

### IndustriAll Europe welcomes modernised trade defence instruments

(25 January 2018)

#### New tools for fighting unfair trade practices

On 23 January 2018, the INTA-Committee of the European Parliament voted in favour of the long-awaited changes to the EU Regulation on protection against subsidised imports. The new provisions still need formal approval from the plenary and the Council, but the vote puts an end to a deadlock of more than 4 years resulting from a deep ideological gap inside the Council between the more protectionist and the more free-trade-friendly EU Member States. The most important change is the lifting of the 'lesser duty rule' (LDR) in case of distortions in the prices of raw materials and energy. This will make it possible to levy duties for the whole dumping margin. Equally important is the fact that a clear link has been established between trade policy and the preservation of our social model. Indeed, core labour and multilateral environmental standards will be taken into account for calculating the injury margin, which can also lead to higher dumping duties. Furthermore, trade unions are invited to raise their voices during the proceedings and will even be able to raise a complaint (together with employers). The introduction of a minimum profit margin of at least 9% and the speeding-up of procedures are also important improvements.

For industriAll Europe, these changes represent crucial steps in the right direction following a very long and sensitive debate. They will provide the Commission with new tools to support the principles of free and fair trade. But most of all, they will safeguard industrial jobs in Europe. As an industrial trade union with millions of jobs dependent upon exports, industriAll Europe will never support a protectionist agenda. However, trade defence is part of the legal order created by the WTO and should be used in a targeted, temporary, non-arbitrary and transparent way.

*"On balance, we are happy with the outcome of the trilogue. The agreed measures create a strong and legitimate framework, which will allow to impose higher tariffs on dumped/subsidised goods in case of distortions of energy and raw material prices. The fact that trade unions will be able to participate in dumping procedures will allow us to put jobs and respect of social and environmental standards centre stage. Indeed, fighting unfair trading practices to support industrial workplaces is at the heart of our concerns"* said Luc Triangle, General Secretary of industriAll Europe.

*"Having said this, we still think that the institutions could have gone one step further by simply lifting the lesser duty rule in case of non-respect of core labour standards",* Luc Triangle continued.

*"Together with the new anti-dumping methodology, we have made good progress in establishing an overall trade defence system that lives up to the current challenges of globalisation. Having a legitimate and robust trade defence system is one thing, but the Commission must now use and enforce it in a strict and consistent way. Therefore, we remain cautious as the proof of the pudding is in the eating, only in practise we will see if the new regime is really able to address global*

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*overcapacities, market distortions and the non-respect of labour and environmental standards”, Luc Triangle concluded.*

In 2013, the European Commission tabled a proposal to adapt the EU’s rulebook regarding unfair competition from dumped and subsidised imports in order to take into account the contemporary challenges of an increasingly globalised economy. Indeed, state intervention, massive subsidies and all kinds of price distortions have resulted in global overcapacities in numerous industrial sectors and, ultimately, in exports at dumped prices to the EU market. The objective of the 2013 proposal was to make the anti-dumping and anti-subsidy instruments more efficient and to create “a level playing field” in international trade. The ambition was also to make the system more transparent and user-friendly. Nevertheless, it took four years of long and difficult negotiations to reach a long-awaited agreement. On the basis of a compromise position from the Slovak presidency in November 2016, trilogues began and were concluded on 6 December 2017.

IndustriAll Europe welcomes the fact that a compromise on the modernisation of the trade defence instruments was finally agreed upon and that progress was achieved in addressing unfair trade practices:

- Most important is **the removal of the LDR** in case of imports impacted by raw material distortions (energy included). The LDR prevents the Commission from imposing anti-dumping duties above the calculated level of injury (based on the impact on profitability) caused to domestic companies, even if the calculated margin of dumping may be higher. Raw material distortions are defined as dual pricing systems, export taxes, export quota, export prohibition, licensing requirements, minimum export prices and other distortions that result in prices/costs that do not reflect the operation of normal market forces.
- The original compromise proposal from the Slovak government contained a requirement that the raw materials for which a distortion is found should account for more than 27% of the cost of production in total and more than 7% for each raw material taken individually. IndustriAll Europe was of the view that this proposal failed to consider the complex realities of many metals sectors and was thus simply unworkable. The replacement of these requirements by a **more realistic (although still high) threshold of 17% for qualifying to lift the LDR** is an important development.
- The LDR will also be lifted in case of **anti-subsidy procedures** (countervailing measures).
- As **trade unions**, we will be **able to submit complaints** (together with industry). We will also be considered as interested parties to be involved in the investigation and the resulting proceedings.
- **Costs for EU industry resulting from core labour and multilateral environmental agreements** would be reflected in the calculation of the reference price (which serves as a basis for defining the injury margin). The Commission can also initiate interim reviews in cases where EU industry faces increased costs from higher social and environmental standards or in cases of changed circumstances in social and environmental standards in export countries. Finally, when assessing the acceptability of an offer for an undertaking (a

- promise given by an importer to end the dumping of goods), respect of core labour standards and multilateral environmental standards will be taken into consideration.
- A **target profit margin** of minimum 6% for calculating the injury margin will be introduced. So far, this calculation was based on a comparison with historical profits (these have dropped dramatically in many sectors due to the financial crisis).
  - The Commission will be able to start investigations on its own without complaints from industry (**ex-officio investigations**). 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 preventing the initiation of retaliation measures (sometimes EU producers fear tit-for-tat strategies and decide not to lodge or support a complaint). EU producers will, however, be requested to provide the necessary information.
  - The **earlier imposition of provisional measures**: from 9 to 8/7 months (further shortening the period to e.g. 6 months would have been even better, but this could be to the detriment of the quality of the investigations) while anti-dumping investigations should be terminated 14 months after they begin.
  - The **maritime loophole will be closed**. Today it is possible for companies operating in the maritime exclusive economic zones or the continental shelves of the EU Member States to avoid paying anti-dumping duties. An implementing act will allow the Commission to collect duties on goods such as pipes, tubes, steel used on artificial islands and fixed or floating installations (e.g. offshore windmill parks).
  - Smaller companies will be supported by a **help desk** to facilitate their access to trade defence procedures.

All this is very good progress. However, a number of concerns remain:

- **Non-respect of social and environmental standards will not be a criterion for lifting the LDR**. Indeed, core labour standards and multilateral environmental standards will only be taken into account for calculating the injury margin. The assessment about whether or not to lift the LDR will only be based on the existence of raw material distortions.
- **The way core labour standards and multilateral environmental standards will be taken into account** for calculating the injury margin is not at all clear. It remains to be seen how this principle will be applied in practice.
- The **three-week period** from the announcement of duties until they take effect could give importers too much room for reacting to decisions and avoiding their consequences. This provision certainly serves the objective of transparency but is also an open invitation to flood the European markets with dumped products during this period. To avoid this, the new rules require national customs authorities to register imports "whenever possible", allowing duties to be collected retroactively. As it has to be proven that the additional safety nets to address the issue of stockpiling will be effective, the three-week notice period will be reviewed after two years.
- The application of the **union interest test** (this test involves an examination of the interests of all economic operators in the EU before imposing measures) creates too much room for discretion, specifically to the LDR.

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- The reimbursement of **duties** collected during expiry review investigations misleadingly looks to be a fair proposal as they serve as a compensation for the lack of measures between the initiation and the imposition of provisional measures (no retroactive imposition of measures).

The new trade defence rules are legitimate tools to combat the dumping of often subsidised goods on the European markets. It allows to defend European interests against foreign governments that artificially subsidise their strategic industries by means of cheap energy, soft loans and distorted raw material prices. The integration of social and environmental concerns in trade defence instruments is a positive evolution as it gives concrete meaning to the principle of a ‘trade policy based on values’, which was a key element of the 2015 “Trade for All” communication of the Commission. The new rules will contribute to the overarching objective of creating an inclusive global trading system for a fair and value-based global economy and will finally have a positive impact on European jobs. Indeed, according to the impact assessment survey of the European Commission (carried out by Hylke Vandenbussche and Jo Van Biesebrouck of the Catholic University of Leuven) the lifting of the LDR could save 50,000 jobs in Europe’s industry.<sup>i</sup>

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<sup>i</sup> Hylke Vandenbussche, Jo Van Biesebrouck, Economic Impact of Changing Methodology for Calculating Normal Value in Trade Defense against China, KU Leuven, 2016, p.7