COUNCIL OF THE EUROPEAN UNION

Brussels, 15 April 2013

8493/13

COMER 84
WTO 93
ANTIDUMPING 36

COVER NOTE

from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	11 April 2013
to:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
No Cion doc.:	COM(2013) 191 final
Subject:	Communication from the Commission to the Council and the European Parliament on Modernisation of Trade Defence Instruments Adapting Trade Defence Instruments to the current needs of the European economy

Delegations will find attached Commission document COM(2013) 191 final.

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Encl.: COM(2013) 191 final

EUROPEAN
COMMISSION

Brussels, 10.4.2013
COM(2013) 191 final

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

on
Modernisation of Trade Defence Instruments
Adapting trade defence instruments to the current needs of the European economy

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1. INTRODUCTION

1.1. The need for modernisation

The European Union is a world leading trading power and greatly benefits from free trade and open markets globally. In some instances, however, unfair practices by certain trading partners and third country exporters can be prejudicial to industries based in the EU. Trade defence instruments (TDI) are for that reason an important tool in the broader EU trade policy. They are often the only means that companies can invoke to react to unfair international trading practices. At the same time, the application of trade defence instruments can have an impact on users and consumers. The EU applies very high standards in the administration of these instruments that have been enacted in 1995, often higher than those required by the World Trade Organisation (WTO) and as applied by many other users.

However, the economic environment changes continuously and there is a need to periodically consider whether these changes require some adjustment to the TDI.

The rules of the EU's TDI have remained largely unchanged for more than 15 years. The last substantive revision of the EU's TDI took place in 1995 in order to implement the conclusions of the Uruguay round of multilateral trade negotiations. Since then, the only significant legislative change was that adopted in 2004 when the decision making process in the Council was changed (simple majority to reject a Commission proposal instead of simple majority in favour).

In 2006/2007, a reform – the "Green Paper" - exercise was launched and showed that there was a wide divergence of views on the topic. Subsequently, Commissioner De Gucht indicated during his hearing before the INTA Committee of the European Parliament in January 2010, that he considered that the TDIs should be reviewed after the conclusion of the Doha Trade negotiations that are conducted under the auspices of the WTO. These talks have stalled.

Against this backdrop, the Commission has decided to revisit the functioning of the EU's TDI with a view to updating them, but also bearing in mind that the multilateral WTO framework will not change in the foreseeable future. This Communication sets out the proposals and changes that the Commission puts forward in order to modernise the instruments in line with the Treaty objective to contribute to free and fair trade (Article 3 (5) Treaty on European Union).

The guiding principle for the package put forward is that the EU's TDI should be improved in a **pragmatic and balanced way** for the benefit of all stakeholders. Producers, importers, and users, be they large companies or small and medium enterprises, should have user-friendly and efficient instruments at their disposal that respond to today's challenges when faced with

unfair trading practices or with the prospect of TDI measures. The Commission has identified 6 main areas requiring changes to the current rules in order to address the changes in the economic environment.

The proposals take into account the public consultation on modernisation of trade defence instruments (open from 3 April to 3 July 2012)[1], from the Commission's extensive experience in the daily administration of these instruments, and an independent evaluation study, published in March 2012[2].

1.2. The legal framework

The EU's trade defence system is based on the rules of the WTO which allow its Members to address unfair trade practices by exporting countries and restore a level playing field. Anti-dumping, the most frequently used TDI (the others are the anti-subsidy and safeguard instruments), addresses imports of a product from a non-EU country, sold at prices lower than the normal value[3], if they are injuring the EU industry. The anti-subsidy instrument deals with subsidised[4] imports.

In such cases, the affected EU industry can lodge a complaint with the Commission, providing evidence of the unfair practice and of the injury it has caused. If the complaint contains sufficient evidence, an investigation is opened which lasts for around 15 months in case of dumping (13 months in case of subsidies) and in which all parties concerned (Union producers, exporters, importers, users of the product and consumer organisations) are invited to participate. If the investigation confirms the allegations in the complaint, an anti-dumping or anti-subsidy duty will be imposed. Measures remain in force normally for 5 years but they can be reviewed during this period and renewed where appropriate.

The safeguard instrument is the third TDI and is not at issue in this initiative, not least because the EU has very rarely used it.

The so-called "WTO+ elements" of the EU's system, in particular the lesser duty rule and the Union interest test, ensure proportionality and balance in the application of the instruments. The aim of this initiative is to keep these high standards but to adapt and improve them as necessary.

Many stakeholders have expressed the wish that the Commission shortens AD/AS investigations. The Commission will seek to reduce in general the time needed for deciding provisional measures in AD/AS cases by two months.

2. THE PROPOSALS

This part of the Communication describes the Commission proposals to modernise the EU's TDIs. For each proposal it is specified whether or not a legislative change is required. In fact, an important number of these proposals require a change of the Basic Anti-Dumping (AD)

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1 Results of the public consultation on the Modernisation of the EU's Trade Defence Instruments: http://ec.europa.eu/yourvoice/ipm/forms/dispatch?userstate=DisplayPublishedResults&form=MTDI

2 Independent evaluation of trade defence instruments: http://trade.ec.europa.eu/doclib/press/index.cfm?id=786

3 The normal value is usually based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country or on the full cost of production plus a reasonable profit.

4 Subsidies are financial contributions by a government or a government body that confer a benefit to a recipient (Article 1 ASCM).

and Anti-Subsidy (AS) Regulations[5]. The proposed legislative changes are set out in detail in a draft Regulation which the Commission submits to the Council and the Parliament for adoption in the ordinary legislative procedure. The proposals also comprise draft guidelines on four important elements of the EU's TDI. The draft guidelines will be released together with this Communication in the form of Commission staff working documents for public consultation before they are adopted by the Commission. By adopting these guidelines, the Commission exercises the discretion it enjoys and needs when applying EU TDI to concrete products.

2.1. Increased transparency and predictability

Transparency in the implementation of the TDIs is of great importance and therefore the continued increase in transparency in TDI proceedings is a priority. Various elements designed to enhance transparency of the proceedings and to improve predictability for all parties concerned are being proposed in order to take account of concerns expressed by stakeholders.

2.1.1. Pre-disclosure of provisional anti-dumping and anti-subsidy measures

Stakeholders have often expressed the desire to have a possibility to comment in advance on the basis used for the imposition of provisional anti-dumping and anti-subsidy duties. They claim that such a possibility would, for instance, help to eliminate errors, calculation mistakes etc. which, under the current system, are only removed at the stage of definitive measures. More fundamentally, stakeholders claim that they do not know if and how their business will be affected by provisional measures because they are unaware of the level at which duties might be imposed.

In order to increase transparency in anti-dumping and anti-subsidy proceedings, it is proposed to provide interested parties with a pre-disclosure, limited in scope, two weeks before the imposition of provisional measures. This would avoid that parties are taken by surprise by the imposition of provisional measures without causing any significant danger of stockpiling imports, because already today economic operators normally know the time frame of the EU's decision-making process and when the publication of provisional measures takes place. The current time lines of investigations would not be affected.
The limited in scope pre-disclosure would be comprised of (i) a summary of the proposed measures and (ii) the relevant calculations of the dumping and injury margins for each cooperating exporter and the Union industry. In order to respect the time limits of an investigation, parties would be granted a relatively short deadline, i.e. three working days to provide comments limited to the calculations. The full disclosure of provisional measures, which in turn triggers the possibility to comment extensively on all aspects of such measures, would continue to be given, as under the current system, at the time of imposition.[6] Thus calculation errors could be corrected before the imposition of provisional measures which would increase the accuracy of the measures but without delaying the adoption process.

This proposal requires a legislative change.

2.1.2. Advance notice of non-imposition of provisional measures

[5] Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51.) and Council Regulation (EC) No 597/2009 on protection against subsidised imports from countries not members of the European Community (OJ L 188, 18.7.2009, p. 93.)

[6] Article 20 (1) of the Basic AD Regulation / Article 30 of the Basic AS Regulation

Many stakeholders pointed out that they would like to be informed earlier if the Commission does not intend to impose provisional measures. Indeed, parties often find out that no provisional measures are imposed, only when the 9-month deadline for imposing such measures has passed. Advance notice would help improving transparency and predictability of the business environment. In any event, should parties be informed in advance when it is intended to impose measures (as envisaged under this initiative) then it would appear reasonable to also inform them when it is intended not to impose provisional measures. It is therefore proposed to inform interested parties around two weeks prior to the 9-month deadline, if it is envisaged or not to impose provisional measures.

This proposal requires a legislative change.

2.1.3. Two weeks advance notice of imposition of provisional anti-dumping/anti-subsidy measures

Importers often complain that goods already in transit at the time of imposition of provisional measures become subject to those measures, once they are cleared through customs. Since, as mentioned above, it is proposed to make information about the proposed imposition of provisional measures available to interested parties (around two weeks prior to imposition), it is also proposed not to impose measures within a period of two weeks after pre-disclosure. These two weeks would increase predictability for all parties and give importers more flexibility to deal with shipments already in transit while fully respecting the time limits. As pointed out in section 2.1.1., two weeks would not endanger the effectiveness of any provisional measures, all the more so because the timing of provisional measures is generally well known. The right of Member States to request immediate imposition of provisional measures pursuant to Article 7(5) and Article 12(4) of the basic AD and AS regulations respectively is not affected by this proposal.

This proposal requires a legislative change.

2.1.4. Guidelines

Companies involved in TD investigations are often unaware of the very technical aspects of the investigations. However, it is in the interest of all parties that these aspects are well known and that the relevant information is easily accessible. With this in mind, it is proposed to publish guidelines on four core elements of an investigation, i.e. the calculation of the injury margin, the choice of the analogue country in investigations concerning imports from non-market economy countries, the Union interest test and the duration of measures and expiry reviews.

The draft guidelines spring from the Commission's experience. The Commission will carry out a public consultation on the draft guidelines before adopting them.

2.2. How to deal with threats of retaliation

2.2.1. Ex-officio initiations in case of threats of retaliation

The public consultation has confirmed that there is a problem of retaliation against some EU producers who intend to lodge a complaint requesting the initiation of anti-dumping or anti-subsidy investigations. As a result, EU producers are often reluctant to lodge a complaint or may withdraw from an investigation and thus be prevented from exercising their rights under EU and WTO law.

A third of the respondents reported that they had been subject to retaliatory behaviour in the past. Retaliation includes any threat against the economic interests that the EU industry may

have in the exporting country. Such threats may take many forms, e.g. threats against production, selling activities, investments, creation of administrative hurdles, etc. Threats against customers or suppliers of the Union industry are also relevant.

In the experience of the Commission, such threats are indeed increasing. Therefore, up-to-date TDIs need to provide mechanisms in order to at least alleviate the pressure resulting from threats of retaliation.

The way forward is that the Commission opens, where possible, an ex-officio investigation in case Union producers are exposed to threats of retaliation and if there is sufficient prima facie evidence of injurious dumping/subsidisation.

The evidence required at the initiation of an ex-officio case has to be of the same standard as that for the initiation of an investigation following an application by the EU industry pursuant to Article 5 and Article 10 of the Basic AD and AS Regulations respectively.

Union producers who consider lodging an AD or AS complaint will be encouraged to contact the Commission in confidence where they are exposed to threats of retaliation. An outline of the type of information that is normally requested will be published on the Commission (DG Trade) web-site.

In deciding whether or not to go ahead with an ex-officio investigation, the Commission will decide on the basis of the merits of the evidence available on injurious dumping/subsidisation. In addition, the Commission will also take into account available evidence as to whether any measures would have disproportionate economic consequences for the Union as whole, should the investigation confirm the existence of injurious dumping/subsidisation.

The Commission suggests clarifying this point through the applicable legislation.

2.2.2. Obligation to cooperate for Union producers producing the like product

Under current provisions parties are not obliged to cooperate in TD proceedings. For the purpose of ex-officio investigations initiated by the Commission, it is proposed to introduce an obligation to cooperate for Union producers. Such an obligation is necessary in order to ensure that the Commission services have access to the data required for the investigation. The obligation to cooperate comprises the duty to reply to the questionnaire that will be sent to the parties at the beginning of such investigations and to accept on-the-spot verification of its questionnaire reply by Commission officials.

The details of Union producers communicating with the Commission will remain confidential and will not be revealed in the non-confidential file pursuant to Article 6(7) and Article 11(7) of the Basic AD and AS Regulations respectively.

This proposal requires a legislative change.

2.3. Effectiveness and enforcement

2.3.1. Ex-officio anti-circumvention investigations

The circumvention of trade defence measures is a growing problem in international trade. Therefore, improved monitoring of trade flows by the Commission will ensure earlier

detection of such practices. Whenever the Commission is satisfied that such practices appear to be taking place, it will open an *ex-officio* anti-circumvention investigation.

This proposal does not require a legislative change.

2.3.2. Non-application of the lesser-duty rule in anti-subsidy cases and where structural raw material distortions exist

The lesser-duty rule is a 'WTO plus' element in the EU's TDI. WTO rules allow the imposition of anti-dumping and anti-subsidy measures at the level of the dumping/subsidy margin. The EU goes beyond this minimum requirement set by the WTO and imposes measures at a lower level than the dumping/subsidy margin if such lower level is sufficient to remove the injury of the Union industry.

However, the application of the lesser-duty rule is not appropriate in the following situations. First, subsidisation by third country governments is an increasing concern and in some respects the benefit of obtaining a lower duty via the lesser-duty-rule may encourage governments to continue subsidizing their economic operators.

Second, third countries increasingly interfere in trade of raw materials with a view to keeping raw materials in their country for the benefit of downstream users. As a consequence, EU producers do not compete on a level playing field with such third country downstream producers. It does not seem appropriate that such producers benefit from the lesser-duty rule under the EU's TDI system if they themselves benefit from structural raw material distortions.

The current law does not contain any provision that would discourage third country governments and economic operators from engaging in such practices. Therefore, it is proposed not to apply the lesser-duty rule:

- on a country-wide basis in cases of subsidisation,
- on a country-wide basis in cases of structural raw material distortions,

This proposal requires a legislative change.

2.4. Facilitate Cooperation

2.4.1. Registration and collection of information relating to Union interest

Stakeholders claim that cooperation with the Commission in TD investigations may be burdensome in certain cases. This is particularly true for small and medium sized enterprises. The main difficulties encountered by stakeholders include the significant workload, the burdensome and costly procedures, and the short deadlines. While the degree of difficulty varies between stakeholders, they all agree that due to the technical nature and complexity of TD investigations, many companies, especially SMEs often refrain from cooperating.

In response to these difficulties, the Commission services have already simplified the type of information requested from users. In addition, it is proposed in future to grant longer deadlines to all parties to register as interested parties and to reply to the questionnaires, i.e. 29 days instead of 15 days to register as interested party and 51 days instead of 37 days to submit the questionnaire reply. This applies for the Union interest part of the investigation but not for the investigation of dumping, subsidisation and injury. This should encourage parties

to cooperate in trade defence investigations, and thus further strengthen the quality of findings underlying any decision on measures, while fully respecting the time limits.

This proposal does not require a legislative change.

2.4.2. Simplification of refund procedures

Stakeholders identified the need to increase transparency also regarding refund procedures.

The Commission will publish updated guidelines on refund applications in the Official Journal and on the Commission's (DG Trade) web-site. It is also proposed to publish on the web-site: an aide-memoire including a standard form to be filled in by the applicant and the cooperating producer, a contact list with all the contact points in the Member States, a list of pending refund applications, and whether a refund has been granted or rejected. Provided that the applicant has granted permission, the non-confidential version of the refund decision will also be published on DG Trade's web-site. The Union industry concerned will be informed about the receipt of a refund application. A non-confidential file with all non-confidential documents of refund investigations will be created.

This proposal does not require a legislative change.

2.4.3. Small and medium enterprises

Mainly due to their fragmentation and lack of resources it is often very difficult for Small and Medium Sized Enterprises (SMEs) to cooperate in lengthy and complex TDI proceedings. Many stakeholders representing various interests claim that the SME helpdesk needs to be upgraded.

The SME helpdesk will be upgraded to provide more support and information for SME's concerned by a TDI proceeding.

Furthermore, specific seminars will be organised for SME's throughout the Union in cooperation with Member States, in order to raise awareness about TDIs. Additionally, the Commission will examine ways to facilitate the participation of SME’s in TDI proceedings in collaboration with DG Enterprise’s SME network, in particular with regard to the following issues: (a) standard form for statistics to be submitted for standing purposes and questionnaires so as to allow SMEs to provide the necessary data in the least burdensome manner; (b) considering setting the investigation period to coincide with the financial year whenever possible; (c) diminishing the burden caused by language barriers in a proportionate manner. The result of this work will be enshrined in Commission guidelines. This proposal does not require a legislative change.

2.5. Optimising review practice

2.5.1. Reimbursement of duties paid if the expiry review investigation is terminated without renewal of measures

Expiry reviews may be initiated just before the end of the 5 year period of applicability of TD measures. The measures remain in force pending the outcome of these reviews which last for 12 to 15 months. The AD/AS duties continue to be collected during this period and are not reimbursed even if the investigation is terminated and the measures are repealed. However, in

cases where the investigation has shown that there is no injurious dumping/subsidisation it seems unjustified to retain the duties.

It is therefore proposed to reimburse duties collected during expiry review investigations, if the investigation does not result in a renewal of the measures. Such reimbursement will only be granted upon application to national customs authorities and will not include interest. While creating an additional administrative burden, it is not reasonable to hold operators liable for additional duties after formal expiry of the measure if there is no longer evidence to support renewal of the measure.

Stakeholders representing producing interests argue that, since provisional measures are not imposed retroactively, the Union industry continues to suffer injury even after the initiation of the proceeding. Consequently the duties collected during an expiry review investigation serve as a compensation for the lack of measures between the initiation and the imposition of provisional measures. However, both EU and WTO law allow for the retroactive imposition of measures only in exceptional, well-defined circumstances (a substantial rise in dumped imports, over a relatively short period of time, which is likely to seriously undermine the remedial effect of the measures[7]).

This proposal requires a legislative change.

2.5.2. Expiry reviews combined with interim reviews

TDI measures are imposed initially for a period of 5 years, after which they may be extended for a further period of 5 years following an expiry review. Further extensions following additional expiry reviews may follow. Given that the provisions on expiry reviews do not allow for amending the level of duties, the measures are either maintained unchanged or repealed. With the passage of time, the market situation may have changed significantly since the measures were originally imposed (e.g. different Union industry, more exporters on the market, new imports from other sources, etc.). Where parties consider that this is indeed the case, they will be encouraged to request an interim review in parallel to the initiation of the expiry review. This will allow the adaptation of the level of the measure, as appropriate, to more accurately reflect the changed market situation.

Therefore, it is proposed that the notice of impending expiry published around nine months prior to the end of the 5 year period of application of measures, pursuant to Article 11(2) and Article 18(4) of the Basic AD and AS Regulations respectively, will highlight this possibility. Moreover, a reminder could be published on the DG TRADE website for the benefit of all stakeholders concerned.

This proposal does not require a legislative change.

2.5.3. Systematic initiation of interim reviews in case relevant anti-competitive behaviour of Union producers has been identified

While it is true that the purpose and legal basis of TDI and EU competition laws are different, anti-competitive behaviour can distort injury findings, e.g. companies participating in a cartel will have higher sales prices than under normal competitive conditions. This, in turn,

[7] Article 10.4 of the Basic AD Regulation, Article 16.4 of the Basic AS Regulation

influences the price analysis which is an essential part of the injury examination pursuant to Article 3(3) and Article 8(3) of the Basic AD and AS Regulations respectively.

The Commission will in future, systematically open an interim review of the AD/AS measures in force where the Commission has found that Union producers have engaged in anti-competitive behaviour. This will only apply where there is an overlap of the product concerned and the time periods. The interim review will examine if and to what extent the existing anti-dumping or anti-subsidy measures are affected by any such anti-competitive behaviour.

This proposal does not require a legislative change.

2.6. Codification

The legislative changes proposed hereunder, which are of a technical nature, are proposed in order to bring EU legislation in line with current practice or developments and recent jurisprudence. Most of the changes have also been recommended in the recent evaluation of the EU's TDI[8].

2.6.1. Registration of imports ex-officio

Article 14(5) of the Basic AD Regulation and Article 24(5) of the Basic AS Regulation provide for the possibility to register imports in the context of an investigation. The purpose of registration is to facilitate the retroactive application of duties, if necessary. This provision is routinely applied in limited circumstances (e.g. new exporter reviews, anti-circumvention reviews). The current texts of Article 14(5) and 24(5) provide for registration following a request by the Union industry. While registration is also possible on the Commission's own initiative this should also be stated in the legislation in the interest of clarity. This amendment would not extend the areas where registration can be used today.

2.6.2. Update Article 11(9) of the Basic AD Regulation and Article 22(4) of the Basic AS Regulation

Article 11(9) provides: *"In all review or refund investigations carried out pursuant to this Article, the Commission shall, provided that circumstances have not changed, apply the same methodology as in the investigation which led to the duty, with due account being taken of Article 2, and in particular paragraphs 11 and 12 thereof, and of Article 17*." The application of this provision in practice has created uncertainty, in particular as to what constitutes a change in circumstances. Furthermore, it has sometimes led to the continued use of clearly outdated methodologies which are no longer applied in other more recent cases. Article 22(4) of the Basic AS Regulation contains similar rules. Therefore, in order to ensure greater coherence across the board, these two provisions should be deleted.

2.6.3. Ensure that exporting producers with a zero or de-minimis dumping margin in an original investigation (as opposed to a review investigation) will not be subject to any review

Article 9(3) of the Basic AD Regulation stipulates, *inter alia*, that individual exporting producers with a dumping margin of less than 2% shall not be subject to an AD duty but *'they*

[8] Independent evaluation of trade defence instruments: http://trade.ec.europa.eu/doclib/press/index.cfm?id=786

shall remain subject to the proceeding and may be reinvestigated in any subsequent review carried out for the country concerned pursuant to Article 11.' In a WTO dispute settlement case between USA and Mexico[9], the WTO Appellate Body ruled that exporters with a dumping margin of less than 2% in an original investigation must not be subject to any subsequent review investigation, as this would amount to a violation of Article 5.8 of the *WTO AD Agreement.* Therefore, Article 9(3) will be modified in order to reflect this ruling. Instead of including such companies in reviews, they may become subject to new investigations pursuant to Article 5 of the Basic AD Regulation. Similarly, Article 14(5) of the Basic AS Regulation will also be amended.

2.6.4. Provide for the possibility of exemptions also for related parties if they are not involved in circumvention practices

The purpose of Article 13(4) of the Basic AD Regulation is to ensure that companies subject to anti-circumvention investigations are exempted from any anti-circumvention measures if they can demonstrate that they are not engaging in circumvention practices. However, this text does not explicitly provide for the exemption of parties who are not engaged in circumvention practices but are related to producers subject to the existing measures. Therefore, it is proposed to change the provisions of Article 13(4) and Article 23(6) of the Basic AD and AS Regulations respectively, in order to clarify the texts in this regard.

2.6.5. Clarify the definition of "a major proportion" of the Union industry

An AD or AS investigation may not be initiated unless complainants represent a "major proportion" of Union producers, i.e. producers must represent at least 25% of the total production of the product concerned in the EU.

The Basic Regulations provide for maintaining the same threshold also for the injury analysis. However, following a WTO dispute settlement ruling of 2011[10], for the purposes of demonstrating injury, a "major proportion" during the investigation does not automatically mean the 25% threshold used for the initiation of an investigation.[11] This aspect must be established on a case-by-case basis.

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9 Appellate Body Report WT/DS295/AB/R of 29.11.2005, Mexico – Definitive anti-dumping measures on beef and rice –complaint with respect to rice.

10 DS397 of 15 July 2011 in European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China.

11 Investigations based on an industry complaint cannot be initiated if complainants do not meet the 25% threshold of initiation (see Article 5(4) of the basic AD Regulation and Article 10(6) of the Basic AS Regulation: No investigation will be initiated when "Union producers expressly supporting the complaint account for less than 25% of total production of the like product produced by the Union industry"). Article 4(1) of the basic AD regulation further stipulates: "For the purposes of this Regulation, the term 'Union industry' shall be interpreted as referring to the Union producers as a whole of the like product or to those of them whose collective output of the product constitutes a major proportion, as defined in Article 5(4), of the total Union production of those products (…)" (emphasis added). Article 9(1) of the Basic AS Regulation contains similar text. However, the Appellate Body in DS397 of 15 July 2011 in European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China ruled that the reference to a major proportion in Article 4(1) of the basic AD regulation in the context of the investigation, cannot automatically be equated with the minimum threshold of 25% set in Article 5(4) of the Basic AD Regulation, which refers to the initiation of a case. Thus, the Appellate Body rejected the linkage between both articles. The same applies by implication for Articles 9(1) and 10(6) of the basic AS Regulation.

Therefore, the reference to Article 5(4) as contained in Article 4(1) of the basic AD Regulation should be deleted. Similarly, the reference to Article 10(8) as contained in Article 9(1) of the Basic AS Regulation should be deleted, in order to comply with this ruling.

2.6.6. Sampling provisions should refer to Union producers and not to complainants, except for the standing test

In cases where a large number of producers, exporters or importers cooperate in an investigation sampling may be applied. The current practice of DG Trade, which is also that required under WTO law, is to select a sample from all Union producers, and not just from complainants (which is what is in fact stated in the basic regulations[12]).

Therefore, the reference to complainants in the provisions mentioned in footnote 12 will be replaced by a reference to Union producers in order to reflect this practice.

2.6.7. Clarify that the investigation of Union interest covers all Union producers and not only complainants

Although the Basic Regulations specifically refer only to "complainants", information for the purposes of the Union interest test is, in practice, accepted not only from complainants but also from other Union producers.[13]

This is in line with the principle, and long-standing practice, that the probable effects of imposing measures or not should be examined for all different types of economic operators in the EU. Therefore, the reference to complainants in the provisions mentioned in footnote 13 will be replaced by a reference to Union producers in order to reflect this practice.

3. CONCLUSION

An update of legislation and procedures is appropriate so as to provide stakeholders with modern tools to address the changes in the environment in which they operate.

The proposals laid out in this document aim at modernising the current TD system. They tackle real problems and offer practical solutions. The different elements address concerns of stakeholders representing producing interests on the one hand, and importing and consumer interests on the other. A number of these proposals, in particular those relating to transparency, will be beneficial for all stakeholders concerned. There are also some proposals that are more beneficial to producers while others are more beneficial to importers and consumers. For example, a more offensive approach against threats of retaliation, fraudulent or structurally distortive trade practices will strengthen our system and contribute to keeping

[12] Article 17 of the basic AD Regulation and Article 27 of the basic AS Regulation allow the possibility to apply sampling in AD/AS investigations. Both regulations stipulate that sampling is carried out "[i]n cases where the number of complainants, exporters or importers, types of product or transactions is large (…)" (emphasis added).

[13] Information for the purposes of the Union interest test is accepted not only from complainants but also from other Union producers. However, Article 21(2) of the Basic AD Regulation and Article 31(2) of the Basic AS Regulation stipulate the following: "In order to provide a sound basis on which the authorities can take account of all views and information in the decision as to whether or not the imposition of measures is in the Community interest, the complainants, importers and their respective associations, representative users and representative consumer organisations may (…) make themselves known and provide information to the Commission. …" (emphasis added). The provisions quoted above do not reflect the current practice of DG-Trade, as they would leave unaddressed the situation of producers in the Union that are not part of the complainants.

production and employment in the EU. More predictability in relation to provisional measures and an optimised review practice will help importers and better satisfy consumers' interests. Taken as a whole, the Commission is convinced that the package is balanced. We are confident that with this modernisation the EU's trade defence instruments will remain a benchmark internationally and provide, *inter alia,* a source of inspiration for the desirable reform of WTO-rules on the subject.

4. TIMELINE

April 2013:

- Adoption by the Commission of this Communication and the legislative proposal. After adoption the legislative proposal will follow the ordinary legislative procedure in Council and Parliament in the course of 2013/14.

- Launch of public consultation on draft guidelines.

July 2013:

- End of public consultation on draft guidelines.

Summer 2013:

- Analysis of responses to public consultation.

The changes in practice proposed in this Communication which are not affected by the legislative changes or the guidelines will be rolled out over the following months.