



PROPOSALS FOR A MORE EFFECTIVE TRADE DEFENCE TOOLBOX

CONTEXT

In view of the increasing number of industry complaints and the perception that trade defence processes are slow and measures do not effectively address current market distortions, this paper intends to make some proposals aimed at improving the system while gathering industry consensus.

The current trade defence framework is not facing one isolated weakness, but a combination of structural challenges: increasingly sophisticated state-supported export strategies, complex value-chain distortions, faster circumvention patterns, insufficiently deterring remedies and a significant, widening gap between the speed of market disruption and the speed of institutional response. A modernised EU trade defence toolbox must therefore be comprehensive, combining faster initiation, stronger remedies, better monitoring, more effective enforcement and improved access for fragmented sectors and SMEs while taking into consideration the interests of the industry users.

NEED FOR A PROACTIVE TRADE DEFENCE APPROACH

Overall, EU trade defence needs to become more anticipatory. Investigations and reviews should not only react once injury has already materialised but should also be supported by systematic monitoring of import volumes, import prices, origin switches, short-term export surges, product modifications, changes in routing and downstream displacement effects. Where clear patterns emerge, the Commission should be able to engage with industry, both producers and users of the goods in question, at an earlier stage, assess whether ex officio action is warranted and launch targeted proceedings without placing the full burden of coordination and evidence-gathering on affected sectors.

In parallel, the EU should use existing instruments more effectively, where the legal basis already permits a more robust approach. This applies in particular to the use of facts available in cases of insufficient cooperation, the treatment of particular market situations and distorted input costs, the monitoring of duty absorption and the initiation of anti-circumvention proceedings where trade patterns clearly undermine the remedial effect of existing measures. A more assertive administrative practice does not require any changes to the EU trade defence law, at least not at this stage but it would significantly improve the practical deterrent effect of measures.

CHANGES TO CURRENT PRACTICE

1. Allocation of additional human resources

There should be the immediate allocation of additional human resources to DG Trade. This will allow for quicker starting phase of the investigations and a larger number of investigations being pursued simultaneously into unfair practices, to understand and address changes in state-run trade strategies faster, more flexible and effective use of current instruments. There is a need to

enhance both staffing levels and specialised expertise dedicated to TDIs, with a view to improving investigative capacity, responsiveness, and analytical rigour in trade defence investigations, as well as the management of increasingly complex cases.

Timely initiation and conclusion of investigations are essential to ensure the effectiveness of the instruments and to strengthen the EU's capacity to respond to distortive trade practices.

To facilitate investigations and free additional resources, the Commission could limit the data required by EU producers to calculate the injury margins as well as use expedited expiry reviews if no exporting producer actively cooperates in the investigation. This would highly reduce the burden both on the industry and the Commission side. However, any such effort must not be carried out in such a way that it undermines due process and the rights for affected companies to supply information to the Commission. Speed cannot come at the expense of high-quality investigations.

2. A value chain approach

The Commission should, when appropriate, initiate parallel and simultaneous investigations covering value chain to address similar unfair trading practices at different levels of a value chain.

One possible solution might be to widen the product scope by reducing, where appropriate, the HS digits of the products under investigation.

Users, importers, distributors and retailers are also an essential part of the European economy, play a key role in employment, consumer access, supply chain stability, and overall EU competitiveness. For this reason, investigations must take the Union interest into account, ensure transparency, communication and cooperation with these stakeholders, and grant access to relevant information.

Investigations must ensure early and meaningful participation by downstream manufacturers and users. Their interests, including access to inputs, international competitiveness, employment, investment and resilience of EU supply chains, should be fully reflected in the Union-interest assessment.

3. Duties on incorporated products

The Commission could explore, when appropriate and in consultation with relevant stakeholders, imposing measures not only on the upstream product itself, but also on that part of the downstream product that is made up of the upstream product. This can be done by drafting a notice of initiation that is sufficiently broad.

4. Better SMEs Support

SMEs continue to face significant difficulties both in understanding the procedural framework and functioning of TDIs and, from an operational perspective, in initiating proceedings and handling the technical, evidentiary, and administrative requirements associated with investigations. In this context, there is a clear need for simplification of procedures, improved usability of information tools and the establishment of more structured, continuous, and specialised technical assistance throughout the entire procedural process. Strengthening dedicated SME support structures therefore appears essential to facilitate their effective participation in investigations and reduce the burdens and barriers resulting from the high degree of technical and administrative complexity of trade defence procedures.

The Commission must, not only explain TDI but also assist claimant sectors, dominated by Small and Medium Enterprises, in the filing of complaints and in the completion of the injury questionnaire if they request so. Most importantly, the questionnaire for SMEs selected in the EU sample should be simplified (particularly the "Transaction by Transaction" table) which makes the whole exercise very unpredictable due to the huge difficulty for SMEs to meet this requirement.

To further simplify the process, especially for SMEs but also for other companies, it would be helpful to further standardize the individual stages of the proceedings/investigations, for example in the preparation of an AD claim in the sense of providing checklists, questionnaires, or decision guidance with explanations on the websites of DG Trade or of the Member States.

Additional support to SMEs could be provided by establishing contact points at national level, within the Commission Delegations and with the support of member states.

5. Better monitoring of trade patterns

The Commission must improve the trade monitoring system with the obligation to advise industry and build cooperation with industry on ex-officio investigations which could also help sectors comprised of SMEs as it would limit the burden of industry-wide coordination. A more robust and anticipatory monitoring system would allow early identification of distortions in the markets.

6. More robust use of circumvention rules to address new forms of circumvention practices

Third country exporting producers hit by trade defence measures, or the imposition of unilateral tariffs, are becoming more and more skilled and innovative to quickly circumvent the duties in place.

Boosted by domestic subsidies, third country exporting producers subject to duties, are engaging in “duty offshoring” practices, which consist in establishing a production presence, whether partial (through insufficient finishing operations) outside their home country (in the EU or outside the EU), in order to exclusively bypass a duty (tariff, anti-dumping duty). Duty offshoring is a practice for which there is insufficient due cause or economic justification other than the sole imposition of the duty. There is also evidence of dumping and injury and evidence that the remedial effects of the duty are being undermined in terms of the prices and/or quantities.

Third country exporting producers subject to duties may also circumvent duties by adding insufficient additional processing steps to their products initially subject to duties to avoid the measures and export downstream products in specific and regulated situations. This results in displacing the negative impacts of unfair trading practices, from upstream producers to downstream producers, equally affected by these systemic unfair trading practices. When there is a change in the pattern of trade which consists in an increase of imports of a product immediately derived from products subject to anti-dumping duties and belonging to the same value chain, the Commission should investigate whether this practice qualifies as a new form of circumvention practices falling under Article 13(1) of the Basic Anti-Dumping Regulation. [to be discussed].

7. More extensive consideration of particular market situation and facts available

Increasingly, state-induced distortions affecting key merchandise in one country are transmitted through international value chains and embedded in products exported to the EU from another third country. By suppressing market-based input prices in the intermediary country, these distortions artificially lower the production costs of downstream producers and confer an unfair competitive advantage. The Commission should therefore make more robust use of the particular market situation (PMS) framework to adjust for such distortions where they materially affect the costs of production of the exported product, irrespective of where the underlying distortion originates.

Investigations reveal in many cases that exporting producers did not cooperate to the best of their ability. However, many disclosures confirm that the Commission uses facts available very conservatively to adjust prices or costs.

POTENTIAL CHANGES TO THE LAW

In the short term, in order not to have unnecessary delays, more efficient use of existing tools must be ensured. In the medium to long term, changes to the law might be considered along the following lines.

1. Improvement of the safeguard instrument

Allowing the EU industry to file a safeguard complaint would streamline the procedures – rather than having to provide the data via Member States.

In the future, a reform of the voting system in safeguards procedures could perhaps be warranted: the current rule of a qualified majority voting for the imposition of safeguard duties adds another obstacle to a procedure that already asks the concerned industries to meet very strict conditions. As done for the anti-dumping instrument, the voting rule could change in blocking a proposal from the Commission if a qualified majority votes against the Commission's proposal.

2. Assess the potential removal of the Lesser Duty Rule

The effect of the lesser duty rule (LDR) is that only the share of the dumping margin corresponding to the difference between the dumped price and the European target price – which is the main reference to determine the “injury margin” – is tackled by the definitive anti-dumping duties, the remaining share of the dumping margin being supposed to be absorbed by EU producers. Depending upon the cases, the target price can be the actual EU price – provided it is profitable – or a reconstructed price based on costs and a profit margin. In both instances, the removal of the LDR would be economically justified. Due to the pressure applied by dumped prices on EU producers, European (target) prices are not fully representative of the injurious effects of the dumping practices. Indeed, these European prices have already been pushed down by the presence of dumped products on the EU market which prevents EU producers from reflecting any increase in production costs if they do not want to lose their respective market share even faster to the benefit of dumped products. Therefore, not only is the lesser duty rule not required under the WTO, but it may also make no economic sense in some cases. If the EU is the only one in the world applying the LDR, its application magnifies the existing unlevel playing field.

Consequently, in cases where the dumping margin is higher than the injury margin, and only in these cases, a solution could be to remove the need to make a comparison between the dumping margin and the injury margin and remove the lesser duty rule.

The lesser duty rule could automatically not be applied where there is evidence of significant overcapacities in the countries of origin of the dumping.

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