

Position paper

Reform proposals on the Anti-Dumping Regulation (2016/1036) and Anti-Subsidy Regulation (2016/1037) of the European Union

- **Proposal (2013/0103 (COD)) of 10 April 2013 on the Modernization of Trade Defence Instruments (TDIs)**
- **Proposal (2016/0351) COD)) of 9 November 2016 following the Amendment to the Protocol on China's accession to the WTO**

Registration number in the European
Commission's transparency register:
976536291-45

VDMA

The German Engineering Association (VDMA) is the largest European association in the capital goods industry with over 3,200 German and international member companies. Employing over one million people in Germany, the sector is the largest industrial employer and generated revenues of around €218 billion in 2016.

The character of the capital goods industry is dominated by medium-sized companies. Around 87% of all VDMA members are – pursuant to the EU definition – small and medium-sized companies (SME). Two thirds of them have a staff of no more than 100, at that.

The sector is not only heavily export-oriented with an average export ratio of 78% but also extremely successful globally. One indication of this is that almost 60% of exports are sold outside of the EU. The sector's high level of innovation is reflected in the fact that VDMA member companies are currently global market leaders in 18 of 32 internationally comparable product areas in the mechanical engineering industry.

Trade Defence Policy must take into account the interests of all industry sectors

To enable the engineering industry to continue operating successfully worldwide, fair competitive conditions must be ensured within and outside of the European Union. To this end, Trade Defence Instruments (TDI) must be used free from political considerations. On the one hand, Trade Defence Measures can help to secure jobs but on the other hand it can result in job losses in the event of market foreclosure. VDMA therefore supports a constructive and well-balanced Trade Defence Policy which ensures both the necessary protection for the industrial sectors affected by dumping but also takes into account the legitimate interest in free trade under fair competitive conditions.

European Commission's proposal (2013/0103 (COD)) of 10 April 2013 on the Modernisation of the Anti-Dumping Regulation (2016/1036) and the Anti-Subsidy Regulation (2016/1037)

VDMA calls for the withdrawal of any proposed amendments that give preference to individual industry sector interests in the proposal on the TDI modernisation of 10 April 2013. Instead VDMA calls for a strengthening of the transparency and user-friendliness for SMEs in the application of Trade Defence Measures.

VDMA rejects any restriction of the Lesser Duty Rule (LDR)

With the amendment to Art. 7(2) and Art. 9(4) of the Anti-Dumping Regulation (AD-Reg) the European Commission proposes suspending the application of the Lesser Duty Rule (LDR) in the event of "structural market distortions". This would mean that the duty may equal the fully calculated dumping margin although a lower duty would be sufficient to eliminate the injury to the EU industrial sector concerned.

Trade defence instruments should aim to restore fair competitive conditions. Duties levied above the injury margin constitute a protectionist application of TDIs and result in significant competitive disadvantages for the processing industries in Europe on the global markets.

A duty at the same level as the injury margin – as the Lesser Duty Rule provides for – already ensures the end of illegal dumping imports. The inclusion of a profit margin, as proposed in Art. 7 (d) of the AD-Reg, is not necessary for this purpose.

The EU has always supported the LDR as a defender of open markets at bilateral and multilateral level. Instead of abandoning the LDR now, the European Union should continue to convince other WTO members to introduce an effective LDR into their national Trade Defence Regime.

VDMA rejects the introduction of a "Shipping Clause"

With the amendments to Art. 7 and Art. 19a of the AD-Reg and Art. 21(2) as well as Art. 12(1) and Art. 29b of the AS-Reg and Art. 31(2), the Commission is proposing to levy provisional duties only two weeks after the notification of interested parties.

VDMA unreservedly rejects the introduction of such a shipping clause as it would not achieve the desired effect in practice.

The proposed shipping clause would create advantages for companies that import dumped products into the EU. This contradicts the spirit and purpose of trade defence measures. The proposed shipping clause would also cause legal and planning uncertainty amongst customers and processing industries. Pursuant to Art. 10.4 AD-Reg and Art. 16 AS-Reg, the Commission can levy customs retrospectively for up to 90 days. Alternative procurement sources could be identified in good time in the event of the provision of information at an early stage with the support of the SME Helpdesk.

VDMA rejects mandatory cooperation in an ex officio procedure

The European Commission may introduce and implement Trade Defence Measures ex officio pursuant to Art. 5 (6) of the AD-Reg and Art. 10(8) of the AS-Reg. The aim of that procedure is to protect manufacturers in the EU against retaliatory measures from third countries. With the introduction of Art. 6 (10) into the AD-Reg and Art. 11(11) into the AS-Reg, the European Commission is planning to extend the application of the ex officio procedure. Companies in the EU that manufacture comparable products would be obliged to cooperate and to disclose information under the threat of sanctions despite the fact that they have not acted illegally.

EU manufacturers concerned would have to bear the significant costs of providing personnel resources and sharing internal company information despite having no benefits from cooperation on the procedure. With Art. 18 (Non-cooperation) and Art. 19 (Confidentiality) in the AD-Reg and Art. 28 (Non-cooperation) as well as Art. 29 (Confidentiality) in the AS-Reg, basic provisions already exist with regard to the involvement of interested parties. The European Parliament in its report of 27 January 2014 as well as the Council on 13 December 2016 therefore rightly expressed their opposition to mandatory cooperation.

VDMA supports greater transparency and the expansion of the SME Helpdesk

The Council and European Parliament expressed their support for an expansion of the SME Helpdesk and the creation of an online transparency database. The SME Helpdesk should be provided with substantial funding and should provide advice for both companies injured by illegal dumping as well as companies that may suffer from higher duties. This would reduce the costs for SMEs in ongoing dumping procedures. To increase the transparency of the procedure, customers should be systematically informed as early as possible about the introduction of investigations.

European Commission's proposal (2016/0351) COD)) of 9 November 2016 on the amendment to the Anti-Dumping Regulation (2016/1036) and the Anti-Subsidy Regulation (2016/1037)

Generally positive assessment

VDMA welcomes the European Commission's proposal of 9 November 2016 on the amendment to the Anti-Dumping Regulation (2016/1036) and the Anti-Subsidy Regulation (2016/1037) after the removal of Section 15 a (ii) from the protocol on China's accession to the WTO.

In a joint statement on 19 October 2016 the industry associations VCI (German Chemical Industry Association), VDMA (German Engineering Association) and ZVEI (German Electrical and Electronic Manufacturers' Association) expressed their support of a neutral, WTO-compliant approach. From VDMA's point of view the European Commission's proposal meets this requirements and ensures a continuation of effective anti-dumping measures without yielding to market foreclosure tendencies.¹ Furthermore, the European Commission has followed the resolution of the European Parliament of 12 May 2016: China does not obtain a market economy status and alternative methods of calculation still remain possible.

VDMA calls on the member states of the European Union and the European Parliament to support the proposal of 9 November 2016. In our view, the new calculation method is based on a solid WTO legal basis, maintains the balance between the interests of the manufacturing and import-dependent industries and ensures stable relations with China.

New alternative calculation method of the normal value and the drawing up of reports on market distortions in certain third states and sectors proposed

The European Commission provides for a new calculation method diverging from the standard calculation of the normal value using calculated production factors and sales prices in third states. This calculation method can be used if a Commission report determines that at least one of four market-distorting criteria applies to the country of origin or sector of the country of origin concerned. The EU industry suffering injury can then use these reports in legal proceedings.

VDMA sees a requirement for additional information and clarifications from the Commission's side as regards:

Requirements concerning transparency and the risk of political interference

The Commission plans to draw up reports on market distortions in countries of origin or sectors in countries of origin in the form of Commission working documents. The reporting should be

¹ <http://www.zvei.org/Presse/Presseinformationen/Seiten/EU-und-China-muessen-gemeinsame-Loesung-finden.aspx>,
<https://www.vci.de/presse/pressemitteilungen/eu-und-china-muessen-gemeinsame-loesung-finden-position-von-chemie-elektro-und-maschinenbauindustrie-zum-marktwirtschaftsstatus-chinas.jsp>,
<http://www.vdma.org/viewer/-/article/render/15161274>

accessible to interested parties and free of political interference. However, this is currently not ensured.

The Commission should therefore not just consult industry formally and informally but also carry out consultation rounds on individual third countries and sectors market distortions. The country and sector reports should be subject to an evaluation at regular intervals.

Applicability and financial costs

The new calculation method should not result in any additional costs for parties taking part in the procedure. The SME Helpdesk should be expanded to counteract this.

Expansion of anti-subsidy procedure

In future, the Commission is planning to take account of newly identified state aid and subsidies in the calculation of anti-subsidy duties during an evaluation or interim procedure. VDMA welcomes this general approach.

Contact

Ulrich Ackermann
Head of Foreign Trade Department
Tel.: +49 69 6603 1441
Email: ulrich.ackermann@vdma.org

Simon Fleischmann
VDMA European Office, Brussels
Tel.: +32 2 706 8207
Email: simon.fleischmann@vdma.org

Oliver Wack
Foreign Trade Department
Tel.: +49 69 6603 1444
Email: oliver.wack@vdma.org

Date: 27.02.2017