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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
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Executive summary of the Impact assessment
Accompanying the Regulation of the European Parliament and of the Council
amending Council Regulation (EC) No 1225/2009 on protection against
dumped imports from countries not members of the European Community and
Council Regulation (EC) No 597/2009 on protection against subsidised imports
from countries not members of the European Community

Delegations will find attached Commission document SWD(2013) 106 final.

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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community and Council Regulation (EC) No 597/2009 on protection against subsidised imports from countries not members of the European Community

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1. INTRODUCTION

This impact assessment (IA) lays out how the Commission should tackle different challenges to its trade defence policy, which has not undergone any major reform since 1995. The principal goal of the Commission is to find solutions to streamline the system, to ensure utmost efficiency and effectiveness of the instruments without altering the existing balance among the different interests of stakeholders. On this basis the IA examines three policy options.

Trade defence (TD) is part of the legal order created by the World Trade Organization (WTO) and provided to its members by Article VI of GATT 1994, the WTO Anti-Dumping and Anti-subsidy Agreements. TD can be used only if the relevant conditions are met and an investigation concludes that imported goods are dumped or benefit from a subsidy, and cause or threaten to cause material injury to the domestic industry. Any measures imposed may not exceed the level of the dumping or subsidy found.

Beyond the WTO minimum requirements, the EU framework contains extra elements, known as 'WTO+', i.e. the lesser duty rule (LDR), which allows imposing duties that are lower than the actual dumping or subsidy margin, and the Union interest test. This test involves an examination of the interests of all economic operators in the EU before imposing measures.

In 2006/2007 a reform exercise was launched in form of a green paper, which failed due to a lack of convergence among stakeholders. The main controversial issues were the scope of the Union interest test and the definition of Union industry. However, due to the new challenges that have occurred in the trading environment over the past years, this new initiative was launched in October 2011.

Evidence for the present initiative was drawn from the Commission services' own experience, a study prepared by an external consultant, and the public consultation of stakeholders through an online questionnaire. 310 replies were received from stakeholders such as business associations at European and national level, EU industry, importers, etc.

2. PROBLEM DEFINITION

Various areas of improvement of the system have been identified in order to better cope with the ever-changing trading environment.

(a) Suboptimal transparency and predictability

Transparency and predictability issues may impact on the quality of the measures taken and the treatment of stakeholders. The lack of disclosure prior to the Commission's provisional decision, and the opacity of the work of the anti-dumping and anti-subsidy committees appear problematic in some cases. Certain inequalities in the dissemination of information relating to these committees have also been identified. Other concerns raised relate to more technical issues such as the choice of the analogue country, the calculation of the injury margin, the Union interest analysis, the methodology used in expiry reviews, non-confidential versions of complaints and submissions, or refund procedures.

(b) Retaliation against users of TDI

EU producers using or intending to use TDIs face ever growing threats of direct and indirect retaliation. At present, EU producers fear increasingly 'tit for tat' strategies to which some respond by deciding not to lodge or not to support a complaint, not to cooperate, or even to withdraw from an investigation. Since the current basic regulations do not provide for an obligation to cooperate, the Commission may not have sufficient information to continue the investigation. Retaliation by third countries ranges from countermeasures on the same or different products to personal blackmailing.

(c) Circumvention of measures

Circumvention increasingly risks jeopardising the effectiveness of AD and AS measures. Circumvention practices comprise among others a slight modification of the products or their misclassification, in order not to pay the duty. It is very difficult for the EU industry to detect these practices because the relevant information is confidential and not available in official statistics.

(d) Trade distortive subsidisation and raw material distortions in third countries

Subsidisation occurs when governments provide financial contributions to their companies, which is considered an even more serious form of unfair trading practice than dumping. AS cases are however fewer than AD cases because of the difficulty of finding evidence of subsidization in the third country, and because of the effect of the lesser duty rule in parallel AS and AD cases. Consequently, in practice, third countries often subsidize with impunity.

Concern has also been raised with regard to structural raw material distortions. These distortions can take the form of a subsidy (e.g. provision of cheap energy by the government). However, often they are not countervailable and need to be addressed in an anti-dumping context, e.g. various forms of export restrictions, or trading of raw materials on specialised exchanges which are under state influence and to which access of companies is restricted.

(e) Quality of data available for the decision-making process

TD investigations rely on information provided by interested parties, who must fill in a questionnaire and who must allow Commission investigators to verify their data. The information gathered is often incomplete due to the burdensome and lengthy task of completing questionnaires within a relatively short deadline. SMEs have even greater difficulties in meeting these deadlines and fail to provide relevant information, which may give Commission services an incomplete picture.

(f) Access to TDIs by SMEs

TDIs are not easy instruments for SMEs, because gathering the necessary evidence is costly and resource intensive.

(g) Shortcomings of the review practice

Currently, expiry reviews only allow either repeal of the duty, or else maintaining it at the same level. However, in the case of a second or third expiry review, when measures have been in force for 10 or more years, market conditions may have changed, and a variation in the level of duties may be appropriate.

Another issue to be addressed is the reimbursement of duties collected during the review period, when the review investigation shows that the duty should be repealed.

(h) Review of certain provisions in the basic regulations

Since the last substantive changes to the basic regulations in 1995 several WTO dispute settlement rulings and ECJ rulings have been handed down and need to be reflected in the basic regulations. Also certain issues that have arisen in the practice of TDIs need to be clarified.

(i) Inadequate consideration of value chains

It is claimed that TDIs fail to take into account global value chains. Current legislation (in line with WTO law) defines as Union industry only companies that physically produce in the EU, depriving final stage importers of their label of 'domestic (Union) producer'.

(j) Time taken from the onset of injury to imposition of measures

The time that lapses between the initiation of a case and the imposition of provisional duties is longer in the EU than in some other countries using TD instruments. This, coupled with the complexity of gathering the necessary information, greatly decreases the deterrent effect of TDIs.

(k) Duration of TDI measures

TDI measures normally remain in force for 5 years. They may be prolonged following an expiry review for another 5 year period. There is no limitation on the number of expiry reviews and hence there is no limit to the overall duration of TD measures. EU producers are in favour of the current practice. Importers, however, complain about the lack of justification for measures remaining in force for 10 years or more.

3. OBJECTIVES

(1) General Objectives:

- (a) Contribute to free and fair trade in the world
- (b) Contribute to economic growth, consumer benefits and labour effects
- (c) Restore fair trading conditions

(2) Specific Objectives:

- (a) Create a trading environment in which EU industries (and by implication their workers) are able to compete on the basis of their genuine competitive advantages and make sure that they can make full use of the instruments legally at their disposal to restore a level playing field
- (b) Allow users and consumers to benefit from imports based on the genuine competitive advantages of foreign suppliers
- (c) Increase confidence and awareness in the EU's TDI system among all stakeholders, including among small and medium enterprises
- (d) Improve the level of cooperation of all stakeholders concerned in TDI proceedings
- (e) Preserve the existing balance of interests between producing and importing interests

(3) Operational Objectives:

- (a) Increase transparency and predictability
- (b) Prevent retaliation
- (c) Ensure effectiveness and enforcement
- (d) Facilitate cooperation
- (e) Optimise review practice
- (f) Increase legal certainty (codification)

4. POLICY OPTIONS

Policy Option 1: No change: the first option would be to continue with the current state of affairs, and leave current legislation and practice unchanged.

Policy Option 2: consists of a specific proposed intervention for each individual problem identified (and retained) – with alternative solutions in a limited number of cases.

Policy Option 3: the third option consists of a package of precisely those specific interventions examined under Option 2 where the overall impact is expected to be positive, and which do not change the balance of interest between producers and importers.

5. IMPACT ANALYSIS

Option 1 – no change:

While not changing anything may well be the preferred option of some stakeholders, inaction would also leave all the identified problems unaddressed. This would have a limited negative economic impact. It would result in an increased administrative burden and thus increased workload for all stakeholders concerned. The absence of additional guidance on certain technical issues of an investigation and the need for clarification regarding certain legal issues may lead to an increasing number of legal challenges. Retaliation, a newer phenomenon,

would not be tackled. In the long term, inaction may also have some limited negative social and environmental consequences.

Option 2 – specific interventions for individual problems identified:

The impact of each specific intervention proposed in order to address the individual problems identified is analysed in option 2. In a limited number of cases alternative solutions are proposed and their impact is analysed on an individual basis as well. While the effect of these interventions may be significant as regards the individual specific problems addressed, the overall impact on trade flows of option 2 is expected to be marginal and no noticeable social and environmental effect is expected.

Option 3 - package option:

The package proposed in option 3 contains amongst others, the so-called "**three weeks shipping clause**", i.e. a grace period when duties are not imposed. Importers would have 3 weeks to adapt before the imposition of provisional duties. Furthermore, duties collected during an expiry review investigation would be reimbursed in case of termination of the duty. Both proposals would have a limited positive impact on importers.

The negative impact on Union producers would be limited, since 3 weeks is not sufficient to place many additional orders or engage in massive stockpiling. No negative impact on Union producers is expected from the re-imburement of duties, since measures remain in force throughout the review period.

The **non-application of the LDR** in cases of subsidisation or structural raw material distortions, would increase the duties in such cases and might therefore have an impact on costs for importers and final consumers. At the same time, such higher duties would give some breathing space to Union producers who are affected by unfair practices, and the increased duties should discourage third country governments and exporters from engaging in trade distorting behaviour.

Option 3 envisages **ex officio initiations** and an obligation to cooperate for Union producers in cases of retaliation. This would improve the ability of Union producers to seek protection while reducing their exposure to the economic consequences of such retaliatory behaviour. Regarding SMEs, an improved helpdesk would help them to better understand and deal with TDI proceedings.

Overall, the **effect on trade flows** is expected to be minimal. Any **social and environmental impacts** will also be limited but positive, i.e. option 3 would contribute to limiting job losses in the EU.

6. COMPARING THE OPTIONS

Option 2:

To the extent it addresses the individual problems identified, policy option 2 would meet certain of the operational objectives and partially meet some of the specific objectives. However, since it lacks coherence, it would not make a significant contribution to achieving the general objectives. Such individual approach also bears the risk of creating imbalance between producing and importing interests.

Option 3:

This option contributes fully or partially to each of the general objectives. Besides discouraging operators from engaging in trade distortive practices and retaliatory behaviour, it also helps to restore a level playing field. Finally, it maintains the balance of interests among stakeholders. In a nutshell, option 3 responds to all the specific objectives and makes a significant contribution to achieving all the general objectives.

7. MONITORING AND EVALUATION

In order to evaluate the impact and effectiveness of the present initiative, indicators have been conceived that will allow monitoring the development of the EUs TDI system. It is suggested to use 2013 as a benchmark year, and an evaluation period, covering at least three years after the entry into force of the proposed amendments.