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

2016/0351(COD) - 12/12/2017 - Final act

PURPOSE: modernise the EU's trade defence instruments.

LEGISLATIVE ACT: Regulation (EU) 2017/2321 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.

CONTENT: the Regulation amends the basic anti-dumping and anti-subsidy Regulations currently in force, in order to **better deal with unfair commercial practices**. The main changes introduced concern the following points:

Determination of normal value where there are market distortions: the Regulation amends the method used to calculate the normal value and the dumping margin for non-market economy third countries.

In case it is determined that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions, the normal value shall be constructed exclusively **on the basis of costs of production and sale reflecting undistorted prices or benchmarks.**

Sources of information that may be used for this purpose include, but are not limited to, undistorted international prices, costs, or benchmarks, or the corresponding costs of production and sale in an appropriate representative country with a similar level of economic development as the exporting country.

Significant market distortions: the amending Regulation specifies the circumstances in which significant distortions can be considered to have a considerable influence on free market forces. It states that this is the case when reported prices or costs, including the costs of raw materials and energy, **are not the result of free market forces because they are affected by substantial government intervention.**

The analysis of the existence of significant distortions will **take into account the following factors:**

- the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;
- state presence in firms allowing the state to interfere with respect to prices or costs;
- public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces;
- the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws;
- wage costs being distorted;
- access to finance granted by institutions that implement public policy objectives or otherwise not acting independently of the state.

Relevant international standards, including core conventions of the **International Labour Organisation** (ILO) and relevant multilateral environmental conventions, should be taken into account, where appropriate.

Commission reports: in the interest of transparency, the Regulation provides for the possibility for the Commission services to **produce and make public a report describing the market circumstances in a particular country or sector**. Such reports and the evidence on which they are based shall be placed on the file of any investigation relating to that country or sector so that interested parties have ample opportunity to comment on the reports and the evidence on which they are based.

Union industry will be able to rely on the evidence in these reports in the context of filing a complaint.

All interested parties, including industry and trade unions established in the Union, may also present indications of significant distortions.

The Commission undertakes inform the European Parliament and the Council whenever it intends to produce or update a report.

Subsidies: experience has shown that the actual magnitude of subsidisation is usually discovered during the relevant investigation. When such subsidies are found in the course of any given investigation or review, the Commission will offer **additional consultations to the country of origin and/or export concerned with regard to such subsidies identified in the course of the investigation.**

Report and information: the Commission will present to the European Parliament and the Council an annual report on the application of the Regulation, taking into account the protection of confidential information.

The report shall include information about the application of provisional and definitive measures, the termination of investigations without measures, reinvestigations, reviews, significant distortions and verification visits, and the activities of the various bodies responsible for monitoring the implementation of the Regulation.

ENTRY INTO FORCE: 20.12.2017.