



# EUROPE'S TRADE DEFENCE INSTRUMENTS NOW STRONGER AND MORE EFFECTIVE

## The EU has modernised its basic anti-dumping and anti-subsidy regulations

The EU's trade defence instruments (TDIs), which shield European industry from the harmful effects of dumped or subsidised imports, are now stronger and more effective and reflect EU values.

Along with the changes on calculating dumping margins introduced in December 2017, this modernisation of the legislation is the first major revamp of the EU's TDI since the establishment of the WTO in 1994.

The EU is committed to an open rules-based trading system. This is now reinforced while ensuring a level playing field, balance and fairness for businesses.



*'The EU believes in open and fair trade but we are not naive free traders. We have shown our teeth when we had to by adopting anti-dumping and anti-subsidy measures. And now we have new and improved trade defence rules in our arsenal to face down some of today's challenges in global trade. Make no mistake – we will do whatever it takes to defend European producers and workers when others distort the market or don't play by the rules.'*

Jean-Claude Juncker, President of the European Commission, 7 June 2018

### Good for EU business

- Anti-dumping investigations will be faster and measures imposed earlier, giving EU industry much needed relief against the damaging effect of unfair imports.
- There is increased transparency and predictability. The Commission will announce its intention to impose new measures three weeks in advance, allowing the market to adjust.
- Small and medium sized enterprises ('SMEs') have easier access to the instruments and will benefit from a new TDI Helpdesk
- Duties paid while expiry reviews are ongoing will be refunded to importers if the review results in the measures being terminated.

### Stronger and more effective

- The EU is taking a more assertive stance on trade distortive measures by countries outside the EU by imposing higher duties, if it is necessary for industry and in the EU's interest.
- The harm done to EU industry will be quantified in a way which better reflects the economic reality and which will make it easier for industry to recover.
- EU industry will have access to trade defence instruments without fear of retaliation in other markets. Where companies may face threats of retaliation, the Commission can start an investigation on its own initiative.

### Reflecting EU values

- The EU's modernised TDIs reinforce its commitment to an open rules-based trading system while ensuring balance and fairness for all businesses.
- The EU's modernised TDIs now reflect the European Union's commitment to high environmental and social standards.
- Trade Unions, representing the workers whose jobs can be affected by unfair imports, can now participate fully in the process, including making requests for action jointly with EU industry.

## 1. Good for European business

### **The Commission will inform interested parties about provisional measures three weeks in advance**

The Commission will inform all interested parties three weeks before provisional measures are imposed (pre-disclosure). As a result, all companies will know in advance which exporters will be subject to duties and at which rates. The Commission will also notify interested parties if provisional measures will not be imposed. This information will be made publicly available on DG Trade's webpage <http://trade.ec.europa.eu/tdi/> for each individual investigation launched after 7 June 2018.

During this three week period the Commission will register imports, where warranted, to avoid stockpiling of imports which could undermine the remedial effect of the duties. This will allow for the retroactive collection of duties for that period, if necessary.

Exporting producers and the EU industry concerned will also be provided with their respective dumping / subsidy / injury calculations for provisional measures.

The Commission will review the application of this new rule within two years, as requested by the European Parliament and the Council. The review will establish whether or not pre-disclosure has led to stockpiling and additional injury to the EU industry. If this is the case the period of pre-disclosure shall be reduced from three weeks to two. Otherwise, pre-disclosure shall be lengthened to four weeks.

### **Investigations will be shorter**

Where the EU industry is suffering due to dumped imports the Commission will impose provisional anti-dumping measures within seven or eight months after the initiation of an investigation, instead of the current nine months. The whole

investigation will be shortened by one month to 14 months.

This will provide faster relief for the industry and certainty for the market. The investigative process has been streamlined to maintain the high standards, in terms of data verification, respect of procedural rights, deadlines etc. The key steps and the applicable deadlines are explained on our website.

### **SME Help Desk**

EU small and medium-sized companies (SMEs) will now be able to benefit from streamlined procedures and the support of an SME Helpdesk to make it easier for them to participate in trade defence investigations.

The Commission has created a dedicated web page for SMEs which provides relevant information to help navigate the system, including a guide to filing complaints as well as standard questionnaires for Union producers, importers and users. Currently, most of the information is only available in English but work is underway to provide the information in all EU official languages.

Subject to resources, the Commission will also reach out to business associations in member states, as part of its efforts to raise awareness of the instruments and explain their functioning.

### **Repayment of duties where expiry reviews result in terminated measures**

Where the Commission decides that a measure should not be renewed, anti-dumping or anti-subsidy duties collected while an expiry review is ongoing will be repaid. To get the duties refunded importers must file an application with their competent customs authorities.

## 2. More effective and stronger

### **Possibility to impose higher duties**

The legislation introduces changes in how the rule known as the 'lesser duty rule' (LDR) is applied. Under WTO rules, measures can be imposed at the level of the dumping or subsidy margin. However, the EU always applied the lesser duty rule. This means measures were always imposed at a level lower than the full extent of dumping or subsidisation, if a lower level, called the 'injury margin', is enough to remove the injury suffered by the EU industry.

The modernisation of the TDI significantly improves how this rule is applied, including how the injury margin is calculated. Changes have been made to three aspects:

### **Calculating the non-injurious price for the injury margin**

The Commission calculates a non-injurious price in order to calculate an injury margin. This is based on the full cost of production and a target profit. Now the cost of production will include costs related to:

- investment, research and development and innovation which, up to now, have not always been included as industries' have had to cut costs in reaction to unfair imports.
- future cost increases reflecting the cost of compliance with multilateral environmental agreements and International Labour Organisation Conventions during the lifetime of TDI measures. This is particularly relevant with regard to Emission Trading Systems.

A minimum target profit of 6% is introduced – based on long-term profitability figures established for the European industry. Higher margins may be possible on a case-by-case basis.

### **Anti-dumping: Level of duty when significant raw material distortions exist in exporting countries**

When determining the level of duties to be imposed in anti-dumping cases, the Commission can pay regard to important distortions in the exporting market for relevant raw materials. Under certain conditions set out hereunder, the Commission may consider it necessary to impose measures at the level of the dumping margin in order to remove injury:

- the complaint lodged by the Union industry contains sufficient evidence of ‘significant raw material distortions’. The notice of initiation will indicate whether or not the scope of the investigation covers raw material distortions.
- distortions must concern one raw material, whether unprocessed or processed, including energy, that account individually for more than 17% of the cost of production.
- the price of the distorted raw material needs to be significantly lower as compared to prices in the representative international markets.
- the Commission must determine that such a level of measures is in line with the interest of the Union. For this purpose the Commission will actively seek information from interested parties and examine all pertinent information such as:
  - spare capacity in the exporting country
  - competition for raw materials and
  - the effect on supply chains for Union companies.

Where the higher level is not in the Union interest, the injury margin will be calculated according to the rules that apply in cases without raw material distortions.

The new rules provide a list of relevant raw material distortions. The type of distortions listed includes, for example, instances where exporting countries create obstacles to the export of raw materials in order to keep them for further manufacturing. Such activities are particularly problematic if this type of unfair trade is combined with dumping practices of products made with the same raw materials. The European industry suffers twice:

- first from being prevented from getting raw materials at the same conditions as their competitors
- second by the dumping of the product which incorporates those raw materials.

In order to check whether an exporting country operates relevant distortions, reference can be made to a database maintained by the OECD. An update of this database including the years 2015-2017 is currently underway. EU industry can also invoke a distortion in an exporting country, if it is not identified in the database, provided it falls under the list of relevant distortions. The Commission can extend this list by delegated act when the OECD recognises new forms of distortions.

### **The lesser-duty rule in anti-subsidy cases**

Anti-subsidy measures will fully offset the subsidies that an exporter has received, unless it is against the overall interest of the EU to do so. This means the EU can tackle the serious unfair trade practice of subsidised imports more rigorously.

### **Better response to threats of retaliation**

European industry should not be prevented, for example through pressure from foreign governments, from using TDI whenever they are exposed to injurious dumping / subsidisation. Where there might be a risk of such threats, the Commission can launch investigations on its own initiative, i.e. without a complaint lodged by industry. However, once the case is opened, the Commission will ask the industry to cooperate with the investigation.

### **TDI measures can now be applied in the continental shelf and exclusive economic zones of Member States**

In future cases, trade defence measures can also apply to dumped or subsidised products imported and used on the Continental Shelf where the consumption of the product concerned is significant. This covers, for example, oil rigs or off-shore wind parks. Up to now measures were not extended to cover these zones. Regulations imposing anti-dumping / anti-subsidy measures will specify if these zones are covered. A specific customs tool, currently being discussed with customs experts from Member States, will set out the rules on how the collection of TDI duties in the continental shelf / exclusive economic zone of Member States will work.

TDI measures will continue to apply automatically to the territorial waters, consisting of twelve nautical miles off shore of a Member State, comprising part of the EU's customs territory.

### 3. Reflecting EU values

#### **Better rules on the acceptance of price undertakings from exporters**

The Commission will only accept 'undertakings', i.e. where an exporting producer gives a commitment to raise its export prices as an alternative to paying duties, where the price rise eliminates the injurious effect of the dumping or subsidisation.

Exporting producers must submit a meaningful non-confidential version of any undertaking offer and interested parties will have the opportunity to comment on such offers before the Commission decides on the issue.

The Commission can reject an undertaking for reasons of general policy. This includes the consideration, whether the exporting country has not ratified one or more important environmental and labour agreements.

#### **Commitment to social and environmental standards**

The European Union is committed to high social and environmental standards and is a strong supporter of multilateral agreements in this area. For the first time, these standards become part of the EU's trade defence instruments in three concrete ways

- The calculation of the injury margin will better reflect the cost of social and environmental standards within the European Union. The cost of production also includes costs that EU producers incur when complying with multilateral environmental agreements and with important International Labour Organisation conventions. The new provision not only allows for taking into account the actual costs incurred by EU manufacturers but also future cost increases during the lifetime of TDI measures resulting from compliance with these standards. This is particularly relevant with regard to Emission Trading Systems.
- Better rules on the acceptance of price undertakings from exporters emphasise that an undertaking can be rejected for reasons of general policy, including if the exporting country has not ratified one or more important environmental and labour agreements.
- When circumstances change in exporting countries relating to social and environmental standards the Commission can initiate interim reviews. For instance, where a country withdraws from an agreement, such as the Paris climate agreement, an interim review of the measures could be appropriate and undertakings can be terminated.

The Commission will report about these three specific elements in a dedicated chapter of the annual TDI report.

#### **Trade unions can be interested parties in investigations**

For the first time, trade unions can be interested parties in investigations. This means they will have full access to the non-confidential file as well as the right to comment. They can also jointly prepare, with the Union industry, applications to launch anti-dumping or anti-subsidy investigations. However, the European industry can decide independently to withdraw any such application. This exception to the involvement of trade unions is to make it possible to keep to tight deadlines.

#### **Continued commitment to uphold procedural rights**

The European Union visibly reinforces its commitment to uphold procedural rights by anchoring the institution of the Hearing Officer firmly in the relevant legislation.

#### **Improved reporting on the EUs trade defence activity**

The Commission report to the European Parliament and the Council on the EU's trade defence activities will be more comprehensive and now incorporate information on TDI investigations and measures taken by countries outside the EU. Currently, this is the subject of a separate report. The report will also include information on the activities of the Hearing Officer, the SME Helpdesk, as well as how TDI cases have addressed third countries' compliance with international social and environmental legislation.

#### **New procedures to follow before issuing guidelines on TDIs**

The Commission will carry out a public consultation before adopting any document that provides guidance to interested parties on the application of the Basic Regulations. The European Parliament and Council may express their views as well during the consultation.



*'Finally, this long-awaited reform can be rolled out and put into action. European companies have been looking for a modern set of rules. I am very confident that this provides us with the necessary tools to efficiently defend our industries from unfair trade practices. We believe in open, rules-based trade. Now, we are better equipped to stand up for our companies if other countries don't stick to the rules.'*

Cecilia Malmström, European Commissioner for Trade, 7 June 2018