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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 4.6.2020 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union as regards the duration of the period of pre-disclosure

Delegations will find attached document C(2020) 3338 final.

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EUROPEAN
COMMISSION

Brussels, 4.6.2020
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COMMISSION DELEGATED REGULATION (EU) .../...

of 4.6.2020

amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union as regards the duration of the period of pre-disclosure

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The common rules for protection against dumped and subsidised imports from countries which are not members of the European Union are contained in Regulations (EU) 2016/1036¹ and (EU) 2016/1037² of the European Parliament and the Council (hereinafter jointly referred to as the ‘Regulations’).

A fundamental review of the Regulations was concluded in 2018, resulting in Regulation (EU) 2018/825³ (hereinafter referred to as the ‘amending Regulation’) which amended the Regulations.

In order to improve the transparency and predictability of anti-dumping and countervailing duty investigations, the amending Regulation introduced a period of pre-disclosure of three weeks in which information is provided to interested parties on the planned (non-)imposition of provisional duties.

Furthermore, the amending Regulation introduced an obligation for the Commission to review by 9 June 2020 whether a substantial rise in imports has occurred during the period of pre-disclosure and whether, if such rise has occurred, it has caused additional injury to the Union industry.

In the amending Regulation, the European Parliament and Council delegated to the Commission the power to adopt a delegated act to amend the duration of the period of pre-disclosure upon this review to two weeks in the case of a substantial rise of imports that have caused additional injury and to four weeks where this is not the case.

The attached delegated Regulation first sets out the analysis of imports within the period of pre-disclosure with regard to all investigations in which such pre disclosure has been given and that have been carried out since the entry into force of the amending Regulation. This delegated Regulation also amends the duration of the period of pre-disclosure to four weeks.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The drafting of this delegated act was done in accordance with the Framework Agreement on relations between the European Parliament and the European Commission and the Common Understanding of the European Parliament, Council and Commission on delegated acts. The Commission gathered prior to the adoption of the delegated act the necessary expertise through the consultation of Member States’ experts.

Given that the text of the amending Regulation leaves no margin of discretion to the Commission, as it already provides for a clear and narrowly-defined framework for the analysis to be done and the two possible outcomes (two weeks or four weeks), the Commission did not publish the draft delegated act for stakeholder feedback.

¹ Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 21).

² Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 55).

³ Regulation (EU) 2018/825 of the European Parliament and of the Council of 30 May 2018 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union (OJ L 143, 7.6.2018, p. 1).

Pursuant to Article 23a(4) of Regulation (EU) 2016/1036 and Article 32b(4) of Regulation (EU) 2016/1037, the Commission consulted experts designated by each Member State.

The first draft of this Regulation was distributed to experts designated by each Member State on 28 February 2020. On 18 March 2020, the designated experts were consulted in writing. The Commission answered to the questions asked on 20 April 2020 in writing and a virtual meeting with the experts took place on 30 April 2020. The main issues raised by the experts were the small number of cases in the assessment, the possibility not to adjust the three week period of pre-disclosure, in particular given the current economic uncertainties linked to COVID-19, and the next procedural steps including the possibility of objection by the co-legislators.

The Commission addressed the issues raised by the experts during the virtual meeting of 30 April. In particular, the Commission explained that the delegated power gave no margin of discretion to the Commission regarding the review of the pre-disclosure period and its possible outcomes. Even if the number of cases at the Commission's disposal was limited, the Commission's assessment showed a clear trend in these cases and the Commission could conclude that overall no additional injury to the Union industry had been caused by the imports during the pre-disclosure period. Regarding the adjustment of pre-disclosure period to four weeks, the Commission recalled that it had to register imports during the pre-disclosure period unless there is sufficient evidence to the contrary and the need to monitor these imports also in future in view of possible retroactive application of measures or – in case imports have not been registered - an adjustment of the injury margin⁴.

The measures proposed in this delegated Regulation include the comments made by Member States' experts and are in accordance with their opinion.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The legal basis for this Regulation is contained in the delegation of power of Article 23a of Regulation (EU) 2016/1036 and Article 32b of Regulation (EU) 2016/1037.

Subsidiarity principle

As the Regulations were not subject to a subsidiarity test, it is not appropriate to carry out such a test on this delegated Regulation. It should be noted that the smooth functioning of the Regulations require action at the level of the Union.

Proportionality principle

In terms of proportionality, this delegated Regulation respects the limits of the empowerments granted by the co-legislators and provides only provisions for the review of the pre-disclosure period as set out in Article 7(1) of Regulation (EU) 2016/1036 and Article 12(1) of Regulation (EU) 2016/1037.

Budgetary implications: As this delegated Regulation was drafted with a view to maintain, insofar as legally compatible with the Regulations, the current practices, there should be no direct budgetary implications arising from this delegated Regulation.

⁴ See Article 9(4) in fine of Regulation (EU) 2016/1036 and Article 15(1) in fine of Regulation (EU) 2016/1037, both as amended by Regulation (EU) 2018/825.

COMMISSION DELEGATED REGULATION (EU) .../...

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 290(1) thereof,

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union¹, and in particular Articles 7(1) and 23a thereof, and Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union², and in particular Articles 12(1) and 32b thereof,

Whereas:

- (1) On 7 June 2018, Regulation (EU) 2018/825 of the European Parliament and the Council was published, amending Regulation (EU) 2016/1036 (hereafter ‘the basic anti-dumping Regulation’) and Regulation (EU) 2016/1037 (hereafter ‘the basic anti-subsidy Regulation’).
- (2) In order to improve the transparency and predictability of anti-dumping and countervailing duty investigations, parties which will be affected by the imposition of provisional anti-dumping and countervailing measures, in particular importers, should be made aware of the impending imposition of such measures. In addition, in investigations where it is not appropriate to impose provisional measures, it is desirable that parties are aware sufficiently in advance of such non-imposition. Therefore, a pre-disclosure period of three weeks was introduced.
- (3) According to Article 7(1) of the basic anti-dumping Regulation and Article 12(1) of the basic anti-subsidy Regulation, the Commission had to review by 9 June 2020, whether a substantial rise in imports occurred during the period of pre-disclosure and whether, if such rise did occur, that that rise caused additional injury to the Union industry, despite possible registration or adjustment to the injury margin.
- (4) Based on this review, the Commission is required to amend the duration of the period of pre-disclosure to two weeks in the case of a substantial rise of imports which caused additional injury and to four weeks where that did not prove to be the case.
- (5) As set out in Articles 7(1) and 23a(2) of the basic anti-dumping Regulation and Article 12(1) and 32b(2) of the basic anti-subsidy Regulation, this review is an obligation for the Commission that could only be exercised once.

¹ OJ L 176, 30.6.2016, p. 21.

² OJ L 176, 30.6.2016, p. 55.

- (6) Since the entry into force of Regulation (EU) 2018/825 on 8 June 2018, the Commission initiated 19 investigations³ according to Article 5 of the basic anti-dumping Regulation and six investigations according to Article 10 of the basic anti-subsidy Regulation.
- (7) For twelve of these investigations, they both passed the provisional stage and there are also import data available for the pre-disclosure period. They could therefore be analysed to review whether a substantial rise in imports occurred during the period of pre-disclosure⁴.
- (8) The number of cases at the Commission's disposal to base its assessment on whether a substantial rise in imports has occurred during the period of pre-disclosure, is therefore, and as expected at the time when Regulation (EU) 2018/825 was agreed, limited. However, a clear trend can be seen in those cases.
- (9) In six of these twelve investigations, the Commission decided to impose provisional measures. In the other six, parties were informed three weeks before the deadline to impose provisional measures of the Commission's intention not to do so.
- (10) On the basis of statistical data summarised in Table 1 below, the Commission found that the volume of imports from the countries concerned into the Union increased in only two investigations. In the other investigations, a substantial decrease occurred.

Table 1
Import volumes per case

Case name and number	Decision to impose provisional measures	Imports originating from	Imports during IP (tonnes)	Imports during pre-disclosure (tonnes)	Rise in imports
Mixtures of urea and ammonium nitrate (AD649)	Yes	Russia	35 297	8 497	-76%
		USA	42 700	0	-100%
		Trinidad	21 183	0	-100%
		total	99 180	8 498	-91%
Biodiesel (AS650)	Yes	Indonesia	29 693	24 045	-19%
Steel road wheels (AD652)	Yes	PRC	13 763	914	-93%
Glass fibre fabrics (AD653)	No	Egypt	882	4	-100%
		PRC	2 161	1 724	-20%
		total	3 043	1 728	-43%

³ The Commission follows the computation method used by the WTO. This means that if a case concerning the same product is directed against imports from more than one country, each country covered counts as one separate investigation.

⁴ Three cases (Hollow sections originating in the Republic of North Macedonia, Russia, and Turkey) have been terminated, the other 10 cases have just or not yet reached the end of the provisional stage and therefore no reliable statistical data is available for the period of pre-disclosure (date of writing 30 April 2020).

Continuous filament glass fibre products (AD655)	No	Egypt	8 295	3 076	-63%
		Bahrein	1 350	327	-76%
		total	9 644	3 403	-65%
Glass fibre fabrics (AS656)	No	Egypt	882	37	-96%
		PRC	2 161	2.500	16%
		total	3 043	2.537	-17%
Continuous filament glass fibre products (AS657)	Yes	Egypt	8 295	11.574	38%

Source: Eurostat, verified data provided by the Union industry, and Surveillance II

- (11) No substantial rise occurred in the majority of reviewed cases. Moreover, in one of the two cases where a rise did occur, the imports were ultimately not the result of pre-disclosure but the result of the fact that the Commission did not impose provisional duties. Indeed, also under the previous system without pre-disclosure, imports could, in any event, enter the Union without attracting a duty once it was clear to all interested parties that no provisional duties would be imposed due to the expiry of the applicable deadline.
- (12) This leaves one case where a further increase incurred in the period of pre-disclosure before the imposition of provisional measures.
- (13) Consequently, the Commission concluded that overall no additional injury to the Union industry had been caused by the imports during the pre-disclosure period. Accordingly, the duration of the period of pre-disclosure should be amended to four weeks.
- (14) In the absence of any other specific transitional rules regulating the matter, it is appropriate to clarify that all investigations initiated subject to a notice of initiation pursuant to Article 5(9) of Regulation (EU) 2016/1036 or Article 10(11) of Regulation (EU) 2016/1037 prior to the date of publication in the *Official Journal of the European Union* of this Regulation should be unaffected by the prolonged pre-disclosure period. That should ensure legal certainty, provide a reasonable opportunity for interested parties to adapt themselves to the expiry of the old rules and the entry into force of the new rules, and facilitate the efficient, orderly and equitable implementation of Regulations (EU) 2016/1036 and (EU) 2016/1037.
- (15) Regulations (EU) 2016/1036 and (EU) 2016/1037 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Article 19a of Regulation (EU) 2016/1036 of the European Parliament and of the Council is replaced with:

‘Information at provisional stage

1. Union producers, importers and exporters and their representative associations, and representatives of the exporting country, may request information on the planned imposition of provisional duties. Requests for such information shall be made in

writing within the time limit prescribed in the notice of initiation. Such information shall be provided to those parties four weeks before the imposition of provisional duties. Such information shall include: a summary of the proposed duties for information purposes only, and details of the calculation of the dumping margin and the margin adequate to remove the injury to the Union industry, due account being taken of the need to respect the confidentiality obligations contained in Article 19. Parties shall have a period of three working days from the supply of such information to provide comments on the accuracy of the calculations.

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

Article 2

Article 29a of Regulation (EU) 2016/1037 of the European Parliament and of the Council is replaced with:

‘Information at provisional stage

1. Union producers, importers and exporters and their representative associations, and the country of origin and/or export, may request information on the planned imposition of provisional duties. Requests for such information shall be made in writing within the time limit prescribed in the notice of initiation. Such information shall be provided to those parties four weeks before the imposition of provisional duties. Such information shall include: a summary of the proposed duties for information purposes only, and details of the calculation of the amount of the countervailable subsidy and the margin adequate to remove the injury to the Union industry, due account being taken of the need to respect the confidentiality obligations contained in Article 29. Parties shall have a period of three working days from the supply of such information to provide comments on the accuracy of the calculations.
2. In cases where it is intended not to impose provisional duties but to continue the investigation, interested parties shall be informed of the non-imposition of duties four weeks before the expiry of the deadline mentioned in Article 12(1) for the imposition of provisional duties.’.

Article 3

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

Article 4

This Regulation shall apply to all investigations for which the notice of initiation pursuant to Article 5(9) of Regulation (EU) 2016/1036 or Article 10(11) of Regulation (EU) 2016/1037 was published in the *Official Journal of the European Union* after the date of entry into force of this Regulation.

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

Done at Brussels, 4.6.2020

For the Commission
The President
Ursula VON DER LEYEN