

CIVIL SOCIETY DIALOGUE

Trade Defence Instruments – New methodology

Date: 02/03/2018

Time: 9:30-11:00

Location: Charlemagne building, Room Lord Jenkins, Rue de la Loi 170, Brussels

Lead speaker

Mr Leopoldo Rubinacci, Director, Trade Defence, DG TRADE.

Moderator

Ms. Adeline Hinderer, Acting Head of Unit DG Trade, Information, Communication and Civil Society.

Agenda

1. Presentation by the Commission on the TDI methodology
2. Discussion with stakeholders

Presentation

Mr Rubinacci informed civil society dialogue representatives about the recent changes to the EU's antidumping and anti-subsidy legislation which came into effect on 20 December 2017. By way of context, he gave an introduction to the basic concepts of how dumping is normally calculated as well as how the Commission investigates subsidies in third countries. He went on to describe the main aspects of the legislative amendments introduced in December i.e. (a) the introduction of a new country neutral anti-dumping methodology to capture market distortions linked to State intervention in third countries (highlighted the fact that there is no longer a legal distinction between WTO Members that are market economy countries and WTO Members that are not) (b) arrangements for the transition to the new methodology for measures already in place by setting out a clear timeframe for when reviews in which the new methodology may apply can be requested and (c) how the anti-subsidy instrument was amended to make it possible to address also subsidies which are identified in the course of an investigation and not only those identified in the complaint.

He explained how the new methodology is mandatory when the Commission finds the existence of significant distortions in the exporting country. He described the types of distortions which could be relevant such as state policies and influence, the widespread presence of state-owned enterprises, discrimination in favour of domestic companies and the lack of independence of the financial sector.

In this context, Mr Rubinacci referred to a Staff Working Document which set out the distortions in China which was published on DG Trade's website on 20 December and informed those present that work was already underway on a second report which would concern Russia. He stressed that industry could rely on these reports to show that distortions exist in order to request the application of the new methodology at the complaint stage, but also pointed out that the Commission may rely on any other information regarding distortions brought by industry or which comes to light in the context of an investigation.

Mr Rubinacci explained that where significant distortions are found to exist, the normal value will be based on out-of-country undistorted costs of production, instead of being based on domestic prices and costs in the exporting country. He also explained that for the first time the EU's anti-dumping legislation allows for social and environmental standards to be taken into account in a trade defence

context. The recitals state that in choosing undistorted benchmarks to establish normal value preference will normally be given to countries which adhere to these standards.

Discussion highlights/Questions and replies

R. Kamphoner, German Confederation of Textiles and Fashion Industry said that while they had not actively contributed to the developments on the legislation, they were happy to see that there remains a balance in the instruments. He added that it was important that the EU focus on economic and not social dumping. He also expressed appreciation for the open transparent attitude of the Commission on this file. S. Goren, EU Chemical Council also emphasised the need for balance and fairness in the instruments and welcomed the approach taken.

On the subject of balanced and fair trade defence instruments, Mr Rubinacci said that in the EU it is crucial that we have strong effective instruments. He added that it was important we remain conscious of the fact that the industrial structures in the various Member States are diverse and that there are competing interests often at play e.g. users/traders versus producers. The EU's trade defence instruments address these issues and we act in a proportional manner using the instrument to correct imbalances in the international playing field.

In response to a question posed by S. Newman, Free Trade Association (FTA), regarding the level of details of the normal value calculation which would be disclosed, Mr Rubinacci referred to the confidentiality obligations of both the WTO Agreements and EU legislation. He assured those present that there would be full transparency on the information which was not, by its nature confidential, and also drew attention to the fact that given normal value could be based on publicly available information this could be available on the open case file.

K. Ulmer, ACT Alliance questioned how the social and environment issues would be taken into account in practice. This was also of concern to S. Newman who considered that, having to take such considerations on board when choosing a benchmark country for normal value, could make it even more difficult than heretofore in finding companies to cooperate. Mrs L. Catrain, EPIA SolarPower Europe also raised a similar concern asking if we expected co-operation by representative country companies to improve. Ms. S. Gören, European Chemical Industry Council expressed concern with regard to the environmental and labour standards being taken into account in the context of anti-dumping. She added that these issues should be dealt with by other instruments and not in a TDI context.

In his reply, Mr Rubinacci explained how a representative country would be selected. First the level of economic development would be taken into account to try and find one as close as possible to the exporting country. He added that this should result in fairer normal value for dumping calculations. Where there is more than one possible representative country, preference will be given to the country which has the best record as regards the level of social and environmental protection drawing from a map of how the relevant conventions are implemented worldwide. He did stress that this was not a matter of sanctions for the countries who do not comply with such conventions as TDI was not the appropriate mechanism. Mr Rubinacci added that, in any event, the possibility to use other publicly available data meant that a representative country would not always be necessary.

I. Van Lierde, Euroalliances and AEGIS asked if, at complaint stage, it would be sufficient for industry to bring information on normal value based on data from a representative country or should they provide data from a mixture of public sources. She also expressed concerns regarding the resource capabilities of the trade defence directorate to deal with the new methodology as well as the forthcoming changes arising from the modernisation exercise. She questioned if provisional measures might be skipped in the process in order to meet deadlines.

In his response, Mr Rubinacci recalled that the amendments to the legislation do not affect the provisions regarding the prima facie evidence requirements and, as heretofore, the complainant can

only be expected to bring evidence that can be realistically obtained. However, he did caution industry to ensure that complaints are of the highest standard possible, as any material error at this stage of a proceeding could result in the entire case being dismissed by the European Court of Justice. He assured those present that the complaints office of the directorate was fully available to advise industry regarding the level of information needed.

In response to S. Nalpanidou, The European Steel Association who asked about the timetable for the new country report on Russia, Mr Rubinacci explained that work was already underway on the report. He added that the report on China took almost a year to prepare so it will take time as the collection of the information is a difficult process.

Mr. R. Batier, Cerame-Unie referred to the overcapacities problem in China in the ceramics sector, estimated at between 2.5 to 6 times the EU market. He expressed concern on behalf of their members, who are mainly SMEs, regarding the complexity of the sampling process and the demands of providing a transaction by transaction listing for them. In reply, Mr Rubinacci said that it is imperative that we have the data to support our findings in cases. He stressed that we were not extreme in discarding incomplete data like other users of the instruments and that we work to find solutions for SMEs who face particular challenges when faced with trade defence cases.

In replying to a question posed by P. Martinache, European Steel Tube Association, Mr Rubinacci confirmed that the change of the legislation was not a change of circumstance as required under the legislative requirements for an interim review.

Mrs E. Boonstra , European Economic and Social Committee (EESC) queried how much information the EU complainant industry would be required to disclose in the context of the new methodology. Mr Rubinacci explained the need for information from the EU industry in order to support the claims of injury but added the protection afforded by the confidentiality obligations and the difference between the confidential and non-confidential files.