

Protection against dumped and subsidised imports from countries not members of the European Union

2013/0103(COD) - 16/04/2018 - Council position

The Council adopted its position at first reading with a view to the adoption of a Regulation of the European Parliament and of the Council 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 aim of the proposal was to update and modernise the EU Trade Defence Instruments, which have not been substantially revised since the completion of Uruguay Round in 1995, in order to make them more efficient and effective for the support of EU operators.

The main provisions concern the following points:

Trade Unions: trade unions will be able to submit complaints together with industry. Trade unions become interested parties in the proceedings.

Access to information: the Commission shall facilitate access to the trade defence instrument for diverse and fragmented industry sectors, largely composed of small and medium-sized enterprises (SMEs), through a dedicated SME Helpdesk, for example by awareness raising, by providing general information and explanations on procedures and on how to submit a complaint.

The Union producers, trade unions, importers and exporters and their representative associations, users and consumer organisations, which have made themselves known, as well as the representatives of the exporting country, may, upon written request, inspect all information made available by any party to an investigation, as distinct from internal documents prepared by the authorities of the Union or its Member States, which is relevant to the presentation of their cases and not confidential and is used in the investigation.

The Commission shall have in place the office of the Hearing Officer whose powers and responsibilities are set out in a mandate adopted by the Commission and who shall safeguard the effective exercise of the procedural rights of the interested parties.

Pre-disclosure: the Council position lays down a period of 3 weeks of pre-disclosure in combination with three additional safety nets which will address the potential risks of stockpiling: wider use of registration of imports; revamped collection and communication of statistics; and an additional injury margin to be added to the definitive duty in order to compensate any stockpiling during the period of pre-disclosure.

In addition, a review clause of the duration of the pre-disclosure period was agreed. Two years from the entry into force, the Commission will assess how effective the three safety nets were in addressing stockpiling. In light of that assessment, the Commission should propose via a delegated act, to:

- decrease the period of pre-disclosure to two weeks if a substantial rise in imports has occurred that the Commission was unable to address;
- increase the pre-disclosure period to four weeks in order to improve predictability for Union operators if no substantial rise in imports has occurred or if the Commission was able to address it.

Lesser Duty Rule: the Council position allows for disapplication of the LDR in well-defined situations:

- distorted raw materials accounting for more than 17% of the cost of production, taken individually (single threshold);
- raw material distortions as defined in the OECD list but with the possibility to update this list via a delegated act to bring it in line with future OECD considerations;
- in cases of dumping, the Commission will have to clearly conclude that the disapplication of the LDR is in the Union's interest ("positive Union interest test").

When the injury margin is calculated on the basis of a target price, the target profit used shall be established taking into account factors such as the level of profitability before the increase of imports from the country under investigation, the level of profitability needed to cover full costs and investments, research and development (R&D) and innovation, and the level of profitability to be expected under normal conditions of competition. Such profit margin shall not be lower than 6 %.

Social and environmental standards will be taken into account when establishing the injury elimination margin. In addition, there will be a possibility to take into account future costs stemming from implementing these standards if such costs are clearly foreseeable and objectively quantifiable. **Reimbursement of duties:** the Councils position safeguards the possibility of reimbursement for operators. If measures are repealed, the duties collected in excess during the expiry review investigations will be reimbursed to importers. **Duration of investigations:** the duration for the imposition of provisional measures will be normally 7 months but not later than 8 months. Definitive duties will have to be imposed within 14 months.