



**2016/0351(COD)**

30.5.2017

## **OPINION**

of the Committee on Industry, Research and Energy

for the Committee on International Trade

on the proposal for a regulation of the European Parliament and of the Council 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  
(COM(2016)0721 – C8-0456/2016 – 2016/0351(COD))

Rapporteur: Jerzy Buzek

PA\_Legam

## AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on International Trade, as the committee responsible, to take into account the following amendments:

### Amendment 1

#### Proposal for a regulation

##### Citation 2 a (new)

*Text proposed by the Commission*

*Amendment*

***Having regard to the resolution of the European Parliament of 12 May 2016 on China's market economy status,***

### Amendment 2

#### Proposal for a regulation

##### Recital 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(1a) The Union should be able to protect its industry against dumping effectively, and future Union action should accord with WTO rules. An instrument with the same rules for all trading partners is the correct basis for lasting trade relations.***

### Amendment 3

#### Proposal for a regulation

##### Recital 2

*Text proposed by the Commission*

*Amendment*

***(2) Articles 2(7)(a) and 2(7)(b) of Regulation (EU) 2016/1036 stipulate 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 WTO, it is appropriate that, for those countries, normal value should be determined on the basis of paragraphs 1 to 6a of Article 2 of***

***(2) In view of developments in world trade, concerning also Members of the WTO, including their effects on domestic industry, it is appropriate to determine normal value on the basis of paragraphs 1 to 6a of Article 2 of Regulation (EU) 2016/1036, with effect from the date on which this Regulation enters into force, and subject to the provisions of this Regulation. In the case of non-market-economy***

Regulation (EU) 2016/1036, with effect from the date on which this Regulation enters into force, and subject to the provisions of this Regulation. In the case of countries which are, at the date of initiation, not Members of the WTO and listed in Annex I of Regulation (EU) 2015/755<sup>2</sup>, normal value should be determined on the basis of paragraph 7 of Article 2 of Regulation (EU) 2016/1036, as amended by this Regulation. ***This Regulation should be without prejudice to establishing whether or not any WTO Member is a market economy.***

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<sup>2</sup> 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).

countries which are ***Members of the WTO or that***, at the date of initiation, ***are*** not Members of the WTO and listed in Annex I of Regulation (EU) 2015/755<sup>2</sup>, normal value should be determined on the basis of paragraph 7 of Article 2 of Regulation (EU) 2016/1036, as amended by this Regulation.

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<sup>2</sup> 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).

#### *Justification*

*The rapporteur maintains an explicit reference to market or non-market economy status for WTO Members, as provided for instance by Article 15.d of the Protocol of Accession of China to the WTO.*

#### **Amendment 4**

##### **Proposal for a regulation Recital 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***(2 a) In view of the Council agreement to modernise the Union's trade defence instruments (TDIs) and in order to have effective anti-dumping measures, it is necessary to take into account that the lesser duty rule unjustly reduces the anti-dumping duties at a level below the dumping margin. For that purpose and, as proposed by the European Parliament in its position adopted at first reading on 16 April 2014 relating to the modernisation of TDIs, the lesser duty rule should be removed, the trade defence***

*proceedings should be accelerated, provisional duties should be imposed, and trade unions and SMEs should be allowed to submit anti-dumping complaints.*

## Amendment 5

### Proposal for a regulation

#### Recital 3

##### *Text proposed by the Commission*

(3) In the light of experience gained in past proceedings, it is appropriate to clarify the circumstances in which significant distortions affecting to a considerable extent free market forces may be deemed to exist. In particular, it is appropriate to clarify that this situation may be deemed to exist, inter alia, when reported prices or costs, including the costs of raw materials, are not the result of free market forces because they are affected by government intervention. It is further appropriate to clarify that in considering whether or not such a situation exists regard may be had, inter alia, to the potential impact of the following: the market in question is to a significant extent served 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; ***and access to finance granted by institutions implementing public policy objectives***. It is further appropriate to provide that the Commission ***services may*** issue a report describing the specific situation concerning these criteria in a certain country or a certain sector; that such report and the evidence on which it is based ***may*** be placed on the file of any investigation relating to that country or sector; and that interested parties should

##### *Amendment*

(3) In the light of experience gained in past proceedings, it is appropriate to clarify the circumstances in which significant distortions affecting to a considerable extent free market forces may be deemed to exist. In particular, it is appropriate to clarify that this situation may be deemed to exist, inter alia, when reported prices or costs, including the costs of raw materials ***and other production factors***, are not the result of free market forces because they are affected by ***state*** intervention ***at any level, including central, regional and provincial level***. It is further appropriate to clarify that in considering whether or not such a situation exists regard may be had, inter alia, to the potential impact of the following:

have ample opportunity to comment on the report and the evidence on which it is based in each investigation in which such report or evidence is used.

the market in question is to a significant extent served by enterprises, ***such as public bodies***, which operate under the ownership, control or policy supervision or guidance, ***whether direct or indirect***, 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, ***for example through the use of state-fixed prices, or discrimination in the tax, trade or currency regimes***; or otherwise influencing free market forces, ***including the allocation of resources; the absence of a transparent and non-discriminatory company law which ensures adequate corporate governance, such as the application of international accounting standards, the protection of shareholders and public availability of accurate company information; the absence and implementation of a coherent, effective and transparent set of laws which ensure the respect of property rights and the operation of a functioning bankruptcy regime; the absence of a genuine financial sector which operates independently from the state and which in law and practice is subject to sufficient guarantee provisions and adequate supervision; lack of compliance with international social and environmental standards having as result an impact on costs production.***

It is further appropriate to provide that the Commission ***should*** issue, ***as soon as possible***, a report describing the specific situation concerning these criteria in a certain country or a certain sector; that such report and the evidence on which it is based ***should*** be placed on the file of any investigation relating to that country or sector ***and updated on a regular basis as***

*appropriate*; and that interested parties should have ample opportunity to comment on the report and the evidence on which it is based in each investigation in which such report or evidence is used.

## Amendment 6

### Proposal for a regulation

#### Recital 4

##### *Text proposed by the Commission*

(4) It is further appropriate to recall that costs should normally be calculated on the basis of records kept by the exporter or producer under investigation. However, where there are significant distortions in the exporting country with the consequence that costs reflected in the records of the party concerned are artificially low, such costs *may* be adjusted or established on any reasonable basis, including information from other representative markets or from international prices or benchmarks. In the light of experience gained in past proceedings, it is appropriate to further clarify that, for the purposes of applying the provisions introduced by this regulation, due account should be taken of all relevant evidence, including relevant assessment reports regarding the circumstances prevailing on the domestic market of the exporting 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.

##### *Amendment*

(4) It is further appropriate to recall that costs should normally be calculated on the basis of records kept by the exporter or producer under investigation. However, where there are significant distortions in the exporting country with the consequence that costs reflected in the records of the party concerned are artificially low ***and do not reflect actual market values***, such costs ***should*** be adjusted or established on any reasonable basis, including information from other representative markets or from ***undistorted*** international prices or benchmarks, ***including Union prices or benchmarks where appropriate***. In the light of experience gained in past proceedings, it is appropriate to further clarify that, for the purposes of applying the provisions introduced by this regulation, due account should be taken of all relevant evidence, including relevant assessment reports regarding the circumstances prevailing on the domestic market of the exporting 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.

## Amendment 7

### Proposal for a regulation

#### Recital 6

(6) Absent any other specific transitional rules regulating the matter, it is appropriate to provide for the application of this Regulation 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, subject to Article 11(9) of Regulation (EU) 2016/1036. Furthermore, by way of specific transitional rule, and having regard to the absence of any other specific transitional rule regulating the matter, it is appropriate to provide that, in the case of a transition from a normal value calculated pursuant to Articles 2(7)(a) or 2(7)(b) to a normal value calculated pursuant to paragraphs 1 to **6a** of Article 2, the reasonable period of time provided for in the first sub-paragraph of Article 11(3) of Regulation (EU) 2016/1036 should be deemed to elapse on the date on which the first expiry review following such transition is initiated. With a view to reducing the risk of circumvention of the provisions of this Regulation, the same approach should apply with respect to reviews conducted pursuant to Article 11(4) of Regulation (EU) 2016/1036. It is also appropriate to recall that a transition from a normal value calculated pursuant to Articles 2(7)(a) or 2(7)(b) to a normal value calculated pursuant to paragraphs 1 to **6a** of Article 2 would not in itself constitute sufficient evidence within the meaning of Article 11(3) of Regulation (EU) 2016/1036. Such transitional rules should complete a lacuna that would otherwise risk to generate legal uncertainty, should provide a reasonable opportunity for interested parties to adapt themselves to the expiry of the old rules and the entry into force of the new rules, and should facilitate the efficient, orderly and equitable administration of Regulation (EU) 2016/1036.

(6) Absent any other specific transitional rules regulating the matter, it is appropriate to provide for the application of this Regulation 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, subject to Article 11(9) of Regulation (EU) 2016/1036. Furthermore, by way of specific transitional rule, and having regard to the absence of any other specific transitional rule regulating the matter, it is appropriate to provide that, in the case of a transition from a normal value calculated pursuant to Articles 2(7)(a) or 2(7)(b) to a normal value calculated pursuant to paragraphs 1 to **6e** of Article 2, the reasonable period of time provided for in the first sub-paragraph of Article 11(3) of Regulation (EU) 2016/1036 should be deemed to elapse on the date on which the first expiry review following such transition is initiated. With a view to reducing the risk of circumvention of the provisions of this Regulation, the same approach should apply with respect to reviews conducted pursuant to Article 11(4) of Regulation (EU) 2016/1036. It is also appropriate to recall that a transition from a normal value calculated pursuant to Articles 2(7)(a) or 2(7)(b) to a normal value calculated pursuant to paragraphs 1 to **6e** of Article 2 would not in itself constitute sufficient evidence within the meaning of Article 11(3) of Regulation (EU) 2016/1036. Such transitional rules should complete a lacuna that would otherwise risk to generate legal uncertainty, should provide a reasonable opportunity for interested parties to adapt themselves to the expiry of the old rules and the entry into force of the new rules, and should facilitate the efficient, orderly and equitable administration of Regulation (EU) 2016/1036.



## Amendment 8

### Proposal for a regulation

#### Recital 7 a (new)

*Text proposed by the Commission*

*Amendment*

***(7 a) The Union should coordinate with major trading partners through multilateral or bilateral actions before and during investigations. In this regards, a comparative follow-up on the anti-dumping calculation with our major trading partners should be exercised by the Commission and the results should be communicated to the stakeholders.***

## Amendment 9

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 1

Regulation (EU) 2016/1036

Article 2 – paragraph 6a – point a

*Text proposed by the Commission*

*Amendment*

(a) In case it is determined, ***when applying this provision 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 of significant distortions, the normal value shall 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 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***, provided the relevant ***cost*** data are readily available. The constructed normal value shall include a reasonable amount for administrative, selling and general costs

(a) In case it is determined that it is not appropriate to use domestic prices and costs in the exporting country due to the existence of significant distortions ***in the economy as a whole or in sectors of the economy***, the normal value shall ***be based on a price or*** be constructed on the basis of costs of production and sale reflecting undistorted prices or benchmarks ***for every factor of production***. For this purpose, the sources that may be used include undistorted international prices, costs, or benchmarks, or corresponding costs of production and sale in an appropriate representative country, ***including those in the Union, and with sufficient*** level of ***international social and environmental standards***, provided the relevant data are readily available. The constructed normal value shall include a reasonable amount for

and for profits.

administrative, selling and general costs  
and for profits.

*Where an exporter can clearly  
demonstrate that its prices or costs of all  
factors of production are not affected by  
significant distortions, those prices or  
costs shall be used in the construction of  
its normal value.*

## Amendment 10

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 1

Regulation (EU) 2016/1036

Article 2 – paragraph 6a – point b

#### *Text proposed by the Commission*

(b) Significant distortions *for the product concerned* within the meaning of point (a) may be deemed to exist, inter alia, when reported prices or costs, including the costs of raw materials, are not the result of free market forces as they are affected by government intervention. In considering whether or not significant distortions exist regard may be had, inter alia, to the potential impact of the following: the market in question is to a significant extent served 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; *and access to finance granted by institutions implementing public policy objectives.*

#### *Amendment*

(b) Significant distortions within the meaning of point (a) may be deemed to exist, inter alia, when reported prices or costs, including the costs of raw materials *and others factors of production*, are not the result of free market forces as they are affected by *state* intervention *at any level*. In considering whether or not significant distortions exist regard *shall* be had, inter alia, to the potential impact of the following:

the market in question is to a significant extent served by enterprises which operate under the ownership, control or policy supervision or guidance, *whether directly or indirectly (such as public bodies)*, 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 *for example through the use of state-fixed prices, or discrimination in the tax, trade or currency regimes*; or otherwise influencing free market forces, *including the allocation of resources; the absence of a transparent and non-discriminatory company law which ensures adequate corporate governance, such as the application of international accounting standards, protection of shareholders and public availability of accurate company information; the absence and implementation of a coherent, effective and transparent set of laws which ensure the respect of property rights and the operation of a functioning bankruptcy regime; the absence of a genuine financial sector which operates independently from the state and which in law and practice is subject to sufficient guarantee provisions and adequate supervision; lack of compliance with international social and environmental standards having as result an impact on costs production*;

## **Amendment 11**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 1**

Regulation (EU) 2016/1036

Article 2 – paragraph 6a – point b a (new)

*Text proposed by the Commission*

*Amendment*

*(ba) Significant distortions for the product concerned within the meaning of point (a) shall be deemed to exist, inter alia, when reported prices or costs are the result of overcapacities in the sense that the price or the cost of the product is not the result of free market forces as they are affected by levels of overproductions which reduce the impact of fixed costs.*

## Amendment 12

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 1

Regulation (EU) 2016/1036

Article 2 – paragraph 6a – point c

*Text proposed by the Commission*

(c) ***When appropriate***, the Commission ***services may*** issue a report describing the specific situation concerning the criteria listed in ***point (b)*** in a certain country or a certain sector. Such report and the evidence on which it is based may be placed on the file of any investigation relating to that country or sector. Interested parties shall have ample opportunity to 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. The determinations made shall take into account all of the relevant evidence on the file.

*Amendment*

(c) The Commission ***shall*** issue, ***as soon as possible***, a ***public*** report describing the specific situation concerning the criteria listed in points (b) in a certain country or a certain sector. Inter alia, ***the report shall, where appropriate, include information on the compliance with international environmental and social standards that affect the cost production.*** Such report and the evidence on which it is based, ***as well as relevant findings from prior Union investigations and country reports, shall*** be placed on the file of any investigation relating to that country or sector. Interested parties, ***including trade unions and SMEs***, shall have ample opportunity to 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. ***The Commission shall inform the European Parliament and the Council accordingly.*** The determinations made shall take into account all ***relevant evidence on the file, based on reliable, secure and timely information and data available.*** ***The report or the evidence on which it is based shall be updated by the Commission on a regular basis at least every five years or whenever the situation concerning the criteria laid down in point (b) have changed.***

## Amendment 13

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 1

Regulation (EU) 2016/1036

Article 2 – paragraph 6a – point d

*Text proposed by the Commission*

(d) The Union industry may rely on the report referred to in point (c) for the calculation of normal value when filing a complaint in accordance with Article 5 **or** a request for a review in accordance with Article 11.

*Amendment*

(d) The Union industry **and trade unions** may rely on the report referred to in point (c) for the calculation of normal value when filing a complaint in accordance with Article 5, request for a review in accordance with Article 11 **or request for a reinvestigation in accordance with Article 12. That report shall constitute sufficient evidence to justify the calculation of normal value in the complaint or request on the basis of the methodology specified in paragraph 6a. Furthermore, where a significant portion of the complaining Union industry is made up of SMEs, the normal value calculations in the complaint or request may be based on information related to costs of production in the Union of the product concerned.**

**Amendment 14**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 1**

Regulation (EU) 2016/1036

Article 2 – paragraph 6a – point e

*Text proposed by the Commission*

(e) The parties to the investigation shall be informed shortly after initiation about the relevant sources that the Commission intends to use for the purpose of point (a) and shall be given 10 days to comment. For this purpose, interested parties shall be given access to the file, including any evidence on which the investigating authority relies, without prejudice to Article 19.

*Amendment*

(e) The parties to the investigation, **including trade unions and SMEs**, shall be informed shortly after initiation about the relevant sources that the Commission intends to use for the purpose of point (a) and shall be given 10 days to comment. For this purpose, interested parties shall be given access to the file, including any evidence on which the investigating authority relies, without prejudice to Article 19. **A disclosure regarding the methodology to be used shall be communicated to the parties no later than three months from initiation of the investigation.**

## Amendment 15

### Proposal for a regulation

#### Article 3 – paragraph 1

##### *Text proposed by the Commission*

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

##### *Amendment*

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

***By that date the Commission will have published its report referred to in point 1 of Article 1 of this Regulation, as regards Article 6a (c) of Regulation (EU) 2016/1036.***

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	Protection against dumped and subsidised imports from countries not members of the EU						
<b>References</b>	COM(2016)0721 – C8-0456/2016 – 2016/0351(COD)						
<b>Committee responsible</b> Date announced in plenary	INTA 21.11.2016						
<b>Opinion by</b> Date announced in plenary	ITRE 21.11.2016						
<b>Rapporteur</b> Date appointed	Paloma López Bermejo 5.12.2016						
<b>Discussed in committee</b>	27.2.2017						
<b>Date adopted</b>	30.5.2017						
<b>Result of final vote</b>	<table> <tr> <td>+: </td><td>30</td></tr> <tr> <td>–: </td><td>21</td></tr> <tr> <td>0: </td><td>5</td></tr> </table>	+:	30	–:	21	0:	5
+:	30						
–:	21						
0:	5						
<b>Members present for the final vote</b>	Bendt Bendtsen, Xabier Benito Ziluaga, José Blanco López, Reinhard Bütikofer, Jerzy Buzek, Angelo Ciocca, Edward Czesak, Jakop Dalunde, Pilar del Castillo Vera, Christian Ehler, Ashley Fox, Adam Gierek, Theresa Griffin, Hans-Olaf Henkel, Kaja Kallas, Barbara Kappel, Krišjānis Kariņš, Seán Kelly, Jaromír Kohlíček, Peter Kouroumbashev, Zdzisław Krasnodębski, Miapetra Kumpula-Natri, Janusz Lewandowski, Paloma López Bermejo, Edouard Martin, Angelika Mlinar, Nadine Morano, Dan Nica, Angelika Niebler, Morten Helveg Petersen, Miroslav Poche, Michel Reimon, Herbert Reul, Paul Rübig, Massimiliano Salini, Algirdas Saudargas, Jean-Luc Schaffhauser, Neoklis Sylikiotis, Evžen Tošenovský, Claude Turmes, Vladimir Urutchev, Kathleen Van Brempt, Henna Virkkunen, Lieve Wierinck, Anna Záborská, Flavio Zanonato, Carlos Zorrinho						
<b>Substitutes present for the final vote</b>	Soledad Cabezón Ruiz, Jude Kirton-Darling, Constanze Krehl, Barbara Kudrycka, Olle Ludvigsson, Florent Marcellesi, Marian-Jean Marinescu, Marisa Matias, Markus Pieper, Sofia Sakorafa, Anne Sander, Pavel Telička, Anneleen Van Bossuyt						
<b>Substitutes under Rule 200(2) present for the final vote</b>	Fabio Massimo Castaldo, Nicola Danti, Gabriele Preuß						

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

30	+
ALDE	Kaja Kallas, Angelika Mlinar, Morten Helveg Petersen, Pavel Telicka, Lieve Wierinck
ENF	Angelo Ciocca, Jean-Luc Schaffhauser
PPE	Bendt Bendtsen, Jerzy Buzek, Christian Ehler, Krišjānis Kariņš, Seán Kelly, Barbara Kudrycka, Janusz Lewandowski, Marian-Jean Marinescu, Angelika Niebler, Markus Pieper, Herbert Reul, Massimiliano Salini, Anne Sander, Algirdas Saudargas, Vladimir Urutchev, Henna Virkkunen, Anna Záborská, Pilar del Castillo Vera
Verts/ALE	Reinhard Bütikofer, Jakop Dalunde, Florent Marcellesi, Michel Reimon, Claude Turmes

21	-
EFDD	Fabio Massimo Castaldo
GUE	Xabier Benito Ziluaga, Jaromír Kohlíček, Paloma López Bermejo, Marisa Matias
S&D	José Blanco López, Soledad Cabezón Ruiz, Adam Gierek, Theresa Griffin, Jude Kirton-Darling, Peter Kouroumbashev, Constanze Krehl, Miapetra Kumpula-Natri, Olle Ludvigsson, Edouard Martin, Dan Nica, Miroslav Poche, Gabriele Preuß, Kathleen Van Brempt, Flavio Zanonato, Carlos Zorrinho

5	0
ECR	Edward Czesak, Ashley Fox, Hans-Olaf Henkel, Evžen Tošenovský, Anneleen Van Bossuyt

Key to symbols:

+ : in favour

- : against

0 : abstention