

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

The Shipping Clause in Trade Defence Investigations

▶ Anti-dumping and anti-subsidy measures enter into force the day after they are publically announced. This makes it difficult for importers to plan their business activities, as months may pass between placing an order and customs clearance. This brief explains why the European Commission's proposal on the shipping clause, in certain ways, fails to solve the importers' situation and suggests how the proposal could be improved in order to address these weaknesses.

What are the shortcomings with the proposed shipping clause?

According to the EU Regulation, the EU may impose trade defence duties from anytime between 60 days and 15 months from the official announcement date of a trade defence investigation against a country. If it is decided that duties will be imposed, this will only be announced one day before they come into effect.

This unpredictability poses a problem for importers. When an investigation is initiated importers are either faced with 1) the option of placing an order from their regular exporter, risking a large duty payment and making a loss when the goods arrive or 2) the option of spending time and resources finding a new exporter in another country, which might also mean higher prices.

In order to increase predictability, the European Commission has proposed a shipping clause in the modernisation review of the trade defence instruments. The proposed clause suggests that importers will be notified around 14 days before provisional duties come into effect, provided that they have made themselves known to the Commission at the initiation of the investigation.

The idea is to exclude goods from the proposed measures if they have already been shipped. Whilst the initiative to introduce a shipping clause is welcome, the proposal has several shortcomings:

Firstly, even if only transportation time by sea from the countries against which the EU has its majority of trade defense measures is taken into account, transportation time to the most important EU ports is always longer than 14 days (see table on next page). Hence, 14 days does not reflect actual shipping times.

Secondly, the proposed shipping clause does not consider the time taken between placing the order and the start of the shipment, which for example could include customising products to meet certain standards and packaging. It also fails to take into account the time and resources that the importer needs to find alternative exporters that comply with their requirements.

Thirdly, a shipping clause must apply to all importers and not only to those who have made themselves known to the Commission. It must also be made public before the imposition of definitive duties.

Proposals on how the shipping clause could be improved

- In order to improve the predictability for importers, the shipping clause could be replaced by a contract clause. This would also exclude the risk of stockpiling. A contract clause implies that if importers provide evidence that the order was placed before the duties were imposed, either in the form of a contract or payment, they will be exempt from the measures on this shipment.
- Another option would be to adjust the number of days on a case-by-case basis, by establishing the time span between the announcement of duties and their

Today, EU importers may face trade defence duties on goods shipped before the duty is made public.

implementation, taking into account the actual shipping time to EU ports from the country being targeted in the investigation.

- The shipping clause should enter into force after the publication of the measures in the EU Official Journal, in order to allow all importers to benefit from the shipping clause and not only those that have made themselves known to the Commission at the initiation of the investigation.

Shipping time (days)*

Port of departure	Destination		
	Gothenburg	Bremerhaven	Rotterdam
Kaohsiung (Taiwan)	33	35	33
Taichung (Taiwan)	34	31	26
BUSAN (South Korea)	39	37	37
Laem Chabang (Thailand)	34	26	25
Jakarta (Indonesia)	30	27	27
Tanjung Pelepas (Malaysia)	26	23	19
Ho Chi Minh City (Vietnam)	34	31	24
Dalian (China)	45	39	36
Qingdao (China)	40	35	32
Xingang (China)	44	37	34
Ningbo (China)	36	30	29
Shanghai (China)	34	28	28
Hong Kong (China)	35	30	28
Bangalore (India)	30	28	33
Nhava Sheva (India)	27	23	25
Cochin (India)	25	22	28
Chennai/Madras (India)	26	23	29
Port Qasim (Pakistan)	30	27	29

* The table describes the shipping time from key Asian ports to Gothenburg in Sweden, Bremerhaven in Germany and Rotterdam in the Netherlands. The actual transportation time is longer as the goods need to be made available to the shipping company approximately 1-2 days before departure, and since the goods will not be accessible at destination until around 2 days after arrival. Source: *Maersk*.

77 percent of current EU anti-dumping and anti-subsidy measures in force are measures on products from the countries listed in the table above. 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.