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 (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,

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) Council Regulation (EC) No 1225/2009[(2)] has been substantially amended several times[(3)]. In the interests of clarity and rationality, that Regulation should be codified.

(2) The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (‘the 1994 Anti-Dumping Agreement’) contains detailed rules, relating in particular to the calculation of dumping, procedures for initiating and pursuing an investigation, including the establishment and treatment of the facts, the imposition of provisional measures, the imposition and collection of anti-dumping duties, the duration and review of anti-dumping measures and the public disclosure of information relating to anti-dumping investigations.

(3) In order to ensure a proper and transparent application of the rules of the 1994 Anti-Dumping Agreement, the language of that agreement should be reflected in Union legislation to the best extent possible.

(4) In applying the rules of the 1994 Anti-Dumping Agreement, it is essential, in order to maintain the balance of rights and obligations which the General Agreement on Tariffs and Trade (‘GATT’) established, that the Union take account of the interpretation of those rules by the Union's major trading partners.

(5) It is desirable to set out clear and detailed rules on the calculation of the normal value. In particular, such value should in all cases be based on representative sales in the ordinary course of trade in the exporting country. It is expedient to give guidance as to when parties may be considered as being associated for the purpose of determining dumping.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2016/1036 of the European Parliament and of the Council. (See end of Document for details)*

It is expedient to define the circumstances in which domestic sales may be considered to be made at a loss and may be disregarded, and in which recourse may be had to remaining sales, or to constructed normal value, or to sales to a third country. It is also appropriate to provide for a proper allocation of costs, even in start-up situations, and for guidance as to the definition of start-up and the extent and method of allocation. It is also necessary, when constructing the normal value, to indicate the methodology to be applied in determining the amounts for selling, general and administrative costs and the profit margin that should be included in such value.

(6) When determining the normal value for non-market-economy countries, it appears prudent to set out rules for choosing the appropriate market-economy third country to be used for such purpose and, where it is not possible to find a suitable third country, to provide that the normal value may be established on any other reasonable basis.

(7) It is expedient to define the export price and to enumerate the adjustments which should be made in those cases where a reconstruction of that price from the first open-market price is deemed necessary.

(8) For the purpose of ensuring a fair comparison between the export price and the normal value, it is advisable to list the factors which may affect prices and price comparability and to set out specific rules as to when and how the adjustments should be made, including the fact that any duplication of adjustments should be avoided. It is also necessary to provide that comparison may be made using average prices although individual export prices may be compared to an average normal value where the former vary by customer, region or time period.

(9) It is desirable to set out clear and detailed guidance as to the factors which may be relevant for the determination of whether the dumped 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 the Union industry, attention should be given to the effect of other factors and in particular prevailing market conditions in the Union.

(10) 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 anti-dumping 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.

(11) It is necessary to specify who may lodge an anti-dumping complaint, including the extent to which it should be supported by the Union industry, and the information on dumping, 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.

(12) 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.

(13) 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. For administrative reasons, it is also necessary to provide that such duties may in all cases be imposed by the Commission, either directly for a nine-month period or in two stages of six and three months.

(14) It is necessary to set out procedures for accepting undertakings which eliminate dumping 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.

(15) 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 15 months, of the initiation of the investigation.

(16) Investigations or proceedings should be terminated where the dumping is *de minimis* 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 margin of dumping if such lesser amount would remove the injury, and also to specify the method of calculating the level of measures in cases of sampling.

(17) 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.

(18) 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 anti-dumping duties are warranted. It is also appropriate to provide that, in any recalculation of dumping which necessitates a reconstruction of export prices, duties are not to be treated as a cost incurred between importation and resale where those duties are being reflected in the prices of the products subject to measures in the Union.

(19) It is necessary to provide specifically for the reassessment of export prices and dumping margins where the duty is being absorbed by the exporter through a form of

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compensatory arrangement and the measures are not being reflected in the prices of the products subject to measures in the Union.

(20) The 1994 Anti-Dumping Agreement does not contain provisions regarding the circumvention of anti-dumping measures, though a separate GATT Ministerial Decision recognised circumvention as a problem and referred it to the GATT Anti-dumping Committee for resolution. Given the failure of the multilateral negotiations so far and pending the outcome of the referral to the World Trade Organisation ('WTO') Anti-Dumping Committee, Union legislation should contain provisions to deal with practices, including mere assembly of goods in the Union or a third country, which have as their main aim the circumvention of anti-dumping measures.

(21) 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.

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

(23) 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.

(24) 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.

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

(26) 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.

(27) 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.

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

(29) 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.

(30) 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' interest, and to specify the time limits within which such information has to be presented as well as the disclosure rights of the parties concerned.

(31) The implementation of this Regulation requires uniform conditions for the adoption of 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[(4)].

(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 An anti-dumping duty may be imposed on any dumped product whose release for free circulation in the Union causes injury.

2 A product is to be considered as being dumped if its export price to the Union is less than a comparable price for a like product, in the ordinary course of trade, as established for the exporting country.

3 The exporting country shall normally be the country of origin. However, it may be an intermediate country, except where, for example, the products are merely transhipped through that country, or the products concerned are not produced in that country, or there is no comparable price for them in that country.

4 For the purposes of this Regulation, ‘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.

Article 2

Determination of dumping

A.
NORMAL VALUE

1 The normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country.