



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
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Opinion

Title **DG TRADE - Impact Assessment on the Modernisation of trade defence mechanisms**
(draft version of 9 November 2012)*

(A) Context

Allowed by the WTO, trade defence instruments (anti-dumping, anti-subsidy and safeguard - TDIs) have been part of EU trade policy since 1968. Last modified in 2004, the EU TDI regime meets WTO mandated minimum standards but also includes specific "WTO+" features. These are meant to ensure countervailing measures are kept to the minimum necessary ("lesser duty clause") and do not harm overall Union interest ("Union interest test"). The legal form and approval process for TDIs application by the EU is being modified in accordance with the Lisbon Treaty. In addition, the Commission is considering modifying the substance of the regulations for anti-dumping and anti-subsidy instruments following an in-depth evaluation of past policy, a widespread consultation process and given the procedural changes to be adopted in the light of the "Omnibus regulation".

(B) Overall assessment

The report needs to be improved in several respects. It should place the analysis into the overall policy context by providing illustrative quantitative statistics and greater information on the aims and procedures of the current regime. Problems should be better substantiated and presented, clearly distinguishing between issues proven to affect the effectiveness and efficiency with which the system's general goals are achieved and the concerns raised by stakeholders in view of their specific interests. The report should also modify the design of options and improve their presentation, assessing alternative measures to address individual problems through clearly explained channels. The report should better assess and compare impacts, providing greater quantitative indication of their magnitude. Finally, the result of the public consultation should better inform the analysis.

(C) Main recommendations for improvements

(1) Provide more information on the overall policy context. The report should significantly improve the way it places the analysis into the overall policy context. To do so, it should provide quantitative statistics on TDI application and use as well as data on cases brought before the European Court of Justice or the WTO. It should also give greater and clearer information on TDI procedural steps, including an exemplification of how the WTO+ features of the EU system are implemented in practice (particularly with

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted
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regard to the Union interest test). Finally, the report should clearly spell out the full set of objectives of the EU regime.

(2) Substantiate the problem definition and better present it. Against this background, the analysis of the problems should be streamlined and presented in terms of the effectiveness and efficiency of the current provisions as assessed on the basis of existing evidence, evaluation results and international benchmarks. While stakeholder views should inform this analysis, they should be qualified as appropriate to take into account the contrasting interests of different stakeholders. The report should also better substantiate the existence of the different issues identified, clearly distinguishing between actual problems and concerns raised by specific stakeholders. When the latter are not backed up by corroborating evidence in terms of their negative impact on the effectiveness and efficiency of the system, they should be discarded with no further analysis in terms of objectives and alternative options. Relying on the richer background information recommended above, the analysis should also provide an indication of the relative importance and magnitude of the individual problems as well as more precisely identify their underlying drivers. Finally, the problem tree should be improved to clearly link drivers to problems.

(3) Modify the design of options and improve their presentation. The report should not compare packages of options addressing different combinations of problems. It should instead compare alternative measures to address individual problems. This may imply a binary comparison between the baseline and a single intervention option in some cases to be explicitly justified. Against the background of a strengthened problem analysis, the report should also more clearly identify how the proposed options would affect problem drivers, particularly for the issues identified with respect to transparency and SMEs. Finally, the report should explain how confidentiality and anonymity would be better guaranteed in the case of an obligation to cooperate in ex officio proceedings (data protection issues, etc.).

(4) Better assess and compare impacts. The report should provide greater quantitative indication of the magnitude of the expected impacts (including on administrative burdens, length of procedures and trade in the affected sectors). The report should be explicit on the advantages and disadvantages for importers, exporters and other possible winners or losers in each of the proposed options and discuss in greater depth the impact on consumers and SMEs. The relevance of potential environmental impacts should be reconsidered or better substantiated. In addition, the report should also analyse in greater detail the extent to which the measures proposed would affect the problems connected to circumvention, subsidies and trade deflection. The report should also mention and consider the other instruments at the Commission's disposal to address the issue of retaliation. The assessment of the option of allowing trade unions to initiate proceedings should be strengthened and take into account the impact that ex officio proceedings would already have on the underlying problem. Finally, only after comparing options for individual problems, the report may assess different packages of measures in terms of their overall impact on the effectiveness and efficiency with which the objectives of the EU TDI regime are achieved. The report should then indicate whether there is a preferred package.

(5) Better utilize stakeholder views. While the report provides an extensive annex detailing the responses to the public consultation, these results should be better used. In particular, the contrasting interests of different stakeholders (exporters, importers, consumers, producers and their employees) should be explicitly taken into account when analysing the results and be set against the overarching goals of the TDI regime and EU

trade policy more generally. Given these contrasting interests and the sharp differences in the number of responses from different stakeholder groups, the report should avoid drawing conclusions on the basis of the overall share of respondents favouring or opposing a measure. More disaggregated data should therefore be used. Finally, the main text of the report should also illustrate the views of Member States and third countries whenever relevant.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report

(D) Procedure and presentation

The report is longer than recommended by the Commission impact assessment guidelines. It should therefore be shortened by avoiding repetitions, moving parts of the text into annexes and avoiding the analysis of options when there is no corroborating evidence of an underlying problem. Annexes summarizing the result of the evaluation, illustrating current procedures and clarifying the implications and relevance of the "Omnibus regulation" should be added along with a table showing the relationship between problems, operational objectives and options. References to the position of individual Commission services should be deleted. Finally, the executive summary should fully respect the standards set out by the Impact Assessment Guidelines.

(E) IAB scrutiny process

Reference number	2012/TRADE/008
External expertise used	No
Date of IAB meeting	5 December 2012