

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

2013/0103(COD) - 10/04/2013 - Legislative proposal

PURPOSE: to update and modernise Union's legislation on protection against dumped imports and subsidised imports from third countries.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the common rules for protection against dumped and subsidised imports from countries which are not members of the European Union are contained in Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community and Council Regulation (EC) No 597/2009 on protection against subsidised imports from countries not members of the European Community respectively. The Regulations were initially adopted in 1995 following the conclusion of the Uruguay Round. Given that a number of amendments were made to them since then, the Council decided in 2009 to codify the regulations in the interest of clarity and rationality.

Following a review launched by the Commission in 2011, it was considered that certain provisions of the Regulations should be amended in order to improve transparency and predictability, provide for effective measures to fight against retaliation, improve effectiveness and enforcement and optimise review practice. In addition, certain practices that in recent years have been applied in the context of anti-dumping and anti-subsidy investigations should be included in the Regulations.

This legislative proposal is issued in parallel with a [Communication on the Modernisation of Trade Defence Instruments: Adapting trade defence instruments to the current needs of the European economy](#) and draft guidelines on four important elements (i.e. Union interest, injury margin, analogue country and expiry reviews) of the EU's Trade Defence Instruments (TDIs). The draft guidelines are subject to a three-month public consultation before they are adopted by the Commission.

IMPACT ASSESSMENT: taking into account the results of a public consultation, an evaluation study and the Commission's extensive practice in the use of the instruments, an impact assessment was carried out in autumn 2012. The impact assessment report identified problems in the functioning of the trade defence instruments and proposed various solutions. The preferred solutions form the basis for this proposal.

LEGAL BASIS: Article 207(2) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: under its legislative proposal, the Commission introduces what it considers to be a series of improvements to the current rules in relation to anti-dumping and anti-subsidy measures which may be summarised under five main headings:

1. **Enhanced transparency and predictability:** interested parties, such as importers or users, would be informed two weeks in advance of the imposition of provisional measures that such measures are going to be imposed. Parties would also be given a guarantee that the measures will not be imposed within this two-week period. A summary of the basis on which it is intended to impose the measures

would be sent to interested parties and they would have the opportunity to comment on the calculation of the dumping and injury margins. Calculation errors could then be corrected in advance of the imposition of measures.

Furthermore, when it is decided not to impose provisional measures but to continue the investigation, interested parties would be informed of the intention not to impose such measures two weeks in advance of the ultimate date for imposition.

2. **Threats of retaliation against Union producers:** in order to ensure effective measures to fight against retaliation, the proposal would enable Union producers to rely on the Regulations without fear of retaliation by third parties. Existing provisions, under special circumstances, provide for the initiation of an investigation without having received a complaint (“*ex-officio*”), where sufficient evidence of the existence of dumping, countervailable subsidies, injury and causal link exists. Such **special circumstances** should include threat of retaliation. Furthermore, when investigations are opened on an *ex-officio* basis, it is proposed to oblige Union producers to cooperate in the proceeding.
3. **Effectiveness of the instruments:** according to the Commission, third countries increasingly interfere in 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. As a result, the costs of raw materials do not result from the operation of normal market forces reflecting supply and demand for a given raw material. Such interference creates additional distortions of trade. As a consequence, Union producers are not only harmed by dumping, but suffer, compared to downstream producers from third countries engaged in such practices, additional distortions of trade. In order to protect trade adequately, it is proposed to **remove the lesser duty rule** in cases of circumvention, or where structural raw material distortions have been found to exist, and subsidisation.
4. **Reviews:** in order to optimise the review practice, it is proposed that duties collected during the investigation should be reimbursed to importers, where measures are not extended after the conclusion of an expiry review investigation. This is considered appropriate given that the conditions required for the continuation of the measures have not been found to exist during the investigation period.
5. Lastly, there are a number of areas where it is proposed to codify **certain practices which stem from ECJ or WTO rulings** that have been handed down in recent years. These concern (i) the definition of Union industry, (ii) the consequences for exporting producers found not to be dumping or to be dumping at *de-minimis levels* in an original investigation, (iii) dealing with changed circumstances in a review investigation, (iv) the treatment of related companies in anti-circumvention investigations, (v) the conditions for the registration of imports, and (vi) the basis for choosing a sample of Union producers.

BUDGETARY IMPLICATION: the proposal has implications for the Union budget. The non-application of the lesser duty rule under certain circumstances will, in some cases, lead to higher duty levels and is thus revenue enhancing. The reimbursement of duties in cases where measures are terminated after an expiry review represents an expense for the Union budget. Quantification is, however, very difficult since any revenue or expense depends on the circumstances of each individual case.

The cost of the upgrading of the SME helpdesk would amount to EUR 130 000 per year.