

## **Common core demands from Germany and France on modernising the Trade Defence Instruments (TDI) of the European Union (EU)**

The global economy and world trade are undergoing dynamic change. Emerging economies are rapidly becoming stronger and are creating new challenges for trade policy as a result.

This raises the issue of global overcapacities. For example, the current steel crisis highlights the problem of the Chinese steel industry overcapacities, which results in a situation of unfair competition, whereby products that have often been heavily subsidised and are often sold at dumping prices are forcing their way onto the European markets and are damaging European industry. This leads to serious and irreversible economic and social consequences, including site closures leading to high job losses.

We therefore very much welcome the Communication from the European Commission of 16 March 2016, which focuses on achieving sustainable growth and retaining jobs in Europe in the long term through the use of targeted measures. Such measures include effective trade defence instruments.

Against this background, a key aim for Germany and France is to ensure the consistent use and development of Trade Defence Instruments of the European Union to protect against trade practices and subsidies used by third countries which distort competition. European industry, its companies and its employees need fair, WTO-compatible conditions for competition in international trade in order to ensure that the global competitiveness of Europe's own industry is maintained.

In order to address the detrimental effects of overcapacities when it leads to unfair competition, we vigorously advocate that the discussion on modernising EU Trade-defence Instruments (TDIs) be continued in order to reach a compromise.

The aim is to protect European companies and industrial hubs against unfair competitive situations more effectively.

The efficiency of TDIs is also at stake in the current discussion on whether to grant market economy status to China in anti-dumping procedures. To contribute to the

objective of making European Trade Defence Instruments more efficient, the EU must further explore and use the possibilities of China's WTO Accession Protocol not to use the standard calculation methodology to the extent the producers under investigation can not clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product.

In view of this discussion, we consider the following core demands to be particularly important for the improvement of EU TDIs:

### **1. Early warning system**

We expressly welcome the European Commission's aim to re-introduce the system of prior surveillance of steel products. In addition, the Commission should make greater use of the instrument of registering imports which enables provisional anti-dumping or anti-subsidisation measures to be introduced retroactively, thereby providing a protective effect at an early stage.

### **2. Acceleration of procedures**

We support the Commission's proposal to reduce the duration of the investigation. We call for provisional TDI measures to be adopted more quickly, whilst also ensuring that the investigations are still carried out to a high degree of quality. A first step would be to limit all anti-dumping and anti-subsidisation procedures to a maximum of 13 months as this would enable provisional anti-dumping measures to be adopted after just 7 months. In particularly urgent cases, consultation with the Member States – a further means of accelerating procedures which already exists – should also be initiated once the provisional measures have already been introduced. The aim should be to accelerate further to the possible extent, in line with best international standards.

### **3. Initiation of procedures ex-officio**

We support to make greater use of the possibility of initiating TDI procedures ex-officio by the European Commission. Recourse to ex-officios should particularly be made in order to protect against possible retaliatory measures by third countries.

### **4. Pre-disclosure**

In order to improve transparency prior to TDI measures being adopted and to reach a balanced compromise, we are ready to consider a pre-disclosure which enables economic operators to receive information on the upcoming adoption of provisional measures 2-3 weeks in advance.

### **5. Restriction of the Lesser Duty Rule (LDR) <sup>1</sup>**

Germany and France support a balanced modernisation of the Lesser Duty Rule. The Lesser Duty Rule shall not apply in anti-dumping and anti-subsidy procedures in cases where structural distortions to competition in the field of raw materials including energy<sup>2</sup> would be caused. Moreover, in the case of massive over-capacities the EU is requested to identify those sectors where adequate responses are needed.

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<sup>1</sup> The amount of the anti-dumping duty shall not exceed the margin of dumping as established, but it should be less than the margin if such lesser duty would be adequate to remove the injury to the Union industry.

<sup>2</sup> "Raw materials" are primary or secondary raw materials, including raw materials on a first-processed stage, or energy that represent a significant input used in producing a product, where the level of significance of the input is measured using non-distorted price. Raw materials shall be considered subject to structural distortions if : i) their price is not the result of normal market forces, but caused by state interference as e.g. through export taxes, export restrictions, subsidies and dual pricing schemes, and ii) when the overall resulting distortion of the product price is significant.

## **6. The criterion of the "EU Union interest"**

When assessing the EU Union interest (weighing up what – as experience shows – are differing interests of the economic operators), we call upon the European Commission to give particular consideration to the need to eliminate the trade-distorting effects and injury caused by dumping and to restore fair competition.

## **7. Support for SMEs**

We want to continue to support SMEs in a targeted manner, as they often suffer disadvantages from the use of trade-defence instruments due to their size. We very much welcome the proposals tabled by the European Commission on improving the help and advice available to companies from the Commission's SME Helpdesk.

## **8. Publication of guidelines**

We call upon the Commission to draw up and publish a set of broad administrative guidelines detailing how TDI legal provisions are to be implemented in practice. This would send out a clear signal of the intention to improve the transparency and predictability of future TDI decisions. The guidelines should be built upon existing practice, and should cover a multitude of different issues that go considerably further than those currently being proposed by the Commission, namely 'selection of an analogue country', 'expiry reviews and the duration of measures', determination of the profit margin used in establishing the injury margin' and 'on Union interest'. Competence for these guidelines should lie with the Commission, the Council should be involved in the process to draft the guidelines and there should be mutual consensus on the content.

The aim must continue to be to achieve an overall package for modernising TDIs that is balanced and that is composed of a legislative and a non-legislative part, as well as the administrative guidelines. In the development of this package, it is essential to avoid to weaken the TDI instruments. In order to make sure that the EU has the best

possible TDI instruments, a review report presented by the Commission (e.g., after 3 years) should be introduced in the legislative part.

