

Propositions for the Trade defence of the European Union

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Diagnosis:

The multilateral trading system, historically based on a set of common rules agreed upon and applied by all members of the World Trade Organization (WTO), is now being undermined by a variety of actors and the rise of unfair trade practices. Some of the European Union's (EU) main trading partners are breaking with this multilateral framework by imposing new trade barriers or contributing to systemic and structural industrial overcapacity. This situation has had a direct impact on the European industry, which lost one million jobs between 2019 and 2025¹.

The EU has a fundamental interest in an open, rules-based global economy. Open markets, effective competition and a wide choice of suppliers are essential for European consumers and for the competitiveness of our downstream industries. At the same time, the growing imbalance in the level playing field for the Union's industrial base, and the risk of losing critical industrial capacities and strategic sectors cannot be ignored and requires an appropriate response.

In this context, it is the Union's responsibility to restore the conditions of a level playing field, on its market and with its partners, to allow trade to flourish and competition to play its full role within a secure legal framework. If we welcome the substantial progress already made in recent years in the area of trade defence, as reflected in particular by the high number of investigations opened and successfully conducted by DG Trade and with more than 625,000 jobs currently protected by EU measures², we still see room for improvement. Current trade defence instruments' limitations include, among others, long delays for industry to benefit from a protective measure, narrow products scopes that hamper the EU's ability to react to sector-wide disruptions, and the ease with which measures can be circumvented (compared with the enduring and long process to implement anti-circumvention measures). Where the propositions under heading 1 and 2 focus on improvements to the TDI toolbox as such, heading 3 goes into possibilities beyond the current toolbox. The objective of all propositions is to strengthen the Union's capacity to respond to unfair trade practices, while preserving the benefits of an open and competitive economy.

In strengthening its trade defence toolbox, the EU should work closely with like-minded partners, including its free trade agreement (FTA) partners. Coordinated or complementary action with FTA partners can enhance the effectiveness and legitimacy of our responses to unfair trade, while supporting open markets and resilient supply chains.

Propositions:

- 1. In the short-term, three actions can be taken to bolster level playing field conditions in the EU without making any changes to the existing legal framework.**

a. The Commission must allocate more resources to the units and teams in charge of trade defence tools implementation. The recent massive increase in antidumping and anti-subsidy cases submitted to the Directorate G of the DG Trade has created workload issues for staff and backlogs in file treatment. This results in increasing delays for companies seeking protection against unfair practices. To ensure that every case submitted to the Commission can be treated in a timely manner – i.e., coherent with the constraints and challenges the industry faces – the Commission must internally

¹ [Eurostat - Employed persons in manufacturing between 2019 and 2025](#)

² [43rd Annual Report from the Commission to the European Parliament and the Council on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities and the Use of Trade Defense Instruments by Third Countries targeting the EU in 2024](#)

reallocate resources to DG Trade, Directorate G. Staff issues cannot be a factor limiting the number and quality of inquiries in the future and the current backlog cannot wait until the next multiannual financial framework for a solution. In addition, the Commission should consider moving away from the “first come, first serve” handling of complaints and initiation of investigations, into more prioritization of cases and sectors, including through an economic security lens, as further elaborated below.

b. The Union shall contemplate more frequently the opportunity to open safeguard investigations in case of sector-wide trade disruptions. Although the safeguard tool has been a part of our toolbox since its inception in the dedicated WTO agreement, it has so far been mobilised only twice. As global overcapacities spread in many industrial sectors and create systemic disruptions, the tendency of the Commission is to conduct AS/AD investigations product by product. It is particularly inefficient for disruptions that affect several segments of the value chain, where a custom duty at a level of a segment could prove inefficient or hurt an already jeopardized downstream industry. The Commission should adapt its framework to those more sectorial cases and adopt a more open stand towards safeguard measures, in order to provide with more efficient and agile protection. In designing and applying such safeguard measures, the Union should take into account the interests of, and potential impact on, key EU trading partners, in particular FTA partners. Panel reports in cases DS595, DS121 and DS415 confirm that there is room to adapt the definition of the product to expand the scope both vertically and horizontally, as long as the requirements for the introduction of the safeguard are met for the product globally, as the investigating authority has defined it.

Member states should facilitate the work of the Commission by sharing information on their respective assessment of global overcapacities, their impact on EU industries, and sectors particularly exposed and of priority importance for the EU’s strategic autonomy, industrial resilience and supply chains.

Safeguards can also be leveraged as a complement to existing antidumping and countervailing duties or to antidumping and anti-subsidy investigations. Upstream antidumping and countervailing measures can be complemented by safeguards downstream to ensure the survival of the whole relevant European value chain. Provisional safeguard measures³ could also be used for up to 200 days in urgent cases that cannot wait until the Commission is ready to implement provisional antidumping or countervailing measures. When replaced by such measures, the safeguard investigation would be closed without any definitive measures, whereas the antidumping or anti-subsidy investigation would continue toward the definitive measures’ stage.

c. The Union should be more proactive and consider to more systematically contest any measure that is clearly inconsistent with suitable agreements or rules before the WTO Dispute Settlement Body (DSB). To the extent that available resources allow, this principle should be applied before and independently from any parallel reform of the WTO framework and its DSB. This practice will ensure that non-market policies and practices (NMPPs) that directly harm the EU industry are systematically identified as such at the WTO level, thus legitimising potential EU responses, reinforcing the role of the WTO and countering false narratives by economies responsible for NMPPs. It could also create traction and encourage third countries to also contest such measures harming their own industries, thus facilitating a conversation on the multilateral response to distortive industrial practices. We acknowledge that litigation at the WTO is resource-intensive and time-consuming, and therefore it is not realistic to request a panel for each case of breach of WTO rules that harms European industries. However, the prior step of submitting a formal request for consultations and holding such consultations would allow to officially consider the case as a dispute in the WTO and for it to receive a DS number. Then, the most harmful or strategically important disputes should be furthered to the

³ The provisional measures are adopted by the Commission and follow the advisory procedure.

panel and Multi-Party Interim Appeal Arbitration Arrangement (MPIA, if applicable and necessary) stages.

2. In the medium-term, the EU must contemplate some surgical adjustments to its trade defence legal framework, in order to be able to restore fair competition and a level playing field on the EU market.

a. In priority, the improvement of the anti-circumvention tool would allow the EU to guarantee the legal effect and the effectiveness of its existing trade defence measures. Some third countries engage in increasingly blurred and complex actions to avoid additional EU customs duties. Even though they sometimes constitute a clear circumvention, certain practices cannot be addressed by the Commission under current rules and the use currently being done of them.

When it comes to assembly, the thresholds of 25 % of added-value and of 60 % of parts originating in the country subject to the initial trade defence measure are too easily circumvented. For vertically integrated companies and/or countries, which have an extended control over their economy, it is easy to circumvent the measures by using a third country or by establishing themselves within the EU and modifying their supplies to fall just below these thresholds. The EU has indeed faced a number of complex circumventing practices, for instance on AD/AS measures on Indonesian stainless steel through jurisdictions such as Taiwan, Vietnam or Turkey. The case of the bypass of anti-dumping measures on biodiesel originating in the United States through Canada is a very relevant example as well, where the scope of the measure was also consequently extended.

Moreover, since a few years ago, the Commission considers the 60% and 25% thresholds to apply also to simple finishing works that do not entail any kind of assembly of more than one piece, which unnecessarily raises the bar for innovative ways of circumvention that are not pursued through assembly operations. The recent judgement of the General Court in case T-379/23 confirms that in cases where there is no assembly of more than one piece, the existence of circumvention should be assessed though the requirements set in art. 13.1 of the Regulation, taking into account that the list of paragraph four of that provision is an illustrative list. The application of these thresholds to case of the circumvention of antidumping measures on threaded malleable tube fittings through unthreaded fittings that are simply threaded within the EU sets a precedent that creates a major threat more broadly to the industries of the EU

Today, there is a real risk that the number of circumventing practices will increase with the global increase of TDI cases on various products. The resources of DG Trade being already very constrained as mentioned before, a review, reinterpretation and reinforcement of anti-circumvention framework is all the more relevant.

WTO rules do not limit anti-circumvention measures. The EU therefore enjoys legal room for manoeuvre which it must mobilise. The thresholds could be reviewed as follows:

- The 60 % threshold of parts originating in the country subject to the trade defence measure could be lowered to 50 %. It would then be impossible to have more than half of the part a of final product coming from the country under the trade defence measure;
- The minimum of 25 % of added value produced in a factory could be risen up to 40 %, in order to ensure a real and meaningful production. Moreover, such a threshold would be much closer and coherent with the EU rules of origins on industrial products – those generally require a change of tariff heading or a minimum share of added value originating in the third country of round 45-50 %.

- These thresholds should, in any case, be applied only to assembly operations as article 13 of Regulation (EU) 2016/1036 actually provides, and not to other superficial finishing works. For these anti-circumvention duties would be applied solely on the basis of Article 13.(1) of the Basic Regulation.

b. There may be scope to improve the design of trade remedies to improve their effectiveness, also from a value chain approach. In a context of increasing trade defence requests, it is essential to ensure the effectiveness of measures and their impact. On several recent cases, the antidumping duties could have been substantially higher than what was decided if the “*lesser duty rule*” would not have been used; it would have allowed for a better protection of the EU industry against unfair practices. In order to improve the protection of the EU industry it could be considered not to apply the “*lesser duty rule*” in antidumping cases where there is no reciprocity of our main trading partners if that is in the Union interest. At the same time, the interest of the Union from a value chain perspective should be the guide for the design of the measures. There may be cases in which the harm to downstream industries may be too serious (even in cases in which the lesser duty rule is applied). In such cases, TRQs could sometimes help mitigate the impact on these sectors. Moreover, in some cases even the foregoing of the lesser duty rule may prove ineffective, in particular against the backdrop of non-market economies where national or provincial champions could afford to react to high antidumping duties by increasing their level of dumping as much as needed to protect their market shares. Even if not always feasible⁴, in some such cases, introducing minimum prices for dumped imports, even if applying the lesser duty rule, may prove more effective to protect the targeted industry while limiting the impact on industries downstream. However, there may also be many situations in which trade remedies, on their own, will fall short to ensure the competitiveness of the Union’s industries and a broader policy approach, in which trade defence instruments will be only one among the options of the policy toolbox, will be needed to pursue the Union’s strategic goals.

c. The EU Commission should consider the product scopes of the anti-dumping and anti-subsidy investigations with more agility, so as to cover – when needed – like-products as the safeguard measure allows it. The safeguard measure indeed makes it possible to protect not only similar CN codes, such as AD and AS, but also directly competing products, ensuring full protection for the products targeted by the initial measure. It would be useful and consistent to explore the compatibility with the WTO’s Antidumping and Subsidies and Countervailing Measures Agreements of aligning this possibility with AD/AS tools to minimize the risk of dumped/subsidized products being replaced by similar ones, leaving European businesses unprotected against ongoing unfair competition¹.

d. EU Member States and the Commission would benefit to integrate economic security as a consideration in the assessment of the Union’s interest. As the fourth criterion established by the EU within the TDI toolbox (after the existence of a dumping/subvention; the injury and the link of causality), the assessment of the Union’s interest seeks to balance the interests of producers—who are afforded a certain advantage under the current regulatory framework—with those of users and consumers. Given the progressive erosion of key industries and value chains within the Union over recent years, the inclusion of economic security as part of the analyses could serve as a decisive balancing factor in cases where the above-mentioned interests are in tension. This approach would help preserve the Union’s remaining production capacities in strategic sectors and value chains, thereby protecting the Community’s industrial base. There are three dimensions in which economic security implications could be assessed. The first one would be at the level of the merits of each proposal of trade remedies, individually. The second dimension would be at the level of interrelated

⁴ For example, minimum prices are not feasible when there is a risk of cross-compensation, and when prices are determined to a large extent by a key input which in turn has volatile prices.

trade remedies (antidumping and countervailing measures affecting the same value chain). Finally, there is also a need to consider the economic security dimension in the broader policy approach, including but not limited to trade remedies.

Further to the above, the sectoral prioritisation of trade defence investigations should respond to a strategic logic. A clear orientation of investigations should be ensured towards sectors deemed critical and where dependencies in our value-chains represent economic security concerns considering the risks associated with their weaponization.

3. In the long-term, several key in depth reforms could significantly improve the trade toolbox.

a. **The EU should explore how to better address the transnational activity of companies from countries affected by significant distortions, which are subject to trade defence measures in the country of origin.** For example, trade defence measures against the country of origin may be incentivizing its subject companies to delocalize to a third country with the sole or main purpose of exporting its production to the countries imposing the trade defence measures, especially the Union's internal market, thereby possibly worsening already acute problems of global overcapacity, without those practices necessarily fitting in those that can be addressed through the existing anti-circumvention provisions.

When these cases have to be addressed through antidumping investigations, special attention has to be paid, when calculating the normal value, to the distortions that may affect production costs in the country of destination of the investment (either because of distortions imported from the country of origin of the parent company, or sometimes because of distortions in the country of destination itself, for example, because of a dual exchange rate regime). The Commission should analyse all the possibilities it has for addressing this kind of situations with the existing legal framework and, if necessary, propose WTO-compliant reforms of this framework to improve its capacity to address them.

b. **The EU could also explore the WTO compatibility of improving the anti-subsidy instrument by allowing the Commission to apply countervailing duties at a company-level, rather than a country- and product- levels combined, which can currently allow for easy circumventionⁱⁱ.** In the context of anti-subsidy investigations, the European Commission demonstrates that a third country intentionally supports a company by granting it subsidies, for example tax exemptions (among other measures), in order to confer an economic advantage, particularly for its export activities. Within internationalized corporate structures, where a company has subsidiaries in multiple countries, the advantage granted by State A typically impacts the economic activities of the aided company in State B. Once the conferred advantage is proven and deemed distortive under WTO rules, the Commission could undertake a pass-through analysis of the advantage from the parent company in the subsidizing country to its subsidiary in a different country so that countervailing duties could be applied, if WTO compatible, at a company level and cover all exports from the company to the EU in order to properly tackle the distortion caused by the subsidies.

c. **Finally, the EU should initiate a broader reflection on how to address situations where a significant market distortion on a specific sector is identified that no existing trade defence instrument could prevent, repair or remediate the injury.** In such cases, the EU should explore the opportunity to develop a broader, cross-sector trade defence tool⁵. A new instrument could for example take the form of a resilience tool, activated when European supply sources are concentrated beyond a specified

⁵ Further work needs to be done to verify compliance with WTO law.

threshold. While using the national security exceptions, the Union could implement measures such as additional duties or TRQs, in order to protect European producers.

ⁱ The question of whether the measure could be extended to other products remains open, though legally uncertain.

As recalled by **Panel Report, Indonesia – Autos, paras. 14.173-14.174**, *“we do not see that the SCM Agreement precludes us from looking at criteria other than physical characteristics, where relevant to the like product analysis. The term 'characteristics closely resembling' in its ordinary meaning includes but is not limited to physical characteristics, and we see nothing in the context or object and purpose of the SCM Agreement that would dictate a different conclusion”*.

Similarly, this panel noted that *“the issue of 'like product' must be considered on a case-by-case basis, that in applying relevant criteria panels can only use their best judgment regarding whether in fact products are like, and that this will always involve an unavoidable element of individual, discretionary judgement”*, while also endorsing *“an approach, which segments the market based on a combination of size and price/market position, [as] a sensible one which is consistent with the criteria relevant to 'like product' analysis under the SCM Agreement.”*

Taken together, these two quotations suggest that the like product determination is inherently flexible and not confined to physical characteristics alone, which opens the door to a potential extension of the measure to other products, horizontally.

ⁱⁱ **It appears that no work or case law on this issue has been carried out at the WTO level.** A somewhat similar case could be EU - CVD/AD on SSCRFP (Indonesia), but it differs because it is based on the notion of an inducement to subsidize, which is not the case here: we consider here that the negative effects resulting from the subsidy received by company Y from a public body of State A are not limited to the territory of that State, but extend to all of company Y's subsidiaries worldwide (without any inducement from another State hosting the subsidiaries).

In the present case, a broad interpretation of Article 1 of Regulation (EU) 2016/1037 should be applied, which states: *“A countervailing duty may be imposed to offset any subsidy granted, directly or indirectly, for the manufacture, production, export, or transport of any product whose release for free circulation in the Union causes injury”*.