

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

*Article 1*

Regulation (EU) 2016/1036 is amended as follows:

(1) in Article 2, the following paragraph is inserted:

6a.

- a In case it is determined, when applying this or any other relevant provision of this Regulation, that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, subject to the following rules.

The sources the Commission may use include:

- corresponding costs of production and sale in an appropriate representative country with a similar level of economic development as the exporting country, provided the relevant data are readily available; where there is more than one such country, preference shall be given, where appropriate, to countries with an adequate level of social and environmental protection;
- if it considers appropriate, undistorted international prices, costs, or benchmarks; or
- domestic costs, but only to the extent that they are positively established not to be distorted, on the basis of accurate and appropriate evidence, including in the framework of the provisions on interested parties in point (c).

Without prejudice to Article 17, that assessment shall be done for each exporter and producer separately.

The constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits.

- b Significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces because they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, *inter alia*, to the potential impact of one or more of the following elements:
- the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;
  - state presence in firms allowing the state to interfere with respect to prices or costs;
  - public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces;

- the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws;
  - wage costs being distorted;
  - access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state.
- c Where the Commission has well-founded indications of the possible existence of significant distortions as referred to in point (b) in a certain country or a certain sector in that country, and where appropriate for the effective application of this Regulation, the Commission shall produce, make public and regularly update a report describing the market circumstances referred to in point (b) in that country or sector. Such reports and the evidence on which they are based shall be placed on the file of any investigation relating to that country or sector. Interested parties shall have ample opportunity to rebut, supplement, comment or rely on the report and the evidence on which it is based in each investigation in which such report or evidence is used. In assessing the existence of significant distortions, the Commission shall take into account all the relevant evidence that is on the investigation file.
- d When filing a complaint in accordance with Article 5, or a request for a review in accordance with Article 11, Union industry may rely on the evidence in the report referred to in point (c) of this paragraph, where meeting the standard of evidence in view of Article 5(9), in order to justify the calculation of the normal value.
- e Where the Commission finds that there is sufficient evidence, pursuant to Article 5(9), of significant distortions within the meaning of point (b) of this paragraph and decides to initiate an investigation on that basis, the notice of initiation shall specify that fact. The Commission shall collect the data necessary to allow the construction of the normal value in accordance with point (a) of this paragraph.

The parties to the investigation shall be informed promptly after initiation about the relevant sources that the Commission intends to use for the purpose of determining normal value pursuant to point (a) of this paragraph and shall be given 10 days to comment. For that purpose, interested parties shall be given access to the file, which shall include any evidence on which the investigating authority relies, without prejudice to Article 19. Any evidence regarding the existence of significant distortions may only be taken into account if it can be verified in a timely manner within the investigation, in accordance with Article 6(8).;

(2) in Article 2, paragraph 7 is replaced by the following:

7. In the case of imports from countries which are, at the date of initiation of the investigation, not members of the WTO and listed in Annex I to Regulation (EU) 2015/755 of the European Parliament and of the Council<sup>(1)</sup>, normal value shall be determined on the basis of the price or constructed value in an appropriate representative country, or the price from such a third country to other countries, including the Union, or where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit margin.

The appropriate representative country shall be selected in a reasonable manner, due account being taken of any reliable information made available at the time of selection, and in particular of cooperation by at least one exporter and producer in

that country. Where there is more than one such country, preference shall be given, where appropriate, to countries with an adequate level of social and environmental protection. Account shall also be taken of time limits. Where appropriate, an appropriate representative country which is subject to the same investigation shall be used.

The parties to the investigation shall be informed promptly after its initiation of the country envisaged and shall be given 10 days to comment.;

- (3) in Article 11(3), the following subparagraph is added:

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) in Article 11(4), the following subparagraph is added:

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) in Article 11(9), the following subparagraph is added:

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.;

- (6) Article 23 is replaced by the following:

### *Article 23*

#### **Report and information**

1 The Commission shall, with due regard to the protection of confidential information within the meaning of Article 19, present an annual report on the application and implementation of this Regulation to the European Parliament and to the Council. The report shall include information about the application of provisional and definitive measures, the termination of investigations without measures, reinvestigations, reviews, significant distortions and verification visits, and the activities of the various bodies responsible for monitoring the implementation of this Regulation and fulfilment of the obligations arising therefrom.

2 The European Parliament may invite the Commission to an *ad-hoc* meeting of its responsible committee to present and explain any issues related to the

implementation of this Regulation. It may also, inter alia, on the basis of the report pursuant to paragraph 1 and the presentation and explanations referred to in this paragraph, communicate any relevant considerations and facts to the Commission.

- 3 No later than six months after presenting the report to the European Parliament and to the Council, the Commission shall make the report public..

*Article 2*

In Article 10(7) of Regulation (EU) 2016/1037, the following subparagraph is added:

The Commission shall also offer consultations to the country of origin and/or export concerned with regard to other subsidies identified in the course of the investigation. In those situations, the Commission shall send to the country of origin and/or export a summary of the main elements concerning other subsidies, in particular those referred to in point (c) of paragraph 2. If the additional subsidies are not covered by the notice of initiation, the notice of initiation shall be amended and the amended version published in the *Official Journal of the European Union*. All interested parties shall be given additional and sufficient time to comment..

*Article 3*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

*Article 4*

This Regulation shall apply to all decisions on the initiation of proceedings, and to all proceedings, including original investigations and review investigations, initiated on or after the date on which this Regulation enters into force.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 12 December 2017.

*For the European Parliament*

*The President*

A. TAJANI

*For the Council*

*The President*

M. MAASIKAS

- (1) Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries ([OJ L 123, 19.5.2015, p. 33](#)).<sup>2</sup>;