

Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (codification)

Article 11

Duration, reviews and refunds

1 An anti-dumping measure shall remain in force only as long as, and to the extent that, it is necessary to counteract the dumping which is causing injury.

2 A definitive anti-dumping measure shall expire five years from its imposition or five years from the date of the conclusion of the most recent review which has covered both dumping and injury, unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of dumping and injury. Such an expiry review shall be initiated on the initiative of the Commission, or upon a request made by or on behalf of Union producers, and the measure shall remain in force pending the outcome of that review.

[^{F1}An expiry review shall be initiated where the request contains sufficient evidence that the expiry of the measures would likely result in a continuation or recurrence of dumping and injury. Such likelihood may, for example, be indicated by evidence of continued dumping and injury or evidence that the removal of injury is partly or solely due to the existence of measures or evidence that the circumstances of the exporters, or market conditions, are such that they would indicate the likelihood of further injurious dumping, or by evidence of continued distortions on raw materials.]

In carrying out investigations under this paragraph, the exporters, importers, the representatives of the exporting country and the Union producers shall be provided with the opportunity to amplify, rebut or comment on the matters set out in the review request, and conclusions shall be reached with due account taken of all relevant and duly documented evidence presented in relation to the question as to whether the expiry of measures would be likely, or unlikely, to lead to the continuation or recurrence of dumping and injury.

A notice of impending expiry shall be published in the *Official Journal of the European Union* at an appropriate time in the final year of the period of application of the measures as defined in this paragraph. Thereafter, the Union producers shall, no later than three months before the end of the five-year period, be entitled to lodge a review request in accordance with the second subparagraph. A notice announcing the actual expiry of measures pursuant to this paragraph shall also be published.

3 The need for the continued imposition of measures may also be reviewed, where warranted, on the initiative of the Commission or at the request of a Member State or, provided that a reasonable period of time of at least one year has elapsed since the imposition of the definitive measure, upon a request by any exporter or importer or by the Union producers which contains sufficient evidence substantiating the need for such an interim review.

An interim review shall be initiated where the request contains sufficient evidence that the continued imposition of the measure is no longer necessary to offset dumping and/or that the injury would be unlikely to continue or recur if the measure were removed or varied, or that the existing measure is not, or is no longer, sufficient to counteract the dumping which is causing injury.

In carrying out investigations pursuant to this paragraph, the Commission may, *inter alia*, consider whether the circumstances with regard to dumping and injury have changed significantly, or whether existing measures are achieving the intended results in removing the injury previously established under Article 3. In those respects, account shall be taken in the final determination of all relevant and duly documented evidence.

[^{F2}Where existing anti-dumping measures are based on a normal value calculated pursuant to the Article 2(7) as it was in force on 19 December 2017, the methodology laid down in Article 2(1) to (6a) shall replace the original methodology used for the determination of the normal value only from the date on which the first expiry review of those measures, after 19 December 2017, is initiated. In accordance with Article 11(2), those measures shall remain in force pending the outcome of the review.]

4 A review shall also be carried out for the purpose of determining individual margins of dumping for new exporters in the exporting country in question which have not exported the product during the period of investigation on which the measures were based.

The review shall be initiated where a new exporter or producer can show that it is not related to any of the exporters or producers in the exporting country which are subject to the anti-dumping measures on the product, and that it has actually exported to the Union following the investigation period, or where it can demonstrate that it has entered into an irrevocable contractual obligation to export a significant quantity to the Union.

A review for a new exporter shall be initiated and carried out on an accelerated basis after Union producers have been given an opportunity to comment. The Commission Regulation initiating a review shall repeal the duty in force with regard to the new exporter concerned by amending the regulation which has imposed such duty, and by making imports subject to registration in accordance with Article 14(5) in order to ensure that, should the review result in a determination of dumping in respect of such an exporter, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

The provisions of this paragraph shall not apply where duties have been imposed under Article 9(6).

[^{F2}Where existing anti-dumping measures are based on a normal value calculated pursuant to Article 2(7) as it was in force on 19 December 2017, the methodology laid down in Article 2(1) to (6a) shall replace the original methodology used for the determination of the normal value only after the date on which the first expiry review of those measures, after 20 December 2017, is initiated. In accordance with Article 11(2), those measures shall remain in force pending the outcome of the review.]

5 The relevant provisions of this Regulation with regard to procedures and the conduct of investigations, excluding those relating to time limits, shall apply to any review carried out pursuant to paragraphs 2, 3 and 4.

Reviews carried out pursuant to paragraphs 2 and 3 shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review. In any event, reviews pursuant to paragraphs 2 and 3 shall in all cases be concluded within 15 months of initiation.

Reviews pursuant to paragraph 4 shall in all cases be concluded within nine months of the date of initiation.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EU) 2016/1036 of the European Parliament and of the Council, Article 11. (See end of Document for details)

If a review carried out pursuant to paragraph 2 is initiated while a review under paragraph 3 is ongoing in the same proceedings, the review pursuant to paragraph 3 shall be concluded at the same time as the review pursuant to paragraph 2.

If the investigation is not completed within the deadlines specified in the second, third and fourth subparagraphs, the measures shall:

- expire in investigations pursuant to paragraph 2,
- expire in the case of investigations carried out pursuant to paragraphs 2 and 3 in parallel, where either the investigation pursuant to paragraph 2 was initiated while a review under paragraph 3 was ongoing in the same proceedings or where such reviews were initiated at the same time, or
- remain unchanged in investigations pursuant to paragraphs 3 and 4.

A notice announcing the actual expiry or maintenance of the measures pursuant to this paragraph shall then be published in the *Official Journal of the European Union*.

[^{F3}If, following an investigation pursuant to paragraph 2, the measure expires, any duties collected from the date of the initiation of such investigation on goods that were customs-cleared shall be repaid provided that this is requested from national customs authorities and granted by those authorities in accordance with the applicable Union customs legislation concerning repayment and remission of duty. Such repayment shall not give rise to the payment of interest by the national customs authorities concerned.]

6 Reviews pursuant to this Article shall be initiated by the Commission. The Commission shall decide whether or not to initiate reviews pursuant to paragraph 2 of this Article in accordance with the advisory procedure referred to in Article 15(2). The Commission shall also provide information to the Member States once an operator or a Member State has submitted a request justifying the initiation of a review pursuant to paragraphs 3 and 4 of this Article and the Commission has completed its analysis thereof, or once the Commission has itself determined that the need for the continued imposition of measures should be reviewed.

Where warranted by reviews, measures shall, in accordance with the examination procedure referred to in Article 15(3), be repealed or maintained pursuant to paragraph 2 of this Article, or repealed, maintained or amended pursuant to paragraphs 3 and 4 of this Article.

Where measures are repealed for individual exporters, but not for the country as a whole, such exporters shall remain subject to the proceedings and may, automatically, be reinvestigated in any subsequent review carried out for that country pursuant to this Article.

7 Where a review of measures pursuant to paragraph 3 is in progress at the end of the period of application of measures as defined in paragraph 2, such a review shall also cover the circumstances set out in paragraph 2.

8 Notwithstanding paragraph 2, an importer may request reimbursement of duties collected where it is shown that the dumping margin, on the basis of which duties were paid, has been eliminated, or reduced to a level which is below the level of the duty in force.

In requesting a refund of anti-dumping duties, the importer shall submit an application to the Commission. The application shall be submitted via the Member State of the territory in which the products were released for free circulation, within six months of the date on which the amount of the definitive duties to be levied was duly determined by the competent authorities or of the date on which a decision was made definitively

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to collect the amounts secured by way of provisional duty. Member States shall forward the request to the Commission forthwith.

An application for refund shall only be considered to be duly supported by evidence where it contains precise information on the amount of refund of anti-dumping duties claimed and all customs documentation relating to the calculation and payment of such amount. It shall also include evidence, for a representative period, of normal values and export prices to the Union for the exporter or producer to which the duty applies. In cases where the importer is not associated with the exporter or producer concerned and such information is not immediately available, or where the exporter or producer is unwilling to release it to the importer, the application shall contain a statement from the exporter or producer that the dumping margin has been reduced or eliminated, as specified in this Article, and that the relevant supporting evidence will be provided to the Commission. Where such evidence is not forthcoming from the exporter or producer within a reasonable period of time the application shall be rejected.

The Commission shall decide whether and to what extent the application should be granted, or it may decide at any time to initiate an interim review, whereupon the information and findings from such a review carried out in accordance with the provisions applicable for such reviews shall be used to determine whether and to what extent a refund is justified. The Commission shall provide information to the Member States once it has completed its analysis of the application.

Refunds of duties shall normally take place within 12 months, and in no circumstances more than 18 months after the date on which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the anti-dumping duty.

The payment of any refund authorised should normally be made by Member States within 90 days of the Commission's decision.

9 In all review or refund investigations carried out pursuant to this Article, the Commission shall, provided that circumstances have not changed, apply the same methodology as in the investigation which led to the duty, with due account being taken of Article 2, and in particular paragraphs 11 and 12 thereof, and of Article 17.

[^{F2}In relation to the circumstances relevant for the determination of the normal value pursuant to Article 2, due account shall be taken of all relevant evidence, including relevant reports regarding the circumstances prevailing on the domestic market of the exporters and producers and the evidence on which they are based, which has been placed on the file, and upon which interested parties have had an opportunity to comment.]

10 In any investigation carried out pursuant to this Article, the Commission shall examine the reliability of export prices in accordance with Article 2. However, where it is decided to construct the export price in accordance with Article 2(9), it shall calculate it with no deduction for the amount of anti-dumping duties paid when conclusive evidence is provided that the duty is duly reflected in resale prices and the subsequent selling prices in the Union.

Textual Amendments

- F1** Substituted by [Regulation \(EU\) 2018/825 of the European Parliament and of the Council of 30 May 2018 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.](#)

Changes to legislation: There are currently no known outstanding effects for the Regulation (EU) 2016/1036 of the European Parliament and of the Council, Article 11. (See end of Document for details)

- F2** Inserted by Regulation (EU) 2017/2321 of the European Parliament and of the Council of 12 December 2017 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.
- F3** Inserted by Regulation (EU) 2018/825 of the European Parliament and of the Council of 30 May 2018 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.

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