

V

(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON
COMMERCIAL POLICY

EUROPEAN COMMISSION

On the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations

(2020/C 86/06)

1. Background

The safety measures applied due to the threat of COVID-19 transmission may impact trade defence investigations in two main ways: (1) on spot verifications, and (2) deadlines within which interested parties have to respond to Commission's information requests.

The COVID-19 outbreak originally affecting mostly the People's Republic of China, has spread to many other locations around the world. The safety measures aimed at limiting the spread of COVID-19 have an impact on parties involved in trade defence investigations located or closely interlinked with the areas affected by the virus. This notice therefore applies to all those parties.

2. Impact of COVID-19 on anti-dumping and anti-subsidy investigations

a) *On spot verifications*

Article 16 of 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 ⁽¹⁾ and Article 26 of Regulation (EU) No 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 ⁽²⁾ ('the basic Regulations') state that 'the Commission shall, where it considers it appropriate, carry out visits to examine the records of importers, exporters, traders, agents, producers, trade associations and organizations and to verify information provided'.

As a result of the COVID-19 outbreak, the European Commission decided to suspend all non-essential travel to the affected areas and to postpone all face-to-face meetings with visitors from these areas.

In case information provided by exporting producers located in the areas affected by COVID-19 is not subject to verification on spot because of travel restrictions or other safety measures, the Commission will endeavour to consider the information properly submitted by the parties and to cross-check such information with other information available if feasible. If the Commission is not satisfied with the accuracy or completeness of the information submitted, it will have to base its findings only on the verified or other proven facts on the record of the investigation.

⁽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).

For this purpose, the Commission will carefully examine, inter alia, the following information when making its finding with respect to the imports under investigation:

- the complaint and the verified information contained therein submitted on behalf of the Union industry pursuant to Articles 5 or 10 of the respective basic Regulations,
- the information submitted pursuant to Articles 6(2) or 11(2) of the respective basic Regulations by other interested parties, in particular exporting producers, which can be properly verified by the Commission services in Brussels.

In this respect, the utmost cooperation will be required from interested parties, in particular in providing information which is sufficiently detailed, can be crosschecked from independent and verifiable sources and is fully and properly certified.

As concerns questionnaire responses submitted by exporting producers subject to the methodology falling under Article 2(6a) of the basic anti-dumping Regulation, the exporting producers are requested to pay particular attention to ensure they comply with the General Instructions of the questionnaire, in particular Point (1): ‘To be able to verify your response and link it to your accounting and management records, submit all worksheets (usually Excel files and/or other extractions from your company’s databases) used for preparing data for this questionnaire together with your questionnaire reply and provide a detailed explanation on how the worksheets were compiled and how to reconcile the figures and data in the worksheets with the figures and data submitted in the questionnaire and the annexed tables’.

If such necessary information cannot be provided by interested parties, the Commission may make its findings on the basis of the facts available in accordance with Articles 18 and 28 of the respective basic Regulations.

In this context, the Commission will take particular care that due process and transparency requirements are observed.

b) *Impact on time-limits*

Exporting producers and other parties located in areas affected by COVID-19 may be subject to safety measures preventing or limiting their ability to conduct business activities for extended periods of time. This may have an impact on the ability of parties to reply on time to questionnaires and other requests for information sent in the course of trade defence investigations. Articles 6(2) and 11(2) of the respective basic Regulations specify the time limit for replying to questionnaires. Sections 5 through 9 of Notices of Initiation set out additional provisions for the submission of information and the timeline of the investigation.

Section 9 of the Notices of Initiation provides for a possibility to grant a 7-day extension in case of exceptional circumstances. Since the COVID-19 outbreak is an unforeseen event constituting *force majeure* likely to impede the affected economic entities from complying with the relevant deadlines for submission of information, an extension of 7 days may be granted. For that purpose, the requesting parties must explain in detail how the measures linked to the COVID-19 affect their capacity to provide the information requested.

Furthermore, economic operators located in regions particularly affected by the COVID-19 outbreak may be subject to additional substantial safety measures impeding their capacity to comply with the Commission’s requests, such as quarantine periods and/or mandatory factory closures. In such extraordinary cases, the Commission may exceptionally decide to extend the deadline beyond the 7-day period. The requesting party must duly substantiate how additional substantial safety measures affect their capacity to provide the specific information requested. In those exceptional situations, the requesting parties should also indicate how the additional time would allow them to prepare a meaningful reply to the Commission’s questionnaire or other requests for information. The Commission will then decide on a case-by-case basis whether this further extension should be granted.

It should be noted that, if these longer extensions for *force majeure* or additional safety measures would risk jeopardising the timely conclusion of the investigation, the Commission may reject the extension requests or shorten the time granted.

c) *Conduct of investigations affected and decision-making*

The approach described in this notice concerning verification visits and extensions of timeline will apply until the areas affected by COVID-19 have been deemed safe to travel or there are no restrictive prevention measures applying to parties located in those areas or otherwise affected by the measures linked to COVID-19. Although the Commission will monitor the developments in this situation closely, interested parties are also requested to inform the Commission of any change which may improve the verification process as well as the submission of information.

If in the course of an investigation, certain areas affected by COVID-19 are no longer considered unsafe for travelling, verification visits will again be carried out provided this is still feasible in view of the deadlines applicable to investigations.

In the case where an investigation has been concluded and definitive measures were imposed on the basis of the facts available, the Commission may, as soon as certain areas where the exporting producers are located are no longer considered unsafe for travelling, initiate ex officio a review pursuant to Article 11(3) or Article 19(1) of the basic Regulations.

Parties concerned may wish to comment on the abovementioned approach. These comments must reach the Commission within 10 days of the date of publication of this notice in the *Official Journal of the European Union*.
