

Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (codification)

Article 12

Provisional measures

- [^{F1} Provisional duties may be imposed if:
- a proceedings have been initiated in accordance with Article 10;
 - b a notice has been given to that effect and interested parties have been given an adequate opportunity to submit information and make comments in accordance with the second subparagraph of Article 10(12);
 - c a provisional affirmative determination has been made that the imported product benefits from countervailable subsidies and consequent injury to the Union industry; and
 - d the Union interest calls for intervention to prevent such injury.

The provisional duties shall be imposed no earlier than 60 days from the initiation of the proceedings but no later than nine months from the initiation of the proceedings.

The amount of the provisional countervailing duty shall correspond to the total amount of countervailable subsidies as provisionally established.

Where the Commission, on the basis of all the information submitted, can clearly conclude provisionally that it is not in the Union's interest to impose the provisional duty at that amount, the provisional countervailing duty shall be the amount adequate to remove the injury to the Union industry, if this is lower than the total amount of countervailable subsidies.

Provisional duties shall not be imposed within a period of three weeks after the information is sent to interested parties under Article 29a (period of pre-disclosure). The provision of such information shall not prejudice any subsequent related decision that may be taken by the Commission.

The Commission shall review by 9 June 2020, whether a substantial rise in imports has occurred during the period of pre-disclosure and whether, if such rise has occurred, it has caused additional injury to the Union industry, despite the measures that the Commission might have taken based on Article 24(5a) and Article 15(1). It shall rely in particular on data collected on the basis of Article 24(6) and any relevant information at its disposal. The Commission shall adopt a delegated act in accordance with Article 32b to amend the duration of the period of pre-disclosure to two weeks in the case of a substantial rise of imports that have caused additional injury and to four weeks where this is not the case.

The Commission shall make public on its website its intention to impose provisional duties, including information on the possible duty rates, at the same time when it provides interested parties with the information pursuant to Article 29a.]

[^{F2}1a 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

Changes to legislation: There are currently no known outstanding effects for the Regulation (EU) 2016/1037 of the European Parliament and of the Council, Article 12. (See end of Document for details)

level of profitability to be expected under normal conditions of competition. Such profit margin shall not be lower than 6 %.

1b When establishing the target price, the actual cost of production of the Union industry, which results from multilateral environmental agreements, and protocols thereunder, to which the Union is a party, or from International Labour Organisation (ILO) Conventions listed in Annex Ia to this Regulation, shall be duly reflected. Moreover, future costs, which are not covered in paragraph 1a of this Article, which result from those agreements and conventions, and which the Union industry will incur during the period of the application of the measure pursuant to Article 18(1), shall be taken into account.]

2 Provisional duties shall be secured by a guarantee and the release of the products concerned for free circulation in the Union shall be conditional upon the provision of such a guarantee.

3 The Commission shall adopt provisional measures in accordance with the procedure referred to in Article 25(4).

4 Where a Member State requests immediate intervention by the Commission and where the conditions of the first and second subparagraphs of paragraph 1 are met, the Commission shall, within a maximum of five working days from receipt of the request, decide whether a provisional countervailing duty shall be imposed.

5 Provisional countervailing duties shall be imposed for a maximum period of four months.

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.
- F2** 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.

Changes to legislation:

There are currently no known outstanding effects for the Regulation (EU) 2016/1037 of the European Parliament and of the Council, Article 12.