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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Position of the Council at first reading with a view to the adoption of a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union

REGULATION (EU) 2018/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION

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

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure¹,

¹ Position of the European Parliament of 16 April 2014 (OJ C 443, 22.12.2017, p. 934) and position of the Council at first reading of ... [(OJ ...)] [(not yet published in the Official Journal)]. Position of the European Parliament of ... [(OJ ...)] [(not yet published in the Official Journal)] [and decision of the Council of ...].

Whereas:

- (1) The common rules for protection against dumped and subsidised imports from countries which are not members of the 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'). The Regulations were initially adopted in 1968 and last significantly amended in 1996 following the conclusion of the Uruguay Round conducted within the framework of the General Agreement on Tariffs and Trade (GATT). Given that a number of amendments had been made to the Regulations since 1996, the legislators decided to codify the Regulations in the interest of clarity and rationality.
- (2) While the Regulations have been amended and codified, there has not been a fundamental review of their functioning. The Commission launched a review of the Regulations in order, *inter alia*, to better reflect the needs of business at the beginning of the twenty-first century.

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) Following that review, certain provisions of the Regulations should be amended in order to improve transparency and predictability, to provide for effective measures to fight against retaliation by third countries, to improve effectiveness and enforcement, and to optimise review practice. In addition, certain practices that have been applied in recent years in the context of anti-dumping and countervailing duty investigations should be included in the Regulations.
- (4) 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 antidumping 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. In order to limit the risk of a substantial rise in imports in the period of pre-disclosure, the Commission should register imports where possible. When providing for registration of imports during the period of pre-disclosure, it is necessary to consider that it requires a prospective analysis of the risks associated and the likelihood that these circumstances would undermine the remedial effects of the measures. Furthermore, the Commission should collect additional statistical information at the level of the Integrated Tariff of the European Union (TARIC) to ensure a proper factual basis of the analysis of the imports. Where registration is not possible, and a further substantial rise in imports takes place during the period of pre-disclosure, the Commission should reflect this additional injury in the injury margin.

- (5) A short period of time in advance of the imposition of provisional measures should be allowed for exporters or producers to check the calculation of their individual dumping margin or amount of the countervailable subsidy and the margin adequate to remove injury to the Union industry. Calculation errors could then be corrected in advance of the imposition of measures.
- (6) In order to ensure that measures to fight against retaliation are effective, Union producers should be able to rely on the Regulations without fear of retaliation by third countries. Existing provisions, under special circumstances, provide for the initiation of an investigation without having received a complaint, where sufficient evidence exists of dumping or countervailable subsidies, and of injury and causal link. Such special circumstances should include the threat of retaliation by third countries.
- (7) Where an investigation is not initiated by a complaint, the Commission should request Union producers to provide the information necessary for the investigation to proceed, in order to ensure that sufficient information is available for carrying out the investigation in case of threats of retaliation by third countries.

- (8) Third countries increasingly interfere in the trade of raw materials with a view to keeping raw materials in those countries for the benefit of domestic downstream users, for instance by imposing export taxes or operating dual pricing schemes. Such interference creates additional distortions of trade. As a result, the costs of raw materials do not reflect the operation of normal market forces of supply and demand for a given raw material. As a result, Union producers are not only harmed by dumping, but suffer from additional distortions of trade compared to third country downstream producers which engage in such practices. In order to adequately protect trade, due regard should be had to such distortions when determining the level of duties to be imposed.
- (9) The Commission should verify the existence of distortions on raw materials on the basis of the complaint received and the Organisation for Economic Co-operation and Development (OECD) 'Inventory on export restrictions on industrial raw materials' or any other OECD database which replaces that database and identifies distortions on raw materials.
- (10) Within the Union, countervailable subsidies are in principle prohibited pursuant to Article 107(1) of the Treaty on the Functioning of the European Union (TFEU). Therefore, countervailable subsidies granted by third countries are particularly distortive of trade. The amount of State aid authorised by the Commission has steadily been reduced over time. When determining the level of countervailing measures, it is, in general, no longer possible to apply the lesser duty rule.

- (11) Where measures are not prolonged after the conclusion of an expiry review investigation because the conditions required for the continuation have not been found to exist during the investigation, duties collected during the investigation on goods that were customs-cleared should be reimbursed to importers.
- (12) The Commission should initiate interim reviews, where appropriate, in cases where the Union industry faces increased costs resulting from higher social and environmental standards. Furthermore, the Commission should also initiate interim reviews in cases of changed circumstances in exporting countries relating to social and environmental standards. For instance, if a country under measures withdraws from multilateral environmental agreements, and protocols thereunder, to which the Union is a party, or from International Labour Organisation (ILO) Conventions listed in Annex Ia to the Regulations, the interim review investigation could result in the withdrawal of acceptance of the undertakings in force. The scope of the review would depend on the precise nature of the change. Such interim reviews could be also initiated *ex officio*.

- (13) It is possible for the Commission to adopt interpretative notices providing general guidance to possible interested parties on the application of the Regulations. In accordance with the established case-law of the Court of Justice, such notices are not legally binding and do not modify mandatory rules of Union law. On the basis of the general principles of equal treatment and legitimate expectations, the Commission applies such notices but it cannot waive by their adoption the discretion it enjoys in the area of the common commercial policy. Prior to adopting such notices, the Commission should carry out consultations in line with Article 11(3) of the Treaty on European Union (TEU). It is also possible for the European Parliament and the Council to express their views.
- (14) Union industry should no longer be defined by reference to the initiation thresholds set out in the Regulations.
- (15) The Commission should ensure that all interested parties have the best possible access to information by putting in place an information system whereby interested parties are notified when new non-confidential information is added to the investigation files and by making such information accessible to those parties through a web-based platform.
- (16) In initial investigations where the dumping margin or the amount of the countervailable subsidy has been found to be less than the *de minimis* thresholds, the investigation should be immediately terminated in relation to the exporters concerned and such exporters will not be subject to subsequent review investigations.

- (17) The Commission should only accept an offer for an undertaking where it is satisfied, based on a prospective analysis, that it effectively eliminates the injurious effect of dumping.
- (18) Where the conditions exist for the initiation of an anti-circumvention investigation, imports should in all cases be made subject to registration.
- (19) Experience in anti-circumvention investigations has shown that, sometimes, although producers of the product concerned are found not to be engaged in circumvention practices themselves, they are found to be related to a producer that is subject to the original measures. In such cases, producers should not be denied an exemption merely on the grounds that they are related to a producer that is subject to the original measures. Therefore, the condition that in order to be granted an exemption from registration or extended duties, producers of the product concerned should not be related to any producer that is subject to the original measures, should be removed. In addition, where the circumvention practice takes place in the Union, the fact that importers are related to producers that are subject to the measures should not be decisive in determining whether the importer may be granted an exemption.
- (20) Where the number of Union producers is so large that resort must be made to sampling, a sample of producers should be chosen from among all Union producers and not just those producers submitting the complaint.

- (21) In cases of distortions on raw materials as identified in Article 7(2a) of Regulation (EU) 2016/1036, as amended by this Regulation, the Commission should conduct a Union-interest test as laid out in Article 7(2b) of that Regulation. If the Commission decides, when establishing the level of duties subject to Article 7 of that Regulation, to apply Article 7(2) of that Regulation, it should carry out the Union-interest test in accordance with Article 21 of that Regulation on the basis of the measures determined pursuant to Article 7(2).
- (22) In applying the Union-interest test, the opportunity to provide comments should be given to all Union producers and not just those producers submitting the complaint.
- (23) The annual report by the Commission to the European Parliament and to the Council on its implementation of the Regulations allows for the regular and timely monitoring of the trade defence instruments. There should be an exchange of views about that report in the European Parliament and such exchange should also cover the functioning of the trade defence instruments. It should be possible for the Council to attend such exchange.

- (24) The Commission should extend the application and collection of anti-dumping and countervailing duties to the continental shelf of a Member State or the exclusive economic zone declared by a Member State pursuant to the United Nations Convention on the Law of the Sea (UNCLOS), provided that the product subject to measures is used in any of both places with the purpose of exploring or exploiting of the non-living natural resources of the seabed and its subsoil or in order to produce energy from the water, currents and winds, and provided that the product subject to measures is consumed there in significant quantities. The intention to extend the application in that manner should be set out in the notice of initiation of proceedings, and should be supported by sufficient evidence in the request. In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to specify the arrangements for the application and collection of anti-dumping and countervailing duties. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹.

¹ 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).

(25) In order to update the list identifying distortions on raw materials by adding further distortions on raw materials if the OECD 'Inventory on export restrictions on industrial raw materials', or any OECD database which replaces that inventory, identifies distortions on raw materials in addition to those included in the list, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amending the list of distortions on raw materials referred to in Article 7(2a) of Regulation (EU) 2016/1036. Furthermore, in order to address appropriately a substantial rise in imports in the event it occurs during the period of pre-disclosure, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of increasing or decreasing the duration of the period of pre-disclosure. The period of pre-disclosure should be decreased if the substantial rise in imports occurs but the Commission is not able to address it. Nevertheless, if a substantial rise in imports has not occurred or if the Commission is able to address it, the period of pre-disclosure should be increased in order to ensure predictability for Union operators. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making¹. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

¹ OJ L 123, 12.5.2016, p. 1.

(26) Regulations (EU) 2016/1036 and (EU) 2016/1037 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

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

(1) in Article 4(1), the introductory wording is replaced by the following:

'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 of the total Union production of those products, except that:'.

(2) Article 5 is amended as follows:

(a) in paragraph 1, a subparagraph is inserted after the first subparagraph as follows:

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

(b) the following paragraph is inserted:

'1a. The Commission shall facilitate access to the trade defence instrument for diverse and fragmented industry sectors, largely composed of small and medium-sized enterprises (SMEs), through a dedicated SME Helpdesk, for example by awareness raising, by providing general information and explanations on procedures and on how to submit a complaint, by releasing standard questionnaires in all official languages of the Union and by replying to general, non-case-specific queries.

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

(3) Article 6 is amended as follows:

(a) in paragraph 7, the first subparagraph is replaced by the following:

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

(b) paragraph 9 is replaced by the following:

'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 14 months of initiation, in accordance with the findings made pursuant to Article 8 for undertakings or the findings made pursuant to Article 9 for definitive action. Investigation periods shall, whenever possible, especially in the case of diverse and fragmented sectors largely composed of SMEs, coincide with the financial year.';

(c) the following paragraphs are added:

- '10. Union producers of the like product are requested to cooperate with the Commission in investigations that have been initiated pursuant to Article 5(6).
11. The Commission shall have in place the office of the Hearing Officer whose powers and responsibilities are set out in a mandate adopted by the Commission and who shall safeguard the effective exercise of the procedural rights of the interested parties.'

(4) Article 7 is amended as follows:

(a) paragraph 1 is replaced by the following:

- '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 an adequate opportunity 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 and normally not later than seven months, but in any event not later than eight months, from the initiation of the proceedings.

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

The Commission shall review by ... [two years from the date of entry into force of this amending Regulation], 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, despite the measures that the Commission might have taken based on Article 14(5a) and Article 9(4). It shall rely in particular on data collected on the basis of Article 14(6) and any relevant information at its disposal. The Commission shall adopt a delegated act in accordance with Article 23a to amend the duration of the period of pre-disclosure 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 Commission shall make public on its website its intention to impose provisional duties, including information on the possible duty rates, at the same time when it provides interested parties with the information pursuant to Article 19a.';

(b) the following paragraphs are inserted:

'2a. When examining whether a duty lower than the margin of dumping would be sufficient to remove injury, the Commission shall take into account whether there are distortions on raw materials with regard to the product concerned.

For the purposes of this paragraph, distortions on raw materials consist of the following measures: dual pricing schemes, export taxes, export surtax, export quota, export prohibition, fiscal tax on exports, licensing requirements, minimum export price, value added tax (VAT) refund reduction or withdrawal, restriction on customs clearance point for exporters, qualified exporters list, domestic market obligation, captive mining if the price of a raw material is significantly lower as compared to prices in the representative international markets.

The Commission is empowered to adopt delegated acts in accordance with Article 23a to amend this Regulation by adding further distortions on raw materials on to the list referred to in the second subparagraph of this paragraph, if the OECD "Inventory on export restrictions on industrial raw materials", or any OECD database which replaces this inventory, identifies other types of measures.

The investigation shall cover any distortion on raw materials identified in the second subparagraph of this paragraph, for the existence of which the Commission has sufficient evidence pursuant to Article 5.

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

- 2b. Where the Commission, on the basis of all the information submitted, can clearly conclude that it is in the Union's interest to determine the amount of the provisional duties in accordance with paragraph 2a of this Article, paragraph 2 of this Article shall not apply. The Commission shall actively seek information from interested parties enabling it to determine whether paragraph 2 or 2a of this Article shall apply. In this regard, the Commission shall examine all pertinent information such as spare capacities in the exporting country, competition for raw materials and the effect on supply chains for Union companies. In the absence of cooperation the Commission may conclude that it is in accordance with the Union interest to apply paragraph 2a of this Article. When carrying out the Union-interest test in accordance with Article 21, special consideration shall be given to this matter.
- 2c. When the injury margin is calculated on the basis of a target price, the target profit used shall be established taking into account factors such as the level of profitability before the increase of imports from the country under investigation, the level of profitability needed to cover full costs and investments, research and development (R&D) and innovation, and the level of profitability to be expected under normal conditions of competition. Such profit margin shall not be lower than 6 %.

2d. When establishing the target price, the actual cost of production of the Union industry, which results from multilateral environmental agreements, and protocols thereunder, to which the Union is a party, or from International Labour Organisation (ILO) Conventions listed in Annex Ia to this Regulation, shall be duly reflected. Moreover, future costs, which are not covered in paragraph 2c of this Article, which result from those agreements and conventions, and which the Union industry will incur during the period of the application of the measure pursuant to Article 11(2), shall be taken into account.'

(5) Article 8 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

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

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

- (b) in paragraph 2, the third subparagraph is replaced by the following:

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

(c) paragraphs 3 and 4 are replaced by the following:

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 which comprise in particular the principles and obligations set out in multilateral environmental agreements and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia to this Regulation. 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 that is meaningful in the sense of Article 19, so that it may be made available to interested parties to the investigation, to the European Parliament and to the Council.

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

(6) in Article 9, paragraphs 3 and 4 are replaced by the following:

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

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

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

(7) Article 11 is amended as follows:

(a) in paragraph 2, the second subparagraph is replaced by the following:

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

- (b) in paragraph 5, the following subparagraph is added:

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

(8) Article 13 is amended as follows:

(a) in paragraph 3, the first subparagraph is replaced by the following:

'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 of this Article. Initiations shall be made by means of a Commission regulation which shall 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.';

(b) in paragraph 4, the first, second, third and fourth subparagraphs are replaced by the following:

'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 pursuant to which the investigation is initiated.

Where the circumventing practice, process or work takes place outside the Union, exemptions may be granted to producers of the product concerned that are found not to be engaged in circumvention practices as defined in paragraphs 1 and 2 of this Article.

Where the circumventing practice, process or work takes place inside the Union, exemptions may be granted to importers that can show that they are not engaged in circumvention practices as defined in paragraphs 1 and 2 of this Article.'

(9) Article 14 is amended as follows:

(a) paragraph 3 is replaced by the following:

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

* Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).';

(b) paragraph 5 is replaced by the following:

'5. As of the initiation of the investigation and having informed the Member States in due time, the Commission may direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration. Imports shall be made subject to registration following a request, from the Union industry, which contains sufficient evidence to justify such action. Imports may also be made subject to registration on the Commission's own initiative. Registration shall be introduced by Commission regulation. Such regulation shall specify the purpose of the action and, if appropriate, the estimated amount of possible future liability. Imports shall not be made subject to registration for a period longer than nine months.';

(c) the following paragraph is inserted:

'5a. The Commission shall, unless it has sufficient evidence within the meaning of Article 5 that the requirements either under point (c) or (d) of Article 10(4) are not met, register imports pursuant to paragraph 5 of this Article during the period of pre-disclosure pursuant to Article 19a. When deciding on registration, the Commission shall in particular analyse the information collected based on the creation of Integrated Tariff of the European Union (TARIC) codes for the product under investigation pursuant to paragraph 6 of this Article.';

(d) paragraph 6 is replaced by the following:

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

(e) the following paragraph is added:

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

(10) the following Article is inserted:

'Article 14a

Continental shelf or exclusive economic zone

1. An anti-dumping duty may also be imposed on any dumped product brought in significant quantities to an artificial island, a fixed or floating installation or any other structure in the continental shelf of a Member State or the exclusive economic zone declared by a Member State pursuant to UNCLOS, where this would cause injury to the Union industry. The Commission shall adopt implementing acts laying down the conditions for the incurrence of such duties, as well as the procedures relating to the notification and declaration of such products and the payment of such duties, including recovery, repayment and remission (customs tool). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(3).
2. The Commission shall only impose duties as referred to in paragraph 1 as of the date the customs tool referred to in paragraph 1 is operational. The Commission shall inform all economic operators that the customs tool is operational by separate publication in the *Official Journal of the European Union*.

(11) in Article 17, paragraphs 1 and 2 are replaced by the following:

1. In cases where the number of Union producers, exporters or importers, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples which are statistically valid, on the basis of information available at the time of the selection, or to the largest representative volume of production, sales or exports which can reasonably be investigated within the time available.
2. The final selection of parties, types of products or transactions made under these sampling provisions shall rest with the Commission. However, in order to enable the selection of a representative sample preference shall be given to choosing a sample in consultation with, and with the consent of, the parties concerned, provided that such parties make themselves known and make sufficient information available within one week of initiation of the investigation.'

(12) the following Article is inserted:

'Article 19a

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 three weeks before the imposition of provisional duties. Such information shall include: a summary of the proposed duties for information purposes only, and details of the calculation of the dumping margin and the margin adequate to remove the injury to the Union industry, due account being taken of the need to respect the confidentiality obligations contained in Article 19. Parties shall have a period of three working days 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 three weeks before the expiry of the deadline mentioned in Article 7(1) for the imposition of provisional duties.'

(13) Article 21 is amended as follows:

(a) paragraph 2 is replaced by the following:

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

(b) paragraph 4 is replaced by the following:

'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 15 days of the date of application of such measures if they are to be taken into account and they, or appropriate summaries thereof, shall be made available to other parties who shall be entitled to respond to such comments.'.

(14) Article 23 is amended as follows:

(a) paragraph 1 is replaced by the following:

'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 this Regulation to the European Parliament and to the Council.

That report shall include information about the application of provisional and definitive measures, the termination of investigations without measures, undertakings, reinvestigations, reviews, significant distortions and verification visits, and the activities of the various bodies responsible for monitoring the implementation of this Regulation and fulfilment of the obligations arising therefrom. The report shall also cover the use of trade defence instruments by third countries targeting the Union and appeals against the measures imposed. It shall include the activities of the Hearing Officer of the Commission's Directorate General for Trade and those of the SME Helpdesk in relation to the application of this Regulation.

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

(b) the following paragraph is added:

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

(15) the following Article is inserted:

'Article 23a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 7(1) shall be conferred on the Commission for a period of two years from ...[the date of entry into force of this amending Regulation] and it can be exercised only once.

The power to adopt delegated acts referred to in Article 7(2a) shall be conferred on the Commission for a period of five years from ...[the date of entry into force of this amending Regulation]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for a period of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 7(1) and (2a) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. Delegated acts adopted pursuant to Article 7(1) and (2a) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.'

Article 2

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

- (1) in Article 9(1), the introductory wording is replaced by the following:
 - '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 of the total Union production of those products, except that:'.

(2) Article 10 is amended as follows:

(a) in paragraph 1, a subparagraph is inserted after the first subparagraph as follows:

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

(b) the following paragraph is inserted:

'1a. The Commission shall facilitate access to the trade defence instrument for diverse and fragmented industry sectors, largely composed of small and medium-sized enterprises (SME) through a dedicated SME Helpdesk, for example by awareness raising, by providing general information and explanations on procedures and on how to submit a complaint, by releasing standard questionnaires in all official languages of the Union and by replying to general, non-case-specific queries.

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

(3) Article 11 is amended as follows:

(a) in paragraph 7, the first subparagraph is replaced by the following:

'7. The Union producers, the government of the country of origin and/or export, trade unions, importers and exporters and their representative associations, users and consumer organisations, which have made themselves known in accordance with the second subparagraph of Article 10(12), may, upon written request, inspect all information made available to the Commission 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 is not confidential within the meaning of Article 29, and is used in the investigation.';

(b) paragraph 9 is replaced by the following:

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

(c) the following paragraphs are added:

- '11. Union producers of the like product are requested to cooperate with the Commission in investigations that have been initiated pursuant to Article 10(8).
12. The Commission shall have in place the office of the Hearing Officer whose powers and responsibilities are set out in a mandate adopted by the Commission and who shall safeguard the effective exercise of the procedural rights of the interested parties;'

(4) Article 12 is amended as follows:

(a) paragraph 1 is replaced by the following:

- '1. Provisional duties may be imposed if:
 - (a) proceedings have been initiated in accordance with Article 10;
 - (b) a notice has been given to that effect and interested parties have been given an adequate opportunity to submit information and make comments in accordance with the second subparagraph of Article 10(12);
 - (c) a provisional affirmative determination has been made that the imported product benefits from countervailable subsidies 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.

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

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

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

The Commission shall review by ... [two years from the date of entry into force of this amending Regulation], 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, despite the measures that the Commission might have taken based on Article 24(5a) and Article 15(1). It shall rely in particular on data collected on the basis of Article 24(6) and any relevant information at its disposal. The Commission shall adopt a delegated act in accordance with Article 32b to amend the duration of the period of pre-disclosure 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 Commission shall make public on its website its intention to impose provisional duties, including information on the possible duty rates, at the same time when it provides interested parties with the information pursuant to Article 29a.!

(b) the following paragraphs are inserted:

- '1a. When the injury margin is calculated on the basis of a target price, the target profit used shall be established taking into account factors such as the level of profitability before the increase of imports from the country under investigation, the level of profitability needed to cover full costs and investments, research and development (R&D) and innovation, and the level of profitability to be expected under normal conditions of competition. Such profit margin shall not be lower than 6 %.
- 1b. When establishing the target price, the actual cost of production of the Union industry, which results from multilateral environmental agreements, and protocols thereunder, to which the Union is a party, or from International Labour Organisation (ILO) Conventions listed in Annex Ia to this Regulation, shall be duly reflected. Moreover, future costs, which are not covered in paragraph 1a of this Article, which result from those agreements and conventions, and which the Union industry will incur during the period of the application of the measure pursuant to Article 18(1), shall be taken into account.'

(5) Article 13 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Where a provisional affirmative determination of subsidisation and injury has been made, the Commission may, in accordance with the advisory procedure referred to in Article 25(2), accept satisfactory voluntary undertakings offers under which:

- (a) the country of origin and/or export agrees to eliminate or limit the subsidy or take other measures concerning its effects; or
- (b) any exporter undertakes to revise its prices or to cease exports to the area in question as long as such exports benefit from countervailable subsidies, if the injurious effect of the subsidies is thereby eliminated.

In such a case and as long as such undertakings are in force, provisional duties imposed by the Commission in accordance with Article 12(3), or definitive duties imposed in accordance with Article 15(1), as the case may be, shall not apply to the relevant imports of the product concerned manufactured by the companies referred to in the Commission decision accepting undertakings, as subsequently amended.

Price increases under such undertakings shall not be higher than necessary to offset the amount of countervailable subsidies.

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

- (b) in paragraph 2, the third subparagraph is replaced by the following:

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

(c) paragraphs 3 and 4 are replaced by the following:

- '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 which comprise in particular the principles and obligations set out in multilateral environmental agreements and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia to this Regulation. The exporter and/or the country of origin and/or export 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 that is meaningful in the sense of Article 29, so that it may be made available to interested parties to the investigation, to the European Parliament and to the Council.

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

(6) in Article 14, paragraph 5 is replaced by the following:

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

(7) in Article 15(1), the third subparagraph is replaced by the following:

'The amount of the countervailing duty shall not exceed the amount of countervailable subsidies established.

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

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

(8) in Article 18(1), the following subparagraph is added:

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

(9) Article 23 is amended as follows:

(a) in paragraph 4, the first subparagraph is replaced by the following:

'4. 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 paragraphs 1, 2 and 3 of this Article. Initiations shall be made by means of a Commission regulation which shall also instruct customs authorities to subject imports to registration in accordance with Article 24(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.';

- (b) in paragraph 6, the second and third subparagraphs are replaced by the following:

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

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

- (10) Article 24 is amended as follows:

- (a) paragraph 3 is replaced by the following:

'3. Special provisions, in particular with regard to the common definition of the concept of origin, as contained in Regulation (EU) No 952/2013 of the European Parliament and of the Council^{*}, and with regard to the application and collection of a countervailing duty in the continental shelf of a Member State or the exclusive economic zone declared by a Member State pursuant to the United Nations Convention on the Law of the Sea (UNCLOS), may be adopted pursuant to this Regulation.

* Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).';

(b) paragraph 5 is replaced by the following:

'5. As of the initiation of the investigation and having informed Member States in due time, the Commission may direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration. Imports shall be made subject to registration following a request, from the Union industry, which contains sufficient evidence to justify such action. Imports may also be made subject to registration on the Commission's own initiative. Registration shall be introduced by Commission regulation. Such regulation shall specify the purpose of the action and, if appropriate, the estimated amount of possible future liability. Imports shall not be made subject to registration for a period longer than nine months.';

(c) the following paragraph is inserted:

'5a. The Commission shall, unless it has sufficient evidence within the meaning of Article 10 that the requirements either under point (c) or (d) of Article 16(4) are not met, register imports pursuant to paragraph 5 of this Article during the period of pre-disclosure pursuant to Article 29a. When deciding on registration, the Commission shall in particular analyse the information collected based on the creation of Integrated Tariff of the European Union (TARIC) codes for the product under investigation pursuant to paragraph 6 of this Article.';

(d) paragraph 6 is replaced by the following:

'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. When initiating an investigation pursuant to Article 10, the Commission shall create TARIC codes corresponding to the product under investigation. Member States shall use those TARIC codes in order to report on imports of the product under investigation as of the initiation of the investigation. The Commission may, upon receiving a specific reasoned request from an interested party, decide to provide them with a non-confidential summary of the information on aggregated import volumes and values of the products concerned.'

(e) the following paragraph is added:

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

(11) the following Article is inserted:

'Article 24a

Continental shelf of a Member State or exclusive economic zone

1. A countervailing duty may also be imposed on any subsidised product brought in significant quantities to an artificial island, a fixed or floating installation or any other structure in the continental shelf of a Member State or the exclusive economic zone declared by a Member State pursuant to UNCLOS, where this would cause injury to the Union industry. The Commission shall adopt implementing acts laying down the conditions for the incurrence of such duties, as well as the procedures relating to the notification and declaration of such products and the payment of the such duties, including recovery, repayment and remission (customs tool). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25(3).
2. The Commission shall only impose duties as referred to in paragraph 1 as of the date the customs tool referred to in paragraph 1 is operational. The Commission shall inform all economic operators that the customs tool is operational by separate publication in the *Official Journal of the European Union*.'

(12) in Article 27, paragraphs 1 and 2 are replaced by the following:

1. In cases where the number of Union producers, exporters or importers, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples which are statistically valid, on the basis of information available at the time of the selection, or to the largest representative volume of production, sales or exports which can reasonably be investigated within the time available.
2. The final selection of parties, types of products or transactions made under those sampling provisions shall rest with the Commission. However, in order to enable the selection of a representative sample preference shall be given to choosing a sample in consultation with, and with the consent of, the parties concerned, provided that such parties make themselves known and make sufficient information available, within one week of initiation of the investigation.'.

(13) the following Article is inserted:

'Article 29a

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 three weeks before the imposition of provisional duties. Such information shall include: a summary of the proposed duties for information purposes only, and details of the calculation of the 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 three weeks before the expiry of the deadline mentioned in Article 12(1) for the imposition of provisional duties.'

(14) Article 31 is amended as follows:

(a) paragraph 2 is replaced by the following:

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

(b) paragraph 4 is replaced by the following:

'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 15 days of the date of application of such measures if they are to be taken into account and they, or appropriate summaries thereof, shall be made available to other parties who shall be entitled to respond to such comments.'.

(15) the following Articles are inserted:

'Article 32a

Report

1. The Commission shall, with due regard to the protection of confidential information within the meaning of Article 29, present an annual report on the application and implementation of this Regulation to the European Parliament and to the Council.

That report shall include information about the application of provisional and definitive measures, the termination of investigations without measures, undertakings, reinvestigations, reviews, significant distortions and verification visits, and the activities of the various bodies responsible for monitoring the implementation of this Regulation and fulfilment of the obligations arising therefrom. The report shall also cover the use of trade defence instruments by third countries targeting the Union and appeals against the measures imposed. It shall include the activities of the Hearing Officer of the Commission's Directorate General for Trade and those of the SME Helpdesk in relation to the application of this Regulation.

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

2. By ...[five years from the date of entry into force of this amending Regulation] and every five years thereafter, the Commission shall submit, to the European Parliament and to the Council, a review of the application of the third and fourth subparagraphs of Article 12(1), the third and fourth subparagraphs of Article 13(1), and of the third and fourth subparagraphs of Article 15(1), including an evaluation of this application. Such a review may, where appropriate, be accompanied by a legislative proposal.

Article 32b

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 12(1) shall be conferred on the Commission for period of two years from ...[the date of entry into force of this amending Regulation] and it can be exercised only once.

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

Article 3

The Annex to this Regulation shall be added as Annex Ia to Regulation (EU) 2016/1036 and to Regulation (EU) 2016/1037.

Article 4

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

Article 5

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 has been 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,

For the European Parliament
The President

For the Council
The President

ANNEX

'ANNEX Ia

ILO CONVENTIONS REFERRED TO IN THIS REGULATION

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