



### EU modernises its trade defence instruments

Brussels, 23 January 2018

#### **The European Parliament and the Council agreed on 5 December on the Commission's proposal to modernise the EU's trade defence instruments (TDIs).**

Together with the [new anti-dumping methodology](#), this is the first major overhaul of the EU's anti-dumping and anti-subsidy instruments since 1995.

The changes to the EU's anti-dumping and anti-subsidy regulations represent a balanced result, taking into account the interests of EU producers, users and importers alike. They will make the EU's trade defence instruments faster, more effective and more transparent. They make the EU better equipped to deal with the challenges of the global economy and unfair competition from imports. At the same time, they bring the EU trade defence system closer to the needs of smaller companies. Finally, trade unions that represent workers whose jobs are at stake due to unfair competition from abroad can now fully participate in these investigations.

The overhaul covers a broad range of aspects relating to the way the Commission carries out trade defence investigations for the benefit of EU producers and other businesses, including importers and downstream industries that depend on imports.

#### **Why is the EU modernising its trade defence instruments (TDI)?**

The EU's trade defence instruments have remained largely the same since the creation of the World Trade Organisation (WTO) in the mid-nineties. They have proven effective but needed an update. The aim of this modernisation is to ensure the continued effectiveness of the EU's TDI in the face of new global challenges, for instance various global overcapacities in products like steel and aluminium.

The agreement builds on the proposal presented by the Commission in 2013 aiming at providing Europe's trade defence instruments with more transparency, faster procedures and more effective enforcement.

#### **When will the new rules apply?**

The European Parliament's international trade committee endorsed this agreement on 23 January 2018. The new rules will enter into force once the respective approval procedures within the European Parliament and the Council are finalised. This is foreseen for end of May 2018.

#### **What will be the benefits of the reform?**

Amongst the most important changes to the EU's anti-dumping and anti-subsidy legislation are:

- **Faster and more efficient investigations:** provisional measures will be imposed within 7 to 8 months, in comparison to the current 9 months.
- **Possibility to impose higher duties:** this will apply to anti-subsidy cases, as well as anti-dumping cases concerning imports produced using raw materials and energy provided at an artificially low price. This means the rule known as "lesser duty rule" will be adapted. In such cases, the EU will be able to apply the duty rates at the full dumping margin level, provided this is in the interest of the EU as a whole, taking into account the interest of consumers, as much as upstream and downstream industries.
- **Improved injury calculation:** the new rules concerning calculation of the 'non-injurious price', i.e. the price that the industry is expected to have charged under normal circumstances, now better reflect economic reality. They may now take into account the cost of necessary investments, such as in infrastructure or research and development, but also future expenses related to social and environmental standards, for example under the Emission Trading System. Also, the 'non-injurious price' will now assume a minimum profit of 6% that will be included in the calculation, with a higher profit margin possible on a case-to-case basis.
- **Inclusion of social and environmental considerations:** Trade has to be open but also fair. The new rules ensure that our high standards in the EU do not disadvantage European industry in application of trade defence measures. The EU will now for instance take into account the cost of compliance by EU industry with higher social and environmental standards. Furthermore, the EU

will normally not accept price undertakings from third countries that have a bad record on core International Labour Organisation conventions and multilateral environmental agreements. The Commission also intends to review the measures in place in case of changed circumstances concerning social and environmental standards. The Commission's annual report on trade defence instruments will also include now a section dedicated to sustainability issues.

- **Increased transparency and predictability:** An advance warning of 3 weeks will now be given to companies before duties start being collected. This will allow all companies to adapt to the new situation.
- **Support for EU smaller companies:** EU small and medium-sized companies will now be able to benefit from streamlined procedures and support of an SME Helpdesk to make it easier for them to participate in trade defence investigations. The helpdesk for small and medium-sized enterprises (SMEs) will be boosted significantly so that smaller businesses can get practical help and advice from the Commission's trade defence experts, for example on the requirements for bringing a trade defence complaint. There are also practical changes that will make it easier for SMEs to participate in trade defence investigations. For instance the Commission will release a guide in all EU languages on its trade defence instruments.
- **Closing the loophole related to dumped products shipped offshore:** Trade defence measures will now also apply to dumped or subsidised products shipped offshore in the Continental Shelf / Exclusive Economic Zone of the Member States when the consumption of the product is significant. This closes an important loophole in the legislation. The Commission will adopt a technical tool to fully implement this legislative change.

### **Is this only going to benefit European manufacturing companies?**

Trade defence measures are typically a double edged sword and this Commission initiative was designed right from the beginning for the benefit of all types of businesses including importers and downstream users. Their benefits include:

- More transparency in particular with regard to provisional anti-dumping duties: they will get an advance warning of at least three weeks. This is subject to a review after two years which can adjust the advance warning to two or four weeks.
- The Commission will also reimburse duties that have been collected during an expiry review, in cases where such review concludes with the termination of measures.

### **How does this TDI modernisation package relate to the new anti-dumping methodology that the EU has recently introduced?**

Both reforms have aimed at maintaining and improving the effectiveness of the EU's trade defence instruments in light of the changes in the global economy but cover different aspects. The present trade modernisation package is distinct from the new methodology for calculating the dumping margin.

The changes agreed in TDI modernisation cover a variety of issues relating to how trade defence investigations are conducted, including the duration of the investigations, better rules concerning the calculation of the non-injurious price and hence the duty levels, increased transparency in particular about provisional duties, as well as help for SMEs.

The new methodology to calculate the dumping margin concerns cases where the exporting country engages in distortive practices in its economy.

This being said, both reforms are equally important in order to ensure the continued effectiveness of the EU's trade defence and preserve a level playing field for EU industry.

### **Will the lesser duty rule continue to apply?**

The lesser duty rule has proven to be effective in the past and it will remain part of the EU's trade defence instruments. However, the rule has been adapted to deal with raw material distortions in anti-dumping cases. In anti-subsidy cases the European Parliament and the Council followed the Commission's proposal to impose the measures at the level of the subsidy margin. Subsidies are particularly distortive of trade. It is not acceptable that exporters benefit from subsidies that are against WTO rules, at the expense of European industry.

### **More information**

[Press release](#) on modernisation of EU trade defence of 5 December

[New antidumping methodology](#)

[EU Trade Defence](#)

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