

Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports (codification)

CHAPTER III

UNION INVESTIGATION PROCEDURE

Article 4

- 1 Without prejudice to Article 7, the Union investigation procedure shall be implemented before any safeguard measure is applied.
- 2 Using as a basis the factors referred to in Article 9, the investigation shall seek to determine whether imports of the product in question are causing or threatening to cause serious injury to the Union producers concerned.
- 3 The following definitions shall apply:
 - a ‘serious injury’ means a significant overall impairment in the position of Union producers;
 - b ‘threat of serious injury’ means serious injury that is clearly imminent;
 - c ‘Union producers’ means the producers as a whole of like or directly competing products operating within the territory of the Union, or those whose collective output of like or directly competing products constitutes a major proportion of the total Union production of those products.

Article 5

- 1 Where it is apparent to the Commission that there is sufficient evidence to justify the initiation of an investigation, the Commission shall initiate an investigation within 1 month of the date of receipt of information from a Member State and publish a notice in the *Official Journal of the European Union*. That notice shall:
 - a give a summary of the information received, and require that all relevant information is to be communicated to the Commission;
 - b state the period within which interested parties may make known their views in writing and submit information, if such views and information are to be taken into account during the investigation;
 - c state the period within which interested parties may apply to be heard orally by the Commission in accordance with paragraph 4.

The Commission shall commence the investigation, acting in cooperation with the Member States.

The Commission shall provide information to the Member States concerning its analysis of the information normally within 21 days of the date on which the information is provided to the Commission.

- 2 The Commission shall seek all information it deems necessary and, where it considers it appropriate, after having informed the Member States, endeavour to check that information with importers, traders, agents, producers, trade associations and organisations.

The Commission shall be assisted in this task by staff of the Member State on whose territory those checks are being carried out, provided that that Member State so wishes.

3 The Member States shall supply the Commission, at its request and following procedures laid down by it, with the information at their disposal on developments in the market of the product being investigated.

4 Interested parties which have come forward pursuant to the first subparagraph of paragraph 1 and representatives of the exporting country may, upon written request, inspect all information made available to the Commission in connection with the investigation other than internal documents prepared by the authorities of the Union or its Member States, provided that that information is relevant to the presentation of their case and not confidential within the meaning of Article 8 and that it is used by the Commission in the investigation.

Interested parties which have come forward may communicate their views on the information in question to the Commission. Those views may be taken into consideration where they are backed by sufficient evidence.

5 The Commission may hear the interested parties. Such parties must be heard where they have made a written application within the period laid down in the notice published in the *Official Journal of the European Union*, showing that they are actually likely to be affected by the outcome of the investigation and that there are special reasons for them to be heard orally.

6 When information is not supplied within the time limits set by this Regulation or by the Commission pursuant to this Regulation, or the investigation is significantly impeded, findings may be made on the basis of the facts available. Where the Commission finds that any interested party or third party has supplied it with false or misleading information, it shall disregard that information and may make use of facts available.

7 Where it appears to the Commission that there is insufficient evidence to justify an investigation, it shall inform the Member States of its decision within 1 month of the date of receipt of the information from the Member States.

Article 6

1 At the end of the investigation, the Commission shall submit a report on the results to the Committee.

2 Where the Commission considers, within 9 months of the initiation of the investigation, that no Union surveillance or safeguard measures are necessary, the investigation shall be terminated within a month. The Commission shall terminate the investigation in accordance with the advisory procedure referred to in Article 3(2).

3 If the Commission considers that Union surveillance or safeguard measures are necessary, it shall take the necessary decisions in accordance with Chapters IV and V, no later than 9 months from the initiation of the investigation. In exceptional circumstances, this time limit may be extended by a further maximum period of 2 months; the Commission shall then publish a notice in the *Official Journal of the European Union* setting forth the duration of the extension and a summary of the reasons therefor.

Article 7

1 The provisions of this Chapter shall not preclude the use, at any time, of surveillance measures in accordance with Articles 10 to 14 or provisional safeguard measures in accordance with Articles 15, 16 and 17.

Provisional safeguard measures shall be applied:

- a in critical circumstances where delay would cause damage which would be difficult to repair, making immediate action necessary; and

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- b where a preliminary determination provides clear evidence that increased imports have caused or are threatening to cause serious injury.

The duration of such measures shall not exceed 200 days.

2 Provisional safeguard measures shall take the form of an increase in the existing level of customs duty, whether the latter is zero or higher, if such action is likely to prevent or repair the serious injury.

3 The Commission shall immediately conduct whatever investigation measures are still necessary.

4 Should the provisional safeguard measures be repealed because no serious injury or threat of serious injury exists, the customs duties collected as a result of the provisional measures shall be automatically refunded as soon as possible. The procedure laid down in Article 235 et seq. of Council Regulation (EEC) No 2913/92⁽¹⁾ shall apply.

Article 8

1 Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

2 The Commission and the Member States, including the officials of either, shall not reveal any information of a confidential nature received pursuant to this Regulation, or any information provided on a confidential basis, without specific permission from the supplier of such information.

3 Each request for confidentiality shall state the reasons why the information is confidential.

However, if it appears that a request for confidentiality is unjustified and if the supplier of the information wishes neither to make it public nor to authorise its disclosure in general terms or in the form of a summary, the information concerned may be disregarded.

4 Information shall in any case be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information.

5 Paragraphs 1 to 4 shall not preclude reference by the Union authorities to general information and in particular to reasons on which decisions taken pursuant to this Regulation are based. Those authorities shall, however, take into account the legitimate interest of legal and natural persons concerned that their business secrets should not be divulged.

Article 9

1 Examination of the trend in imports, of the conditions in which they take place and of serious injury or threat of serious injury to Union producers resulting from such imports shall cover in particular the following factors:

- a the volume of imports, in particular where there has been a significant increase, either in absolute terms or relative to production or consumption in the Union;
- b the price of imports, in particular where there has been a significant price undercutting as compared with the price of a like product in the Union;
- c the consequent impact on Union producers as indicated by trends in certain economic factors such as:
 - production,
 - capacity utilisation,

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- stocks,
 - sales,
 - market share,
 - prices (i.e. depression of prices or prevention of price increases which would normally have occurred),
 - profits,
 - return on capital employed,
 - cash flow,
 - employment;
- d factors other than trends in imports which are causing or may have caused injury to the Union producers concerned.

2 Where a threat of serious injury is alleged, the Commission shall also examine whether it is clearly foreseeable that a particular situation is likely to develop into actual injury.

In this regard account may be taken of factors such as:

- a the rate of increase of the exports to the Union;
- b the export capacity in the country of origin or export, as it stands or is likely to be in the foreseeable future, and the likelihood that that capacity will be used to export to the Union.

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- (1) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ([OJ L 302, 19.10.1992, p. 1](#)).

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