

Basic information

2016/0351(COD)

COD - Ordinary legislative procedure (ex-codecision procedure)
Regulation

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

Amending Regulation (EU) 2016/1037 [2014/0305\(COD\)](#)

Amending Regulation (EU) 2016/1036 [2014/0309\(COD\)](#)

Subject




6.20.02 Export/import control, trade defence, trade barriers

Procedure completed

Key players

| | | | | |
|-------------------------------|--|--|--|------------------|
| European Parliament | Committee responsible | | Rapporteur | Appointed |
| | INTA International Trade | | CICU Salvatore (PPE) | 28/11/2016 |
| | | | Shadow rapporteur MOSCA Alessia Maria (S&D) LOONES Sander (ECR) LAMBSDORFF Alexander Graf (ALDE) SCHOLZ Helmut (GUE /NGL) JADOT Yannick (Verts/ALE) BORRELLI David (EFDD) SALVINI Matteo (ENF) | |
| | Committee for opinion | | Rapporteur for opinion | Appointed |
| | ITRE Industry, Research and Energy | | BUZEK Jerzy (PPE) | 05/12/2016 |
| | JURI Legal Affairs | | LEBRETON Gilles (ENF) | 28/11/2016 |
| Council of the European Union | Council configuration | | Meetings | Date |
| | Transport, Telecommunications and Energy | | 3581 | 2017-12-04 |
| | | | | |

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|---------------------|-----------------------------|-------------------|
| European Commission | Commission DG | Commissioner |
| | Trade and Economic Security | MALMSTRÖM Cecilia |

| Key events | | | |
|------------|---|--|---------|
| Date | Event | Reference | Summary |
| 09/11/2016 | Legislative proposal published | COM(2016)0721  | Summary |
| 21/11/2016 | Committee referral announced in Parliament, 1st reading | | |
| 20/06/2017 | Vote in committee, 1st reading | | |
| 20/06/2017 | Committee decision to open interinstitutional negotiations with report adopted in committee | | |
| 27/06/2017 | Committee report tabled for plenary, 1st reading | A8-0236/2017 | Summary |
| 03/07/2017 | Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71) | | |
| 05/07/2017 | Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71) | | |
| 12/10/2017 | Approval in committee of the text agreed at 1st reading interinstitutional negotiations | PE612.094 GEDA/A/(2017)009267 | |
| 14/11/2017 | Debate in Parliament |  | |
| 15/11/2017 | Decision by Parliament, 1st reading | T8-0437/2017 | Summary |
| 15/11/2017 | Results of vote in Parliament |  | |
| 04/12/2017 | Act adopted by Council after Parliament's 1st reading | | |
| 12/12/2017 | Final act signed | | |
| 12/12/2017 | End of procedure in Parliament | | |
| 19/12/2017 | Final act published in Official Journal | | |

| Technical information | |
|----------------------------|--|
| Procedure reference | 2016/0351(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 European Union TFEU 207-p2 |
| Other legal basis | Rules of Procedure EP 165 |
| Stage reached in procedure | Procedure completed |
| Committee dossier | INTA/8/08406 |

Documentation gateway





European Parliament

| Document type | Committee | Reference | Date | Summary |
|---|----------------------|------------------------------|------------|-------------------------|
| Committee draft report | | PE602.983 | 25/04/2017 | |
| Committee opinion | ITRE | PE597.738 | 30/05/2017 | |
| Amendments tabled in committee | | PE604.811 | 30/05/2017 | |
| Committee report tabled for plenary, 1st reading/single reading | | A8-0236/2017 | 27/06/2017 | Summary |
| Text agreed during interinstitutional negotiations | | PE612.094 | 03/10/2017 | |
| Text adopted by Parliament, 1st reading/single reading | | T8-0437/2017 | 15/11/2017 | Summary |

Council of the EU

| Document type | Reference | Date | Summary |
|--|-------------------------------------|------------|---------|
| Coreper letter confirming interinstitutional agreement | GEDA/A/(2017)009267 | 11/10/2017 | |
| Draft final act | 00050/2017/LEX | 13/12/2017 | |

European Commission

| Document type | Reference | Date | Summary |
|--|--|------------|-------------------------|
| Legislative proposal | COM(2016)0721  | 09/11/2016 | Summary |
| Document attached to the procedure | SWD(2016)0370  | 09/11/2016 | |
| Document attached to the procedure | SWD(2016)0371  | 09/11/2016 | |
| Document attached to the procedure | SWD(2016)0372  | 09/11/2016 | |
| Commission response to text adopted in plenary | SP(2018)8 | 10/01/2018 | |

National parliaments

| Document type | Parliament /Chamber | Reference | Date | Summary |
|---------------|----------------------------|-------------------------------|------------|---------|
| Contribution | IT_CHAMBER | COM(2016)0721 | 16/02/2017 | |
| Contribution | CZ_SENATE | COM(2016)0721 | 03/05/2017 | |

Other institutions and bodies

| Institution/body | Document type | Reference | Date | Summary |
|------------------|--|------------------------------|------------|---------|
| EESC | Economic and Social Committee: opinion, report | CES0077/2017 | 29/03/2017 | |

Additional information

| Source | Document | Date |
|---------------------|--------------------------|------|
| EP Research Service | Briefing | |
| European Commission | EUR-Lex | |

Final act

[Regulation 2017/2321](#)
[OJ L 338 19.12.2017, p. 0001](#)

[Summary](#)

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.

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

2016/0351(COD) - 27/06/2017 - Committee report tabled for plenary, 1st reading/single reading

The Committee on International Trade adopted the report by Salvatore CICU (EPP, IT) on the proposal for 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 position of the European Parliament adopted at first reading in accordance with the ordinary legislative procedure should amend the Commission proposal as follows:

Determination of the normal value in the event of market distortions (basic anti-dumping Regulation): Members stated that normal value in the presence of market distortions shall be constructed on the basis of costs of production and sale reflecting undistorted prices or benchmarks for **each and every factor of production.**

If an exporting producer from a country where one or more significant distortions exist clearly **demonstrates that it is not directly or indirectly affected by any significant distortion** and that its costs of one or more of its individual factors of production are not distorted, as assessed pursuant to the third subparagraph, those costs shall be used in the construction of its normal value.

The absence of distortion of an exporting producer's costs of a given factor of production and the reliability thereof shall be **assessed**, *inter alia*, by reference to the quantities involved, their proportion in relation to the total costs of that factor of production, and actual use in production.

Criteria and factors to be taken into account: Members considered that there is a significant market distortion when the declared prices or costs, including the cost of raw materials, energy and other factors of production, are not the result of free market forces as they are affected by government intervention or in case of non-compliance:

- the fundamental Conventions of the **International Labour Organization** (ILO) listed in Annex I to the Regulation (in particular the Conventions on forced labour, freedom of association, collective bargaining rights, equal remuneration for men and women);
- **multilateral environmental agreements** to which the Union is a party;
- the OECD conventions in the field of **taxation.**

When assessing the existence of **significant distortions** regard should be had, *inter alia*, to the potential impact of the following:

- **government influence**, whether direct or indirect, over the allocation of resources and decisions and enterprises;
- the lack of or discriminatory application or inadequate enforcement of a transparent and effective set of laws that ensure the respect of **property rights** and the operation of a functioning bankruptcy regime;
- **wage rates** are not the result of free bargaining between labour and management;
- the absence of a transparent set of laws produces **discriminatory effects** with regard to joint ventures and foreign investments;
- **access to finance** granted by institutions implementing public policy objectives, including by sectorial subsidies, or the existence of an oligopoly or monopoly in factors of production.

Report and conclusions: the Commission services would be required to draw up a detailed report describing the particular situation relating to all these criteria in a given country or sector. The Commission should take account of the economic and commercial particularities of **SMEs** and assist them in the use of the reports.

On the request of the European Parliament, of a Member State or on the Commission's own initiative when circumstances in a specific country or sector have changed, the Commission shall initiate or update the report. In the absence of a report, the Commission shall use any available information or data to establish the existence of significant distortions.

The Commission shall **make a definitive determination on the existence of one or more significant distortions** in the exporting country and disclose it to the parties within **60 days** following the initiation of the investigation. A determination that significant distortions exist in a given country or sector should remain in effect until revoked, and such revocation should take place only if sufficient evidence has conclusively shown that that country or sector is no longer affected by significant distortions.

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

2016/0351(COD) - 09/11/2016 - Legislative proposal

PURPOSE: to make targeted amendments to the Basic Anti-Dumping Regulation and to the Basic Anti-Subsidy Regulation.

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 Council. BACKGROUND : the Commission proposal covers targeted amendments to [Regulation \(EU\) 2016/1036](#) on protection against dumped imports from countries that are not members of the European Union (the Basic Anti-Dumping Regulation) and to [Regulation \(EU\) 2016/1037](#) on protection against subsidised imports from countries that are not members of the European Union (the Basic Anti-Subsidy Regulation).

IMPACT ASSESSMENT: taking into account the results of the public consultation, the independent study and the Commission's extensive practice in the use of the instruments, an [impact assessment](#) was carried out in Spring 2016, when various options were analysed. The preferred solutions form the basis for this proposal.

CONTENT : the proposal provides as follows:

1) Amendments to the Basic Anti-Dumping Regulation:

Determination of normal value in the presence of market distortions: the Regulation stipulates the basis on which normal value should be determined in the case of imports from non-market economy countries. In view of developments with respect to certain countries that are Members of the World Trade Organisation (WTO), it is proposed to **amend the method used to calculate the normal value and the dumping margin for the countries concerned.**

For WTO members, the normal value is normally determined on the basis of the domestic prices of the like product or on the basis of a constructed normal value. There are circumstances, however, in which the **domestic prices and costs would not provide a reasonable basis to determine the normal value.** This could be the case, for instance, when prices or costs are not the result of free market forces because they are affected by government intervention.

In such circumstances, the Commission considers that it would be inappropriate to use domestic prices and costs to determine the value at which the like product should be normally sold. Accordingly, a new provision stipulates that **the normal value would instead be constructed on the basis of costs of production and sale reflecting undistorted prices or benchmarks.**

For this purpose, the sources that may be used would include undistorted international prices, costs, or benchmarks, or corresponding costs of production and sale in an appropriate representative country with a similar level of economic development as the exporting country.

This methodology would allow the Commission to **establish and measure the actual magnitude of dumping being practised** in normal market conditions absent distortions.

For the sake of transparency and efficiency, the Commission services intend to issue public reports **describing the specific situation concerning the market circumstances in any given country or sector.** Such reports and the evidence on which it is based would also be placed on the file of any investigation relating to that country or sector so that all interested parties would be in a position to express their views and comments.

Transition from the current system to the new one: the proposal introduces specific disciplines ensuring that the entry into force of the new system would **not create legal uncertainty for ongoing cases or unduly affect existing measures.** Thus, the proposal makes clear that the new system would only apply to cases initiated upon entry into force of the amended provisions. Any given ongoing anti-dumping investigation at the time of entry into force would remain governed by the current disciplines.

2) Amendment to the Basic Anti-Subsidy Regulation: experience shows that the actual magnitude of subsidisation is not always evident at the time of initiation. Yet, those subsidies clearly provide an unfair benefit the exporters concerned, which allow them to sell at injurious prices to the EU market.

For reasons of due process and transparency, the proposal clarifies that, **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. In these situations, the Commission will send to the country of origin and/or export a summary of the main elements concerning these other subsidies to ensure meaningful consultations.

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

The European Parliament adopted by 554 votes to 48, with 80 abstentions, a legislative resolution on the proposal for 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.

As a reminder, the Commission proposal aims to make targeted amendments to the "basic anti-dumping Regulation" and the "basic anti-subsidy Regulation" to protect against dumped and subsidised imports from third country.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows:

Significant market distortions: The amended text clarifies the circumstances in which significant distortions can be considered to have a significant influence on the free market forces: this would be the case **where the prices or costs declared, including the cost of raw materials and energy, are not the result of the free market forces** because they are affected by substantial government intervention.

In assessing the existence of significant distortions regard shall be had, inter alia, to the potential impact of one or more of the following elements:

- 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 which implement public policy objectives or otherwise not acting independently of the state.

When assessing the existence of significant distortions, relevant international standards, including core conventions of the **International Labour Organisation** (ILO) and relevant multilateral environmental conventions, shall be taken into account, where appropriate.

Commission reports: the Commission shall produce, make public and regularly update reports on significant distortions, which could potentially result in an anti-dumping investigation, describing the market circumstances concerning those instances in a certain country or a certain sector.

The Union industry may rely on the evidence in these reports in the context of filing a complaint.

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. In such investigations, interested parties should have ample opportunity to comment on the reports and the evidence on which they are based

Indications as to the existence of significant distortions may also be presented by all relevant stakeholders, including **Union industry and trade unions**. Such indications and the need to avoid any additional burdens for Union industry in using the anti-dumping instrument, in particular in view of the economic and trade specificities of **small and medium-sized enterprises**, shall be considered when deciding on preparing or updating the relevant reports.

Report and information: the Commission shall, with due regard to the protection of confidential information, present an annual report on the application and implementation of this Regulation to the European Parliament and to the Council.

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 this Regulation and fulfilment of the obligations arising therefrom.

The **European Parliament** may 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. It may also communicate any relevant considerations and facts to the Commission.

Commission declarations: the Commission recalled that the purpose of the new methodology is to maintain the continued protection of the Union industry against unfair trade practices, in particular those arising from significant market distortions. In that respect, the Commission will ensure that the **Union industry incurs no additional burden** when seeking protection under the anti-dumping instrument.

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

Where the European Parliament or the Council inform the Commission that they consider that the conditions for producing or updating a report are met, the Commission will take the appropriate action and inform the European Parliament and the Council accordingly.