

Basic information	
2013/0103(COD)	Procedure completed
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	
Protection against dumped and subsidised imports from countries not members of the European Union	
Amending Regulation (EU) 2016/1037 <a href="#">2014/0305(COD)</a> Amending Regulation (EU) 2016/1036 <a href="#">2014/0309(COD)</a>	
<b>Subject</b>	
6.20.02 Export/import control, trade defence, trade barriers	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<span style="border: 1px solid red; padding: 2px;">INTA</span> International Trade	FJELLNER Christofer (PPE)	22/07/2014
		Shadow rapporteur  MARTIN David (S&D)  LOONES Sander (ECR)  SCHAAKE Marietje (ALDE)  SCHOLZ Helmut (GUE/NGL)  JADOT Yannick (Verts/ALE)	
	Former committee responsible	Former rapporteur	Appointed
	<span style="border: 1px solid red; padding: 2px;">INTA</span> International Trade	FJELLNER Christofer (PPE)	25/04/2013
Council of the European Union	Council configuration	Meetings	Date
	Foreign Affairs	3348	2014-11-21
	Competitiveness (Internal Market, Industry, Research and Space)	3317	2014-05-26
	Agriculture and Fisheries	3612	2018-04-16
	Commission DG	Commissioner	
European Commission	Trade and Economic Security	DE GUCHT Karel	

Key events			
Date	Event	Reference	Summary
10/04/2013	Legislative proposal published	COM(2013)0192 	Summary
18/04/2013	Committee referral announced in Parliament, 1st reading		
21/01/2014	Vote in committee, 1st reading		
27/01/2014	Committee report tabled for plenary, 1st reading	A7-0053/2014	Summary
04/02/2014	Debate in Parliament		
05/02/2014	Decision by Parliament, 1st reading	T7-0082/2014	Summary
05/02/2014	Results of vote in Parliament		
16/04/2014	Decision by Parliament, 1st reading	T7-0420/2014	Summary
16/04/2014	Results of vote in Parliament		
26/05/2014	Debate in Council		
21/11/2014	Debate in Council		Summary
28/02/2017	Committee decision to open interinstitutional negotiations after 1st reading in Parliament		
01/03/2017	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 72)		
23/01/2018	Approval in committee of the text agreed at early 2nd reading interinstitutional negotiations	PE616.540 PE616.821	
16/04/2018	Council position published	05700/1/2018	Summary
03/05/2018	Committee referral announced in Parliament, 2nd reading		
17/05/2018	Vote in committee, 2nd reading		
23/05/2018	Committee recommendation tabled for plenary, 2nd reading	A8-0182/2018	Summary
28/05/2018	Act approved by Council, 2nd reading		
29/05/2018	Debate in Parliament		
30/05/2018	Decision by Parliament, 2nd reading	T8-0219/2018	Summary
30/05/2018	Results of vote in Parliament		
30/05/2018	Final act signed		
30/05/2018	End of procedure in Parliament		
07/06/2018	Final act published in Official Journal		

Technical information	
Procedure reference	2013/0103(COD)

Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amending Regulation (EU) 2016/1037 2014/0305(COD) Amending Regulation (EU) 2016/1036 2014/0309(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 207-p2
Stage reached in procedure	Procedure completed
Committee dossier	INTA/8/09282

Documentation gateway
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European Parliament
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Document type	Committee	Reference	Date	Summary
Committee draft report		PE522.895	11/11/2013	
Amendments tabled in committee		PE524.779	20/12/2013	
Committee report tabled for plenary, 1st reading/single reading		A7-0053/2014	27/01/2014	Summary
Text adopted by Parliament, partial vote at 1st reading /single reading		T7-0082/2014	05/02/2014	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0420/2014	16/04/2014	Summary
Text agreed during interinstitutional negotiations		PE616.540	19/01/2018	
Committee letter confirming interinstitutional agreement		PE616.821	26/01/2018	
Committee draft report		PE620.931	18/04/2018	
Committee recommendation tabled for plenary, 2nd reading		A8-0182/2018	23/05/2018	Summary
Text adopted by Parliament, 2nd reading		T8-0219/2018	30/05/2018	Summary

Council of the EU
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Document type	Reference	Date	Summary
Council statement on its position	07631/2018	06/04/2018	
Council position	05700/1/2018	16/04/2018	Summary
Draft final act	00024/2018/LEX	30/05/2018	

European Commission
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Document type	Reference	Date	Summary
Legislative proposal	COM(2013)0192 	10/04/2013	Summary
Document attached to the procedure	SWD(2013)0105 	10/04/2013	
Document attached to the procedure	SWD(2013)0106 	10/04/2013	

Commission response to text adopted in plenary	SP(2014)471	09/07/2014	
Commission communication on Council's position	COM(2018)0191 	17/04/2018	<a href="#">Summary</a>

#### National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	<a href="#">PT_PARLIAMENT</a>	COM(2013)0192	30/09/2013	

#### Additional information

Source	Document	Date
EP Research Service	Briefing	
National parliaments	IPEX	
European Commission	EUR-Lex	

#### Final act

Regulation 2018/0825  
OJ L 143 07.06.2018, p. 0001

[Summary](#)

## 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.

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

2013/0103(COD) - 05/02/2014 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted **amendments** to the proposal for a regulation of the European Parliament and of the Council amending 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.

The matter was **referred back to the committee responsible for reconsideration**. The vote was postponed to a later date.

**Scope:** Parliament considered that following the review, certain provisions of the Regulations should be amended in order to improve transparency and predictability, provide for effective measures to fight against **retaliation by third countries**, improve effectiveness and enforcement and optimise review practice.

It added that the use of any dumped product in connection with the exploration of the Continental Shelf or the Exclusive Economic Zone of a Member State, or the exploitation of its resources, shall be treated as an import under this Regulation and shall be charged to duty accordingly, when causing injury to the Union industry.

**Definition:** the text clarified the notion of a **raw material in relation to the concept of structural distortion**. Parliament considered that a raw material shall be considered to be subject to structural distortion when its price is not solely the result of a normal operation of market forces reflecting supply and

demand. Such distortions are the outcome of interference from third countries, which includes, *inter alia*, export taxes, export restrictions and dual pricing schemes.

**Lesser duty rule not applicable in certain cases:** the lesser duty rule shall not apply in anti-dumping cases when it is established that the exporting country engages in practices that significantly distort the regular course of trade, when the exporting country has an insufficient level of social and environmental standards or when complainants are SMEs.

The sufficient levels of social and environmental standards should be determined on the basis of the ratification and effective implementation by the third country of Multilateral Environmental Agreements, and protocols thereunder, to which the Union is party any point in time, and of ILO Conventions which are listed in Annex Ia.

The lesser duty rule shall always apply, however, when structural raw material distortions are the result of a deliberate choice made by a least developed country to protect its public interest and legitimate development goals.

**Powers of the Commission and consultation of Parliament:** Parliament added that any document aimed at clarifying the established practices of the Commission with regard to the application of the Regulation (including the four draft guidelines on the selection of analogue country, on expiry reviews and the duration of measures, on the injury margin and on the Union interest) should be adopted by the Commission only after entry into force of the Regulation and **proper consultation** of the European Parliament and Council and should then fully reflect the content of the Regulation.

**Reimbursement of duties collected under expiry reviews:** the Commission proposed to reimburse duties collected under expiry reviews, if proven that dumping or subsidisation has been terminated, claiming that it would ensure effectiveness. However, Parliament said this was not desirable and **deleted the provision** in the interests of balance.

**Registration:** to mitigate the risk of stockpiling, registration of imports ought to take place following the submission of any justified request, and from the date of initiation when justified by the complaint. The Commission should also have the possibility of ordering registration on its own initiative.

**SME Help Desk:** Parliament felt that SMEs' access to the instrument should be facilitated by **establishing the SME Help Desk**, which would raise awareness of the instrument.

#### **Time limits:**

- in anti-dumping cases, the duration of investigations should be **limited to nine months** and those investigations be concluded within 12 months of initiation of the proceedings.
- in anti-subsidy cases, the duration of investigations should be **limited to nine months** and those investigations should be concluded within 10 months of initiation of the proceedings.
- in any event, the **provisional duties should be imposed only during a period commencing 60 days after the initiation of the proceedings** until six months after the initiation of the proceedings.

Complaints may also be submitted jointly by the Union industry, or by any natural or legal person or any association not having legal personality acting on behalf thereof, and trade unions.

**Undertakings and non-confidential information:** parties that offer an undertaking shall be required to provide a **meaningful non-confidential version** of such undertaking, so that it may be made available to interested parties to the investigation, the European Parliament and the Council. The parties should be requested to disclose as much information as possible regarding the content and nature of the undertaking with due regard to the protection of confidential information. Furthermore, before accepting any such an offer the Commission should consult the Union industry with regard to the main features of the undertaking.

The Commission should ensure the best possible access to information to all interested parties by allowing for an information system whereby interested parties are notified when new non-confidential information is added to the investigation files. **Non-confidential information shall also be made accessible through a web-based platform.**

Lastly, an amendment stated that the Commission may, upon receiving a specific reasoned request from an interested party, decide to provide them with information concerning the volume and import values of those products.

**Report:** the Commission shall present an annual report on the application and implementation of the Regulation as a part of a trade defence instrument dialogue between the Commission, the European Parliament and the Council. The report shall include information about the application of provisional and definitive measures, the termination of investigations without measures, undertakings, reinvestigations, reviews and verification visits, and the activities of the various bodies responsible for monitoring the implementation of this Regulation and fulfilment of the obligations arising therefrom.

**The European Parliament** may, within one month of the Commission's presentation of the report, invite the Commission to an ad hoc meeting of its responsible committee to present and explain any issues related to the implementation of this Regulation.

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

The Committee on International Trade adopted the report by Christofer FJELLNER (EPP, SE) on the proposal for a regulation of the European Parliament and of the Council amending 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

The committee recommended that the Parliament's position adopted in first reading following the ordinary legislative procedure should amend the Commission proposal. The key amendments are as follows:

**Scope:** Members added that the use of any dumped product in connection with the exploration of the Continental Shelf or the Exclusive Economic Zone of a Member State, or the exploitation of its resources, shall be treated as an import under this Regulation and shall be charged to duty accordingly, when causing injury to the Union industry.

**Definition:** Members clarified the notion of a **raw material in relation to the concept of structural distortion**.

**Lesser duty rule not applicable in certain cases:** the lesser duty rule shall not apply in anti-dumping cases when it is established that the exporting country engages in practices that significantly distort the regular course of trade, when the exporting country has an insufficient level of social and environmental standards or when complainants are SMEs. It shall always apply, however, when structural raw material distortions are the result of a deliberate choice made by a least developed country to protect its public interest and legitimate development goals.

**Powers of the Commission and consultation of Parliament:** the committee added that any document aimed at clarifying the established practices of the Commission with regard to the application of the Regulation (including the four draft guidelines on the selection of analogue country, on expiry reviews and the duration of measures, on the injury margin and on the Union interest) should be adopted by the Commission only after entry into force of the Regulation and **proper consultation** of the European Parliament and Council and should then fully reflect the content of the Regulation.

**Reimbursement of duties collected under expiry reviews:** the Commission proposed to reimburse duties collected under expiry reviews, if proven that dumping or subsidisation has been terminated, claiming that it would ensure effectiveness. However, the committee said this was not desirable and **deleted the provision** in the interests of balance.

**Registration:** to mitigate the risk of stockpiling, registration of imports ought to take place following the submission of any justified request, and from the date of initiation when justified by the complaint. The Commission should also have the possibility of ordering registration on its own initiative.

**SME Help Desk:** Members felt that SMEs' access to the instrument should be facilitated by **establishing the SME Help Desk**, which will raise awareness of the instrument.

#### **Time limits:**

- in anti-dumping cases, the duration of investigations should be **limited to nine months** (rather than 15 months) and those investigations be concluded within 12 months of initiation of the proceedings.
- in anti-subsidy cases, the duration of investigations should be **limited to nine months** (rather than 15 months) and those investigations should be concluded within 10 months of initiation of the proceedings.

In any event, the **provisional duties should be imposed only during a period commencing 60 days after the initiation of the proceedings** until six months after the initiation of the proceedings.

**Undertakings and non-confidential information:** parties that offer an undertaking shall be required to provide a **meaningful non-confidential version** of such undertaking, so that it may be made available to interested parties to the investigation, the European Parliament and the Council. The parties shall be requested to disclose as much information as possible regarding the content and nature of the undertaking with due regard to the protection of confidential information. Furthermore, before accepting any such an offer the Commission shall consult the Union industry with regard to the main features of the undertaking.

The Commission shall ensure the best possible access to information to all interested parties by allowing for an information system whereby interested parties are notified when new non-confidential information is added to the investigation files. **Non-confidential information shall also be made accessible through a web-based platform.**

Lastly, an amendment states that the Commission may, upon receiving a specific reasoned request from an interested party, decide to provide them with information concerning the volume and import values of those products.

**Report:** the Commission shall present an annual report on the application and implementation of the Regulation as a part of a trade defence instrument dialogue between the Commission, the European Parliament and the Council. The report shall include information about the application of provisional and definitive measures, the termination of investigations without measures, undertakings, reinvestigations, reviews and verification visits, and the activities of the various bodies responsible for monitoring the implementation of this Regulation and fulfilment of the obligations arising therefrom.

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

The Council discussed, **in the light of a compromise proposed by the presidency**, a draft regulation aimed at updating EU instruments for tackling unfair competition from dumped and subsidised imports.

The discussion confirmed that there were difficulties in the way of the Council reaching an agreement on the proposal. They also confirmed that **delegations remain deeply divided on the proposal regarding the disapplication of the "Lesser Duty Rule" (LDR)**: 11 Member States are in favour, 3 others are also in favour but want more restricted definitions, whereas the remaining 14 are strongly against and want the status quo to be maintained.

The "Lesser Duty Rule" (LDR) ensures that the duties imposed are not higher than necessary to remove the injury inflicted on the EU industry. The duty amount is set at the lower level between the dumping margin and the injury level. The Presidency proposal foresees that the disapplication of the LDR would apply to antidumping cases only.

Other than the "Lesser Duty Rule", discussions continued on a cluster of technical issues (SME Helpdesk, Reimbursement, Duration and Shipping Clause/pre-disclosure) as well as on "Raw Materials" and "Energy".

The presidency therefore asked the Commission to reflect on the way forward.

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

2013/0103(COD) - 16/04/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 553 votes to 85, with 84 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council amending 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.

The report was referred back to the committee during its 5 February 2014 plenary sitting.

Parliament adopted as its position at first reading the text adopted on 5 February 2014 (please refer to the summary of the same day).

Parliament requested in particular that certain provisions of the Regulations should be amended in order to improve transparency and predictability, provide for effective measures to fight against retaliation by third countries.

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

2013/0103(COD) - 30/05/2018 - Text adopted by Parliament, 2nd reading

The European Parliament adopted a legislative resolution on the Council 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 European Parliament **approved** the Council's position at first reading.

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

2013/0103(COD) - 30/05/2018 - Final act

**PURPOSE:** to update and modernise EU legislation on trade defence instruments to make them more predictable, transparent and accessible, in particular for small and medium-sized enterprises (SMEs).

**LEGISLATIVE ACT:** Regulation (EU) 2018/825 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 existing legal framework, namely [Regulation \(EU\) 2016/1036](#) and [Regulation \(EU\) 2016/1037](#), which allows higher tariffs to be imposed on dumped or subsidised imports in order to improve the protection of EU producers from damage caused by unfair competition.

**Transparency and predictability of provisional anti-dumping and anti-subsidy measures:** the Regulation includes provisions to increase the transparency and predictability of provisional anti-dumping and anti-subsidy measures. It also includes a pre-disclosure period of three weeks after the information is made public during which provisional duties will not be applied, as well as additional safety nets related to stockpiling.

**Initiation of the procedure:** complaints may also be submitted jointly by the Union industry, or by any natural or legal person or any association not having legal personality acting on behalf thereof, and trade unions, or be supported by trade unions. The Commission shall facilitate access to the trade defence instrument for diverse and fragmented industry sectors, largely composed of small and medium-sized enterprises (SME) through a dedicated SME Helpdesk.

**Access to information:** 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.

Where an investigation is not initiated by a complaint, the Commission should request Union producers to provide the information necessary for the investigation to proceed, in order to ensure that sufficient information is available for carrying out the investigation in case of threats of retaliation by third countries.

**Investigation period:** the Regulation reduces the normal investigation period to a period of **7 months**, with a maximum period of 8 months. Definitive duties shall have to be imposed within **14 months**.

**Raw materials:** the Regulation enables higher duties to be imposed where there are raw material distortions and where these raw materials, including energy, account individually for more than 17% of receipts. This would allow for the level of duties imposed under the 'lesser duty rule' to be adapted if it is in the interest of the EU. The imposition of higher duties will include a **target profit set at a minimum of 6%**.

**Social and environmental standards** shall be taken into account when establishing the injury elimination margin.

**Refund of duties:** the Regulation guarantees the possibility of a refund for operators. If the measures are repealed, the excess duties collected during the review investigations will be refunded to the importers.

**Continental shelf of a Member State or exclusive economic zone:** a countervailing duty may also be imposed on any subsidised product brought in significant quantities to an artificial island, a fixed or floating installation or any other structure in the continental shelf of a Member State or the exclusive economic zone declared by a Member State pursuant to UNCLOS, where this would cause injury to the Union industry.

ENTRY INTO FORCE: 8.6.2018.

## 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 Council's 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.

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

2013/0103(COD) - 23/05/2018 - Committee recommendation tabled for plenary, 2nd reading

The Committee on International Trade adopted the recommendation for second reading contained in the report by Christofer FJELLNER (EPP, SE) on the Council 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 committee recommended that the European Parliament **approve the Council's position at first reading**.

The proposed Regulation aims to update and modernise the EU's trade defence instruments, which have not been substantially revised since the completion of the Uruguay Round in 1995, in order to make them more efficient and effective for EU operators.

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

2013/0103(COD) - 17/04/2018 - Commission communication on Council's position

The Commission presented a communication on the position of the Council on 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 Commission accepted the Council's position which reflects the agreement found in trilogues. It considered that the Council supported and further refines the Commission proposal, *inter alia* through a **pre-disclosure period of three weeks** subject to safeguards against stockpiling.

The Commission noted the following:

- as regards the **lesser duty rule**, countervailing measures normally apply at the level of the subsidy margin and in anti-dumping cases a **17% threshold** for distorted raw materials is introduced. Both are subject to a Union interest test and a general review of this practice in five years' time;
- the duration of an **anti-dumping investigation** is shortened;
- the **improved target price calculation for the European industry** includes the full cost, investment, R&D and innovation and a minimum target profit of 6%.

Following the Council's adoption of its first reading position, the **European Parliament is expected to formally endorse the agreement** found in trilogues. In its position at first reading, Parliament suggested several amendments to the Commission proposal, including the following:

- the recognition of trade unions and of social and environmental standards in the trade defence investigations;
- the extension of trade defence measures to the continental shelf and exclusive economic zone of a Member State;
- additional support for small and medium-sized enterprise.