

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 9

Definition of Union industry

[^{F1} For the purposes of this Regulation, the term ‘Union industry’ shall be interpreted as referring to the Union producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total Union production of those products, except that:]

- a when producers are related to the exporters or importers, or are themselves importers of the allegedly subsidised product, the term ‘Union industry’ may be interpreted as referring to the rest of the producers;
- b in exceptional circumstances, the territory of the Union may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if:
 - (i) the producers within such a market sell all or almost all of their production of the product in question in that market; and
 - (ii) the demand in that market is not to any substantial degree met by producers of the product in question located elsewhere in the Union.

In such circumstances, injury may be found to exist even where a major portion of the total Union industry is not injured, provided that there is a concentration of subsidised imports into such an isolated market and provided further that the subsidised imports are causing injury to the producers of all or almost all of the production within such a market.

2 For the purpose of paragraph 1, producers shall be considered to be related to exporters or importers only if:

- a one of them directly or indirectly controls the other;
- b both of them are directly or indirectly controlled by a third person; or
- c together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers.

For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

3 Where the Union industry has been interpreted as referring to the producers in a certain region, the exporters or the government granting countervailable subsidies shall be given an opportunity to offer undertakings pursuant to Article 13 in respect of the region concerned. In such cases, when evaluating the Union interest of the measures, special account shall be taken of the interest of the region. If an adequate undertaking is not offered promptly or if the situations set out in Article 13(9) and (10) apply, a provisional or definitive countervailing duty may be imposed in respect of the Union as a whole. In such cases the duties may, if practicable, be limited to specific producers or exporters.

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 9. (See end of Document for details)

4 The provisions of Article 8(7) shall be applicable to this Article.

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) 2016/1037 of the European Parliament and of the Council, Article 9.