

Modernisation of trade defence instruments is urgent!

EU trade defence instruments



In 2013, the European Commission made a proposal to adapt the EU's rulebook to tackle unfair competition from dumped and subsidized imports to the contemporary challenges of an ever more globalized economy. Indeed, unfair trade practices by third countries are mounting. State intervention, massive subsidies and all kinds of price distortions have resulted in global overcapacities and ultimately in exports to the EU market at dumped prices. The objective of the 2013 proposal was to make the anti-dumping and anti-subsidy instruments more efficient and better enforced to shield EU producers from unfair practices and to create "a level playing field" in international trade. It was also the ambition to make the system more transparent and user-friendly. The proposal was timely as the last significant revision of trade defence instruments (TDIs) took place in 1995 to implement the Uruguay Round of multilateral trade negotiations.

However, no agreement on the proposals could be reached with the member states. But after three years of stalemate and different attempts by various presidencies, in November 2016 in Bratislava, the member states finally agreed on a compromise position based on a proposal by the Slovak Council Presidency. Trilogues have started in the meantime and are expected to be concluded by June 2017. This trilogue will be difficult as the liberal bloc of member states has seriously narrowed the circumstances for lifting the lesser duty rule, while the European Parliament has broadened the scope of the original proposal of the Commission e.g. by introducing social and environmental provisions.

"IndustriAll Europe will continue fighting for a robust, effective and WTO-compatible framework for trade defence. Protecting good jobs in Europe against social dumping from abroad is one of our priorities"
 Luc Triangle, General Secretary industriAll European Trade Union.

Although several steps in the right direction have been taken, industriAll Europe still has some important concerns. We welcome the progress that has been achieved and support a number of the compromise proposals, including:

- The fact that the Lesser Duty Rule (LDR) will be lifted in case of **anti-subsidy procedures**. Under the lesser duty rule, authorities impose duties at a level lower than the margin of dumping if this level is adequate to remove the injury (in this respect the dumping margin will be compared with the injury margin, which is based on the impact of dumping on the profitability of the companies that fall victim of dumping practices)
- The introduction of a **target profit margin** of 5% (EBIT, Earnings Before Interests and Taxes) for calculating the injury margin. So far, this calculation was based on a comparison with the historical profits (in many sectors these have dropped dramatically due to the financial crisis).
- The introduction of **ex-officio investigations** (investigations initiated by the Commission)

as this reinforces the legal protection especially of fragmented industries that are dominated by SMEs that don't have the resources to start a procedure. This provision should also contribute to prevent the initiation of retaliation measures (sometimes EU producers fear 'tit for tat' strategies and decide not to lodge or support a complaint)

- The **earlier imposition of provisional measures**: from 9 to 8/7 months (further shortening the period to e.g. 6 months would even be better but this could be to the detriment of the quality of the investigations)

But important sticking points remain:

So far, no agreement could be reached on the most controversial aspect of the 2013 proposals: the **possibility not to apply the lesser duty rule**. The Slovakian proposal to specify the conditions under which raw material distortions (energy included) could qualify for the lifting of the lesser duty rule, is very stringent. The requirement that these raw materials account for more than 27% of the cost of production in total and more than 7% taken individually is unacceptable for basic industrial sectors. Indeed, as prices of raw material are very cyclical, the share of raw materials can fluctuate strongly. This means that the price cycle will decide whether or not a given product will cross the threshold. Moreover, these thresholds are very arbitrary and not based on an economic/industrial rationale. Also, the 7%-rule doesn't consider the realities of industrial production. Indeed, many products contain a large variety of raw materials as coking coal, gas, electricity, alloys, scrap, non-ferrous metals. The technical complexity of the Slovak proposal is simply unworkable.

For industriAll Europe there is also no reason for sticking to the lesser duty rule as this is a so-called WTO+ requirement (an optional provision) with the US and China not applying it.

According to the impact assessment survey of the European Commission (carried out by Hylke Vandebussche and Jo Van Biesebrouck of the Catholic University of Leuven) **the lifting of the Lesser Duty Rule could safeguard 50.000 jobs in Europe's industry**. Not seizing this opportunity will be hard to explain to industrial workers!

Furthermore, industriAll Europe believes the LDR should not only be lifted in case of raw material distortions but also in situations of significant state interference. Finally, industriAll Europe fully supports the amendments by the parliament to link respect for social and environmental standards to the lifting of the LDR. In this respect, industriAll Europe proposes to apply the principles of the GSP+ arrangement. GSP+ provides additional tariff preferences to developing countries that promote sustainable development and good governance. Eligibility is based on the ratification of 27 core international conventions on human and labour rights, environmental protection and good governance.

- The proposal to **reimburse duties** collected during expiry review investigations looks to be a fair idea on the surface, but it isn't as it serves as a compensation for the lack of measures between the initiation and the imposition of provisional measures (no retroactive imposition of measures)
- Applying the **union interest test** (this test involves an examination of the interests of all economic operators in the EU before imposing measures) specifically to the LDR is not acceptable as the test is already implemented in the general assessment of the anti-dumping complaint.
- The introduction of **an advanced notice of 4 weeks** before the imposition of duties is too

long. This provision indeed serves the objective of transparency but is also an open invitation to flood the European markets with dumped products during this period.

For industriAll Europe TDIs are not part of a protectionist agenda and are no instruments for ordinary protection against imports. They must be targeted, temporary, not arbitrary, and transparent. The main objective should be to correct unfair trading practices that make foreign products artificially cheaper, to correct government interventions (subsidies) that provide unfair competitive advantages and they should be used against those that do not play by internationally accepted rules.

“We cannot remain toothless against government interference, massive subsidies, lack of transparency, unfair advantages provided by non-independent banks. Defending our social, environmental standards can only be successful if we apply truly deterrent measures against those that abuse our open markets for dumping products produced in unacceptable labour conditions” concludes Luc Triangle.

As trade defence is part of the legal order created by the WTO (article VI of GATT 1994), industriAll Europe fully supports the use of these instruments to create a fair level-playing field in the global arena. Trade defence instruments should contribute to an inclusive global trading system for a fair and value-based global economy. Therefore, industriAll Europe aims for an up-to-date- trade defence regulation, able to deal with the challenges of a globalised economy. We need better tools to be able to respond to social dumping practices which threaten quality jobs in Europe. This is not about protectionism, but about implementing the principles of “Trade for all, towards a more responsible trade and investment policy”, the latest communication from the Commission on trade which calls for a trade policy based on values. For industriAll Europe, trade policy should indeed promote the respect of core labour standards or multilateral agreements regarding sustainable development. Therefore, we fully support the proposals of lifting the lesser duty rule in case of non-respect of these values which we consider to be unfair competition.