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## PROPOSAL

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	28 October 2014
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2014) 667 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on protection against dumped imports from countries not members of the European Union (codification)

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Delegations will find attached document COM(2014) 667 final.

Delegations are invited to send their comments on the codification proposal by 27 November 2014 to the following addresses:

SECRETARIAT.Codification@consilium.europa.eu **AND** sj-codification@ec.europa.eu

Delegation's attention is drawn to the Practical Guide on Codification (doc. 14722/14 + COR1 of 24 October 2014).

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Encl.: COM(2014) 667 final

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14907/14

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Brussels, 28.10.2014  
COM(2014) 667 final

2014/0309 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on protection against dumped imports from countries not members of the  
European Union (codification)**

## EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying the law of the Union so as to make it clearer and more accessible to citizens, thus giving them new opportunities and the chance to make use of the specific rights it gives them.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if the law is to be clear and transparent.

2. On 1 April 1987 the Commission decided<sup>1</sup> to instruct its staff that all acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that their provisions are clear and readily understandable.
3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this<sup>2</sup>, stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal procedure for the adoption of acts of the Union.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community<sup>3</sup>. The new Regulation will supersede the various acts incorporated in it<sup>4</sup>; this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.

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<sup>1</sup> COM(87) 868 PV.

<sup>2</sup> See Annex 3 to Part A of the Conclusions.

<sup>3</sup> Entered in the legislative programme for 2014.

<sup>4</sup> See Annex I to this proposal.

5. The codification proposal was drawn up on the basis of a preliminary consolidation, in 22 official languages, of Regulation (EC) No 1225/2009 and the instruments amending it, carried out by the Publications Office of the European Union, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table set out in Annex II to the codified Regulation.

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↓ 1225/2009 (adapted)

2014/0309 (COD)

Proposal for a

## REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

### on protection against dumped imports from countries not members of the European Union (codification)

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,

Having regard to the opinion of the European Economic and Social Committee<sup>5</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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↓ 1225/2009 recital 1 (adapted)

- (1) Council Regulation (EC) No 1225/2009<sup>6</sup> has been substantially amended several times<sup>7</sup>. In the interests of clarity and rationality, that Regulation should be codified.

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↓ 1225/2009 recital 3 (adapted)

- (2) The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ('the 1994 Anti-Dumping Agreement') contains detailed rules, relating in particular to the calculation of dumping, procedures for initiating and pursuing an investigation, including the establishment and treatment of the facts, the imposition of provisional measures, the imposition and collection of anti-dumping duties, the duration and review of anti-dumping measures and the public disclosure of information relating to anti-dumping investigations.

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<sup>5</sup> OJ C [...], [...], p. [...].

<sup>6</sup> Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

<sup>7</sup> See Annex I.

- (3) In order to ensure a proper and transparent application of the rules of the 1994 Anti-Dumping Agreement, the language of that agreement should be reflected in Union legislation to the best extent possible.
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↓ 1225/2009 recital 4 (adapted)  
→<sub>1</sub> Corrigendum, OJ L 7,  
12.1.2010, p. 22

- (4) In applying the rules of the 1994 Anti-Dumping Agreement it is essential, in order to maintain the balance of rights and obligations which the General Agreement on Tariffs and Trade ('GATT') established, that the Union take account of the interpretation of those rules by the Union's major trading partners.
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↓ 1225/2009 recital 5 (adapted)

- (5) It is desirable to set out clear and detailed rules on the calculation of the normal value. In particular such value should in all cases be based on representative sales in the ordinary course of trade in the exporting country. It is expedient to give guidance as to when parties may be considered as being associated for the purpose of determining dumping. It is expedient to define the circumstances in which domestic sales may be considered to be made at a loss and may be disregarded, and in which recourse may be had to remaining sales, or to constructed normal value, or to sales to a third country. It is also appropriate to provide for a proper allocation of costs, even in start-up situations, and for guidance as to the definition of start-up and the extent and method of allocation. It is also necessary, when constructing the normal value, to indicate the methodology to be applied in determining the amounts for selling, general and administrative costs and the profit margin that should be included in such value.
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↓ 1225/2009 recital 6 (adapted)

- (6) When determining the normal value for non-market economy countries, it appears prudent to set out rules for choosing the appropriate market-economy third country to be used for such purpose and, where it is not possible to find a suitable third country, to provide that the normal value may be established on any other reasonable basis.
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↓ 1225/2009 recital 7 (adapted)

- (7) It is expedient to define the export price and to enumerate the adjustments which should be made in those cases where a reconstruction of that price from the first open-market price is deemed necessary.
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↓ 1225/2009 recital 8 (adapted)

- (8) For the purpose of ensuring a fair comparison between export price and normal value, it is advisable to list the factors which may affect prices and price comparability and to set out specific rules as to when and how the adjustments should be made, including the fact that any duplication of adjustments should be avoided. It is also

necessary to provide that comparison may be made using average prices although individual export prices may be compared to an average normal value where the former vary by customer, region or time period.

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↓ 1225/2009 recital 9 (adapted)

- (9) It is desirable to set out clear and detailed guidance as to the factors which may be relevant for the determination of whether the dumped imports have caused material injury or are threatening to cause injury. In demonstrating that the volume and price levels of the imports concerned are responsible for injury sustained by the Union industry, attention should be given to the effect of other factors and in particular prevailing market conditions in the Union .
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↓ 1225/2009 recital 10 (adapted)

- (10) It is advisable to define the term ‘ Union industry’ and to provide that parties related to exporters may be excluded from such industry, and to define the term ‘related’. It is also necessary to provide for anti-dumping action to be taken on behalf of producers in a region of the Union and to set out guidelines on the definition of such region.
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↓ 1225/2009 recital 11 (adapted)

- (11) It is necessary to specify who may lodge an anti-dumping complaint, including the extent to which it should be supported by the Union industry, and the information on dumping, injury and causation which such complaint should contain. It is also expedient to specify the procedures for the rejection of complaints or the initiation of proceedings.
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↓ 1225/2009 recital 12 (adapted)

- (12) It is necessary to specify the manner in which interested parties should be given notice of the information which the authorities require. Interested parties should have ample opportunity to present all relevant evidence and to defend their interests. It is also desirable to set out clearly the rules and procedures to be followed during the investigation, in particular the rules whereby interested parties are to make themselves known, present their views and submit information within specified time limits, if such views and information are to be taken into account. It is also appropriate to set out the conditions under which an interested party may have access to, and comment on, information presented by other interested parties. There should also be cooperation between the Member States and the Commission in the collection of information.
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↓ 1225/2009 recital 13 (adapted)

- (13) It is necessary to set out the conditions under which provisional duties may be imposed, including conditions whereby provisional duties may be imposed no earlier than 60 days from initiation and no later than nine months thereafter. For administrative reasons, it is also necessary to provide that such duties may in all cases

be imposed by the Commission, either directly for a nine-month period or in two stages of six and three months.

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↓ 1225/2009 recital 14 (adapted)

- (14) It is necessary to  set out  procedures for accepting undertakings which eliminate dumping and injury instead of imposing provisional or definitive duties. It is also appropriate to  specify  the consequences of  a  breach or withdrawal of undertakings and that provisional duties may be imposed in cases of suspected violation or where further investigation is necessary to supplement the findings. In accepting undertakings, care should be taken that the proposed undertakings, and their enforcement, do not lead to anti-competitive behaviour.
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↓ 1225/2009 recital 15 (adapted)

- (15) It is necessary to provide that the termination of cases should, irrespective of whether definitive measures are adopted or not, normally take place within 12 months, and in no case later than 15 months, from the initiation of the investigation.
- (16) Investigations or proceedings should be terminated where the dumping is *de minimis* or the injury is negligible, and it is appropriate to define those  situations . Where measures are to be imposed, it is necessary to provide for the termination of investigations and to  specify  that measures should be less than the margin of dumping if such lesser amount would remove the injury,  and also  to specify the method of calculating the level of measures in cases of sampling.
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↓ 1225/2009 recital 16

- (17) It is necessary to provide for retroactive collection of provisional duties if that is deemed appropriate and to define the circumstances which may trigger the retroactive application of duties to avoid the undermining of the definitive measures to be applied. It is also necessary to provide that duties may be applied retroactively in cases of breach or withdrawal of undertakings.
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↓ 1225/2009 recital 17 (adapted)

- (18) It is necessary to provide that measures are to lapse after five years unless a review indicates that they should be maintained. It is also necessary to provide, in cases where sufficient evidence is submitted of changed circumstances, for interim reviews or for investigations to determine whether refunds of anti-dumping duties are warranted. It is also appropriate to  provide  that in any recalculation of dumping which necessitates a reconstruction of export prices duties are not to be treated as a cost incurred between importation and resale where  those duties are  being reflected in the prices of the products subject to measures in the  Union .
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↓ 1225/2009 recital 18 (adapted)

- (19) It is necessary to provide specifically for the reassessment of export prices and dumping margins where the duty is being absorbed by the exporter through a form of



compensatory arrangement and the measures are not being reflected in the prices of the products subject to measures in the  Union .

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↓ 1225/2009 recital 19 (adapted)  
→<sub>1</sub> Corrigendum, OJ L 7,  
12.1.2010, p. 22

- (20) The 1994 Anti-Dumping Agreement does not contain provisions regarding the circumvention of anti-dumping measures, though a separate GATT Ministerial Decision  recognised  circumvention as a problem and referred it to the GATT Anti-dumping Committee for resolution. Given the failure of the multilateral negotiations so far and pending the outcome of the →<sub>1</sub> referral to the World Trade Organisation ('WTO') Anti-Dumping Committee, ←  Union  legislation should contain provisions to deal with practices, including mere assembly of goods in the  Union  or a third country, which have as their main aim the circumvention of anti-dumping measures.
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↓ 1225/2009 recital 20 (adapted)  
→<sub>1</sub> Corrigendum, OJ L 7,  
12.1.2010, p. 22

- (21) It is also desirable to clarify which practices constitute circumvention of the measures in place. Circumvention practices may take place either inside or outside the  Union . It is consequently necessary to provide that exemptions from the extended duties which →<sub>1</sub> may be granted to importers may also be granted to ← exporters when duties are being  applied  to address circumvention taking place outside the  Union .
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↓ 1225/2009 recital 21

- (22) It is expedient to permit suspension of anti-dumping measures where there is a temporary change in market conditions which makes the continued imposition of such measures temporarily inappropriate.
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↓ 1225/2009 recital 22 (adapted)

- (23) It is necessary to provide that imports under investigation may be made subject to registration upon importation in order to enable measures to be subsequently  applied  against such imports.
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↓ 1225/2009 recital 23

- (24) In order to ensure proper enforcement of measures, it is necessary that Member States monitor, and report to the Commission, the import trade of products subject to investigation or subject to measures, and also the amount of duties collected under this Regulation.

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↓ 1225/2009 recital 26

- (25) It is expedient to provide for verification visits to check information submitted on dumping and injury, such visits being, however, conditional on proper replies to questionnaires being received.

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↓ 1225/2009 recital 27

- (26) It is essential to provide for sampling in cases where the number of parties or transactions is large in order to permit completion of investigations within the appointed time limits.

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↓ 1225/2009 recital 28

- (27) It is necessary to provide that, where parties do not cooperate satisfactorily, other information may be used to establish findings and that such information may be less favourable to the parties than if they had cooperated.

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↓ 1225/2009 recital 29

- (28) Provision should be made for the treatment of confidential information so that business secrets are not divulged.

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↓ 1225/2009 recital 30 (adapted)

- (29) It is essential that provision be made for proper disclosure of essential facts and considerations to parties which qualify for such treatment and that such disclosure be made, with due regard to the decision-making process in the  Union  , within a time limit which permits parties to defend their interests.

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↓ 1225/2009 recital 31 (adapted)

- (30) It is prudent to provide for an administrative system under which arguments can be presented as to whether measures are in the  Union's  interest, including the consumers' interest, and to  specify  the time limits within which such information has to be presented as well as the disclosure rights of the parties concerned.

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↓ 37/2014 Art. 1 and Annex .22  
(adapted)

- (31)  The  implementation  of this Regulation  requires uniform conditions for the adoption of provisional and definitive duties, and for the termination of an investigation without measures. Those measures should be adopted by the

Commission in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>8</sup>.

- (32) The advisory procedure should be used for the adoption of provisional measures given the effects of such measures and their sequential logic in relation to the adoption of definitive measures. It should also be used for the acceptance of undertakings, initiation and non-initiation of expiry reviews, suspension of measures, extension of the suspension of measures and the reinstatement of measures given the effect of such measures as compared to definitive measures. Where a delay in the imposition of measures would cause  injury  which would be difficult to repair, it is necessary to allow the Commission to adopt immediately applicable provisional measures,

↓ 1225/2009 (adapted)  
→<sub>1</sub> Corrigendum, OJ L 7,  
12.1.2010, p. 22  
→<sub>2</sub> 1168/2012 Art. 1.1(a)  
→<sub>3</sub> 37/2014 Art. 1 and  
Annex .22(1)

HAVE ADOPTED THIS REGULATION:

### *Article 1*

#### **Principles**

1. An anti-dumping duty may be  imposed on  any dumped product whose release for free circulation in the  Union  causes injury.
2. A product is to be considered as being dumped if its export price to the  Union  is less than a comparable price for  a  like product, in the ordinary course of trade, as established for the exporting country.
3. The exporting country shall normally be the country of origin. However, it may be an intermediate country, except where, for example, the products are merely transhipped through that country, or the products concerned are not produced in that country, or there is no comparable price for them in that country.
4. For the purposes of this Regulation, 'like product' means a product which is identical, that is to say, alike in all respects, to the product under consideration, or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

### *Article 2*

#### **Determination of dumping**

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<sup>8</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

## A. NORMAL VALUE

1. The normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country.

However, where the exporter in the exporting country does not produce or does not sell the like product, the normal value may be established on the basis of prices of other sellers or producers.

Prices between parties which appear to be associated or to have a compensatory arrangement with each other may not be considered to be in the ordinary course of trade and may not be used to establish  the  normal value unless it is determined that they are unaffected by the relationship.

In order to determine whether two parties are associated account may be taken of the definition of related parties set out in Article 143 of Commission Regulation (EEC) No 2454/93<sup>9</sup>.

2. Sales of the like product intended for domestic consumption shall normally be used to determine  the  normal value if such sales volume constitutes 5 % or more of the sales volume of the product under consideration to the  Union . However, a lower volume of sales may be used when, for example, the prices charged are considered representative for the market concerned.

3. When there are no or insufficient sales of the like product in the ordinary course of trade, or where, because of the particular market situation, such sales do not permit a proper comparison, the normal value of the like product shall be calculated on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits, or on the basis of the export prices, in the ordinary course of trade, to an appropriate third country, provided that those prices are representative.

A particular market situation for the product concerned within the meaning of the first subparagraph may be deemed to exist, *inter alia*, when prices are artificially low, when there is significant barter trade, or when there are non-commercial processing arrangements.

4. Sales of the like product in the domestic market of the exporting country, or export sales to a third country, at prices below unit production costs (fixed and variable) plus selling, general and administrative costs may be treated as not being in the ordinary course of trade by reason of price, and may be disregarded in determining normal value, only if it is determined that such sales are made within an extended period in substantial quantities, and are at prices which do not provide for the recovery of all costs within a reasonable period of time.

If prices which are below costs at the time of sale are above weighted average costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

The extended period of time shall normally be one year but shall in no case be less than six months, and sales below unit cost shall be considered to be made in substantial quantities

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<sup>9</sup> Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

within such a period when it is established that the weighted average selling price is below the weighted average unit cost, or that the volume of sales below unit cost is not less than 20 % of sales being used to determine normal value.

5. Costs shall normally be calculated on the basis of records kept by the party under investigation, provided that such records are in accordance with the generally accepted accounting principles of the country concerned and that it is shown that the records reasonably reflect the costs associated with the production and sale of the product under consideration.

If costs associated with the production and sale of the product under investigation are not reasonably reflected in the records of the party concerned, they shall be adjusted or established on the basis of the costs of other producers or exporters in the same country or, where such information is not available or cannot be used, on any other reasonable basis, including information from other representative markets.

Consideration shall be given to evidence submitted on the proper allocation of costs, provided that it is shown that such allocations have been historically utilised. In the absence of a more appropriate method, preference shall be given to the allocation of costs on the basis of turnover. Unless already reflected in the cost allocations under this subparagraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production.

Where the costs for part of the period for cost recovery are affected by the use of new production facilities requiring substantial additional investment and by low capacity utilisation rates, which are the result of start-up operations which take place within or during part of the investigation period, the average costs for the start-up phase shall be those applicable, under the above-mentioned allocation rules, at the end of such a phase, and shall be included at that level, for the period concerned, in the weighted average costs referred to in the second subparagraph of paragraph 4. The length of a start-up phase shall be determined in relation to the circumstances of the producer or exporter concerned, but shall not exceed an appropriate initial portion of the period for cost recovery. For this adjustment to costs applicable during the investigation period, information relating to a start-up phase which extends beyond that period shall be taken into account where it is submitted prior to verification visits and within three months of the initiation of the investigation.

6. The amounts for selling, for general and administrative costs and for profits shall be based on actual data pertaining to production and sales, in the ordinary course of trade, of the like product by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

- (a) the weighted average of the actual amounts determined for other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;
- (b) the actual amounts applicable to production and sales, in the ordinary course of trade, of the same general category of products for the exporter or producer in question in the domestic market of the country of origin;
- (c) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realised by other exporters or producers on sales of

products of the same general category in the domestic market of the country of origin.

7. (a) In the case of imports from non-market economy countries<sup>10</sup>, normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including the ☒ Union ☒, or, where those are not possible, on any other reasonable basis, including the price actually paid or payable in the ☒ Union ☒ for the like product, duly adjusted if necessary to include a reasonable profit margin.

An appropriate market economy third country shall be selected in a not unreasonable manner, due account being taken of any reliable information made available at the time of selection. Account shall also be taken of time limits. Where appropriate, a market economy third country which is subject to the same investigation shall be used.

The parties to the investigation shall be informed shortly after its initiation of the market economy third country envisaged and shall be given 10 days to comment.

- (b) In anti-dumping investigations concerning →<sub>1</sub> imports from the People's Republic of China, Vietnam and Kazakhstan and any non-market-economy country ← which is a member of the WTO at the date of the initiation of the investigation, normal value shall be determined in accordance with paragraphs 1 to 6, if it is shown, on the basis of properly substantiated claims by one or more producers subject to the investigation and in accordance with the criteria and procedures set out in point (c), that market economy conditions prevail for this producer or producers in respect of the manufacture and sale of the like product concerned. When ☒ that ☒ is not the case, the rules set out under point (a) shall apply.
- (c) A claim under point (b) must be made in writing and contain sufficient evidence that the producer operates under market economy conditions, that is if:
- decisions of firms regarding prices, costs and inputs, including for instance raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand, and without significant State interference in ☒ that ☒ regard, and costs of major inputs substantially reflect market values,
  - firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes,
  - the production costs and financial situation of firms are not subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts,
  - the firms concerned are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of firms, and

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<sup>10</sup> →<sub>1</sub> Including Albania, Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Mongolia, North Korea, Tajikistan, Turkmenistan and Uzbekistan. ←

- exchange rate conversions are carried out at the market rate.

A determination whether the producer meets the above-mentioned criteria →<sub>2</sub> shall normally be made within seven months of, but in any event not later than eight months after, the initiation of the investigation ←, →<sub>3</sub> after the Union industry ← has been given an opportunity to comment. ☒ That ☒ determination shall remain in force throughout the investigation. →<sub>3</sub> The Commission shall provide information to the Member States concerning its analysis of claims made pursuant to point (b) normally within 28 weeks of the initiation of the investigation. ←

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↓ 1168/2012 Art. 1.1(b) (adapted)

- (d) When the Commission has limited its ☒ investigation ☒ in accordance with Article 17, a determination pursuant to points (b) and (c) of this paragraph shall be limited to the parties included in the ☒ investigation ☒ and any producer that receives individual treatment pursuant to Article 17(3).

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↓ 1225/2009 (adapted)

### *B. EXPORT PRICE*

8. The export price shall be the price actually paid or payable for the product when sold for export from the exporting country to the ☒ Union ☒ .

9. In cases where there is no export price or where it appears that the export price is unreliable because of an association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or, if the products are not resold to an independent buyer or are not resold in the condition in which they were imported, on any reasonable basis.

In ☒ those ☒ cases, adjustment for all costs, including duties and taxes, incurred between importation and resale, and for profits accruing, shall be made so as to establish a reliable export price, at the ☒ Union ☒ frontier level.

The items for which adjustment shall be made shall include those normally borne by an importer but paid by any party, either inside or outside the ☒ Union ☒ , which appears to be associated or to have a compensatory arrangement with the importer or exporter, including usual transport, insurance, handling, loading and ancillary costs, customs duties, any anti-dumping duties, and other taxes payable in the importing country by reason of the importation or sale of the goods, and a reasonable margin for selling, general and administrative costs and profit.

### *C. COMPARISON*

10. A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade and in respect of sales made at, as closely as possible, the same time and with due account taken of other differences which affect price comparability. Where the normal value and the export price as established are not on such a

comparable basis due allowance, in the form of adjustments, shall be made in each case, on its merits, for differences in factors which are claimed, and demonstrated, to affect prices and price comparability. Any duplication when making adjustments shall be avoided, in particular in relation to discounts, rebates, quantities and level of trade. When the specified conditions are met, the factors for which adjustment can be made are listed as follows:

(a) *Physical characteristics*

An adjustment shall be made for differences in the physical characteristics of the product concerned. The amount of the adjustment shall correspond to a reasonable estimate of the market value of the difference.

(b) *Import charges and indirect taxes*

An adjustment shall be made to normal value for an amount corresponding to any import charges or indirect taxes borne by the like product and by materials physically incorporated therein, when intended for consumption in the exporting country and not collected or refunded in respect of the product exported to the  Union .

(c) *Discounts, rebates and quantities*

An adjustment shall be made for differences in discounts and rebates, including those given for differences in quantities, if  those  are properly quantified and are directly linked to the sales under consideration. An adjustment may also be made for deferred discounts and rebates if the claim is based on consistent practice in prior periods, including compliance with the conditions required to qualify for the discount or rebates.

(d) *Level of trade*

(i) An adjustment for differences in levels of trade, including any differences which may arise in OEM (Original Equipment Manufacturer) sales, shall be made where, in relation to the distribution chain in both markets, it is shown that the export price, including a constructed export price, is at a different level of trade from the normal value and the difference has affected price comparability which is demonstrated by consistent and distinct differences in functions and prices of the seller for the different levels of trade in the domestic market of the exporting country. The amount of the adjustment shall be based on the market value of the difference.

(ii) However, in circumstances not envisaged under point (i), when an existing difference in level of trade cannot be quantified because of the absence of the relevant levels on the domestic market of the exporting countries, or where certain functions are shown clearly to relate to levels of trade other than the one which is to be used in the comparison, a special adjustment may be granted.

(e) *Transport, insurance, handling, loading and ancillary costs*

An adjustment shall be made for differences in the directly related costs incurred for conveying the product concerned from the premises of the exporter to an independent buyer, where such costs are included in the prices charged. Those costs shall include transport, insurance, handling, loading and ancillary costs.



(f) *Packing*

An adjustment shall be made for differences in the directly related packing costs for the product concerned.

(g) *Credit*

An adjustment shall be made for differences in the cost of any credit granted for the sales under consideration, provided that it is a factor taken into account in the determination of the prices charged.

(h) *After-sales costs*

An adjustment shall be made for differences in the direct costs of providing warranties, guarantees, technical assistance and services, as provided for by law and/or in the sales contract.

(i) *Commissions*

An adjustment shall be made for differences in commissions paid in respect of the sales under consideration.

The term ‘commissions’ shall be understood to include the mark-up received by a trader of the product or the like product if the functions of such a trader are similar to those of an agent working on a commission basis.

(j) *Currency conversions*

When the price comparison requires a conversion of currencies, such conversion shall be made using the rate of exchange on the date of sale, except that when a sale of foreign currency on forward markets is directly linked to the export sale involved the rate of exchange in the forward sale shall be used. Normally, the date of sale shall be the date of invoice but the date of contract, purchase order or order confirmation may be used if  those  more appropriately establish the material terms of sale. Fluctuations in exchange rates shall be ignored and exporters shall be granted 60 days to reflect a sustained movement in exchange rates during the investigation period.

(k) *Other factors*

An adjustment may also be made for differences in other factors not provided for under points (a) to (j) if it is demonstrated that they affect price comparability as required under this paragraph, in particular that customers consistently pay different prices on the domestic market because of the difference in such factors.

#### *D. DUMPING MARGIN*

11. Subject to the relevant provisions governing fair comparison, the existence of margins of dumping during the investigation period shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all export transactions to the  Union  , or by a comparison of individual normal values and

individual export prices to the ☒ Union ☒ on a transaction-to-transaction basis. However, a normal value established on a weighted average basis may be compared to prices of all individual export transactions to the ☒ Union ☒ , if there is a ☒ significant difference in the ☒ pattern of export prices among different purchasers, regions or time periods, and if the methods specified in the first sentence of this paragraph would not reflect the full degree of dumping being practised. This paragraph shall not preclude the use of sampling in accordance with Article 17.

12. The dumping margin shall be the amount by which the normal value exceeds the export price. Where dumping margins vary, a weighted average dumping margin may be established.

### Article 3

#### Determination of injury

1. Pursuant to this Regulation, the term ‘injury’ shall, unless otherwise specified, be taken to mean material injury to the ☒ Union ☒ industry, threat of material injury to the ☒ Union ☒ industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.

2. A determination of injury shall be based on positive evidence and shall involve an objective examination of :

- (a) the volume of the dumped imports and the effect of the dumped imports on prices in the ☒ Union ☒ market for like products; and
- (b) the consequent impact of those imports on the ☒ Union ☒ industry.

3. With regard to the volume of the dumped imports, consideration shall be given to whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the ☒ Union ☒ . With regard to the effect of the dumped imports on prices, consideration shall be given to whether there has been significant price undercutting by the dumped imports as compared with the price of a like product of the ☒ Union ☒ industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which would otherwise have occurred, to a significant degree. No one or more of ☒ those ☒ factors can necessarily give decisive guidance.

4. Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the effects of such imports shall be cumulatively assessed only if it is determined that:

- (a) the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in Article 9(3) and the volume of imports from each country is not negligible; and
- (b) a cumulative assessment of the effects of the imports is appropriate in ☒ the ☒ light of the conditions of competition between imported products and the conditions of competition between the imported products and the like ☒ Union ☒ product.

5. The examination of the impact of the dumped imports on the  Union  industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including the fact that an industry is still in the process of recovering from the effects of past dumping or subsidisation, the magnitude of the actual margin of dumping, actual and potential decline in sales, profits, output, market share, productivity, return on investments, utilisation of capacity, factors affecting  Union  prices, actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can any one or more of these factors necessarily give decisive guidance.

6. It must be demonstrated, from all the relevant evidence presented in relation to paragraph 2, that the dumped imports are causing injury within the meaning of this Regulation. Specifically,  that  shall entail a demonstration that the volume and/or price levels identified pursuant to paragraph 3 are responsible for an impact on the  Union  industry as provided for in paragraph 5, and that  that  impact exists to a degree which enables it to be classified as material.

7. Known factors other than the dumped imports which at the same time are injuring the  Union  industry shall also be examined to ensure that injury caused by  those  other factors is not attributed to the dumped imports under paragraph 6. Factors which may be considered in  that  respect  shall  include the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, restrictive trade practices of, and competition between, third country and  Union  producers, developments in technology and the export performance and productivity of the  Union  industry.

8. The effect of the dumped imports shall be assessed in relation to the production of the  Union  industry of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

9. A determination of a threat of material injury shall be based on facts and not merely on an allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.

In making a determination regarding the existence of a threat of material injury, consideration should be given to such factors as:

- (a) a significant rate of increase of dumped imports into the  Union  market indicating the likelihood of substantially increased imports;
- (b) sufficient freely disposable capacity of the exporter or an imminent and substantial increase in such capacity indicating the likelihood of substantially increased dumped exports to the  Union  , account being taken of the availability of other export markets to absorb any additional exports;
- (c) whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred, and would probably increase demand for further imports;

- (d) inventories of the product being investigated.

No one of the factors listed above by itself can necessarily give decisive guidance, but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury will occur.

#### Article 4

##### Definition of Union industry

1. 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, as defined in Article 5(4), of the total  Union  production of those products, except that:

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

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

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

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

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

3. Where the  Union  industry has been interpreted as referring to the producers in a certain region, the exporters shall be given an opportunity to offer undertakings pursuant to Article 8 in respect of the region concerned. In such cases, when evaluating the  Union

interest of the measures, special account shall be taken of the interest of the region. If an adequate undertaking is not offered promptly or the situations set out in Article 8(9) and (10) apply, a provisional or definitive duty may be imposed in respect of the ☒ Union ☒ as a whole. In such cases the duties may, if practicable, be limited to specific producers or exporters.

4. The provisions of Article 3(8) shall be applicable to this Article.

## Article 5

### Initiation of proceedings

1. Except as provided for in paragraph 6, an investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written complaint by any natural or legal person, or any association not having legal personality, acting on behalf of the ☒ Union ☒ industry.

The complaint may be submitted to the Commission or to a Member State, which shall forward it to the Commission. The Commission shall send Member States a copy of any complaint it receives. The complaint shall be deemed to have been lodged on the first working day following its delivery to the Commission by registered mail or the issuing of an acknowledgement of receipt by the Commission.

Where, in the absence of any complaint, a Member State is in possession of sufficient evidence of dumping and of resultant injury to the ☒ Union ☒ industry, it shall immediately communicate such evidence to the Commission.

2. A complaint under paragraph 1 shall include evidence of dumping, injury and a causal link between the allegedly dumped imports and the alleged injury. The complaint shall contain such information as is reasonably available to the complainant on the following:

- (a) the identity of the complainant and a description of the volume and value of the ☒ Union ☒ production of the like product by the complainant. Where a written complaint is made on behalf of the ☒ Union ☒ industry, the complaint shall identify the industry on behalf of which the complaint is made by a list of all known ☒ Union ☒ producers of the like product (or associations of ☒ Union ☒ producers of the like product) and, to the extent possible, a description of the volume and value of ☒ Union ☒ production of the like product accounted for by such producers;
- (b) a complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;
- (c) ☒ the ☒ prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, the prices at which the product is sold from the country or countries of origin or export to a third country or countries or on the constructed value of the product) and ☒ the ☒ export prices or, where appropriate, the prices at which the product is first resold to an independent buyer in the ☒ Union ☒ ;

(d) ☒ the ☒ changes in the volume of the allegedly dumped imports, the effect of those imports on prices of the like product on the ☒ Union ☒ market and the consequent impact of the imports on the ☒ Union ☒ industry, as demonstrated by relevant factors and indices having a bearing on the state of the ☒ Union ☒ industry, such as those listed in Article 3(3) and (5).

3. The Commission shall, as far as possible, examine the accuracy and adequacy of the evidence provided in the complaint, to determine whether there is sufficient evidence to justify the initiation of an investigation.

4. An investigation shall not be initiated pursuant to paragraph 1 unless it has been determined, on the basis of an examination as to the degree of support for, or opposition to, the complaint expressed by ☒ Union ☒ producers of the like product, that the complaint has been made by or on behalf of the ☒ Union ☒ industry. The complaint shall be considered to have been made by or on behalf of the ☒ Union ☒ industry if it is supported by those ☒ Union ☒ producers whose collective output constitutes more than 50 % of the total production of the like product produced by that portion of the ☒ Union ☒ industry expressing either support for or opposition to the complaint. However, no investigation shall be initiated when ☒ Union ☒ producers expressly supporting the complaint account for less than 25 % of total production of the like product produced by the ☒ Union ☒ industry.

5. The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicising of the complaint seeking the initiation of an investigation. However, after receipt of a properly documented complaint and before proceeding to initiate an investigation, the government of the exporting country concerned shall be notified.

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↓ 37/2014 Art. 1 and  
Annex .22(2) (adapted)

6. If, in special circumstances, ☒ the Commission decides ☒ to initiate an investigation without having received a written complaint by or on behalf of the Union industry for the initiation of such an investigation, this shall be done on the basis of sufficient evidence of dumping, injury and a causal link, as described in paragraph 2, to justify such initiation. The Commission shall provide information to the Member States once it has determined the need to initiate such investigation.

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↓ 1225/2009 (adapted)

7. The evidence of both dumping and injury shall be considered simultaneously in the decision on whether or not to initiate an investigation. A complaint shall be rejected where there is insufficient evidence of either dumping or of injury to justify proceeding with the case. Proceedings shall not be initiated against countries whose imports represent a market share of below 1 %, unless such countries collectively account for 3 % or more of ☒ Union ☒ consumption.

8. The complaint may be withdrawn prior to initiation, in which case it shall be considered not to have been lodged.

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↓ 37/2014 Art. 1 and  
Annex .22(2) (adapted)

9. Where it is apparent that there is sufficient evidence to justify initiating proceedings, the Commission shall do so within 45 days of the date  on which  the complaint  was lodged  and shall publish a notice in the *Official Journal of the European Union*. Where insufficient evidence has been presented, the complainant shall be so informed within 45 days of the date on which the complaint is lodged with the Commission. The Commission shall provide information to the Member States concerning its analysis of the complaint normally within 21 days of the date on which the complaint is lodged with the Commission.

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↓ 1225/2009 (adapted)  
→<sub>1</sub> 37/2014 Art. 1 and  
Annex .22(3)

10. The notice of initiation of proceedings shall announce the initiation of an investigation, indicate the product and countries concerned, give a summary of the information received, and provide that all relevant information is to be communicated to the Commission.

It shall state the periods within which interested parties may make themselves known, present their views in writing and submit information if such views and information are to be taken into account during the investigation. It shall also state the period within which interested parties may apply to be heard by the Commission in accordance with Article 6(5).

11. The Commission shall advise the exporters, importers and representative associations of importers or exporters known to it to be concerned, as well as representatives of the exporting country and the complainants, of the initiation of the proceedings and, with due regard to the protection of confidential information, provide the full text of the written complaint received pursuant to paragraph 1 to the known exporters and to the authorities of the exporting country, and make it available upon request to other interested parties involved. Where the number of exporters involved is particularly high, the full text of the written complaint may instead be provided only to the authorities of the exporting country or to the relevant trade association.

12. An anti-dumping investigation shall not hinder the procedures of customs clearance.

## Article 6

### The investigation

1. Following the initiation of proceedings, the Commission, acting in cooperation with the Member States, shall commence an investigation at  Union  level. Such investigation shall cover both dumping and injury and these shall be investigated simultaneously.

For the purpose of a representative finding, an investigation period shall be selected which in the case of dumping shall, normally, cover a period of no less than six months immediately prior to the initiation of proceedings.

Information relating to a period subsequent to the investigation period shall, normally, not be taken into account.

2. Parties receiving questionnaires used in an anti-dumping investigation shall be given at least 30 days to reply. The time limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the day on which it was sent to the exporter or transmitted to the appropriate diplomatic representative of the exporting country. An extension to the 30 day period may be granted, due account being taken of the time limits of the investigation, provided that the party shows due cause for such extension, in terms of its particular circumstances.

3. The Commission may request Member States to supply information, and Member States shall take whatever steps are necessary in order to give effect to such requests.

They shall send to the Commission the information requested together with the results of all inspections, checks or investigations carried out.

Where  that  information is of general interest or where its transmission has been requested by a Member State, the Commission shall forward it to the Member States, provided it is not confidential, in which case a non-confidential summary shall be forwarded.

4. The Commission may request Member States to carry out all necessary checks and inspections, particularly amongst importers, traders and  Union  producers, and to carry out investigations in third countries, provided that the firms concerned give their consent and that the government of the country in question has been officially notified and raises no objection.

Member States shall take whatever steps are necessary in order to give effect to such requests from the Commission.

Officials of the Commission shall be authorised, if the Commission or a Member State so requests, to assist the officials of Member States in carrying out their duties.

5. The interested parties which have made themselves known in accordance with Article 5(10) shall be heard if they have, within the period prescribed in the notice published in the *Official Journal of the European Union*, made a written request for a hearing showing that they are an interested party likely to be affected by the result of the proceedings and that there are particular reasons why they should be heard.

6. Opportunities shall, on request, be provided for the importers, exporters, representatives of the government of the exporting country and the complainants, which have made themselves known in accordance with Article 5(10), to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered.

Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties.

There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case.

Oral information provided under this paragraph shall be taken into account in so far as it is subsequently confirmed in writing.

7. The complainants, 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.

Such parties may respond to such information and their comments shall be taken into consideration, wherever they are sufficiently substantiated in the response.

8. Except in the circumstances provided for in Article 18, the information which is supplied by interested parties and upon which findings are based shall be examined for accuracy as far as possible.

9. 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 15 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.

### *Article 7*

#### **Provisional measures**

1. Provisional duties may be imposed if:

- (a) proceedings have been initiated in accordance with Article 5;
- (b) a notice has been given to that effect and interested parties have been given  $\rightarrow_1$  an adequate opportunity  $\leftarrow$  to submit information and make comments in accordance with Article 5(10);
- (c) a provisional affirmative determination has been made of dumping and consequent injury to the  Union  industry ; and
- (d) 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.

2. The amount of the provisional anti-dumping duty shall not exceed the margin of dumping as provisionally established, but it should be less than the margin if such lesser duty would be adequate to remove the injury to the  Union  industry.

3. Provisional duties shall be secured by a guarantee, and the release of the products concerned for free circulation in the  Union  shall be conditional upon the provision of such guarantee.

$\downarrow$ 37/2014 Art. 1 and Annex .22(3) (adapted)
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4. The Commission shall  adopt  provisional measures in accordance with the procedure referred to in Article 15(4).

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↓ 1225/2009

5. Where a Member State requests immediate intervention by the Commission and where the conditions in paragraph 1 are met, the Commission shall, within a maximum of five working days of receipt of the request, decide whether a provisional anti-dumping duty shall be imposed.

6. Provisional duties may be imposed for six months and extended for a further three months or they may be imposed for nine months. However, they may only be extended, or imposed for a nine-month period, where exporters representing a significant percentage of the trade involved so request or do not object upon notification by the Commission.

### *Article 8*

### **Undertakings**

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↓ 37/2014 Art. 1 and  
Annex .22(4)

1. 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 it is satisfied that 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 should be less than the margin of dumping if such increases would be adequate to remove the injury to the Union industry.

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↓ 1225/2009 (adapted)

2. Undertakings may be suggested by the Commission, but no exporter shall be obliged to enter into such an undertaking. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice consideration of the case.

However, it may be determined that a threat of injury is more likely to be realised if the dumped imports continue. Undertakings shall not be sought or accepted from exporters unless a provisional affirmative determination of dumping and injury caused by such dumping has been made.

Save in exceptional circumstances, undertakings may not be offered later than the end of the period during which representations may be made pursuant to Article 20(5).

3. 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. 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.

4. Parties which offer an undertaking shall be required to provide a non-confidential version of such undertaking, so that it may be made available to interested parties to the investigation.

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↓ 37/2014 Art. 1 and  
Annex .22(4)

5. Where undertakings are accepted, the investigation shall be terminated. The Commission shall terminate the investigation in accordance with the examination procedure referred to in Article 15(3).

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↓ 1225/2009

6. If the undertakings are accepted, the investigation of dumping and injury shall normally be completed. In such a case, if a negative determination of dumping or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of an undertaking. In such cases it may be required that an undertaking be maintained for a reasonable period.

In the event that an affirmative determination of dumping and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Regulation.

7. The Commission shall require any exporter from which an undertaking has been accepted to provide, periodically, information relevant to the fulfilment of such undertaking, and to permit verification of pertinent data. Non-compliance with such requirements shall be construed as a breach of the undertaking.

8. Where undertakings are accepted from certain exporters during the course of an investigation, they shall, for the purpose of Article 11, be deemed to take effect from the date on which the investigation is concluded for the exporting country.

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↓ 37/2014 Art. 1 and  
Annex .22(4) (adapted)

9. In the case of breach or withdrawal of undertakings by any party to the undertaking, or in the case of withdrawal of acceptance of the undertaking by the Commission, the acceptance of the undertaking shall be withdrawn by Commission Decision or Commission Regulation, as appropriate, and the provisional duty which has been imposed by the Commission in accordance with Article 7 or the definitive duty which has been imposed in accordance with Article 9(4) shall automatically apply, provided that the exporter concerned has, except where ☒ that exporter ☒ has withdrawn the undertaking, been given an opportunity to comment. The Commission shall provide information to the Member States when it decides to withdraw an undertaking.

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↓ 1225/2009

Any interested party or Member State may submit information showing *prima facie* evidence of a breach of an undertaking. The subsequent assessment of whether or not a breach of an undertaking has occurred shall normally be concluded within six months, but in no case later than nine months following a duly substantiated request.

The Commission may request the assistance of the competent authorities of the Member States in the monitoring of undertakings.

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↓ 37/2014 Art. 1 and  
Annex .22(4)

10. A provisional duty may be imposed in accordance with Article 7 on the basis of the best information available where there is reason to believe that an undertaking is being breached, or in the case of breach or withdrawal of an undertaking, where the investigation which led to the undertaking has not been concluded.

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↓ 1225/2009 (adapted)

#### Article 9

#### **Termination without measures; imposition of definitive duties**

1. Where the complaint is withdrawn, proceedings may be terminated unless such termination would not be in the ☒ Union's ☒ interest.

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↓ 37/2014 Art. 1 and  
Annex .22(5)

2. Where protective measures are unnecessary, the investigation or proceedings shall be terminated. The Commission shall terminate the investigation in accordance with the examination procedure referred to in Article 15(3).

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↓ 1225/2009

3. For proceedings 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 proceedings, 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, provided that it is only the investigation that shall be terminated where the margin is below 2 % for individual exporters and they shall remain subject to the proceedings and may be reinvestigated in any subsequent review carried out for the country concerned pursuant to Article 11.

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↓ 37/2014 Art. 1 and  
Annex .22(5) (adapted)

4. 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 one month before 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.

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↓ 765/2012 Art. 1

5. An anti-dumping duty shall be imposed in the appropriate amounts in each case, on a non-discriminatory basis, on imports of a product from all sources found to be dumped and causing injury, except for imports from those sources from which undertakings under the terms of this Regulation have been accepted.

The Regulation imposing anti-dumping measures shall specify the duty for each supplier or, if that is impracticable, the supplying country concerned. Suppliers which are legally distinct from other suppliers or which are legally distinct from the State may nevertheless be considered as a single entity for the purpose of specifying the duty. For the application of this subparagraph, account may be taken of factors such as the existence of structural or corporate links between the suppliers and the State or between suppliers, control or material influence by the State in respect of pricing and output, or the economic structure of the supplying country.

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↓ 1225/2009 (adapted)  
→<sub>1</sub> 1168/2012 Art. 1.2  
→<sub>2</sub> 37/2014 Art. 1 and  
Annex .22(6)  
→<sub>3</sub> 37/2014 Art. 1 and  
Annex .22(7)

6. →<sub>1</sub> When the Commission has limited its ⊠ investigation ⊠ in accordance with Article 17, any anti-dumping duty applied to imports from exporters or producers which have made themselves known in accordance with Article 17 but were not included in the ⊠ investigation ⊠ shall not exceed the weighted average margin of dumping established with respect to the parties in the sample, irrespective of whether the normal value for such parties is determined on the basis of Article 2(1) to (6) or point (a) of Article 2(7). ←

For the purpose of this paragraph, the Commission shall disregard any zero and *de minimis* margins, and margins established in the circumstances referred to in Article 18.

Individual duties shall be applied to imports from any exporter or producer which is granted individual treatment, as provided for in Article 17.

## Article 10

### Retroactivity

1. Provisional measures and definitive anti-dumping duties shall only be applied to products which enter free circulation after the time when the  measure  taken pursuant to Article 7(1) or 9(4), as the case may be, enters into force, subject to the exceptions set out in this Regulation.

→<sub>2</sub> 2. Where a provisional duty has been applied and the facts as finally established show that there is dumping and injury, the Commission shall decide, irrespective of whether a definitive anti-dumping duty is to be imposed, what proportion of the provisional duty is to be definitively collected. ← For  that  purpose, ‘injury’ shall not include material  delay  of the establishment of a  Union  industry, nor threat of material injury, except where it is found that this would, in the absence of provisional measures, have developed into material injury. In all other cases involving such threat or  delay , any provisional amounts shall be released and definitive duties can only be imposed from the date  on which  a final determination of threat or material  delay  is made.

3. If the definitive anti-dumping duty is higher than the provisional duty, the difference shall not be collected. If the definitive duty is lower than the provisional duty, the duty shall be recalculated. Where a final determination is negative, the provisional duty shall not be confirmed.

4. A definitive anti-dumping duty may be levied on products which were entered for consumption no more than 90 days prior to the date of application of provisional measures but not prior to the initiation of the investigation, provided that:

- (a)  the  imports have been registered in accordance with Article 14(5);
- (b) the importers concerned  have been given  an opportunity to comment  by the Commission .
- (c) there is, for the product in question, a history of dumping over an extended period, or the importer was aware of, or should have been aware of, the dumping as regards the extent of the dumping and the injury alleged or found; and
- (d) in addition to the level of imports which caused injury during the investigation period, there is a further substantial rise in imports which, in the light of its timing and volume and other circumstances, is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.

5. In cases of breach or withdrawal of undertakings, definitive duties may be levied on goods entered for free circulation no more than 90 days before the application of provisional measures, provided that  the  imports have been registered in accordance with Article 14(5), and that any such retroactive assessment shall not apply to imports entered before the breach or withdrawal of the undertaking.

## Article 11

### Duration, reviews and refunds

1. An anti-dumping measure shall remain in force only as long as, and to the extent that, it is necessary to counteract the dumping which is causing injury.

2. A definitive anti-dumping measure shall expire five years from its imposition or five years from the date of the conclusion of the most recent review which has covered both dumping and injury, unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of dumping and injury. Such an expiry review shall be initiated on the initiative of the Commission, or upon  a  request made by or on behalf of  Union  producers, and the measure shall remain in force pending the outcome of such review.

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.

In carrying out investigations under this paragraph, the exporters, importers, the representatives of the exporting country and the  Union  producers shall be provided with the opportunity to amplify, rebut or comment on the matters set out in the review request, and conclusions shall be reached with due account taken of all relevant and duly documented evidence presented in relation to the question as to whether the expiry of measures would be likely, or unlikely, to lead to the continuation or recurrence of dumping and injury.

A notice of impending expiry shall be published in the *Official Journal of the European Union* at an appropriate time in the final year of the period of application of the measures as defined in this paragraph. Thereafter, the  Union  producers shall, no later than three months before the end of the five-year period, be entitled to lodge a review request in accordance with the second subparagraph. A notice announcing the actual expiry of measures pursuant to this paragraph shall also be published.

3. The need for the continued imposition of measures may also be reviewed, where warranted, on the initiative of the Commission or at the request of a Member State or, provided that a reasonable period of time of at least one year has elapsed since the imposition of the definitive measure, upon a request by any exporter or importer or by the  Union  producers which contains sufficient evidence substantiating the need for such an interim review.

An interim review shall be initiated where the request contains sufficient evidence that the continued imposition of the measure is no longer necessary to offset dumping and/or that the injury would be unlikely to continue or recur if the measure were removed or varied, or that the existing measure is not, or is no longer, sufficient to counteract the dumping which is causing injury.

In carrying out investigations pursuant to this paragraph, the Commission may, *inter alia*, consider whether the circumstances with regard to dumping and injury have changed significantly, or whether existing measures are achieving the intended results in removing the injury previously established under Article 3. In  those  respects, account shall be taken in the final determination of all relevant and duly documented evidence.

4. A review shall also be carried out for the purpose of determining individual margins of dumping for new exporters in the exporting country in question which have not exported the product during the period of investigation on which the measures were based.

The review shall be initiated where a new exporter or producer can show that it is not related to any of the exporters or producers in the exporting country which are subject to the anti-dumping measures on the product, and that it has actually exported to the  Union  following the investigation period, or where it can demonstrate that it has entered into an irrevocable contractual obligation to export a significant quantity to the  Union .

→<sub>3</sub> A review for a new exporter shall be initiated and carried out on an accelerated basis after Union producers have been given an opportunity to comment. ← The Commission Regulation initiating a review shall repeal the duty in force with regard to the new exporter concerned by amending the Regulation which has imposed such duty, and by making imports subject to registration in accordance with Article 14(5) in order to ensure that, should the review result in a determination of dumping in respect of such an exporter, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

The provisions of this paragraph shall not apply where duties have been imposed under Article 9(6).

5. The relevant provisions of this Regulation with regard to procedures and the conduct of investigations, excluding those relating to time limits, shall apply to any review carried out pursuant to paragraphs 2, 3 and 4.

Reviews carried out pursuant to paragraphs 2 and 3 shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review. In any event, reviews pursuant to paragraphs 2 and 3 shall in all cases be concluded within 15 months of initiation.

Reviews pursuant to paragraph 4 shall in all cases be concluded within nine months of the date of initiation.

If a review carried out pursuant to paragraph 2 is initiated while a review under paragraph 3 is ongoing in the same proceeding, the review pursuant to paragraph 3 shall be concluded at the same time as the review pursuant to paragraph 2.

If the investigation is not completed within the deadlines specified in the second, third and fourth subparagraphs, the measures shall:

- expire in investigations pursuant to paragraph 2,
- expire in the case of investigations carried out pursuant to paragraphs 2 and 3 in parallel, where either the investigation pursuant to paragraph 2 was initiated while a review under paragraph 3 was ongoing in the same proceeding or where such reviews were initiated at the same time, or
- remain unchanged in investigations pursuant to paragraphs 3 and 4.

A notice announcing the actual expiry or maintenance of the measures pursuant to this paragraph shall then be published in the *Official Journal of the European Union*.



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↓ 37/2014 Art. 1 and  
Annex .22(7) (adapted)

6. Reviews pursuant to this Article shall be initiated by the Commission. The Commission shall decide whether or not to initiate reviews pursuant to paragraph 2 of this Article in accordance with the advisory procedure referred to in Article 15(2). The Commission shall also provide information to the Member States once an operator or a Member State has submitted a request justifying the initiation of a review pursuant to paragraphs 3 and 4 of this Article and the Commission has completed its analysis thereof, or once the Commission has itself determined that the need for the continued imposition of measures should be reviewed.

Where warranted by reviews, measures shall, in accordance with the examination procedure referred to in Article 15(3), be repealed or maintained pursuant to paragraph 2 of this Article, or repealed, maintained or amended pursuant to paragraphs 3 and 4 of this Article.

Where measures are repealed for individual exporters, but not for the country as a whole, such exporters shall remain subject to the proceedings and may, automatically, be reinvestigated in any subsequent review carried out for that country pursuant to this Article.

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↓ 1225/2009 (adapted)

7. Where a review of measures pursuant to paragraph 3 is in progress at the end of the period of application of measures as defined in paragraph 2, such review shall also cover the circumstances set out in paragraph 2.

8. Notwithstanding paragraph 2, an importer may request reimbursement of duties collected where it is shown that the dumping margin, on the basis of which duties were paid, has been eliminated, or reduced to a level which is below the level of the duty in force.

In requesting a refund of anti-dumping duties, the importer shall submit an application to the Commission. The application shall be submitted via the Member State of the territory in which the products were released for free circulation, within six months of the date on which the amount of the definitive duties to be levied was duly determined by the competent authorities or of the date on which a decision was made definitively to collect the amounts secured by way of provisional duty. Member States shall forward the request to the Commission forthwith.

An application for refund shall only be considered to be duly supported by evidence where it contains precise information on the amount of refund of anti-dumping duties claimed and all customs documentation relating to the calculation and payment of such amount. It shall also include evidence, for a representative period, of normal values and export prices to the  Union  for the exporter or producer to which the duty applies. In cases where the importer is not associated with the exporter or producer concerned and such information is not immediately available, or where the exporter or producer is unwilling to release it to the importer, the application shall contain a statement from the exporter or producer that the dumping margin has been reduced or eliminated, as specified in this Article, and that the relevant supporting evidence will be provided to the Commission. Where such evidence is not forthcoming from the exporter or producer within a reasonable period of time the application shall be rejected.

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↓ 37/2014 Art. 1 and  
Annex .22(7)

The Commission shall decide whether and to what extent the application should be granted, or it may decide at any time to initiate an interim review, whereupon the information and findings from such a review carried out in accordance with the provisions applicable for such reviews shall be used to determine whether and to what extent a refund is justified. The Commission shall provide information to the Member States once it has completed its analysis of the application.

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↓ 1225/2009 (adapted)  
→<sub>1</sub> Corrigendum, OJ L 7,  
12.1.2010, p. 22

Refunds of duties shall normally take place within 12 months, and in no circumstances more than 18 months after the date on which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the anti-dumping duty.

The payment of any refund authorised should normally be made by Member States within 90 days of the Commission's decision.

9. In all review or refund investigations carried out pursuant to this Article, the Commission shall, provided that circumstances have not changed, apply the same methodology as in the investigation which led to the duty, with due account being taken of Article 2, and in particular paragraphs 11 and 12 thereof, and of Article 17.

10. In any investigation carried out pursuant to this Article, the Commission shall examine the reliability of export prices in accordance with Article 2. However, where it is decided to construct the export price in accordance with Article 2(9), it shall calculate it with no deduction for the amount of anti-dumping duties paid when conclusive evidence is provided that the duty is duly reflected in resale prices and the subsequent selling prices in the ☒ Union ☒ .

## *Article 12*

### **→<sub>1</sub> Absorption ←**

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↓ 37/2014 Art. 1 and  
Annex .22(8)

1. Where the Union industry or any other interested party submit, normally within two years from the entry into force of the measures, sufficient information showing that, after the original investigation period and prior to or following the imposition of measures, export prices have decreased or that there has been no movement, or insufficient movement, in the resale prices or subsequent selling prices of the imported product in the Union, the Commission may reopen the investigation to examine whether the measure has had effects on the above-mentioned prices. The Commission shall provide information to the Member States once an interested party has submitted sufficient information justifying the reopening of the investigation and the Commission has completed its analysis thereof.

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↓ 1225/2009 (adapted)  
→<sub>1</sub> Corrigendum, OJ L 7,  
12.1.2010, p. 22

The investigation may also be reopened, under the conditions set out ☒ in the first subparagraph ☒, at the initiative of the Commission or at the request of a Member State.

2. →<sub>1</sub> During a reinvestigation pursuant to this Article, exporters, importers and ☒ Union ☒ producers shall be provided with an opportunity to clarify the situation with regard to resale prices and subsequent selling prices. If it is concluded that the measure should have led to movements in such prices, then, in order to remove the injury previously established in accordance with Article 3, export prices shall be reassessed in accordance with Article 2 and dumping margins shall be recalculated to take account of the reassessed export prices. Where it is considered that the conditions of Article 12(1) are met due to a fall in export prices which has occurred after the original investigation period and prior to or following the imposition of measures, dumping margins may be recalculated to take account of such lower export prices. ←

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↓ 37/2014 Art. 1 and  
Annex .22(8)

3. Where a reinvestigation pursuant to this Article shows increased dumping, the measures in force may be amended by the Commission acting in accordance with the examination procedure referred to in Article 15(3), in accordance with the new findings on export prices. The amount of the anti-dumping duty imposed pursuant to this Article shall not exceed twice the amount of the duty imposed initially.

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↓ 1225/2009 (adapted)

4. The relevant provisions of Articles 5 and 6 shall apply to any reinvestigation carried out pursuant to this Article, except that such reinvestigation shall be carried out expeditiously and shall normally be concluded within six months of the date of initiation of the reinvestigation. In any event, such reinvestigations shall in all cases be concluded within nine months of initiation of the reinvestigation.

If the reinvestigation is not completed within the deadlines specified in the first subparagraph, measures shall remain unchanged. A notice announcing the maintenance of the measures pursuant to this paragraph shall be published in the *Official Journal of the European Union*.

5. Alleged changes in normal value shall only be taken into account under this Article where complete information on revised normal values, duly substantiated by evidence, is made available to the Commission within the time limits set out in the notice of initiation of an investigation. Where an investigation involves a re-examination of normal values, imports may be made subject to registration in accordance with Article 14(5) pending the outcome of the reinvestigation.

### Article 13

#### Circumvention

1. Anti-dumping duties imposed pursuant to this Regulation may be extended to imports from third countries of the like product, whether slightly modified or not, or to imports of the slightly modified like product from the country subject to measures, or parts thereof, when circumvention of the measures in force is taking place.

Anti-dumping duties not exceeding the residual anti-dumping duty imposed in accordance with Article 9(5) may be extended to imports from companies benefiting from individual duties in the countries subject to measures when circumvention of the measures in force is taking place.

Circumvention shall be defined as a change in the pattern of trade between third countries and the  Union  or between individual companies in the country subject to measures and the  Union  , which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product, and where there is evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of Article 2.

The practice, process or work referred to in the first subparagraph includes, *inter alia*:

- (a) the slight modification of the product concerned to make it fall under customs codes which are normally not subject to the measures, provided that the modification does not alter its essential characteristics;
- (b) the consignment of the product subject to measures via third countries;
- (c) the reorganisation by exporters or producers of their patterns and channels of sales in the country subject to measures in order to eventually have their products exported to the  Union  through producers benefiting from an individual duty rate lower than that applicable to the products of the manufacturers;
- (d) in the circumstances indicated in paragraph 2, the assembly of parts by an assembly operation in the  Union  or a third country.

2. An assembly operation in the  Union  or a third country shall be considered to circumvent the measures in force where:

- (a) the operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and the parts concerned are from the country subject to measures; and
- (b) the parts constitute 60 % or more of the total value of the parts of the assembled product, except that in no case shall circumvention be considered to be taking place where the value added to the parts brought in, during the assembly or completion operation, is greater than 25 % of the manufacturing cost; and
- (c) the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the assembled like product and there is evidence of dumping in relation to the normal values previously established for the like or similar products.

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↓ 37/2014 Art. 1 and  
Annex .22(9) (adapted)

3. Investigations shall be initiated pursuant to this Article on the initiative of the Commission or at the request of a Member State or any interested party on the basis of sufficient evidence regarding the factors set out in paragraph 1. Initiations shall be made by Commission Regulation which may also instruct customs authorities to  subject  imports to registration in accordance with Article 14(5) or to request guarantees. The Commission shall provide information to the Member States once an interested party or a Member State has submitted a request justifying the initiation of an investigation and the Commission has completed its analysis thereof, or where the Commission has itself determined that there is a need to initiate an investigation.

Investigations shall be carried out by the Commission. The Commission may be assisted by customs authorities and the investigation shall be concluded within nine months.

Where  the facts as finally ascertained justify the extension of measures, this shall be done by the Commission acting in accordance with the examination procedure referred to in Article 15(3). The extension shall take effect from the date on which registration was imposed pursuant to Article 14(5), or on which guarantees were requested. The relevant procedural provisions of this Regulation  concerning  the initiation and the conduct of investigations shall apply pursuant to this Article.

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↓ 1225/2009 (adapted)

4. 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 concerned that can show that they are not related to any producer subject to the measures and 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 related to producers subject to the measures.

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↓ 37/2014 Art. 1 and  
Annex .22(9) (adapted)

Those  exemptions shall be granted by decision of the Commission and shall remain valid for the period and under the conditions set down therein. The Commission shall provide information to the Member States once it has concluded its analysis.

Provided that the conditions set in Article 11(4) are met, exemptions may also be granted after the conclusion of the investigation leading to the extension of the measures.

Provided that at least one year has lapsed from the extension of the measures, and in case the number of parties requesting or potentially requesting an exemption is significant, the Commission may decide to initiate a review of the extension of the measures. Any such review shall be conducted in accordance with the provisions of Article 11(5) as applicable to reviews pursuant to Article 11(3).

5. Nothing in this Article shall preclude the normal application of the provisions in force concerning customs duties.

#### Article 14

### General provisions

1. Provisional or definitive anti-dumping duties shall be imposed by Regulation, and collected by Member States in the form, at the rate specified and according to the other criteria laid down in the Regulation imposing such duties. Such duties shall also be collected independently of the customs duties, taxes and other charges normally imposed on imports.

No product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation.

2. Regulations imposing provisional or definitive anti-dumping duties, and Regulations or Decisions accepting undertakings or terminating investigations or proceedings, shall be published in the *Official Journal of the European Union*.

Such Regulations or Decisions shall contain in particular, and with due regard to the protection of confidential information, the names of the exporters, if possible, or of the countries involved, a description of the product and a summary of the material facts and considerations relevant to the dumping and injury determinations. In each case, a copy of the Regulation or Decision shall be sent to known interested parties. The provisions of this paragraph shall apply *mutatis mutandis* to reviews.

3. Special provisions, in particular with regard to the common definition of the concept of origin, as contained in Council Regulation (EEC) No 2913/92<sup>11</sup>, may be adopted pursuant to this Regulation.

4. In the Union interest, measures imposed pursuant to this Regulation may be suspended by a decision of the Commission in accordance with the advisory procedure referred to in Article 15(2) for a period of nine months. The suspension may be extended for a further

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<sup>11</sup> Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

period, not exceeding one year, by the Commission acting in accordance with the advisory procedure referred to in Article 15(2).

Measures may only be suspended where market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of the suspension, and provided that the Union industry has been given an opportunity to comment and those comments have been taken into account. Measures may at any time be reinstated in accordance with the advisory procedure referred to in Article 15(2) if the reason for suspension is no longer applicable.

↓ 1225/2009 (adapted)  
→<sub>1</sub> 37/2014 Art. 1 and  
Annex .22(10)

→<sub>1</sub> 5. 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 may be made subject to registration following a request from the ☒ Union ☒ industry which contains sufficient evidence to justify such action. 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.

6. 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.

7. Without prejudice to paragraph 6, the Commission may request Member States, on a case-by-case basis, to supply information necessary to monitor efficiently the application of measures. In this respect, the provisions of Article 6(3) and (4) shall apply. Any data submitted by Member States pursuant to this Article shall be covered by the provisions of Article 19(6).

↓ 37/2014 Art. 1 and  
Annex .22(11) (adapted)

## Article 15

### Committee procedure

1. The Commission shall be assisted by a Committee. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

4. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 4 thereof, shall apply.

5. Pursuant to Article 3(5) of Regulation (EU) No 182/2011, where the written procedure  is used to  adopt definitive measures pursuant to paragraph 3 of this Article, or  to decide  on the initiation or non-initiation of expiry reviews pursuant to Article 11(6) of this Regulation, such procedure shall be terminated without result where, within the time limit set down by the chair, the chair so decides or a majority of committee members as defined in Article 5(1) of Regulation (EU) No 182/2011 so request. Where the written procedure  is used  in other instances where there has been a discussion of the draft measure in the committee, such procedure shall be terminated without result where, within the time limit set down by the chair, the chair so decides or a simple majority of committee members so request. Where the written procedure  is used  in other instances where there has not been a discussion of the draft measure in the committee, such procedure shall be terminated without result where, within the time limit set down by the chair, the chair so decides or at least a quarter of committee members so request.

6. The Committee may consider any matter relating to the application of this Regulation, raised by the Commission or at the request of a Member State. Member States may request information and may exchange views in the Committee or directly with the Commission.

↓ 1225/2009 (adapted)

#### *Article 16*

#### **Verification visits**

1. The Commission shall, where it considers it appropriate, carry out visits to examine the records of importers, exporters, traders, agents, producers, trade associations and organisations and to verify information provided on dumping and injury. In the absence of a proper and timely reply, a verification visit may not be carried out.

2. The Commission may carry out investigations in third countries as required, provided that it obtains the agreement of the firms concerned, that it notifies the representatives of the government of the country in question and that the latter does not object to the investigation. As soon as the agreement of the firms concerned has been obtained the Commission  shall  notify the authorities of the exporting country of the names and addresses of the firms to be visited and the dates agreed.

3. The firms concerned shall be advised of the nature of the information to be verified during verification visits and of any further information which needs to be provided during such visits, though this should not preclude requests made during the verification for further details to be provided in the light of information obtained.

4. In investigations carried out pursuant to paragraphs 1, 2 and 3, the Commission shall be assisted by officials of those Member States who so request.

#### *Article 17*

#### **Sampling**

1. In cases where the number of complainants, 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.

2. 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 three weeks of initiation of the investigation, to enable a representative sample to be chosen.

3. In cases where the  investigation  has been limited in accordance with this Article, an individual margin of dumping shall, nevertheless, be calculated for any exporter or producer not initially selected who submits the necessary information within the time limits provided for in this Regulation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome and would prevent completion of the investigation in good time.

4. Where it is decided to sample and there is a degree of non-cooperation by some or all of the parties selected which is likely to materially affect the outcome of the investigation, a new sample may be selected.

However, if a material degree of non-cooperation persists or there is insufficient time to select a new sample, the relevant provisions of Article 18 shall apply.

#### *Article 18*

#### **Non-cooperation**

1. In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within the time limits provided in this Regulation, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of the facts available.

Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available.

Interested parties should be made aware of the consequences of non-cooperation.

2. Failure to give a computerised response shall not be deemed to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost.

3. Where the information submitted by an interested party is not ideal in all respects it should nevertheless not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information is appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability.

4. If evidence or information is not accepted, the supplying party shall be informed forthwith of the reasons therefor and shall be granted an opportunity to provide further explanations within the time limit specified. If the explanations are considered unsatisfactory, the reasons

for rejection of such evidence or information shall be disclosed and given in published findings.

5. If determinations, including those regarding normal value, are based on the provisions of paragraph 1, including the information supplied in the complaint, it shall, where practicable and with due regard to the time limits of the investigation, be checked by reference to information from other independent sources which may be available, such as published price lists, official import statistics and customs returns, or information obtained from other interested parties during the investigation.

Such information may include relevant data pertaining to the world market or other representative markets, where appropriate.

6. If an interested party does not cooperate, or cooperates only partially, so that relevant information is thereby withheld, the result may be less favourable to the party than if it had cooperated.

### *Article 19*

#### **Confidentiality**

1. Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom he has acquired the information) or which is provided on a confidential basis by parties to an investigation shall, if good cause is shown, be treated as such by the authorities.

2. Interested parties providing confidential information shall be required to  provide  non-confidential summaries thereof. Those summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why such  summarisation  is not possible must be provided.

3. If it is considered that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information available or to authorise its disclosure in generalised or summary form, such information may be disregarded unless it can be satisfactorily demonstrated from appropriate sources that the information is correct. Requests for confidentiality shall not be arbitrarily rejected.

4. This Article shall not preclude the disclosure of general information by the  Union  authorities, and in particular of the reasons on which decisions taken pursuant to this Regulation are based, or disclosure of the evidence relied on by the  Union  authorities in so far as is necessary to explain those reasons in court proceedings. Such disclosure must take into account the legitimate interests of the parties concerned that their business secrets should not be divulged.

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↓ 37/2014 Art. 1 and  
Annex .22(12)

5. The Commission and Member States, including the officials of either, shall not reveal any information received pursuant to this Regulation for which confidential treatment has been requested by its supplier, without specific permission from that supplier. Exchanges of information between the Commission and Member States, or any internal documents prepared by the authorities of the Union or the Member States, shall not be divulged except as specifically provided for in this Regulation.

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↓ 1225/2009 (adapted)

6. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

This provision shall not preclude the use of information received in the context of one investigation for the purpose of initiating other investigations within the same proceedings in relation to the product concerned.

#### *Article 20*

#### **Disclosure**

1. The complainants, importers and exporters and their representative associations, and representatives of the exporting country, may request disclosure of the details underlying the essential facts and considerations on the basis of which provisional measures have been imposed. Requests for such disclosure shall be made in writing immediately following the imposition of provisional measures, and the disclosure shall be made in writing as soon as possible thereafter.

2. The parties mentioned in paragraph 1 may request final disclosure of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive measures, or the termination of an investigation or proceedings without the imposition of measures, particular attention being paid to the disclosure of any facts or considerations which are different from those used for any provisional measures.

3. Requests for final disclosure, as defined in paragraph 2, shall be addressed to the Commission in writing and be received, in cases where a provisional duty has been  imposed , no later than one month after publication of the imposition of that duty. Where a provisional duty has not been  imposed , parties shall be provided with an opportunity to request final disclosure within time limits set by the Commission.

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↓ 37/2014 Art. 1 and  
Annex .22(13)

4. Final disclosure shall be given in writing. It shall be made, due regard being had to the protection of confidential information, as soon as possible and, normally, no later than one month prior to the initiation of the procedures set out in Article 9. Where the Commission is

not in a position to disclose certain facts or considerations at that time, they shall be disclosed as soon as possible thereafter.

Disclosure shall not prejudice any subsequent decision which may be taken by the Commission, but where such a decision is based on any different facts and considerations they shall be disclosed as soon as possible.

5. Representations made after final disclosure is given shall be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least ten days, due consideration being given to the urgency of the matter. A shorter period may be set whenever an additional final disclosure has to be made.

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↓ 1225/2009 (adapted)

### *Article 21*

#### **⊠ Union ⊠ interest**

1. A determination as to whether the ⊠ Union's ⊠ interest calls for intervention shall be based on an appreciation of all the various interests taken as a whole, including the interests of the domestic industry and users and consumers. A determination pursuant to this Article shall only be made where all parties have been given the opportunity to make their views known pursuant to paragraph 2. In such an examination, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition shall be given special consideration. Measures, as determined on the basis of the dumping and injury found, may not be applied where the authorities, on the basis of all the information submitted, can clearly conclude that it is not in the ⊠ Union's ⊠ interest to apply such measures.

2. 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 complainants, 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.

3. The parties which have acted in ⊠ accordance ⊠ with paragraph 2 may request a hearing. Such requests shall be granted when they are submitted within the time limits set in paragraph 2, and when they set out the reasons, in terms of the ⊠ Union's ⊠ interest, why the parties should be heard.

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↓ 37/2014 Art. 1 and  
Annex .22(14) (adapted)

4. 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 25 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.

5. The Commission shall examine the information which is properly submitted and the extent to which it is representative, and the results of such analysis, together with an opinion on its merits, shall be transmitted to the committee as part of the draft measure submitted pursuant to Article 9. The views expressed in the committee should be taken into account by the Commission under the conditions provided for in Regulation (EU) No 182/2011.

6. The parties which have acted in conformity with paragraph 2 may request  that  the facts and considerations on which final decisions are likely to be taken be made available to them. Such information shall be made available to the extent possible and without prejudice to any subsequent decision taken by the Commission.

↓ 1225/2009 (adapted)

7. Information shall only be taken into account where it is supported by actual evidence which substantiates its validity.

## Article 22

### Final provisions

This Regulation shall not preclude the application of:

- (a) any special rules laid down in agreements concluded between the  Union  and third countries;
- (b) the  Union  Regulations in the agricultural sector and Council Regulations (EC) No 1667/2006<sup>12</sup>, (EC) No 614/2009<sup>13</sup> and (EC) No 1216/2009<sup>14</sup>. This Regulation shall operate by way of complement to those Regulations and in derogation from any provisions thereof which preclude the application of anti-dumping duties;
- (c) special measures, provided that such action does not run counter to obligations  under  the  General Agreement on Tariffs and Trade 1994 .

↓ 37/2014 Art. 1 and Annex .22(15)

## Article 23

### Report

1. The Commission shall, with due regard to the protection of confidential information within the meaning of Article 19, present an annual report on the application and implementation of

<sup>12</sup> Council Regulation (EC) No 1667/2006 of 7 November 2006 on glucose and lactose (OJ L 312, 11.11.2006, p. 1).

<sup>13</sup> Council Regulation (EC) No 614/2009 of 7 July 2009 on the common system of trade for ovalbumin and lactalbumin (OJ L 181, 14.7.2009, p. 8).

<sup>14</sup> Council Regulation (EC) No 1216/2009 of 30 November 2009 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products (OJ L 328, 15.12.2009, p. 10).

this Regulation to the European Parliament and to the Council. The report shall include information about the application of provisional and definitive measures, the termination of investigations without measures, reinvestigations, reviews and verification visits, and the activities of the various bodies responsible for monitoring the implementation of this Regulation and fulfilment of the obligations arising therefrom.

2. The European Parliament may, within one month from the Commission presenting the report, invite the Commission to an *ad hoc* meeting of its responsible committee to present and explain any issues related to the implementation of this Regulation.

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

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↓ 1225/2009 (adapted)
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#### *Article 24*

##### **Repeal**

Regulation (EC) No  1225/2009  is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

#### *Article 25*

##### **Entry into force**

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

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*