

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 16

Retroactivity

1 Provisional measures and definitive countervailing duties shall only be applied to products which enter free circulation after the time when the measure taken pursuant to Article 12(1) or Article 15(1), as the case may be, enters into force, subject to the exceptions set out in this Regulation.

2 Where a provisional duty has been applied and the facts as finally established show the existence of countervailable subsidies and injury, the Commission shall decide, irrespective of whether a definitive countervailing duty is to be imposed, what proportion of the provisional duty is to be definitively collected.

For that purpose, ‘injury’ shall not include material delay of the establishment of a Union industry, nor threat of material injury, except where it is found that this would, in the absence of provisional measures, have developed into material injury. In all other cases involving such threat or delay, any provisional amounts shall be released and definitive duties can only be imposed from the date on which a final determination of threat or material delay is made.

3 If the definitive countervailing duty is higher than the provisional duty, the difference shall not be collected. If the definitive duty is lower than the provisional duty, the duty shall be recalculated. Where a final determination is negative, the provisional duty shall not be confirmed.

4 A definitive countervailing duty may be levied on products which were entered for consumption no more than 90 days prior to the date of application of provisional measures but not prior to the initiation of the investigation, provided that:

- a the imports have been registered in accordance with Article 24(5);
- b the importers concerned have been given an opportunity to comment by the Commission;
- c there are critical circumstances where for the subsidised product in question injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefiting from countervailable subsidies under the terms of this Regulation; and
- d it is deemed necessary, in order to preclude the recurrence of such injury, to assess countervailing duties retroactively on those imports.

5 In cases of breach or withdrawal of undertakings, definitive duties may be levied on goods entered for free circulation no more than 90 days before the application of provisional measures, provided that the imports have been registered in accordance with Article 24(5) and that any such retroactive assessment shall not apply to imports entered before the breach or withdrawal of the undertaking.

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 16.