

## Modernising trade defence instruments

Dumping and subsidising of exports by third countries are unfair trade practices that may cause injury to the importing country. World Trade Organization (WTO) law allows to counter such injury by imposing specific duties known as trade defence instruments (TDIs). To ensure EU TDIs are appropriate to tackle new challenges to international trade, such as raw-material distortions in exporting countries, the Commission proposed to modernise the EU's basic Anti-Dumping (AD) and Anti-Subsidy (AS) Regulations. Parliament is due to vote during its May II plenary session on the early second-reading agreement reached in trilogue negotiations.

### Commission proposal

Since 1994, when EU TDIs were enacted to transpose the WTO legal framework into EU law, they have only been amended to incorporate WTO case law. The EU now needs to address some shortcomings seen in TDIs in terms of procedure and substance, to keep pace with a rapidly evolving trade environment.

In April 2013, the Commission adopted a [proposal](#) to modernise the EU [AD](#) and [AS](#) Regulations (codified in 2016). The reform was intended to enhance the transparency and predictability of investigations, increase the effectiveness and enforcement of AD/AS measures and tackle the risk of retaliation. A key element of the proposal was the waiver of the 'lesser duty rule' (LDR) in cases of circumvention, subsidisation and structural raw-material distortions in exporting countries. The LDR involves comparing the dumping and the injury margins, and using the lower of the two to determine the AD duty. The LDR is a 'WTO plus' rule not used by major parties like China and the USA, but the EU has applied it systematically. Its partial removal in AD cases would lead to higher duties on imports from countries with distorted raw-material markets.

### Council position

In the Council, discussions relating to this proposal were stalled from 2013 to 2016. In particular, more 'free-trade'-oriented EU Member States and/or those fearing possible retaliation preferred keeping the LDR in its current form. In December 2016, the [Slovak Presidency](#) was finally able to assemble EU Member States around a negotiating position to enter into trilogue (i.e. interinstitutional) negotiations with Parliament.

### European Parliament position

Parliament had adopted its [position](#) on the proposal in 2014. It rejected the proposals on the pre-disclosure of provisional AD/AS measures and reimbursement of duties paid during expiry reviews, if these lead to the termination of these measures. It called for the waiver of the LDR in AD cases if structural raw material distortions are found to exist in exporting countries, if social and environmental standards of exporting countries are insufficient or if the complainant represents a diverse and fragmented industry, largely composed of SMEs. It introduced the right of trade unions to lodge complaints jointly with EU industry, and afforded them interested party status. It proposed to extend the scope of the legislation to cover exclusive economic zones and the continental shelf, while also calling for the upgrading of the SME Help Desk and to shorten the investigation periods compared to the length established in the proposal.

The December 2017 [provisional text](#) reflects an important agreement on a more focused application of the LDR for AD cases, and a compromise on other issues. The INTA committee [approved](#) it on 23 January 2018 by 29 votes to 5, with 3 abstentions. The Council formally [adopted](#) its first reading on 16 April 2018, Parliament will debate and vote on INTA's recommendation for a second reading during the May II session.

Second-reading report: [2013/0103\(COD\)](#); Committee responsible: INTA; Rapporteur: Christofer Fjellner (EPP, Sweden). For more information, see our '[EU Legislation in Progress](#)' briefing.

