

Reviews

Interim review

What is an interim review?

Anti-dumping measures are usually imposed for 5 years. However, interested parties may ask for a review during that time:

- any exporter, importer or Community producer: once the measures have been in force for 1 year.
- an EU country or the Commission itself: at any time.

An interim review can be ‘full’ – covering dumping, injury and Community interest – or ‘partial’ – limited to dumping, for example.

How to ask for an interim review

Contact us in writing, stating the reasons for the review and providing sufficient evidence of the need for a review.

For example, an exporter may claim that its cost structure has changed due to new investments and that this has resulted in a reduced rate of dumping.

If a request for review is accepted, the Commission publishes a Notice of Initiation in the EU’s Official Journal and sends out questionnaires to interested parties, just as in the original investigation. The review must be concluded within 15 months.

What aspects does an interim review cover?

Most often the request concerns the level of the duty in force.

For instance, an exporter may claim that the amount of dumping has fallen. The duty would be recalculated only if the change is lasting and the dumping margin is not likely to increase again in future.

Other forms of review can also be considered such as for injury, scope and form of measures.

Changes of name, address or legal status for companies subject to an individual duty

Companies subject to an individual duty and mentioned by name in the operative part of an anti-dumping regulation – that change their name and/or address, should contact us immediately.

If the name and address details in the regulation imposing the measures are not identical to the name and address on the export documents, difficulties may arise with customs formalities.

The Commission will verify the data and inform the company if it needs more information. Details of the new name/address will be published in the EU’s Official Journal.

Companies undergoing a more complex structural change such as a merger or takeover should also contact us to determine whether the changes require a change of name or a partial interim review.

New Exporter Review

What is a new exporter review?

- Anti-dumping measures are usually imposed for 5 years.
- Imports from companies that cooperated with the investigation are usually liable to their own individual duty, but there is also a “country-wide” duty for imports from all other companies producing and exporting the product concerned to the EU, which will often be higher than the individual duty.

If a company starts exporting the product to the EU after the investigation, then its goods will be subject to the “country-wide” duty.

How to ask for a new exporter review

Companies that either did not exist, or did not export to the EU during the original investigation, can request a new exporter review to have their own individual duty rate established.

To qualify as a “new exporter”, a company must fulfil these three criteria:

- it did not export the product concerned to the EU during the original investigation period
- it is not related to any exporter or producer subject to the measures imposed
- it has exported the product to the EU since the original investigation, or is contractually bound (irrevocably) to export a significant quantity to the EU.

If a company appears to meet the above criteria, a review will be opened. The review will investigate whether the criteria are met and if so establish an individual margin of dumping for the company concerned. Specific rules apply when the applicable duty was established on the basis of a sample of exporting producers.

Interested parties wishing to claim to be treated as a new exporter should contact us for more information on the procedure.

Absorption

Duties are said to be absorbed when, after anti-dumping or countervailing duties have been imposed, export prices decrease or the resale prices of the imported goods do not increase sufficiently, so the measures do not have the expected effect.

What is an anti-absorption re-investigation?

When there is evidence of duties being absorbed, the original trade defence investigation may be re-opened at the request of any interested party (EU producer, exporter, importer, user), EU country or the Commission. The re-investigation is initiated by publishing a Notice in the EU’s Official Journal, normally within two years of the original measures being imposed. It should take no more than 9 months to complete.

What can be done?

The re-investigation gives exporters, importers, EU producers and users the opportunity to explain the export prices and EU resale prices. If the conclusion is that the duties should have resulted in price changes that did not take place, the dumping margins can be recalculated and the duties increased up to double the rate of the original duty.

What law is applied here?

Article 12 of the basic anti-dumping Regulation and Article 19(3) of the basic anti-subsidy Regulation.

How to proceed

Any interested party EU industry, exporter, importer, user and which finds evidence of absorption of duties, can either lodge a complaint with the European Commission (Directorate General for Trade, Directorate H) or inform national authorities, who may ask for the investigation to be reopened.

Circumvention of measures

In essence, circumvention is any activity designed to avoid the payment of anti-dumping or countervailing duties imposed on a particular product manufactured in and/or exported from a non-EU country.

These practices can best be understood through examples:

- slightly modifying a product so that it can be classified under a combined nomenclature (CN) code that is not subject to duties
- falsely declaring that a product originated in a country not subject to duties
- exporting through a producer with a lower duty rate
- exporting a product in parts and having it assembled in the EU, where the parts are not subject to duties
- certain assembly operations in non-EU countries.

For a practice to qualify as circumvention, there must also be evidence that:

- EU industry is being harmed or the duty's effects are being undermined in terms of prices and/or quantities of the product in question, and
- there is evidence that the imported product is being dumped, or
- evidence that the imported product and/or parts thereof still benefit from the subsidy

When is assembly in the EU considered circumvention?

Three criteria must be met:

- The assembly began – or substantially increased – after or just before an anti-dumping investigation, and the parts imported into the EU come from the country subject to duties.
- The imported parts represent 60% or more of the value of all parts of the assembled product. However, if the value added in the EU to the imported parts represents more than 25% of the manufacturing cost, this is no longer considered assembly and there is no circumvention.
- The assembled product undermines the effects of the duty and there is evidence of dumping.

The same rules apply to assembly operations in non-EU countries.

If a company is circumventing the duties in force, what can be done?

The Commission may open an investigation if:

- an interested party provides sufficient evidence of circumvention, or
- an EU country makes a request, and
- it believes one is warranted.

The first step in an investigation is the publication of a Regulation in the EU's Official Journal. Customs authorities will then begin registering all imports alleged to be circumventing the measures. This enables them to impose a duty retroactively, should circumvention be found.

What is the result of the investigation?

If it is determined that circumvention has taken place, the duties in force will be extended to imports from the country or company found to be circumventing them. The duties then apply retroactively from the date on which the investigation began.

What about exporters in the country concerned that are not circumventing the duties?

The Regulation opening the investigation clearly states that companies not engaging in circumvention must contact the Commission by a specific deadline and provide information and evidence proving that they are not related to any producer subject to measures nor engaged in circumvention themselves.

The Commission can then propose that individual companies be exempted from registration of their imports and/or the extension of duties.

In the case of anti-dumping proceedings, when circumvention takes place in the EU, exemptions may be also granted to importers.

Expiry review

What is an expiry review?

Anti-dumping measures are usually imposed for 5 years. They expire automatically, unless a review determines that if they were to expire, dumping and injury would probably continue or recur.

This "expiry review" is usually requested by producers in the EU – although it can also be launched on the initiative of the Commission – and must include evidence that the expiry of measures would be likely to result in a continuation or recurrence of dumping and injury. This can be demonstrated by evidence that:

- dumping and injury are continuing
- the removal of injury is only due to the measures in force
- further dumping and injury are likely if the measures are allowed to expire.

What is the procedure?

During the final year the measures are in force, the Commission publishes a Notice of Impending Expiry in the EU's Official Journal stating that they will expire on a given date. If EU producers wish to request a review, they must do so no later than three months before the date on which the measures are set to expire.

If a substantiated review request is received, the Commission publishes a Notice of Initiation and begins investigating whether dumping and injury are likely to continue or recur. Normally, expiry reviews are completed within 12 months, but they may take up to 15 months.

If no review is requested, the Commission publishes a Notice of Expiry announcing that the measures will lapse.

What can be the result?

An expiry review can result only in the repeal or continuation of the duties in force. If measures are maintained, they will normally remain in force for another five years. An expiry review cannot lead to a change in the level or form of the duties; these can only be changed by an interim review.