Agreement on Tariffs and Trade 1994 ('the GATT 1994'), an Agreement on Agriculture ('the Agreement on Agriculture'), an Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and an Agreement on Subsidies and Countervailing Measures ('the Subsidies Agreement').

(3) In order to ensure a proper and transparent application of the rules provided for in the Subsidies Agreement, the language of that agreement should be reflected in Union legislation to the best extent possible.

(4) Furthermore, it is appropriate to explain, in adequate detail, when a subsidy is to be deemed to exist, according to which principles it is to be countervailable (in particular whether the subsidy has been granted specifically), and according to which criteria the amount of the countervailable subsidy is to be calculated.

(5) In determining the existence of a subsidy, it is necessary to demonstrate that there has been a financial contribution by a government or a public body within the territory of a country, or that there has been some form of income or price support within the meaning

of Article XVI of the GATT 1994, and that a benefit has thereby been conferred on the recipient enterprise.

(6) For the calculation of the benefit to the recipient in cases where a market benchmark does not exist in the country concerned, 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 not exist or are unreliable, then the appropriate benchmark should be determined by resorting to terms and conditions in other markets.

(7) It is desirable to set out clear and detailed guidance as to the factors which may be relevant for the determination of whether the subsidised imports have caused material injury or are threatening to cause injury. In demonstrating that the volume and price levels of the imports concerned are responsible for injury sustained by a Union industry, attention should be given to the effect of other factors and in particular prevailing market conditions in the Union.

(8) It is advisable to define the term 'Union industry' and to provide that parties related to exporters may be excluded from such an industry, and to define the term 'related'. It is also necessary to provide for countervailing duty action to be taken on behalf of producers in a region of the Union and to set out guidelines on the definition of such a region.

(9) It is necessary to specify who may lodge a countervailing duty complaint, including the extent to which it should be supported by the Union industry, and the information on countervailable subsidies, injury and causation which such a complaint should contain. It is also expedient to specify the procedures for the rejection of complaints or the initiation of proceedings.

(10) It is necessary to specify the manner in which interested parties should be given notice of the information which the authorities require. Interested parties should have ample opportunity to present all relevant evidence and to defend their interests. It is also desirable to set out clearly the rules and procedures to be followed during the investigation, in particular the rules whereby interested parties are to make themselves known, present their views and submit information within specified time limits, if such views and information are to be taken into account. It is also appropriate to set out the conditions under which an interested party may have access to, and comment on, information presented by other interested parties. There should also be cooperation between the Member States and the Commission in the collection of information.

(11) It is necessary to set out the conditions under which provisional duties may be imposed, including conditions whereby provisional duties may be imposed no earlier than 60 days from initiation and no later than nine months thereafter. Such duties may in all cases be imposed by the Commission only for a four-month period.

(12) It is necessary to set out procedures for accepting undertakings which eliminate or offset the countervailable subsidies and injury instead of imposing provisional or definitive duties. It is also appropriate to specify the consequences of a breach or withdrawal of undertakings and that provisional duties may be imposed in cases of suspected

violation or where further investigation is necessary to supplement the findings. In accepting undertakings, care should be taken that the proposed undertakings, and their enforcement, do not lead to anti-competitive behaviour.

(13) It is appropriate to allow withdrawal of an undertaking and application of the duty by one single legal act. It is also necessary to ensure that the withdrawal procedure is terminated within a time limit of normally six months and in no case more than nine months in order to ensure the proper enforcement of the measure in force.

(14) It is necessary to provide that the termination of cases should, irrespective of whether definitive measures are adopted or not, normally take place within 12 months, and in no case more than 13 months, of the initiation of the investigation.

(15) Investigations or proceedings should be terminated where the amount of the subsidy is *de minimis* or, particularly in the case of imports originating in developing countries, the volume of subsidised imports or the injury is negligible, and it is appropriate to define those situations. Where measures are to be imposed, it is necessary to provide for the termination of investigations and to specify that measures should be less than the amount of countervailable subsidies if such lesser amount would remove the injury, and also to specify the method of calculating the level of measures in cases of sampling.

(16) It is necessary to provide for retroactive collection of provisional duties if that is deemed appropriate and to define the circumstances which may trigger the retroactive application of duties to avoid the undermining of the definitive measures to be applied. It is also necessary to provide that duties may be applied retroactively in cases of breach or withdrawal of undertakings.

(17) It is necessary to provide that measures are to lapse after five years unless a review indicates that they should be maintained. It is also necessary to provide, in cases where sufficient evidence is submitted of changed circumstances, for interim reviews or for investigations to determine whether refunds of countervailing duties are warranted.

(18) Even though the Subsidies Agreement does not contain provisions concerning circumvention of countervailing measures, the possibility of such circumvention exists, in terms similar, albeit not identical, to the circumvention of anti-dumping measures. It is appropriate, therefore, to provide for an anti-circumvention provision in this Regulation.

(19) It is desirable to clarify which parties have the right to request the initiation of anti-circumvention investigations.

(20) It is also desirable to clarify which practices constitute circumvention of the measures in place. Circumvention practices may take place either inside or outside the Union. It is consequently necessary to provide that exemptions from the extended duties which may be granted to importers may also be granted to exporters when duties are being applied to address circumvention taking place outside the Union.

(21) It is expedient to permit the suspension of countervailing measures where there is a temporary change in market conditions which makes the continued imposition of such measures temporarily inappropriate.

(22) It is necessary to provide that imports under investigation may be made subject to registration upon importation in order to enable measures to be subsequently applied against such imports.

(23) In order to ensure the proper enforcement of measures, it is necessary that Member States monitor, and report to the Commission on, the import trade of products subject to investigation or subject to measures, as well as the amount of duties collected under this Regulation. It is also necessary to provide for the possibility for the Commission to request Member States to supply, subject to confidentiality rules, information to be used for monitoring price undertakings and verifying the level of effectiveness of the measures in force.

(24) It is expedient to provide for verification visits to check information submitted on countervailable subsidies and injury, such visits being, however, conditional on proper replies to questionnaires being received.

(25) It is essential to provide for sampling in cases where the number of parties or transactions is large in order to permit completion of investigations within the appointed time limits.

(26) It is necessary to provide that, where parties do not cooperate satisfactorily, other information may be used to establish findings and that such information may be less favourable to the parties than if they had cooperated.

(27) Provision should be made for the treatment of confidential information so that business or governmental secrets are not divulged.

(28) It is essential that provision be made for proper disclosure of the essential facts and considerations to parties which qualify for such treatment and that such disclosure be made, with due regard to the decision-making process in the Union, within a time – limit which permits parties to defend their interests.

(29) It is prudent to provide for an administrative system under which arguments can be presented as to whether measures are in the Union's interest, including consumers' interests, and to specify the time –limits within which such information has to be presented, together with the disclosure rights of the parties concerned.

(30) In applying the rules of the Subsidies Agreement it is essential, in order to maintain the balance of rights and obligations which that agreement seeks to establish, that the Union take account of the interpretation of those rights and obligations by the Union's major trading partners, as reflected in legislation or established practice.

(31) The implementation of this Regulation requires uniform conditions for adopting provisional and definitive duties, and for the termination of an investigation without measures. Those measures should be adopted by the Commission in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[(5)].

(32) The advisory procedure should be used for the adoption of provisional measures given the effects of such measures and their sequential logic in relation to the adoption of definitive measures. It should also be used for the acceptance of undertakings,

initiation and non-initiation of expiry reviews, suspension of measures, extension of the suspension of measures and the reinstatement of measures given the effect of such measures as compared to definitive measures. Where a delay in the imposition of measures would cause injury which would be difficult to repair, it is necessary to allow the Commission to adopt immediately applicable provisional measures,

HAVE ADOPTED THIS REGULATION:

Article 1

Principles

1 A countervailing duty may be imposed to offset any subsidy granted, directly or indirectly, for the manufacture, production, export or transport of any product whose release for free circulation in the Union causes injury.

2 Notwithstanding paragraph 1, where products are not directly imported from the country of origin but are exported to the Union from an intermediate country, the provisions of this Regulation shall be fully applicable and the transaction or transactions shall, where appropriate, be regarded as having taken place between the country of origin and the Union.

Article 2

Definitions

For the purposes of this Regulation:

(a) a product is considered to be subsidised if it benefits from a countervailable subsidy as defined in Articles 3 and 4. Such subsidy may be granted by the government of the country of origin of the imported product, or by the government of an intermediate country from which the product is exported to the Union, known for the purposes of this Regulation as ‘the country of export’;

(b) ‘government’ means a government or any public body within the territory of the country of origin or export;

(c) ‘like product’ means a product which is identical, that is to say, alike in all respects, to the product under consideration, or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration;

(d) ‘injury’, unless otherwise specified, means material injury to the Union industry, threat of material injury to the Union industry or material retardation of the establishment of such an industry, and shall be interpreted in accordance with the provisions of Article 8.

Article 3

Definition of a subsidy

A subsidy shall be deemed to exist if: