

# Modernising trade defence instruments

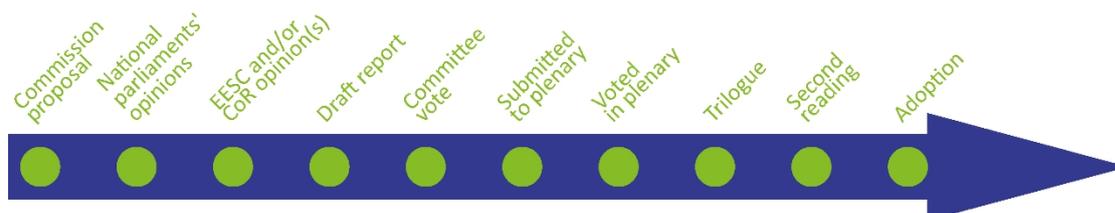
## OVERVIEW

Trade defence instruments (TDIs) play a vital role in countering unfair trade practices from third countries and in levelling the playing field for EU companies, notably in times of mounting global overcapacity in a number of sectors. In April 2013, the Commission adopted a proposal to modernise the EU's basic Anti-dumping and Anti-subsidy (AD/AS) Regulations. The reform was intended to enhance the transparency and predictability of investigations and increase the effectiveness and enforcement of AD/AS measures. Parliament adopted its position on the proposal in 2014, but the procedure was deadlocked in the Council until November 2016. Following interinstitutional negotiations, a political agreement was achieved in December 2017. After the Council's adoption of its first-reading position in April 2018, the text was formally adopted by Parliament in May 2018.

In 2016, the legislative procedure on the reform of the methodology for calculating AD duties was launched as a second pillar of the TDI reform. See also our 'EU Legislation in progress' briefing on that proposal: [Protection from dumped and subsidised imports](#).

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

<i>Committee responsible:</i>	International Trade (INTA)	COM(2013) 192
<i>Rapporteur:</i>	Christofer Fjellner (EPP, Sweden)	10.4.2013
<i>Shadow rapporteurs:</i>	David Martin (S&D, UK)	2013/0103(COD)
	Sander Loones (ECR, Belgium)	Ordinary legislative procedure (COD)
	Marietje Schaake (ALDE, the Netherlands)	(Parliament and Council on equal footing – formerly 'co-decision')
	Helmut Scholz (GUE/NGL, Germany)	
	Yannick Jadot (Greens/EFA, France)	
<i>Procedure completed.</i>	Regulation (EU) 2018/825 <a href="#">OJ L 143, 7.6.2018, pp. 1-18</a>	



## Introduction

In April 2013, the European Commission adopted a proposal to modernise the EU's basic Anti-dumping (AD) and Anti-subsidy (AS) Regulations. The reform purported to enhance the transparency and predictability of investigations and increase the effectiveness and enforcement of AD/AS measures, as well as to enable the EU to deal more efficiently with the threat of retaliation.

Parliament adopted its [position](#) on the proposal in 2014. However, until December 2016 the 'modernisation file' was gridlocked in a Council divided on key aspects of the reform. Since 2015 the issue has been climbing the EU agenda owing to the pressing issue of global overcapacities in sectors such as aluminium, cement, [steel](#), and others. Moreover, the [debate](#) on market economy status (MES) for China reached a peak in 2016. Granting MES to China would have modified the calculation of AD duties for dumped goods from China. In December 2016, the Slovak Presidency succeeded in gathering Member States behind a compromise on crucial aspects of the file, paving the way for trilogues between the Commission, Council and Parliament. A provisional interinstitutional agreement was reached in December 2017. After the Council's adoption of its first-reading position in April 2018, the text was formally adopted by Parliament in May 2018.

In 2016 the Commission added a second legislative [proposal \(2016/0351\(COD\)\)](#), the [methodology file](#), to the TDI reform initiative. This legislative proposal was aimed at modifying the methodology for calculating AD duties, so as to tackle the issue of MES for China and to bring EU legislation into line with WTO law after the expiry in December 2016 of certain provisions of China's 2001 WTO Accession Protocol. The legislative process for the methodology file was completed after an interinstitutional agreement was struck in October 2017, and both Parliament and the Council formally approved it subsequently. The new methodology for the calculation of AD duties is set out in [Regulation \(EU\) 2017/2321](#) which entered into force on 19 December 2017.

## International trade law

The main legal framework for the imposition of AD/AS duties under international trade law consists of the [Agreement](#) on Implementation of Article VI of the 1994 General Agreement on Tariffs and Trade (GATT), also referred to as the Antidumping Agreement (ADA), and the [Agreement](#) on Subsidies and Countervailing Measures (ASCM) adopted during the Uruguay round negotiations that led to the Marrakesh Agreement establishing the WTO. WTO law sets minimum requirements for the application of TDIs.

The EU's current legislation transposing this WTO legal framework is set out in the basic AD [Regulation \(EU\) 2016/1036](#) and the basic AS [Regulation \(EU\) 2016/1037](#) (both

### Trade defence instruments (TDIs)

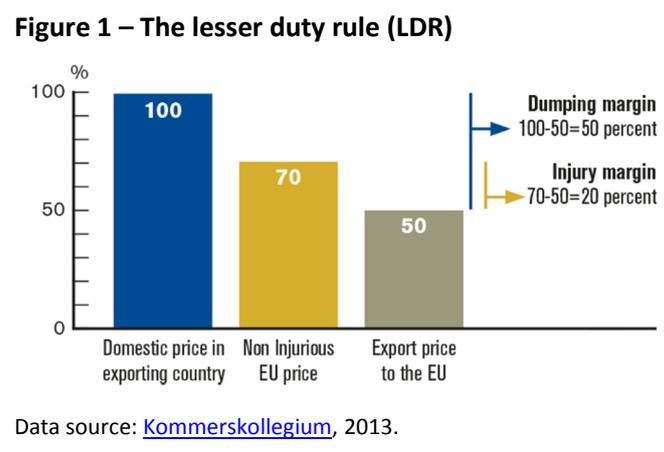
The **anti-dumping (AD) instrument**, the most frequently used [TDI](#), addresses imports of goods from non-EU countries sold at prices lower than the 'normal value', if they harm or threaten to harm the EU industry concerned. The second most commonly used TDI, the **anti-subsidy (AS) instrument**, aims to offset the price-distorting effect on imports of subsidies granted by non-EU exporting countries. [According to the Commission](#), at the end of 2016, 90 definitive AD and 12 definitive AS measures were in force, and AD and AS duties accounted for 0.27 % of total EU imports. The third TDI is the **safeguard instrument**. Global safeguard measures can be imposed on account of a sudden and sharp [surge](#) in imports causing serious injury to domestic industry, without the need to provide evidence of unfair practice. Provisional measures can be imposed much faster and they apply equally to all sources of the imports concerned. The safeguard instrument is however not subject to the current legislative reform process.

codified in 2016), as amended by [Regulation \(EU\) 2017/2321](#) of 12 December 2017, following adoption of the 'methodology file' of the two-pronged TDI reform.

### Existing situation

As the EU's TDIs, enacted in 1994 to transpose the WTO legal framework into EU law, have seen only amendments to incorporate WTO case law, shortcomings in terms of procedure and substance have been identified, which the EU must address to keep pace with a rapidly evolving trade environment. According to current EU procedures, EU producers must lodge a complaint in order to initiate AD or AS investigations. Under WTO law, the EU must

prove i) the existence of dumping/subsidisation, ii) injury to the EU industry, and iii) causation between the existence of an unfair practice (dumping or subsidy) and the injury experienced by industry. Moreover, WTO law requires that the AD duty to be imposed be no higher than the dumping margin (difference between 'normal value'<sup>1</sup> in the country of origin and the export price). In line with the principle of proportionality, EU law applies what is known as the **lesser duty rule (LDR)**, which compares the dumping margin and the injury margin (i.e. the level of duty required to remove the injury), and takes whichever is lower to offset the injury. If the injury margin is lower than the dumping margin, the EU's AD/AS measures will be based on the injury margin as the latter is considered sufficient to remove the injury (see first example in Table 1). By contrast, if the dumping margin is lower than the injury margin, the duty is set at the level of the dumping margin as requested by WTO law (see second example in Table 1).



**Table 1 – Operation of the lesser duty rule (LDR) in practice**

Case examples	Dumping margin	Injury margin	Dumping duty applied to firm
Certain aluminium road wheels (China) <sup>2</sup>	67.6 %	22.3 %	22.3 %
Monosodium glutamate (China) <sup>3</sup>	39.7 %	63.7 %	39.7 %

Source: [Calculation of dumping margins](#), L. Puccio, EPRS, European Parliament, May 2016, p. 4.

EU law mandates the application of a [Union interest test](#) to ensure that the measure to be introduced is not contrary to the overall interest of the EU. The Union interest test and the LDR go beyond WTO obligations and are known as 'WTO+' elements of EU law.

### The LDR in other jurisdictions and its implications

Since the LDR is a WTO+ rule, practice varies across WTO members, with the majority of them applying the LDR either consistently based on mandatory domestic law provisions or on a case-by-case basis in line with discretionary domestic law provisions.

**Table 2 – LDR in other jurisdictions**

Countries mandatorily applying the LDR on the basis of mandatory provisions in domestic law	Countries with discretionary LDR provisions in their AD legislation and applying them in practice
Brazil, India, Israel	Argentina, Australia, Canada, Colombia, New Zealand, Peru, South Africa, Turkey

Source: [Modernisation of the EU's Trade Defence Instruments](#), E. Vermulst, Proceedings of a workshop, European Parliament, 2014, p. 23.

By contrast, China and the USA [make no use](#) of the lesser duty rule, and impose full duties. Although there are other differences in the methodology of calculating AD duties between the EU and the USA<sup>4</sup> the non-application of the LDR contributes significantly to overall higher AD duties imposed by the USA.

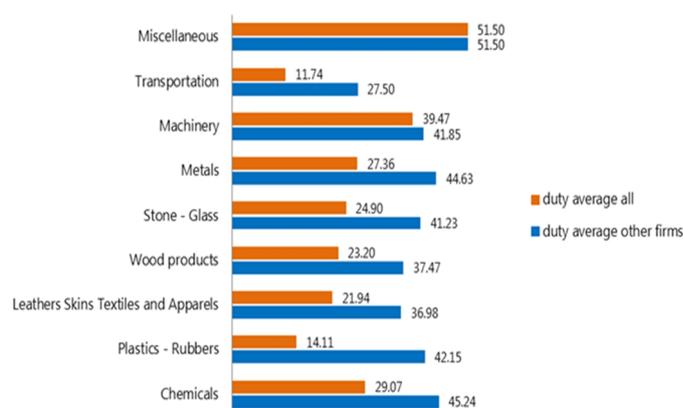
Figures 2 and 3 show the different levels of EU and US AD duties on Chinese imports in various sectors. Based on data from the World Bank's Global Anti-Dumping Database two different average AD duties were computed: the first average ('duty average all') considers both non-market economy (NME) and firm-specific duties. The second average ('duty average other firms') takes into account the residual dumping duty value (i.e. the NME value that applies to any firm not granted a firm-specific duty).

The diversity of practices of WTO members as regards the application of the LDR has given rise to two contrasting arguments on the proposed modification of the current EU provisions for the application of the LDR. Some [experts](#) have argued that the EU's consistent application of the LDR carries the risk of diverting dumped goods in cases where AD/AS duties are applied on like products from destinations like the USA – whose AD duties are generally higher – towards the EU. In times of vast global overcapacity in several sectors, this appears to be a relevant scenario to consider. Other [experts](#) have claimed that higher EU AD duties could harm the EU industry's competitiveness and exports at a global level. Still other [experts](#) have raised concerns about negative reactions from major EU trading partners applying the LDR as well as about WTO compatibility in terms of the LDR's non-discriminatory application.

### Preparation of the proposal

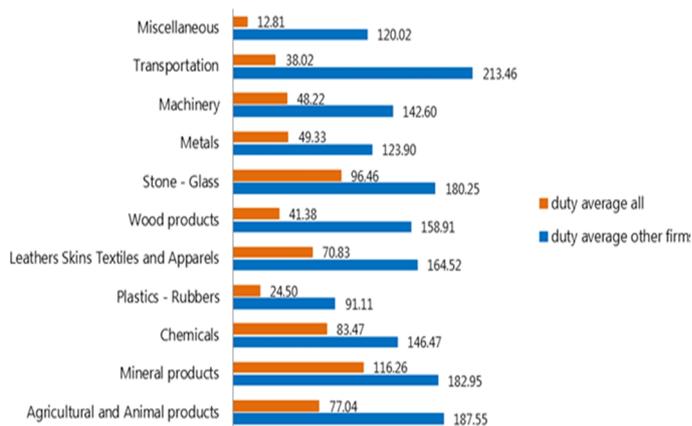
In 2006 the Commission launched a [green paper](#) for a [public consultation](#) on 'Europe's trade defence instruments in a changing global economy'. Owing to the [large diversity](#) of stakeholders' views, the reform exercise was abandoned. One major issue was the scope of the Union interest test and the definition of a Union industry, in particular the question of how far users, traders and consumers need to be taken into account alongside import-competing EU producers.

**Figure 2 – EU AD cases against China (1981-2013), average duty per sector**



Data source: Chad P. Bown, [Global Antidumping Database](#), World Bank, June 2015.

**Figure 3 – US AD cases against China (1989-2014), average duty per sector**



Data source: EPRS from Chad P. Bown, [Global Antidumping Database](#), World Bank, June 2015.

In 2011 the Commission proceeded with a new reform initiative based on the results of an external [evaluation study](#) on the EU's TDIs. In 2012 a new [public consultation](#) was carried out. It generated more than 300 [replies](#), mainly from EU [producers](#), but also from importers, business associations and national governmental authorities. Throughout 2012 the Commission organised a number of [meetings](#), [conferences](#) and [civil society dialogues](#). The Commission's [impact assessment accompanied](#) the legislative proposal of April 2013, and Parliament's secretariat published an [initial appraisal](#) in October 2013.

### The changes the proposal would bring

The Commission [proposal](#) focused on amendments aimed, i) at increasing **transparency and predictability**; ii) enhancing the Commission's ability to deal with the threat of **retaliation**; iii) improving the **effectiveness and enforcement** of AD/AS measures; iv) optimising **review** practice; and v) **codifying** certain practices mandated by the case law of the Court of Justice of the EU and the WTO dispute settlement mechanism. Moreover, the Commission intended to adopt **guidelines on administrative practices** regarding major aspects of the investigation procedure that would not be subject to legislative amendments and are set out in its accompanying [communication](#).

#### Increasing transparency and predictability

Currently, the EU may impose AD or AS duties at any time between 60 days and [15 months](#) from the official announcement date of an investigation. If it is decided that duties will be imposed, this will only be announced one day before they come into effect. To increase predictability for EU importers, the Commission proposed, i) limited pre-disclosure to interested parties – including a summary of the proposed measures and the dumping/subsidy and injury margin calculations for each cooperating exporter and the Union industry – two weeks before the imposition of provisional measures. Parties would be granted a deadline of three working days to provide comments on the accuracy of the calculations.

The Commission furthermore proposed, ii) the non-imposition of provisional duties during a two-week period following the pre-disclosure. This rule has also been referred to as the [shipping clause](#), the idea being to exclude goods from the proposed measures if they have already been shipped. It should allow importers who had placed goods in transit prior to the AD investigation to pass through customs clearance without paying the AD/AS duties that will be imposed after the two weeks' notice has elapsed;<sup>5</sup> and iii) an advance notice in the event of non-imposition of provisional measures, two weeks ahead of the nine-month deadline to impose provisional measures.

#### Enhancing the EU's capacity to deal more effectively with threats of retaliation

In order to protect EU producers considering lodging a complaint against the threat of retaliatory measures by exporting countries, the Commission proposed to consider the threat of retaliation as 'special circumstances' which under the current legal framework allow it to initiate investigations of its own (*ex officio*) without an official request from EU industry, if there is sufficient *prima facie* evidence of injurious dumping/subsidisation. For the purpose of *ex-officio* investigations, the Commission proposal introduced an obligation for Union producers of a 'like product' to cooperate. Such an obligation would be necessary in order to ensure that Commission staff had access to the data required for the investigation.

**Effectiveness and enforcement**

The EU often exercises self-restraint when imposing a lower level of AS or AD duties on account of the LDR. The Commission proposed to remove the LDR so as to level the playing field for EU industry, i) in AS cases, ii) in cases where 'structural raw material distortions' exist, and iii) in anti-circumvention cases.<sup>6</sup>

In the event of 'structural raw material distortions', for example when downstream EU producers are denied access to necessary raw materials and thus put in a disadvantageous competitive position by a foreign government's export restrictions, such self-restraint appears contradictory. The same holds for subsidised exports to the EU, where lower AS duties may even encourage governments to continue subsidising their economic operators.

Compared with peer countries that use TDIs, the EU takes the longest time to impose provisional measures: nine months from the date of initiation. Australia, Canada, India, and the USA routinely impose provisional measures within five months or earlier. EU producers have therefore claimed that this long time-frame results in EU TDIs having a low deterrent effect.<sup>7</sup> In its accompanying [communication](#), the Commission thus pledged to seek to reduce, in general, the time-frame for deciding on provisional measures by two months but fell short of making this a legislative proposal.

**Optimising the review practice**

The Commission proposed that duties collected during expiry review investigations would be reimbursed whenever the review concludes that the measures are not to be maintained.

**Codifying the case law of the Court of Justice of the EU and the WTO**

In recent years the Court of Justice and General Court of the EU and the WTO dispute settlement body have handed down rulings that were set to be codified, as occurred in 2016/2017. The changes concerned the definition of Union industry, the consequences for exporting producers found not to be dumping or to be dumping at *de minimis* levels in an original investigation, how to tackle changed circumstances in review investigations, the treatment of related companies in anti-circumvention investigations, the conditions for the registration of imports and the basis for choosing a sample of Union producers.

**Publication of guidelines**

The Commission also intended to adopt guidelines on four core elements of AD/AS investigation: the calculation of the injury margin, the choice of the [analogue country](#) in investigations concerning imports from non-market economies, the [Union interest test](#), and expiry reviews.

According to the Commission, these guidelines would result from administrative experience. However, the plan to adopt guidelines before a legislative act on the modernisation of TDIs has raised issues of timing and content among Member States and Members of the European Parliament. Guidelines on the Union interest test in particular were considered as defining essential elements of that concept, and hence to be a matter for the legislative, rather than executive power. Ultimately, the Commission [did not pursue](#) the idea of adopting guidelines before a legislative act.

**Advisory committees**

In this area of exclusive competence for the European Union, neither the European Economic and Social Committee (EESC) nor the Committee of the Regions (COR) are

consulted. However, the EESC discussed aspects of the TDI reform in a 2016 [own-initiative opinion](#) on the impact on key industrial sectors (and on jobs and growth) of the possible granting of market economy treatment to China (for the purpose of TDIs) and in an [opinion](#) on the Commission communication [Steel: Preserving sustainable jobs and growth in Europe](#). The EESC contended, inter alia, that 'in the absence of international competition rules, trade defence instruments are essential for tackling unfair trade practices', and encouraged 'the Commission to significantly enhance and accelerate the effectiveness and efficiency of existing trade defence instruments'.

### National parliaments

Since the proposal is based on Article 207(2) of the Treaty on the Functioning of the European Union (TFEU), which concerns the common commercial policy, an area of exclusive EU competence as defined in Article 3(1)(e) TFEU, it is not subject to a [subsidiarity check](#) by national parliaments.

### Stakeholders' views

*This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.*

Stakeholder views on specific elements of the TDI reform can be found in the '[Summary of contributions](#) to the European Commission's 2012 public consultation'. The Commission reports that efforts to strengthen the fight against retaliation and the role of *ex-officio* investigations were well received among stakeholders, while the proposal to reimburse duties collected during expiry review, in the event that measures are not prolonged, received mixed reactions. While importers were in favour of such a move, others saw this as favouring importers twice, as the duties had most probably already been passed on to customers. More than 75 % of respondents were in favour of refraining from applying the LDR in cases of fraud, circumvention or subsidisation.

After the Council compromise in November 2016, several stakeholders from EU industry reaffirmed their positions suggesting continued major divisions among them on the scope of the LDR and the related definition of raw material distortions. [Aegis Europe](#), for example, highlighted the need for a broader scope for the removal of the LDR, advocating an open-ended definition of raw material distortions. [IndustriAll](#) deemed the Council's conditions for the lifting of the LDR too strict. The [Foreign Trade Association](#) (now Amfori), by contrast, criticised the definition of raw material distortions as being too wide, and the EU industry target profit<sup>8</sup> of 5 % as too high. Both elements would in practice amount to a removal of the LDR which would damage EU importers. In the same vein, [Orgalime](#) rejected restrictions to the LDR, in addition to opposing any extension of the *ex-officio* procedures.

Following the interinstitutional agreement in December 2017, there have been only a few stakeholder reactions. The European association of non-ferrous metals producers and recyclers ([Eurometaux](#)) welcomed the compromise. Facing a [looming threat](#) from market distortions in major third countries, it was looking forward to the Commission-waiving the LDR for imports affected by raw material distortions. However, it considered regrettable that the 17 % threshold for applying this waiver- would not be applied to 'collective distortions'. Moreover, it cautioned that the three-week pre-disclosure period could give importers too much advance warning to react to decisions and thus avoid adverse consequences.

## Legislative process

In April 2013, the Commission adopted a [proposal](#) to modernise the AD and AS instruments. Parliament [voted on amendments](#) in February 2014 and adopted its [position](#) in April 2014 (during the previous parliamentary term). At that time, Parliament was ready to negotiate with the Council to come to a first-reading agreement, but the Council was not able to agree on a common position. Meanwhile the [Commission](#), and Parliament, in a [May 2016 resolution](#) and a [July 2016 resolution](#), reiterated the importance of moving forward on the subject. Parliament's Committee on International Trade (INTA) held workshops for Members and stakeholders in [2012](#) and [2013](#).

### Parliament's position

In its [position](#) of April 2014, Parliament rejected the idea of a two-week **pre-disclosure** to parties prior to the imposition of provisional measures, in an attempt to make impossible any form of speculative imports (i.e. goods that are imported shortly before the imposition of duties – and then stored inside the EU to be sold later, effectively circumventing the effect of AD/AS duties).

Parliament also opposed the **reimbursement of duties** collected during expiry reviews in the event that, after the reviews, duties were not to be maintained.

It argued that the non-application of the **lesser-duty rule (LDR)** in AD cases should be extended to a variety of situations, such as when EU complainants represent a diverse and fragmented industry, largely composed of SMEs, when the exporting country provides subsidies to the exporting producers; or when the exporting country fails to have sufficient **social and environmental standards**. The benchmarks for social standards would be the core International Labour Organization (ILO) conventions to be set out in an annexe to the regulation, and those for environmental standards would be the multilateral environmental agreements (MEAs) to which the EU is party. However, the LDR would still apply where, although 'structural raw materials distortions' have been found to exist, the exporting country is considered a least-developed country (LDCs) on the basis of [Regulation No 978/2012](#).

Parliament called for the extension of **ex-officio investigations** to cases where the EU industry is diverse and fragmented and largely composed of SMEs.

Parliament introduced amendments to the legislative proposal regarding the strengthening of the supportive role of the **SME Help Desk**; these went beyond the proposal made by the Commission in its [communication](#). The Commission had proposed to upgrade the SME Help Desk without legislative change which would not have led to a legally binding commitment.

To enhance transparency, Parliament called on the Commission to share with the European Parliament and the Council, in its **annual report**, additional information relating to the application and implementation of the AD/AS Regulations as part of an interinstitutional dialogue, including on the use of TDIs by third countries targeting Union industry, and the activities of the Hearing Officer and the SME Help Desk.

Moreover, Parliament called on the Commission to adopt provisional measures within 6 months and to reduce the overall **duration of investigations** wherever possible to 9 but in any case to 12 months for AD, and wherever possible to 9 but in any case to 10 months for AS investigations.

It also called for more transparency including regarding common undertakings (amicable offers) with non-EU businesses and for the consideration of **social and environmental standards** to be applied to them.

Parliament called for the use of dumped/subsidised goods linked to resource exploration/extraction in Member States' **continental shelves** or **exclusive economic zones (EEZ)** be treated as an import under this regulation.

Parliament opposed the Commission proposal to publish **guidelines** or 'any document aimed at clarifying the established practices of the Commission' before the TDI reform comes into force on the basis of existing powers without amendment to the proposed regulation. Instead, Parliament introduced an amendment requiring that the Commission publish such guidelines only after the entry into force of the new regulation and only after proper consultation with Parliament and the Council.

### **Council position**

In the Council, discussions relating to this proposal were stalled for more than three years. In particular, more 'free-trade' oriented EU Member States and/or those fearing possible retaliation had preferred to stay with the current application of the LDR.

On 13 December 2016, the Slovak Presidency was able to gather the Member States' representatives in [Coreper](#) behind a Council negotiating position (as envisaged by the European Council meeting in [October 2016](#)) giving a mandate to the Presidency to enter into trilogue negotiations with Parliament.

The Council negotiating position, among other things, provides for a period of **pre-disclosure** of four weeks after the publication of information concerning the imposition of provisional AD and AS measures during which provisional duties will not yet be applied.

As for AD cases, it modifies the definition of raw materials distortions in the context of the **LDR** by adding two new thresholds ([deviations](#) from- the LDR can be triggered if it is found that the raw material distortions, including energy, represent at least 27 % of the total cost of production of the product concerned, and taken individually at least 7 %); this provision would limit deviations from - the LDR to cases where (price-distorted) raw materials account for a substantial share in production costs. The Union interest test would apply, so that the modified LDR does not undermine the overall interest of the EU. The Council position contains additions with respect to the calculation of the injury margin by defining a **minimum target profit** (5 %).

It agrees with the Commission proposal to lay down provisions enabling importers to be **reimbursed duties** that were collected during expiry reviews but are ultimately not maintained.

The Council position slightly shortens the **investigation period**, but by less than proposed by Parliament.

Finally, it states that **ex-officio investigations** should be started, if a threat of retaliation is likely.

In December 2016, following the Council's [agreement](#) on a negotiating position, the Commission [announced](#) its readiness to facilitate a compromise between the European Parliament and the Council. On 28 February 2017, INTA took the decision to enter into informal **trilogue negotiations** on the basis of the mandate adopted by plenary on 5 February 2014 with the aim of reaching an early second-reading agreement with the

Council. At the eighth trilogue meeting, on 5 December 2017, the three delegations [arrived](#) at a [provisional agreement](#). EU ambassadors [confirmed](#) the outcome of the final political trilogue, on 20 December 2017.

### The provisional agreement

The provisional agreement includes a **pre-disclosure** period of three weeks, conditional on provisions to prevent stockpiling (the Commission is obliged to register goods during the pre-disclosure period). No duties will be imposed during this period. There will be a review of the three-week notice provision, two years after entry into force, which could entail adjustments if significant stockpiling is found.

The EU will be able to set higher AD tariffs owing to the **LDR reform** based on the introduction of a single threshold of raw material distortions. The LDR will be adapted in AD cases if raw material distortions are found to exist; in such cases, raw materials, whether unprocessed or processed, including energy supplies, for which a distortion is found must account, taken individually, for not less than 17 % of the cost of production of the product concerned. **Social and environmental standards** will be considered as a cost factor. A list of ILO conventions will be attached to the regulation as an annex. There is a comprehensive but adaptable definition of raw material distortions. The Commission may amend and expand the items constituting the definition based on the [OECD's Inventory on export restrictions on industrial raw materials](#). In AS cases, duties will correspond to the subsidy margin, but if the Union interest so requires, AS duties will be the amount adequate to remove the injury, if this is lower than the subsidy margin.

**Duties** collected during expiry reviews that result in the expiry of the measure will be **reimbursed** on request from national customs authorities.

As for **ex-officio investigations** in the event of a threat of retaliation, the non-operative text (recital 6) provides that 'special circumstances should include threat of retaliation by third parties'. The operative text clarifies that in case of *ex-officio* investigations, EU industry is required to cooperate, although no penalty for failure to cooperate is set out.

As for the **duration of investigations**, AD investigations are shortened from a maximum duration of 15 to 14 months. The duration of AS investigations remains unchanged at 13 months.

**Provisional measures** in AD probes need to be imposed within 7 to 8 months, down from 9 months in the current legislative text. For AS probes, the current 9 months will remain unchanged.

Costs for EU industry arising from the implementation of international **social and environmental commitments** will be reflected in the calculation of definitive duties. New rules including a **minimum target profit** above 6 % will apply for the calculation of the injury margin.

**Common undertakings** (amicable offers) with non-EU businesses will be subject to compliance with core international labour and environmental standards by the exporting country.

**Trade unions** i) will be able to request investigations jointly with Union industry, and ii) are recognised as an interested party during investigations and the Union interest test.

An upgraded **SME Help Desk** will provide assistance for SMEs.

The Commission may extend the application of the regulation to imported dumped/subsidised goods linked to the exploration/extraction of natural resources and in a Member State's **continental shelf** or **exclusive economic zone** (EEZ). The Commission is to adopt an implementing act laying down the conditions for related duties and procedures. This provision is intended to close the 'maritime loophole'.

INTA [approved](#) the provisional agreement in its meeting of 23 January 2018 by 29 votes to five with three abstentions. The Council formally [adopted](#) its first-reading position on 16 April 2018. INTA [voted](#) on its [recommendation for second reading](#) on 17 May 2018, supported by 30 votes to four (with two abstentions). Since no amendment to the agreed text was tabled, on 30 May 2018 the EP [approved](#) it in second reading without a vote in line with its [Rules of Procedure](#) (Rule 67a(5)). The agreed text entered into force as [Regulation](#) (EU) 2018/825 one day after its publication in the Official Journal on 7 June 2018.

### EP supporting analysis

Maniaki-Griva A., [European Commission proposal on the modernisation of trade defence instruments](#), Initial appraisal of a European Commission Impact Assessment, EPRS, European Parliament, October 2013.

[Modernisation of the EU's Trade Defence Instruments](#), Proceedings of a workshop, Policy Department for External Policies, European Parliament, 2014.

[Towards a reform of the EU's trade defence instruments?](#), Proceedings of a workshop, Policy Department for External Policies, European Parliament, 2013.

[The Reform of the EU's Trade Defence Instruments](#), study, Policy Department for External Policies, European Parliament, July 2008.

Puccio, L., [Calculation of dumping margins](#), EPRS, European Parliament, May 2016.

### Other sources

De Bièvre D., and Eckhardt J., [Interest groups and EU anti-dumping policy](#), *Journal of European Public Policy*, April 2011, pp. 339-360.

Hofmeister F., [Modernising the EU's Trade Defence Instruments: Mission Impossible?](#) in Hermann et al., [Trade Policy between Law, Diplomacy and Scholarship](#), Springer, 2015, pp. 365-376.

[Protection against dumped or subsidised imports from countries not members of the European Community](#), Legislative Observatory (OEL), European Parliament.

## Endnotes

- <sup>1</sup> The normal value is usually based on the prices paid or payable, in the ordinary course of trade, by independent costumers in the exporting country or on the full cost of production plus a reasonable profit (Article 2 ADA).
- <sup>2</sup> Council Implementing Regulation (EU) [No 964/2010](#) of 25 October 2010, imposing a definitive antidumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium road wheels originating in the People's Republic of China, (2010) OJ L 282/1.
- <sup>3</sup> Council Regulation (EC) [No 1187/2008](#) of 27 November 2008 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of monosodium glutamate originating in the People's Republic of China, (2008) OJ L 322.
- <sup>4</sup> L. Puccio, [Calculation of dumping margins](#), EPRS, European Parliament, May 2016.
- <sup>5</sup> Some [industry stakeholders](#) have however claimed that this period is too short in respect to goods shipped from Asia.
- <sup>6</sup> Anti-circumvention cases are investigations triggered by practices (such as trans-shipment or moving final assemblies) which can circumvent the application of existing AD or AS duties. See: L. Puccio, A. Erbahar, [Circumvention of anti-dumping](#): a law and economics analysis of proportionality in EU rules, *Journal of World Trade*, Vol. 50(3), 2016; A. R. Willems and B. Natens, What's wrong with EU anti-circumvention rules and how to fix it, *Journal of International Economic Law*, Vol. 19, 2016.
- <sup>7</sup> European Commission, [Impact assessment](#), SWD(2013) 105 final, p. 18.
- <sup>8</sup> The 'target profit' is the profit that the Union industry could expect to achieve in the absence of dumped imports.

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