

Protection against dumped and subsidised imports from countries not members of the EU

2016/0351(COD) - 09/11/2016 - Legislative proposal

PURPOSE: to make targeted amendments to the Basic Anti-Dumping Regulation and to the Basic Anti-Subsidy Regulation.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with Council. **BACKGROUND :** the Commission proposal covers targeted amendments to [Regulation \(EU\) 2016/1036](#) on protection against dumped imports from countries that are not members of the European Union (the Basic Anti-Dumping Regulation) and to [Regulation \(EU\) 2016/1037](#) on protection against subsidised imports from countries that are not members of the European Union (the Basic Anti-Subsidy Regulation).

IMPACT ASSESSMENT: taking into account the results of the public consultation, the independent study and the Commission's extensive practice in the use of the instruments, an [impact assessment](#) was carried out in Spring 2016, when various options were analysed. The preferred solutions form the basis for this proposal.

CONTENT : the proposal provides as follows:

1) Amendments to the Basic Anti-Dumping Regulation:

Determination of normal value in the presence of market distortions: the Regulation stipulates the basis on which normal value should be determined in the case of imports from non-market economy countries. In view of developments with respect to certain countries that are Members of the World Trade Organisation (WTO), it is proposed to amend the method used to calculate the normal value and the dumping margin for the countries concerned.

For WTO members, the normal value is normally determined on the basis of the domestic prices of the like product or on the basis of a constructed normal value. There are circumstances, however, in which the domestic prices and costs would not provide a reasonable basis to determine the normal value. This could be the case, for instance, when prices or costs are not the result of free market forces because they are affected by government intervention.

In such circumstances, the Commission considers that it would be inappropriate to use domestic prices and costs to determine the value at which the like product should be normally sold. Accordingly, a new provision stipulates that the normal value would instead be constructed on the basis of costs of production and sale reflecting undistorted prices or benchmarks.

For this purpose, the sources that may be used would include undistorted international prices, costs, or benchmarks, or corresponding costs of production and sale in an appropriate representative country with a similar level of economic development as the exporting country.

This methodology would allow the Commission to establish and measure the actual magnitude of dumping being practised in normal market conditions absent distortions.

For the sake of transparency and efficiency, the Commission services intend to issue public reports describing the specific situation concerning the market circumstances in any given country or sector. Such reports and the evidence on which it is based would also be placed on the file of any investigation relating to that country or sector so that all interested parties would be in a position to express their views and comments.

Transition from the current system to the new one: the proposal introduces specific disciplines ensuring that the entry into force of the new system would not create legal uncertainty for ongoing cases or unduly affect existing measures. Thus, the proposal makes clear that the new system would only apply to cases initiated upon entry into force of the amended provisions. Any given ongoing anti-dumping investigation at the time of entry into force would remain governed by the current disciplines.

2) Amendment to the Basic Anti-Subsidy Regulation:

experience shows that the actual magnitude of subsidisation is not always evident at the time of initiation. Yet, those subsidies clearly provide an unfair benefit the exporters concerned, which allow them to sell at injurious prices to the EU market.

For reasons of due process and transparency, the proposal clarifies that, when such subsidies are found in the course of any given investigation or review, the Commission will offer additional consultations to the country of origin and/or export concerned with regard to such subsidies identified in the course of the investigation. In these situations, the Commission will send to the country of origin and/or export a summary of the main elements concerning these other subsidies to ensure meaningful consultations.