



CIVIL SOCIETY DIALOGUE

ON TRADE DEFENCE INSTRUMENTS AND RIGHTS IN TRADE PROCEEDINGS

Date: 10 December 2019, 14:00-16:00
Location: Conference Center Albert Borschette, Room 5.B, Rue Froissart 36, Brussels

Speakers

- Mr Leopoldo Rubinacci, Director, Trade Defence, DG Trade
- Dr Thinam Jakob, Hearing Officer for Trade Proceedings

Moderator

Deputy Head of the Information, Communication and Civil Society Unit, Directorate-General for Trade, European Commission

1. Presentation on Trade Defence Instruments – updates

The Commission gave an overview of the EU's Trade Defence activities in 2019 addressing dumping, subsidies, safeguards as well as the work defending exporters against trade defence action taken by third countries against the EU. The Commission explained how the legislative changes implemented in 2017 and 2018 work in practice and the experience to date.

Discussion Highlights / Questions and Replies

Regarding the number of jobs 'protected' by trade defence measures, **EuroCommerce** asked the Commission to take into account the possible adverse effect of such measures on importers and users. Eurocommerce also stated that the pre-disclosure period of three weeks does not reflect trading realities, as shipments take a longer time, and suggested five weeks as a more appropriate period. The Commission replied that the modernisation exercise foresees a review of the pre-disclosure period in 2020, with a view to either lengthening or shortening it to four or two weeks respectively, depending on practical experience in cases.

WINDEUROPE stated that, while it was necessary to have a strong EU industry in order to meet the carbon neutrality target for 2050, global supply chains were also very important. In

this context, some trade defence measures such as those on glass fibre, grain oriented electric steel and the steel safeguards were causing difficulties for their members. In addition, they argued that TDI reduces competitiveness and increases de-localisation to lower cost locations. They also enquired if there were plans to take climate and energy objectives into account in Union interest test. The Commission responded saying that, in order to have a strong domestic industry, it was necessary to counter the damage done by unfair trade practices. As regards the impact of measures on users, importers etc these issues are addressed in the context of the union interest test, which the EU conducts. In this context, the Commission said that the EU applies the instruments in a balanced way through the application of a Union interest test as well as using the lesser duty rule, neither of which are mandatory in the WTO rules. The Commission reaches out to all possible stakeholders and invites comments and submissions which are taken into account in investigations.

ORGALIME enquired if the Commission would take the needs of steel users into account when the steel safeguard would be reviewed in 2020. On this issue, the **European Association Automotive Suppliers** also enquired if volumes could also be revised downwards in 2020. The Commission stated that the WTO Agreement on safeguards provides for progressive liberalisation of safeguards so the quantities would increase in 2020.

Economic and Social Committee (EESC) enquired about the number of trade defence investigations opened by the US in recent years and if there has been a noticeable ‘Trump’ effect. ECSC also enquired if there was a link between the crisis in the WTO Dispute Settlement process and TDI and asked about the state of play on the ongoing discussions on rules in the fisheries sector. The Commission responded that US had initiated 88 investigations in 2017 and 58 in 2018 so there was no obvious ‘Trump’ effect, at least in relation to the number of AD and AS initiations. As regards the WTO dispute settlement, the Commission explained that the highest proportion of disputes related to the trade defence agreements. Concerning the fisheries negotiations, the Commission added that these are ongoing but it was impossible to say if they will conclude quickly or not.

The length of the pre-disclosure period was taken up by **Amfori**, who suggested that goods already on the water should remain exempt from provisional measures. In addition, Amfori asked that the Commission consider the introduction of the APO system for TDI, as used in the US. The Commission noted the suggestion on the goods on water proposal but added that it would present implementation difficulties. As regards the APO system, the Commission replied that we have made significant improvements to transparency recently and we should first consolidate where we are before introducing any further changes. The Commission recalled the difficult process already encountered in making changes to the basic legislation.

COMITE EUROPEEN des FABRICANTS de SUCRE asked how a bilateral safeguard measure in the context of the FTAs works. The Commission described the role of the dedicated bilateral safeguard regulation used to implement the safeguard provisions in FTAs. The regulation currently applies to Japan, Singapore and Vietnam FTAs. The Commission explained that the safeguard mechanism in FTAs provides for the temporary introduction of measures to help industry cope with the economic damage when imports under the agreement reach an unexpected high level, following liberalisation.

Euroalliages/AEGIS asked if there was any relationship between the future carbon adjustment tax and the relevant provisions of the basic regulation on the calculation of the non-injurious price. The Commission replied that it is not known how the carbon content of imports will be treated and recalled that the relevant provisions of the Basic regulation do not address the issue but rather the cost of compliance of environmental standards for EU industry.

2. Introduction by the Hearing Officer

The Hearing Officer for trade proceedings, Dr. Thinam Jakob, introduced the institute of the Hearing Officer, its history and evolution over the period of the last 12 years.

She also highlighted the most recent changes and the exact role and competences of the Hearing Officer in particular in the framework of the modernization of the trade defense system of the EU. In particular, she stressed that the Hearing Officer is fully independent Commission official who is not part of the trade defense services, nor DG Trade for that matter, and not involved directly in conduct of investigations.

This was, in fact, the first time for the Hearing Officer to address the larger civil society to raise awareness of the possibility to address the concerns and to safeguard the rights of defense of the interested parties to trade proceedings.

Discussion Highlights / Questions and Replies

Amfori shared their experience that it has not been clear for them why in some cases the interested party status has been granted and in other cases that, according to them, are similar it has been refused. There seems to be lack of consistency. They asked if in such instances they could call upon the Hearing Officer. The Hearing Officer replied that this is precisely the concern that would be in her competence. However, it is necessary to approach the Hearing Officer with a relevant and argued request as the Hearing Officer only acts upon request of an interested party.

ACT ALLIANCE asked if third parties trying to use safeguards under a trade agreement could appeal to the Hearing Officer. As a follow up question, when it was explained that EPAs are not covered by the mandate of the HO, they asked what they could do to have the mandate of the HO extended to EPAs. As a third question, they asked if there might be overlap between the activity of the HO and that of the new Chief Trade Enforcer. The Hearing Officer clarified that bilateral agreements have been negotiated between the parties and any further amendments to the agreements, such as EPAs, would have to be also negotiated. Regarding the new post of Chief Trade Enforcer, the Hearing Officer noted that their mandate has not yet been defined, however, the CTO is expected to be part of the DG Trade services whilst the Hearing Officer is not, hence no overlap can possibly arise.
