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NOTE

From: Presidency

To: Permanent Representatives Committee

Subject: Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) No 2016/1037 on protection against subsidised imports from countries not members of the European Union.

- Analysis of the final compromise text with a view to agreement

I. INTRODUCTION

1. On 11 April 2013, the Commission submitted to the Council the above-mentioned proposal on the modernisation of Trade Defence Instruments ("TDI modernisation") which amends the anti-dumping and anti-subsidy regulations presently in force¹.
2. On 25 April 2013, the European Parliament appointed Christofer FJELLNER (SE, EPP) as rapporteur for the file. The vote by the INTA Committee took place on 21 January 2014. On 5 February 2014, the amendments were adopted by the EP in plenary (78 in total). The legislative resolution was adopted by the European Parliament on 16 April 2014.

¹ doc. 8495/13 + ADD 1-2.

3. The Foreign Affairs Council (Trade) on 21 November 2014 noted that all efforts to reach a position in the Council were deadlocked, with Member States divided on the disapplication of the Lesser Duty Rule in case of distortions of raw materials.
4. The debate was relaunched under the Netherlands Presidency, in the light of the changed context resulting from Chinese dumping practices and the crisis in the EU steel industry. At the meetings of the Foreign Affairs Council in Trade formation on 13 May and 23 September 2016, there was wide agreement on the need to make progress in modernising trade defence, but there were diverging views on how to go about it. While there was openness to explore certain avenues such as shortening deadlines to impose provisional measures, or looking at new methodology for determination of the target profit used for the injury margin, the most controversial element remained, as before, the partial disapplication of the Lesser Duty Rule in case of raw material distortions.
5. In October 2016, the European Council stressed that unfair trade practices needed to be tackled efficiently and robustly and called for "an urgent and balanced agreement on the Council position on the comprehensive modernisation of all trade defence instruments by the end of 2016".
6. Building on the efforts undertaken during previous Presidencies, the Slovak Presidency intensified efforts to narrow down the differences in Member States' positions on critical issues such as the partial disapplication of the Lesser Duty Rule, pre-disclosure, target profit and the Union interest test.
7. In its meeting on 13 December 2016, the Permanent Representatives' Committee agreed on the mandate for the Presidency to enter into negotiations with the European Parliament with a view to an early second-reading agreement (doc. 15466/16).
8. On this basis, eight trilogue meetings took place during the Maltese and Estonian Presidencies in 2017, namely on 21 March, 27 April, 31 May, 13 June, 18 October, 7 and 23 November and 5 December.

9. At the last political trilogue on 5 December, a compromise was reached on the text of the draft Regulation on a modernisation of trade defence instruments which is presented by the Presidency in a consolidated form in the Annex to this note.

II. ANALYSIS OF THE FINAL COMPROMISE TEXT WITH A VIEW TO AGREEMENT

10. The final compromise text emerging from the last trilogue on 5 December 2017 includes the following elements:

A. Lesser Duty Rule (LDR)

*NOTE: According to WTO rules, the level of an anti-dumping duty can never be higher than the dumping margin. However, the level of the duty may be lower if a lower duty is sufficient to remedy the injury caused by the dumped imports. This is called the lesser duty rule ('LDR'), which is not mandatory under WTO rules. The *raison d'être* for applying the lesser duty rule are considerations of proportionality: industry is effectively protected and at the same time the impact on users, distributors and consumers is the lowest possible. The Council mandate foresees that the use of the LDR should remain the rule; it also identifies situations in which the raw material distortions in the exporting country are so significant that it is appropriate to waive the automatic application of the LDR.*

- The compromise allows for disapplication of the LDR in well-defined situations:
 - distorted raw materials accounting for more than 17% of the cost of production, taken individually (single threshold);
 - raw material distortions as defined in the OECD list but with the possibility to update this list via a delegated act to bring it in line with future OECD work;
 - in cases of dumping, the Commission will have to clearly conclude that the disapplication of the LDR is in the Union's interest ("positive Union interest test").

- The minimum target profit margin (which is the level of profitability needed to cover full costs and investments, R&D and innovation) was agreed at the level of minimum 6%. The Council mandate advocated minimum 5%.

- Social and environmental standards will be taken into account when establishing the injury elimination margin. In addition, there will be a possibility to take into account future costs stemming from implementing these standards if such costs are clearly foreseeable and objectively quantifiable. This is a novelty, but the Council has ensured that there is no double-counting of costs and that the costs are duly substantiated².
- For the anti-subsidy instrument, the lesser duty rule may no longer be applied.

B. Pre-disclosure

- A period of 3 weeks of pre-disclosure³ has been agreed in combination with three additional safety nets which will address the potential risks of stockpiling: wider use of registration of imports; revamped collection and communication of statistics; additional injury margin to be added to the definitive duty in order to compensate any stockpiling during the period of pre-disclosure. The Council mandate called for a 4 week period.
- In addition, a review clause of the duration of the pre-disclosure period was agreed. Two years from the entry into force, the Commission will assess how effective the three safety nets were in addressing stockpiling. In light of that assessment, the Commission should propose via a delegated act, to:
 - decrease the period of pre-disclosure to two weeks if a substantial rise in imports has occurred that the Commission was unable to address;
 - increase the pre-disclosure period to four weeks in order to improve predictability for Union operators if no substantial rise in imports has occurred or if the Commission was able to address it.

² The agreement also includes other provisions in relation to social and environmental aspects, but not related to LDR, in the areas of price undertakings, interim reviews and the Commission's yearly report.

³ "Pre-disclosure" means giving an advance warning to importers and distributors before proceeding to impose provisional measures. At present, disclosure takes place only after the imposition of provisional measures.

C. Continental Shelf and Exclusive Economic Zone

- An enabling clause has been introduced in the basic regulations allowing to extend measures to these areas via a future implementing act. The Council has ensured that the customs authorities will be given sufficient time to examine the matter.

D. Reimbursement

- If measures are repealed, importers will be reimbursed of the duties collected in excess during the expiry review investigations. This is fully in line with the Council mandate.

E. Trade Unions

- Trade unions will be able to submit complaints together with industry. They will also be able to support complaints filed by the industry.
- Trade unions become "interested parties" in the proceedings. The Council had already accepted the role of trade unions in trade defence in the related new antidumping methodology file⁴, which modified the same legal acts.

F. Duration of investigations

- The duration for the imposition of provisional measures will be "normally 7 months but not later than 8 months". Definitive duties will have to be imposed within 14 months. The EP accepted the Council mandate.

⁴ doc. PE-CONS 50/17.

III. CONCLUSION

11. On 15 December 2017, the Working Party on Trade Questions expressed very broad support for the compromise found with the European Parliament. Only two delegations opposed the compromise.
12. The Presidency believes that the final compromise text strikes the right balance between the different interests at stake; it is broadly in line with the Council mandate and consistent with the amendments already introduced in the Anti-dumping and Anti-subsidy regulations, when adopting the new anti-dumping methodology.
13. In view of the above, the Permanent Representatives' Committee is invited to analyse the final compromise text with a view to agreement, as set out in the Annex to the present note.
14. The European Parliament's Committee on International Trade (INTA) is expected to vote on the political agreement on 23 January 2018, following which, the INTA Chair will address a letter to the Presidency confirming that, should the Council approve the text in first reading, after legal-linguistic revision, the Parliament would approve the Council's position in an early second reading

TDI Modernisation
Consolidated compromise text

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) No 2016/1037 on protection against subsidised imports from countries not members of the European Union

1. RECITALS

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The common rules for protection against dumped and subsidised imports from countries which are not members of the European Union are contained in Council Regulation (EU) No 2016/1036 on protection against dumped imports from countries not members of the European Community⁵ and Council (EU) No 2016/1037 of 8 June 2016 on protection against subsidised imports from countries not members of the European Community⁶ respectively (hereinafter jointly referred to as the 'Regulations'). The Regulations were initially adopted in

⁵ OJ L 176, 30.6.2016, p. 21–54

⁶ OJ L 176, 30.6.2016, p. 55–91

1995 following the conclusion of the Uruguay Round. Given that a number of amendments were made to the Regulations since then, the Council decided in 2009 to codify the regulations in the interest of clarity and rationality.

- (2) While the Regulations have been amended, there has not been a fundamental review of the functioning of these instruments since 1995. As a result, the Commission launched a review of the Regulations in 2011 in order to, *inter alia*, better reflect the needs of business at the beginning of the 21st century.
- (3) Following the review, certain provisions of the Regulations should be amended in order to improve transparency and predictability, provide for effective measures to fight against retaliation by third countries, improve effectiveness and enforcement and optimise review practice. In addition, certain practices that in recent years have been applied in the context of anti-dumping and anti-subsidy investigations should be included in the Regulations.
- (4) In order to improve transparency and predictability of anti-dumping and anti-subsidy investigations, the parties affected by the imposition of provisional antidumping and countervailing measures, in particular importers, should be made aware of the impending imposition of such measures. Also, in investigations where it is not appropriate to impose provisional measures, it is desirable that parties are aware sufficiently in advance of such non-imposition. In order to limit the risk of a substantial rise in imports in the period of pre-disclosure, it should be stipulated that the Commission has an obligation to register where possible. When providing for registration of imports during the period of pre-disclosure, it is necessary to consider that it requires a prospective analysis of the risks associated and the likelihood that these circumstances would undermine the remedial effects of the measures. Furthermore, the Commission should collect additional statistical information at TARIC level to ensure a proper factual basis of the analysis of the imports. Where registration is not possible, and further substantial rise in imports takes place during the period of pre-disclosure, the Commission should reflect this additional injury in the injury margin.

- (5) A short period of time in advance of the imposition of provisional measures should be allowed for exporters or producers to check the calculation of their individual dumping or subsidy margin. Calculation errors could then be corrected in advance of the imposition of measures.
- (6) In order to ensure effective measures to fight against retaliation, Union producers should be able to rely on the Regulations without fear of retaliation by third parties. Existing provisions, under special circumstances, provide for the initiation of an investigation without having received a complaint, where sufficient evidence of the existence of dumping, countervailable subsidies, injury and causal link exists. Such special circumstances should include threat of retaliation by third parties.
- (7) When an investigation is not initiated by a complaint, a request for cooperation should be made to Union producers to provide the necessary information in order for the investigation to proceed, in order to ensure that sufficient information is available for carrying out the investigation in case of such threats of retaliation from third countries.
- (8) Third countries increasingly interfere in trade of raw materials with a view to keeping raw materials in those countries for the benefit of domestic downstream users, for instance by imposing export taxes or operating dual pricing schemes. Such interference creates additional distortions of trade. As a result, the costs of raw materials do not result from the operation of normal market forces reflecting supply and demand for a given raw material. As a consequence, Union producers are not only harmed by dumping, but suffer, compared to downstream producers from third countries engaged in such practices, additional distortions of trade. In order to protect trade adequately, these distortions should be considered in the level of measures.
- (9) The Commission should verify the existence of distortions on the basis of the complaint and the OECD 'Inventory data on export restrictions on industrial raw materials'⁷ or any other OECD database which replaces this database and identifies raw material distortions.

⁷ Link https://qdd.oecd.org/subject.aspx?Subject=ExportRestrictions_IndustrialRawMaterials

- (10) Within the Union, countervailable subsidies are in principle prohibited pursuant to Article 107 (1) TFEU. Therefore, countervailable subsidies granted by third countries are particularly distortive of trade. The amount of State aid authorized by the Commission has steadily been reduced over time. For the anti-subsidy instrument, the lesser duty rule may no longer be applied.
- (11) In order to optimise the review practice, duties collected during the investigation should be reimbursed to importers, where measures are not prolonged after the conclusion of an expiry review investigation. This is appropriate given that the conditions required for the continuation of the measures have not been found to exist during the investigation period.
- (12) The Commission should initiate interim reviews, where appropriate, in cases where the EU industry faces increased costs resulting from higher social and environmental standards. Furthermore, the Commission should also initiate interim reviews in cases of changed circumstances in exporting countries relating to social and environmental standards. For instance, if a country under measures withdraws from a social or environmental agreement, the interim review investigation could result in the withdrawal of the undertakings in force. The scope of the review would depend on the precise nature of the change. These interim reviews could be also initiated *ex officio*.
- (13) Certain practices which in recent years have been applied in the context of antidumping and anti-subsidy investigations should be included into the Regulations.
- (14) The Commission may adopt interpretative notices providing general guidance to possible interested parties on the application of this Regulation. In accordance with the established case law of the Court of Justice, such notices are not legally binding and do not modify mandatory rules of Union law. On the basis of the general principles of equal treatment and legitimate expectations, the Commission should apply such notices, but it cannot waive by their adoption the discretion it enjoys in the area of the common commercial policy. Prior to adopting such notices, the Commission should carry out consultations in line with Article 11(3) TEU. Parliament and Council may express their views as well.

- (15) The Union industry should no longer be defined by reference to the initiation thresholds set out in the Regulations.
- (16) Moreover, the Commission should ensure the best possible access to information to all interested parties by allowing for an information system whereby interested parties are notified when new non-confidential information is added to the investigation files. Non-confidential information shall also be made accessible to all interested parties through a web-based platform.
- (17) In initial investigations where dumping or subsidy margins have been found to be less than the *de minimis* thresholds, the investigation should be immediately terminated in relation to exporters that will not be subject to subsequent review investigations.
- (18) The Commission should only accept an offer for an undertaking where it is satisfied, based on a prospective analysis, that it effectively eliminates the injurious effect of dumping.
- (19) When the conditions are met for initiating an anti-circumvention investigation, imports should in all cases be made subject to registration.
- (20) In anti-circumvention investigations, it seems advisable to remove the condition that, in order to be granted an exemption from registration or extended duties, producers of the product concerned should not be related to any producer subject to the original measures. This is because experience shows that sometimes producers of the product concerned are found not to be engaged in circumvention practices but are found to be related to a producer subject to the original measures. In such cases the producer should not be denied an exemption merely on the grounds that the company is related to a producer subject to the original measures. Also, when the circumvention practice takes place in the Union, the fact that importers are related to producers subject to the measures should not be decisive in determining whether the importer may be granted an exemption.
- (21) Where the number of producers in the Union is so large that resort must be made to sampling, a sample of producers should be chosen from among all producers in the Union and not just from among producers lodging the complaint.

- (22) In cases of raw material distortions as identified in Article 7(2a), the Commission should conduct a union interest test as laid out in Article 7(2b). If the Commission decides, when establishing the level of duties subject to Article 7, to apply paragraph 2 thereunder, it should carry out the test in accordance with Article 21 on the basis of the measures determined pursuant to paragraph 2.
- (23) In making the Union interest assessment, the opportunity to provide comments should be given to all producers in the Union and not just those producers lodging the complaint.
- (24) The annual report by the Commission to the European Parliament and the Council on its implementation of Regulation (EU) No 2016/1036 and Regulation (EU) No 2016/1037 allows a regular and timely monitoring of the Trade Defence Instruments. There should be an exchange about this report in the European Parliament and such exchange should also cover the functioning of the Trade Defence Instruments. The Council may attend such an exchange.
- (25) The Commission should extend the application and collection of anti-dumping and anti-subsidy duties to the Continental Shelf of a Member State or the Exclusive Economic Zone declared by a Member State pursuant to the United Nations Convention on the Law of the Sea (UNCLOS), provided that the product subject to measures is used in any of both places with the purpose of exploring or exploiting of the non-living natural resources of the seabed and its subsoil or in order to produce energy from the water, currents and winds, and provided that the product subject to measures is consumed there in significant quantities. The intention to extend the application in that manner should be set out in the notice of initiation, and should be supported by sufficient evidence in the request. Furthermore, the modalities of applying and collecting anti-dumping and anti-subsidy duties should be specified in an implementing act.

(26) In order to amend the list of definitions of raw material distortions by adding further raw material distortions in case the OECD 'Inventory data on export restrictions on industrial raw materials' or any OECD data base which replaces this inventory identifies raw material distortions in addition to those included in the list, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of adding raw material distortions to the list in Article 7(2)a) of this regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

Furthermore, in order to address appropriately substantial rise in imports in the event it occurs during the period of pre-disclosure, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of increasing or decreasing the duration of the period of pre-disclosure. The period of pre-disclosure should be decreased if the substantial rise in imports occurs but the Commission is not able to address it. Nevertheless, if substantial rise in imports has not occurred or if the Commission is able to address it, the period of pre-disclosure should be increased in order to ensure the predictability for Union operators.

(27) Regulation (EU) No 2016/1036 and Regulation should therefore be amended accordingly, (The amendments to the Anti-Subsidy Basic Regulation (EU) No 2016/1037, will be prepared subsequently.

2. OPERATIVE PART

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

Article 4(1): the chapeau is replaced by the following:

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 (...):

Article 5:

a. A new subparagraph is added to paragraph 1 after the 1st sentence

Complaints may also be prepared jointly by the Union industry, or by any natural or legal person or any association not having legal personality acting on behalf thereof, and trade unions, or be supported by trade unions. This does not affect the possibility for the Union industry to withdraw the complaint.

b. a new paragraph (1a) is inserted:

The Commission shall facilitate access to the instrument for diverse and fragmented industry sectors, largely composed of small and medium-sized enterprises (SMEs) through an SME Help Desk e.g. by raising awareness of the instrument, provide general information and explanations on procedures, how to file a complaint, releasing standard questionnaires in all languages and by replying to general, not case specific queries.

The SME Help Desk shall make available standard forms for statistics to be submitted for standing purposes and questionnaires.

Article 6 shall be amended as follows

a. paragraph (7) first paragraph is replaced by

The complainants, **trade unions**, importers and exporters and their representative associations, users and consumer organisations which have made themselves known in accordance with Article 5(10), as well as the representatives of the exporting country may, upon written request, inspect all information made available by any party to an investigation, as distinct from internal documents prepared by the authorities of the Union or its Member States, which is relevant to the presentation of their cases and not confidential within the meaning of Article 19, and is used in the investigation.

b. paragraph (9) is replaced by the following

For proceedings initiated pursuant to Article 5(9), an investigation shall, whenever possible, be concluded within one year. In any event, such investigations shall in all cases be concluded within **14 months of initiation**, in accordance with the findings made pursuant to Article 8 for undertakings or the findings made pursuant to Article 9 for definitive action.

Investigation periods shall, whenever possible, especially in the case of diverse and fragmented sectors largely composed of SMEs, coincide with the financial year.

c. a new paragraph 10 is added

Union producers of the like product are requested to cooperate in proceedings that have been initiated pursuant to Article 5(6).

d. new paragraph 11 is added

The Commission shall have the office of the Hearing Officer who shall safeguard the effective exercise of the procedural rights of the interested parties. The powers and responsibilities shall be set out in a mandate adopted by Commission decision.

Article 7 is amended as follows

a. paragraph 1 is replaced by the following

Provisional duties may be imposed if proceedings have been initiated in accordance with Article 5, if a notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments in accordance with Article 5(10), if a provisional affirmative determination has been made of dumping and consequent injury to the Union industry, and if the Union interest calls for intervention to prevent such injury. The provisional duties shall be imposed no earlier than 60 days from the initiation of the proceedings and **normally not later than 7 months, but in any event not later than 8 months** from the initiation of the proceedings.

Provisional duties shall not be applied within a period of three weeks after the information is sent to interested parties under Article 19a (period of pre-disclosure). The provision of such information shall not prejudice any subsequent decision that may be taken by the Commission.

The Commission shall review, two years after the entry into force of this regulation, whether substantial rise in imports has occurred during the period of pre-disclosure and whether, if such rise has occurred, it has caused additional injury to the Union industry, despite the measures that the Commission might have taken based on Article 14(5)a) and Article 9(4). It shall rely in particular on data collected on the basis of Article 14(6) and any relevant information at its disposal. The Commission shall adopt a delegated act in accordance with Article 24 to amend the duration of the period of pre-disclosure to two weeks in case of substantial rise of imports that have caused additional injury and to four weeks where this is not the case.

The Commission shall make public on its website the information of its intention to impose provisional duties including the possible duty rates at the same time when it provides interested parties with the information pursuant to Article 19a.

b. a new paragraph 2a is added

When examining whether a duty lower than the margin of dumping would be sufficient to remove injury, the Commission shall take into account whether there are raw material distortions with regard to the product concerned. Raw material distortions are defined as dual pricing schemes, export taxes, export surtax, export quota, export prohibition, fiscal tax on exports, licensing requirement, minimum export price, VAT tax refund reduction or withdrawal, restriction on customs clearance point for exporters, qualified exporters list, domestic market obligation, captive mining if the price of that raw material is significantly lower as compared to prices in the representative international markets. The Commission shall adopt delegated acts in accordance with Article 24 to amend by adding further raw material distortions in case the OECD 'Inventory data on export restrictions on industrial raw materials' or any OECD data base which replaces this inventory identifies raw material distortions in addition to those listed in the preceding sentence.

The investigation shall cover any distortion defined in the previous paragraph, for the existence of which the Commission has sufficient evidence pursuant to Article 5.

For the purpose of this Regulation, raw materials, whether unprocessed or processed, including energy for which a distortion is found must account, taken individually, for not less than 17% of the cost of production of the product concerned. For the purpose of this calculation, a non-distorted price of the raw material as established in representative international markets shall be used.

c. a new paragraph 2b is added:

When carrying out the Union Interest Test in accordance with Article 21, special consideration will be given to this matter. Where the Commission, on the basis of all the information submitted, can clearly conclude that it is in the Union's interest to determine the amount of the provisional measures in accordance with paragraph 2a of this Article, paragraph 2 of this Article shall not apply. The Commission shall actively seek information from interested parties enabling them to determine whether paragraph 2 or 2a of this Article shall apply. In this regard the Commission shall examine all pertinent information such as spare capacities in the exporting country, competition for raw materials and the effect on supply chains for European companies. In the absence of

cooperation the Commission may conclude that it is in accordance with the Union interest to apply paragraph 2a of this Article.

d. a new paragraph 2c is added

When the injury margin is calculated on the basis of a target price, the target profit used shall be established taking into account factors such as the level of profitability before the increase of imports from the country under investigation, the level of profitability needed to cover full costs and investments, R&D and innovation, and the level of profitability to be expected under normal conditions of competition. Such margin shall in any case be higher than 6 %.

e. a new paragraph 2d is added

When establishing the target price, actual cost of production of the Union industry, which result from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia, shall be duly reflected. Moreover, future costs, which are not covered in paragraph 2c, which result from these agreements and conventions, and which the Union industry will incur during the period of the application of the measure pursuant to Article 11(2), shall be taken into account.

Article 8

a. paragraph 1 is replaced by the following:

On the condition that a provisional affirmative determination of dumping and injury has been made, the Commission may, in accordance with the advisory procedure referred to in Article 15(2), accept satisfactory voluntary undertaking offers submitted by any exporter to revise its prices or to cease exports at dumped prices, if the injurious effect of the dumping is thereby eliminated.

In such a case and as long as such undertakings are in force, provisional duties imposed by the Commission in accordance with Article 7(1), or definitive duties imposed in accordance with Article 9(4), as the case may be, shall not apply to the relevant imports of the product concerned manufactured by the companies referred to in the Commission decision accepting undertakings, as subsequently amended.

Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping and they **shall** be less than the margin of dumping if such increase would be adequate to remove the injury to the Union industry.

When examining whether price increases under such undertakings lower than the margin of dumping would be sufficient to remove injury, Article 7 paragraphs 2a, 2b and 2c shall apply accordingly.

b. paragraph 2 the fifth sentence is replaced by the following:

Save in exceptional circumstances, undertakings may not be offered later than **5 days** prior to the end of the period during which representations may be made pursuant to Article 20(5), so as to ensure the opportunity to comment for other parties.

c. paragraph 3 is replaced by the following:

Undertakings offered need not be accepted if their acceptance is considered impractical, such as where the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy **which comprise in particular the principles and obligations set out in Multilateral Environmental Agreements and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia.** The exporter concerned may be provided with the reasons for which it is proposed to reject the offer of an undertaking and may be given an opportunity to make comments thereon. The reasons for rejection shall be set out in the definitive decision.

d. paragraph 4 is replaced by the following:

Parties which offer an undertaking shall be required to provide a non-confidential version of such undertaking that is meaningful in the sense of Article 19, so that it may be made available to interested parties to the investigation, **the European Parliament and the Council.**

Furthermore, before accepting any such an offer the Union industry shall be given an opportunity to comment with regard to the main features of the undertaking.

Article 9

a. paragraph 3 is replaced by the following:

For a proceeding initiated pursuant to Article 5(9), injury shall normally be regarded as negligible where the imports concerned represent less than the volumes set out in Article 5(7). For the same proceeding, there shall be immediate termination where it is determined that the margin of dumping is less than 2 %, expressed as a percentage of the export price.

b. paragraph 4 is replaced by the following:

Where the facts as finally established show that there is dumping and injury caused thereby, and the Union interest calls for intervention in accordance with Article 21, a definitive anti-dumping duty shall be imposed by the Commission acting in accordance with the examination procedure referred to in Article 15(3). Where provisional duties are in force, the Commission shall initiate that procedure no later than 1 month of the expiry of such duties.

The amount of the anti-dumping duty shall not exceed the margin of dumping established but it should be less than the margin if such lesser duty would be adequate to remove the injury to the Union industry. **Articles 7 paragraphs (2a), (2b) and (2c), shall apply accordingly.**

Where the Commission has not registered imports, but where the Commission finds, based on an analysis of all relevant information at its disposal when adopting definitive measures, that a further substantial rise in imports subject to the investigation occurs during the period of pre-disclosure, the Commission shall reflect the additional injury resulting from such increase in the determination of the injury margin for a period no longer than specified in Article 11(2).

Article 11

a. paragraph 2 subparagraph 2 is replaced by the following

An expiry review shall be initiated where the request contains sufficient evidence that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury. Such likelihood may, for example, be indicated by evidence of continued dumping and injury or evidence that the removal of injury is partly or solely due to the existence of measures or evidence that the circumstances of the exporters, or market conditions, are such that they would indicate the likelihood of further injurious dumping, **or by evidence of continued raw material distortions.**

b. in paragraph 5, the following subparagraph is added:

If following an investigation pursuant to paragraph 2, the measure expires, any duties collected from the date of the initiation of such investigation shall be repaid provided that this is requested from national customs authorities and granted by those authorities in accordance with the applicable Union customs legislation concerning repayment and remission of duty. Such repayment does not give rise to the payment of interest by the national customs authorities concerned.

Article 13

a. in paragraph 3, the second sentence is replaced by the following:

Initiations shall be made by Commission Regulation which **shall** also instruct customs authorities to subject imports to registration in accordance with Article 14(5) or to request guarantees.

b. in paragraph 4, the first subparagraph is replaced by the following (new text in bold, deletion not shown):

Imports shall not be subject to registration pursuant to Article 14(5) or measures where they are traded by companies which benefit from exemptions. Requests for exemptions duly supported by evidence shall be submitted within the time-limits established in the Commission regulation initiating the investigation. Where the circumventing practice, process or work takes place outside the Union, exemptions may be granted to producers of the product that are found not to be engaged in circumvention practices as defined in paragraphs 1 and 2 of this Article. Where the circumventing practice, process or work takes place inside the Union, exemptions may be granted to importers that can show that they are **not engaged in circumvention practices as defined in paragraphs 1 and 2 of this Article.**

Article 14

a. paragraph 3 is amended as follows:

Special provisions, in particular with regard to the common definition of the concept of origin, as contained in Regulation (EU) No 952/2013 of the European Parliament and the Council⁽¹⁾, **and with regard to the application and collection of an anti-dumping duty in the Continental Shelf of a Member State or the Exclusive Economic Zone declared by a Member State pursuant to the United Nations Convention on the Law of the Sea (UNCLOS), may be adopted pursuant to this Regulation.**

b. paragraph 5 is amended as follows

The earliest as of the initiation of the investigation, the Commission may after having informed the Member States in due time direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration. Imports **shall** be made subject to registration following a request from the Union industry which contains sufficient evidence to justify such action.

Imports may also be made subject to registration on the Commission's own initiative. Registration shall be introduced by regulation which shall specify the purpose of the action and, if appropriate, the estimated amount of possible future liability. Imports shall not be made subject to registration for a period longer than nine months.

c. a new paragraph 5a is inserted:

The Commission shall, unless it has sufficient evidence in the sense of Article 5 that the requirements of Article 10(4)(c) and (d) are not met, register imports pursuant to Article 14(5) during the period of pre-disclosure pursuant to Article 19a. When deciding on registration, the Commission shall in particular analyse the information collected based on the creation of TARIC codes for the product under investigation pursuant to Article 14(6).

d. paragraph 6 is replaced by the following:

Member States shall report to the Commission every month on the import trade in products subject to investigation and to measures, and on the amount of duties collected pursuant to this Regulation. **When initiating an investigation pursuant to Article 5, the Commission shall create TARIC codes corresponding to the product under investigation. Member States shall use those TARIC codes in order to report on imports of the product under investigation as of the initiation of the investigation.** The Commission may, upon receiving a specific reasoned request from an interested party, decide to provide them with a non-confidential summary of the information on aggregated import volumes and values of the products concerned.

e. a new paragraph 8 is added:

Whenever the Commission intends to adopt any document providing general guidance to possible interested parties on the application of this Regulation, a public consultation in line with Article 11(3) TEU shall be carried out. Parliament and Council may express their views as well.

New Article 14 a:

An anti-dumping duty may also be imposed on any dumped product brought in significant quantities to an artificial island, a fixed or floating installations or any other structures in the Continental Shelf of a Member State or the Exclusive Economic Zone declared by a Member State pursuant to the United Nations Convention on the Law of the Sea (UNCLOS), where this would cause injury to the Union industry.

The Commission shall adopt an implementing act laying down the conditions for the incurrence of such duties as well as the procedures relating to the notification and declaration of such products and payment of the duties referred to in paragraph 1, including recovery, repayment and remission (customs tool). That implementing act shall be adopted in accordance with the examination procedure referred to in Article 15(3).

The Commission shall only impose duties as referred to in paragraph 1 as of the date the customs tool is operational. The Commission shall inform all economic operators that the customs tool is operational by separate publication in the Official Journal.

Article 17

a. paragraph 1 is amended as follows (new text in bold):

In cases where the number of **Union producers**, exporters or importers, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of information available at the time of the selection, or to the largest representative volume of production, sales or exports which can reasonably be investigated within the time available.

b. paragraph 2 is amended as follows (new text in bold):

The final selection of parties, types of products or transactions made under these sampling provisions shall rest with the Commission, though preference shall be given to choosing a sample in consultation with, and with the consent of, the parties concerned, provided that such parties make themselves known and make sufficient information available, within **one week** of initiation of the investigation, to enable a representative sample to be chosen.

New Article 19 a – Information at provisional stage

a. new paragraph 1

The Union producers, importers and exporters and their representative associations, and representatives of the exporting country, may request information on the planned imposition of provisional duties. Requests for such information shall be made in writing within the time limit prescribed in the notice of initiation. Such information shall be provided to those parties three weeks before the imposition of provisional duties. Such information shall include: a summary of the proposed duties for information purposes only, and details of the calculation of the dumping margin and the margin adequate to remove the injury to the Union industry, due account being taken of the need to respect the confidentiality obligations contained in Article 19. Parties shall have a period of three working days to provide comments on the accuracy of the calculations.

b. new paragraph 2

In cases where it is intended not to impose provisional duties but to continue the investigation, interested parties shall be informed of the non-imposition of duties three weeks before the expiry of the deadline mentioned in Article 7(1) for the imposition of provisional duties.

Article 21

a. paragraph 2 is amended as follows:

In order to provide a sound basis on which the authorities can take account of all views and information in the decision as to whether or not the imposition of measures is in the Union's interest, the **Union producer, trade unions**, importers and their representative associations, representative users and representative consumer organisations may within the time-limits specified in the notice of initiation of the anti-dumping investigation, make themselves known and provide information to the Commission. Such information, or appropriate summaries thereof, shall be made available to the other parties specified in this Article, and they shall be entitled to respond to such information.

b. paragraph 4 is replaced:

The parties which have acted in accordance with paragraph 2 may provide comments on the application of any provisional duties. Such comments shall be received within **15 days** of the date of application of such measures if they are to be taken into account and they, or appropriate summaries thereof, shall be made available to other parties who shall be entitled to respond to such comments.

Article 23

a. paragraph 1 is replaced:

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, **undertakings**, 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. **The report shall also cover the use of trade defence instruments by third countries targeting the Union and appeals against the measures imposed. It shall include the activities of the Hearing Officer of the Commission's Directorate General for Trade and those of the SME Help Desk in relation to the application of this Regulation.**

The Report shall also include how social and environmental standards have been considered and taken into account in the investigations. Standards shall cover those embodied in multilateral environmental agreements to which the EU is party and ILO Conventions listed in Annex Ia, as well as equivalent national legislation of the exporting country.

b. paragraph 4 is added:

Five years after the date of entry into force of this Regulation and every five years thereafter, the Commission shall submit, to the European Parliament and to the Council, a review of the application of Articles 7(2a), 8(1) and 9(4), including an evaluation of this application. Such a review may, where appropriate, be accompanied by a legislative proposal.

New Article 24 – Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 7(2)a) shall be conferred on the Commission for period of five years from the date of entry into force of [the basic legislative act]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for a period of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period. The power to adopt delegated acts referred to in Article 7(1) shall be conferred on the Commission as of two years from the date of entry into force of [the basic legislative act] and it can be exercised only once.

3. The delegation of power referred to in Article 7(2)a) and in Article 7(1) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. Delegated acts adopted pursuant to Article 7(2)a) and Article 7(1) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

New Annex Ia is added:

ILO Conventions referred to in Articles 7, 8, 9

1. Convention concerning Forced or Compulsory Labour, No 29 (1930)
2. Convention concerning Freedom of Association and Protection of the Right to Organise, No 87 (1948)
3. Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, No 98 (1949)

4. Convention concerning Equal Remuneration of Men and Women Workers for Work of Equal Value, No 100 (1951)
5. Convention concerning the Abolition of Forced Labour, No 105 (1957)
6. Convention concerning Discrimination in Respect of Employment and Occupation, No 111 (1958)
7. Convention concerning Minimum Age for Admission to Employment, No 138 (1973)
8. Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, No 182 (1999)"

3. OPERATIVE PART

Regulation (EC) 2016/1037 is amended as follows:

Article 9(1): the chapeau is replaced by the following:

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 (...):

Article 10:

a. A new subparagraph is added to paragraph 1 after the 1st sentence

Complaints may also be prepared jointly by the Union industry, or by any natural or legal person or any association not having legal personality acting on behalf thereof, and trade unions, or be supported by trade unions. This does not affect the possibility for the Union industry to withdraw the complaint.

b. a new paragraph (1a) is inserted:

The Commission shall facilitate access to the instrument for diverse and fragmented industry sectors, largely composed of small and medium-sized enterprises (SMEs) through an SME Help Desk e.g. by raising awareness of the instrument, provide general

information and explanations on procedures, how to file a complaint, releasing standard questionnaires in all languages and by replying to general, not case specific queries.

The SME Help Desk shall make available standard forms for statistics to be submitted for standing purposes and questionnaires.

Article 11 shall be amended as follows

a. paragraph (7) first paragraph is replaced by

The complainants, **trade unions**, importers and exporters and their representative associations, users and consumer organisations which have made themselves known in accordance with Article 10(12), as well as the representatives of the exporting country may, upon written request, inspect all information made available by any party to an investigation, as distinct from internal documents prepared by the authorities of the Union or its Member States, which is relevant to the presentation of their cases and not confidential within the meaning of Article 29, and is used in the investigation.

b. paragraph (9) is replaced by the following

For proceedings initiated pursuant to Article 10(11), an investigation shall, whenever possible, be concluded within one year. In any event, such investigations shall in all cases be concluded within 13 months of initiation, in accordance with the findings made pursuant to Article 13 for undertakings or the findings made pursuant to Article 15 for definitive action. **Investigation periods shall, whenever possible, especially in the case of diverse and fragmented sectors largely composed of SMEs, coincide with the financial year.**

c. a new paragraph 11 is added

Union producers of the like product are requested to cooperate in proceedings that have been initiated pursuant to Article 10(8).

d. new paragraph 12 is added

The Commission shall have the office of the Hearing Officer who shall safeguard the effective exercise of the procedural rights of the interested parties. The powers and responsibilities shall be set out in a mandate adopted by Commission decision.

Article 12 is amended as follows

a. paragraph 1 is replaced by the following

Provisional duties may be imposed if proceedings have been initiated in accordance with Article 10, if a notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments in accordance with Article 10(12), if a provisional affirmative determination has been made of dumping and consequent injury to the Union industry, and if the Union interest calls for intervention to prevent such injury. The provisional duties shall be imposed no earlier than 60 days from the initiation of the proceedings but no later than nine months from the initiation of the proceedings.

The amount of the provisional countervailing duty **shall correspond** to the total amount of countervailable subsidies as provisionally established.

Where the Commission, on the basis of all the information submitted, can clearly conclude provisionally that it is not in the Union's interest to impose the provisional duty at that amount, the provisional countervailing duty shall be the amount adequate to remove the injury to the Union industry, if this is lower than the total amount of countervailable subsidies.

Provisional duties shall not be applied within a period of three weeks after the information is sent to interested parties under Article 29b (period of pre-disclosure). The provision of such information shall not prejudice any subsequent decision that may be taken by the Commission.

The Commission shall review, two years after the entry into force of this regulation, whether substantial rise in imports has occurred during the period of pre-disclosure and whether, if such rise has occurred, it has caused additional injury to the Union industry, despite the measures that the Commission might have taken based on Article 24(5)a) and Article 15(1). It shall rely in particular on data collected on the basis of Article 24(5)a) and any relevant information at its disposal. The Commission shall adopt a delegated act in accordance with Article 35 to amend the duration of the period of pre-disclosure to two weeks in case of substantial rise of imports that have caused additional injury and to four weeks where this is not the case.

The Commission shall make public on its website the information of its intention to impose provisional duties including the possible duty rates at the same time when it provides interested parties with the information pursuant to Article 29b.

d. a new paragraph 1a is added

When the injury margin is calculated on the basis of a target price, the target profit used shall be established taking into account factors such as the level of profitability before the increase of imports from the country under investigation, the level of profitability needed to cover full costs and investments, R&D and innovation, and the level of profitability to be expected under normal conditions of competition. Such margin shall in any case be higher than 6 %.

e. a new paragraph 1b is added

When establishing the target price, actual cost of production of the Union industry, which result from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia, shall be duly reflected. Moreover, future costs, which are not covered in paragraph 1a, which result from these agreements and conventions, and which the Union industry will incur during the period of the application of the measure pursuant to Article 18(1), shall be taken into account.

Article 13

a. paragraph 1 is replaced by the following:

On the condition that a provisional affirmative determination of dumping and injury has been made, the Commission may, in accordance with the advisory procedure referred to in Article 25(2), accept satisfactory voluntary undertaking offers submitted by any exporter to revise its prices or to cease exports at dumped prices, if the injurious effect of the dumping is thereby eliminated.

In such a case and as long as such undertakings are in force, provisional duties imposed by the Commission in accordance with Article 12(1), or definitive duties imposed in accordance with Article 15(1), as the case may be, shall not apply to the relevant imports of the product concerned manufactured by the companies referred to in the Commission decision accepting undertakings, as subsequently amended.

Unless otherwise provided in this Regulation, price increases under such undertakings shall not be higher than necessary to offset the amount of countervailable subsidies.

Where the Commission, on the basis of all the information submitted, can clearly conclude provisionally that it is not in the Union's interest to determine the increase under such undertakings, in accordance with third subparagraph of paragraph (1) of this Article, the increase under such undertakings shall be less than the amount of countervailable subsidies if such increase would be adequate to remove the injury to the Union industry.

b. paragraph 2 the fifth sentence is replaced by the following:

Save in exceptional circumstances, undertakings may not be offered later than **5 days** prior to the end of the period during which representations may be made pursuant to Article 30(5), so as to ensure the opportunity to comment for other parties.

c. paragraph 3 is replaced by the following:

Undertakings offered need not be accepted if their acceptance is considered impractical, such as where the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy **which comprise in particular the principles and obligations set out in Multilateral Environmental Agreements and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia.** The exporter concerned may be provided with the reasons for which it is proposed to reject the offer of an undertaking and may be given an opportunity to make comments thereon. The reasons for rejection shall be set out in the definitive decision.

d. paragraph 4 is replaced by the following:

Parties which offer an undertaking shall be required to provide a non-confidential version of such undertaking that is meaningful in the sense of Article 29, so that it may be made

available to interested parties to the investigation, **the European Parliament and the Council.**

Furthermore, before accepting any such an offer the Union industry shall be given an opportunity to comment with regard to the main features of the undertaking.

Article 14

paragraph 5 is replaced by the following:

The amount of the countervailable subsidies shall be considered to be de minimis if such amount is less than 1% ad valorem, except where, as regards investigations concerning imports from developing countries, the de minimis threshold shall be 2% ad valorem.

Article 15

b. in paragraph 1 subparagraph 3 is replaced by the following:

Unless otherwise provided in this Regulation, the amount of the countervailing duty shall not exceed the amount of countervailable subsidies established.

Where the Commission, on the basis of all the information submitted, can clearly conclude that it is not in the Union's interest to determine the amount of measures in accordance with third subparagraph of paragraph (1) of this Article, the amount of the countervailing duty shall be less if such lesser duty would be adequate to remove the injury to the Union industry.

Where the Commission has not registered imports, but where the Commission finds, based on an analysis of all relevant information at its disposal when adopting definitive measures, that a further substantial rise in imports subject to the investigation occurs during the period of pre-disclosure, the Commission shall reflect the additional injury resulting from such increase in the determination of the injury margin for a period no longer than specified in Article 18(1).

Article 18

In paragraph 1 the following subparagraph is added:

If following an investigation pursuant to Article 18, the measure expires, any duties collected from the date of the initiation of such investigation shall be repaid provided that this is requested from national customs authorities and granted by those authorities in accordance with the applicable Union customs legislation concerning repayment and remission of duty. Such repayment does not give rise to the payment of interest by the national customs authorities concerned.

Article 23

a. in paragraph 4, the second sentence is replaced by the following:

Initiations shall be made by Commission Regulation which **shall** also instruct customs authorities to subject imports to registration in accordance with Article 24(5) or to request guarantees.

b. in paragraph 6, the second and third subparagraphs are replaced by the following (new text in bold, deletion not shown):

Where the circumventing practice, process or work takes place outside the Union, exemptions may be granted to producers of the product concerned that are found not to be engaged in circumvention practices as defined in paragraph 3.'

Where the circumventing practice, process or work takes place inside the Union, exemptions may be granted to importers that can show that **they are not engaged in circumvention practices as defined in paragraph 3**

Article 24

a. paragraph 3 is amended as follows:

Special provisions, in particular with regard to the common definition of the concept of origin, as contained in Regulation (EU) No 952/2013 of the European Parliament and the Council⁽¹⁾, **and with regard to the application and collection of a countervailing duty in the Continental Shelf of a Member State or the Exclusive Economic Zone declared by a Member State pursuant to the United Nations Convention on the Law of the Sea (UNCLOS), may be adopted pursuant to this Regulation.**

b. paragraph 5 is amended as follows

The earliest as of the initiation of the investigation, the Commission may after having informed the Member States in due time direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration. Imports **shall** be made subject to registration following a request from the Union industry which contains sufficient evidence to justify such action.

Imports may also be made subject to registration on the Commission's own initiative.

Registration shall be introduced by regulation which shall specify the purpose of the action and, if appropriate, the estimated amount of possible future liability. Imports shall not be made subject to registration for a period longer than nine months.

c. a new paragraph 5a is inserted:

The Commission shall, unless it has sufficient evidence in the sense of Article 10 that the requirements of Article 16(4)(c) and (d) are not met, register imports pursuant to Article 24(5) during the period of pre-disclosure pursuant to Article 29a. When deciding on registration, the Commission shall in particular analyse the information collected based on the creation of TARIC codes for the product under investigation pursuant to Article 24(6).

d. paragraph 6 is replaced by the following:

Member States shall report to the Commission every month on the import trade in products subject to investigation and to measures, and on the amount of duties collected pursuant to this Regulation. **When initiating an investigation pursuant to Article 5, the Commission shall create TARIC codes corresponding to the product under investigation. Member States shall use those TARIC codes in order to report on imports of the product under investigation as of the initiation of the investigation.** The Commission may, upon receiving a specific reasoned request from an interested party, decide to provide them with a non-confidential summary of the information on aggregated import volumes and values of the products concerned.

e. a new paragraph 8 is added:

Whenever the Commission intends to adopt any document providing general guidance to possible interested parties on the application of this Regulation, a public consultation

in line with Article 11(3) TEU shall be carried out. Parliament and Council may express their views as well.

New Article 24 a:

A countervailing duty may also be imposed on any subsidised product brought in significant quantities to an artificial island, a fixed or floating installations or any other structures in the Continental Shelf of a Member State or the Exclusive Economic Zone declared by a Member State pursuant to the United Nations Convention on the Law of the Sea (UNCLOS), where this would cause injury to the Union industry.

The Commission shall adopt an implementing act laying down the conditions for the incurrence of such duties as well as the procedures relating to the notification and declaration of such products and payment of the duties referred to in paragraph 1, including recovery, repayment and remission (customs tool). That implementing act shall be adopted in accordance with the examination procedure referred to in Article 25(3).

The Commission shall only impose duties as referred to in paragraph 1 as of the date the customs tool is operational. The Commission shall inform all economic operators that the customs tool is operational by separate publication in the Official Journal.

Article 27

a. paragraph 1 is amended as follows (new text in bold):

In cases where the number of **Union producers**, exporters or importers, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of information available at the time of the selection, or to the largest representative volume of production, sales or exports which can reasonably be investigated within the time available.

b. paragraph 2 is amended as follows (new text in bold):

The final selection of parties, types of products or transactions made under these sampling provisions shall rest with the Commission, though preference shall be given to choosing a sample in consultation with, and with the consent of, the parties concerned, provided that such

parties make themselves known and make sufficient information available, within **one week** of initiation of the investigation, to enable a representative sample to be chosen.

New Article 29 a – Information at provisional stage

a. new paragraph 1

The Union producers, importers and exporters and their representative associations, and representatives of the exporting country, may request information on the planned imposition of provisional duties. Requests for such information shall be made in writing within the time limit prescribed in the notice of initiation. Such information shall be provided to those parties three weeks before the imposition of provisional duties. Such information shall include: a summary of the proposed duties for information purposes only, and details of the calculation of the subsidy margin and the margin adequate to remove the injury to the Union industry, due account being taken of the need to respect the confidentiality obligations contained in Article 29. Parties shall have a period of three working days to provide comments on the accuracy of the calculations.

b. new paragraph 2

In cases where it is intended not to impose provisional duties but to continue the investigation, interested parties shall be informed of the non-imposition of duties three weeks before the expiry of the deadline mentioned in Article 12(1) for the imposition of provisional duties.

Article 31

a. paragraph 2 is amended as follows:

In order to provide a sound basis on which the authorities can take account of all views and information in the decision as to whether or not the imposition of measures is in the Union's interest, the **Union producer, trade unions**, importers and their representative associations, representative users and representative consumer organisations may within the time-limits specified in the notice of initiation of the countervailing duty investigation, make themselves known and provide information to the Commission. Such information, or appropriate summaries thereof, shall be made available to the other parties specified in this Article, and they shall be entitled to respond to such information.

b. paragraph 4 is replaced:

The parties which have acted in accordance with paragraph 2 may provide comments on the application of any provisional duties. Such comments shall be received within **15 days** of the date of application of such measures if they are to be taken into account and they, or appropriate summaries thereof, shall be made available to other parties who shall be entitled to respond to such comments.

Article 34

a. paragraph 1 is replaced:

The Commission shall, with due regard to the protection of confidential information within the meaning of Article 29, 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, **undertakings**, 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. **The report shall also cover the use of trade defence instruments by third countries targeting the Union and appeals against the measures imposed. It shall include the activities of the Hearing Officer of the Commission's Directorate General for Trade and those of the SME Help Desk in relation to the application of this Regulation.**

The Report shall also include how social and environmental standards have been considered and taken into account in the investigations. Standards shall cover those embodied in multilateral environmental agreements to which the EU is party and ILO Conventions listed in Annex Ia, as well as equivalent national legislation of the exporting country.

b. paragraph 4 is added:

4. Five years after the date of entry into force of this Regulation and every five years thereafter, the Commission shall submit, to the European Parliament and to the Council, a review of the application of Articles 12(1) third and fourth subparagraph,

13(1) third and fourth subparagraph, 15(1) third and fourth subparagraph, including an evaluation of this application. Such a review may, where appropriate, be accompanied by a legislative proposal.

Article 35 – Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 12(1) shall be conferred on the Commission as of two years from the date of entry into force of [the basic legislative act] and it can be exercised only once.
3. The delegation of power referred to in Article 12(1) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 12(1) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

New Annex Ia is added:

ILO Conventions referred to in Articles 12, 13, 15

1. Convention concerning Forced or Compulsory Labour, No 29 (1930)
2. Convention concerning Freedom of Association and Protection of the Right to Organise, No 87 (1948)
3. Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, No 98 (1949)
4. Convention concerning Equal Remuneration of Men and Women Workers for Work of Equal Value, No 100 (1951)
5. Convention concerning the Abolition of Forced Labour, No 105 (1957)
6. Convention concerning Discrimination in Respect of Employment and Occupation, No 111 (1958)
7. Convention concerning Minimum Age for Admission to Employment, No 138 (1973)
8. Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, No 182 (1999)"
