

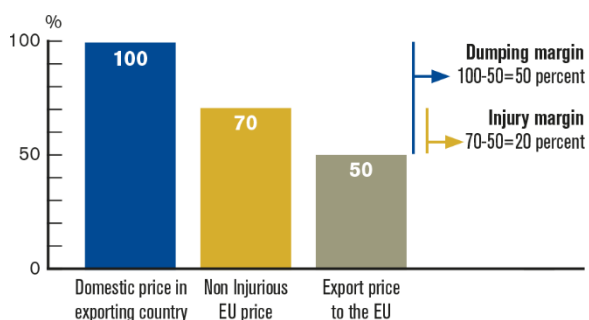
This policy brief is one of a series on key issues in the modernisation review. Further briefs will, *inter alia*, include the areas: Analogue Country, Shipping Clause and Union Interest Test. For more information, see www.kommers.se/TDI-brief

The Lesser Duty Rule in Trade Defence Investigations

► According to EU trade defence regulations, the European Commission should apply a lesser duty than the dumping/subsidy margin, if this is sufficient to remove the injury caused to the EU industry. In the modernisation review of the trade defence instruments (TDI), the Commission proposes to limit the use of the lesser duty rule. This brief explains the weaknesses of the Commission's proposal.

What is the problem with a restricted use of the lesser duty rule?

According to the WTO, dumping is permitted as long as it is not causing injury to the importing country's domestic industry. Only dumping that is causing injury is actionable through the use of TDIs. The lesser duty rule in the EU's current TDI regulations obliges the EU to impose a TDI duty that is not higher than the lesser of the dumping margin and the injury margin. The lesser duty rule ensures, accordingly, that the TDI duties imposed are not higher than necessary to remove the injury inflicted on the EU industry. This is also the case with anti-subsidy measures.



In the Commission's modernisation proposal, it is argued that the lesser duty rule shall no longer apply in future anti-subsidy cases or in future anti-dumping cases in which there are structural raw material distortions.

The Commission clearly states on its webpage that the aim is to: *“Discourage other trading partners from engaging in certain unfair trading practices by imposing higher duties on imports from countries which use unfair subsidies and create structural distortions in their raw material markets.”*

It is important to note that subsidies or alleged raw material distortions will feature in a majority of the EU's future TDI investigations (even though this has not been the case historically). This is particularly true since China has become the main target of the EU's anti-dumping investigations, with claims of raw material distortions. During 1996–2010, 22% of the EU's TDI cases targeted China. In 2010, the share had increased to 56%. In addition, when China is granted market economy status in 2016, the number of anti-subsidy cases against the country is likely to increase. This implies that the option not to use the lesser duty rule will be the rule rather than the exception.

The non-use of the lesser duty rule as a 'bargaining tool' to discourage certain trading practices and subsidies has no foundation in the EU's TDI regulations or in the WTO agreements. It is quite problematic, since it creates the risk of politicising the TDI instrument to the detriment of the EU's importers, user industries and consumers. The failure to apply the lesser duty rule, when it is relevant, leads to unduly high

prices, since the duty will be higher than what is motivated by the level of injury. This affects the EU's global production, supply and value chains negatively and will, in the long run, affect the EU industry's competitiveness and exports on a global level.

As many of the EU's recent TDI investigations have focused on renewable energy sources that involve green subsidies and alleged structural raw material distortions (i.e. biofuels and solar panels), the new proposal would also work to the detriment of the EU's climate policy and sustainable development on a global level.

When it comes to the EU's TDI investigations on solar panels from China, the duties might reach 113% with the new proposal, instead of 68% with the present regulation. This indicates that the EU's TDI measures will take a new dimension, in particular considering the import value of 11.5 billion euro.

Using the 'lesser duty rule' as a bargaining tool implies that TDI measures will be more costly to the *global* EU industry and consumers than necessary in the great majority of future TDI cases.

As shown in the table below, in two out of four definitive TDI measures imposed during Q1 2013, duty rates would be substantially higher if the new proposal was introduced. In one case, certain exporters would face almost three times higher duties, and, in another case, some exporters would face more than double the amount of higher duties.

Proposal on the use of the lesser duty rule

The lesser duty rule is a 'WTO-plus' requirement that goes beyond the WTO rules, and is something the EU, traditionally, has taken great pride in. The lesser duty rule has often been highlighted by the EU, in WTO negotiations as well as in various free trade agreements, as a positive element that is reducing trade distortions. The non-use of the lesser duty rule as a 'bargaining tool' will decrease the confidence in the EU's TDI policy and be costly to the *global* Union industry, as well as consumers. The lesser duty rule must remain unchanged.



Products	Country	Type of TDI		Raw material distortion involved in the AD case**	Duty with old regulation (%)*	Duty with new regulation (%)*
		AD	AS			
Organic coated steel	China	X	X	X	13.7–58.3	48.9–68.1
Aluminium foil	China	X		X	14.2–35.6	30.6–45.6
Tube and pipe fittings, of iron or steel	Russia	X		X	23.8	23.8
	Turkey	X			2.9–16.7	2.9–16.7
Bioethanol	USA	X			9.5	9.5

* As different companies can receive different duties, the duty amounts are presented as the range between the company with the lowest and the highest duty.

** According to the National Board of Trade's interpretation of the proposal.

Source: National Board of Trade.

The EU's trade defence instruments (anti-dumping, anti-subsidy and safeguard measures) have remained largely unchanged for more than 15 years. The Commission has now taken the initiative to modernise the current instruments in order to improve their efficiency and effectiveness.