

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 8

Determination of injury

1 A determination of injury shall be based on positive evidence and shall involve an objective examination of:

- a the volume of the subsidised imports and the effect of the subsidised imports on prices in the Union market for like products; and
- b the consequent impact of those imports on the Union industry.

2 With regard to the volume of the subsidised imports, consideration shall be given to whether there has been a significant increase in subsidised imports, either in absolute terms or relative to production or consumption in the Union. With regard to the effect of the subsidised imports on prices, consideration shall be given to whether there has been significant price undercutting by the subsidised imports as compared with the price of a like product of the Union industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which would otherwise have occurred, to a significant degree. No one or more of those factors can necessarily give decisive guidance.

3 Where imports of a product from more than one country are simultaneously subject to countervailing duty investigations, the effects of such imports shall be cumulatively assessed only if it is determined that:

- a the amount of countervailable subsidies established in relation to the imports from each country is more than *de minimis* as defined in Article 14(5) and the volume of imports from each country is not negligible; and
- b a cumulative assessment of the effects of the imports is appropriate in the light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Union product.

4 The examination of the impact of the subsidised imports on the Union industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including the fact that an industry is still in the process of recovering from the effects of past subsidisation or dumping; the magnitude of the amount of countervailable subsidies; actual and potential decline in sales, profits, output, market share, productivity, return on investments and utilisation of capacity; factors affecting Union prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on government support programmes. This list is not exhaustive, nor can any one or more of these factors necessarily give decisive guidance.

5 It must be demonstrated, from all the relevant evidence presented in relation to paragraph 1, that the subsidised imports are causing injury. Specifically, that shall entail demonstrating that the volume and/or price levels identified pursuant to paragraph 2 are responsible for an impact on the Union industry as provided for in paragraph 4, and that that impact exists to a degree which enables it to be classified as material.

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 8. (See end of Document for details)

6 Known factors, other than the subsidised imports, which are injuring the Union industry at the same time shall also be examined to ensure that the injury caused by those other factors is not attributed to the subsidised imports pursuant to paragraph 5. Factors which may be considered in that respect shall include: the volume and prices of non-subsidised imports; contraction in demand or changes in the patterns of consumption; restrictive trade practices of, and competition between, third-country and Union producers; developments in technology; and the export performance and productivity of the Union industry.

7 The effect of the subsidised imports shall be assessed in relation to the production of the Union industry of the like product when available data permit the separate identification of that production on the basis of criteria such as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the subsidised imports shall be assessed by examination of the production of the narrowest group or range of products, including the like product, for which the necessary information can be provided.

8 A determination of a threat of material injury shall be based on facts and not merely on allegations, conjecture or remote possibility. The change in circumstances which would create a situation in which the subsidy would cause injury must have been clearly foreseen and must be imminent.

In making a determination regarding the existence of a threat of material injury, consideration should be given to factors such as:

- a the nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom;
- b a significant rate of increase of subsidised imports into the Union market indicating the likelihood of substantially increased imports;
- c whether there is sufficient freely disposable capacity on the part of the exporter or an imminent and substantial increase in such capacity indicating the likelihood of substantially increased subsidised exports to the Union, account being taken of the availability of other export markets to absorb any additional exports;
- d whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred, and would probably increase demand for further imports;
- e inventories of the product being investigated.

No one of the factors listed above by itself can necessarily give decisive guidance, but the totality of the factors considered shall be such as to lead to the conclusion that further subsidised exports are imminent and that, unless protective action is taken, material injury will occur.

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 8.