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Modernisation of the EU's Trade Defence Instruments

Recommendations from the European non-ferrous metals industry

Introduction

Following the current compromise reached at the European Council concerning the package of the European Commission proposals on modernisation of Trade Defence Instruments (TDIs), Eurometaux would like to point out its main priorities and suggestions on this matter.

The European non-ferrous metals industry is a devoted supporter of free trade, provided the trade is fair. Effective trade defence instruments – including anti-dumping and anti-subsidy measures – are essential tools for Europe's non-ferrous metals industry to protect its companies against unfair trade practices.

Eurometaux welcomes in general TDI modernisation package, however, there is a risk that some new adjustments created as result of the political compromise of Member States, may undermine the workability and efficiency of the Commission's proposal.

Lesser duty rule – waiver for raw materials distortions

Eurometaux supports the removal of the lesser duty rule in case of raw materials distortions, in order to fully correct distortions with third country governments.

We support this proposal in principle, but are concerned that several components of the Council's proposal would make the waiver arbitrary and inapplicable in many cases.

EU policymakers can make three changes to make the lesser duty rule waiver effective:

i. Add subsidisation of energy to the list of trade distorting measures

Member States have proposed a range of trade distorting measures that would trigger the removal of the lesser duty rule. Although we assume that the list is non-exhaustive, we request that "subsidisation of energy" is explicitly included.

Distortions in the energy field are of high importance for energy-intensive EU non-ferrous metals producers. Subsidisation of energy provides third country producers with a significant unfair advantage, which has a disproportionately high impact on our competitiveness.

Our recommendation: Include 'subsidisation of energy' on the list of trade distorting measures

ii. Make the Union's Interest Test consistent with current EU anti-dumping legislation

The Council has introduced a "positive" Union Interest test, requiring that the Commission proves it is in the interest of the Union to apply the lesser duty rule waiver. If the Commission decides there is not a Union interest, then the lesser duty rule waiver will not be applied.



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We are concerned that this methodology would give too much discretion to each decision, and remove objectivity. It also runs counter to the methodology of existing EU anti-dumping legislation, as laid down in the EU Basic Anti-Dumping Regulation (Art.21)¹. In effect, an additional “WTO+” provision would be added to the European TDI system, at a time when trade protectionism is extremely strong.

Our recommendations:

- Reverse the Union Interest test to be consistent with current EU anti-dumping legislation. The lesser duty rule waiver should be applicable unless the Commission can clearly conclude it is not in the Union’s interest to apply such a waiver.

iii. Remove or lower high individual thresholds

Member States have agreed that the lesser duty rule waiver should only be applicable when special thresholds are reached. Under their proposal, the lesser duty rule waiver would only apply when:

- The identified distortions are over 27% of the cost of production for the product concerned
- Taken individually, the identified distortion should account for more than 7% of the cost of production

We fail to understand the practical application of high individual thresholds, in particular for alloys containing a number of metals. A large number of small individual distortions would have an equally negative impact than a limited number of big distortions.

Our recommendation: Significantly reduce the individual thresholds, to ensure workability for non-ferrous metals and their alloys.

Four week pre-disclosure notification

The Council has agreed on a four week pre-disclosure notification mechanism, which will act as an early warning for all parties on the potential imposition of provisional measures.

We see the extension of the notification period to four weeks rather critical. We acknowledge logistical complications for an exporter, when provisional measures are imposed without an advance notice. A four week notification period creates a risk that exporting countries in the proximity to the EU can stockpile their products.

Our recommendation: Reduce the pre-disclosure notification period in order to lower the risk of stockpiling

¹ REGULATION (EU) 2016/1036 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 8 June 2016 on protection against dumped imports from countries not members of the European Union



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Target profit calculations

The Council have agreed to add an assessment of ‘target profit’ into injury margin calculations, when based on a target price. In this situation, Member States have agreed that the target profit determination should consider:

- The level of profitability before the increase of imports from the country under investigation
- The level of profitability needed to cover full costs and investments, R&D and innovation
- The level of profitability to be expected under normal conditions of competition

In addition to that, such margin shall in any case be higher than 5%.

We believe that this provision is a clear improvement to the existing TDIs, as it will help to increase predictability and coherence in the implementation phase. We hope to see target profit calculations that addresses the real level of profit to be carried out in each anti-dumping case.

Our recommendation: Target profit calculations should address the real level of profit

Shortening the timing for anti-dumping investigations

The Council has proposed a one month reduction to the permitted timing for anti-dumping investigations and imposition of provisional duties. Currently, anti-dumping investigations are terminated 15 months after they begin, and provisional duties are imposed within 9 months.

We consider that the Council’s one month reduction is a positive development, but not one with substantial impact.

ABOUT EUROMETAUX

Eurometaux is the decisive voice of non-ferrous metals producers and recyclers in Europe. With an annual turnover of €120bn, our members represent an essential industry for European society that businesses in almost every sector depend on. Together, we are leading Europe towards a more circular future through the endlessly recyclable potential of metals.

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