

*This brief is one in a series on key issues in the modernisation review. Further briefs will, inter alia, include the areas: Analogue Country, Shipping Clause and Lesser Duty Rule. For more information, see [www.kommers.se/TDI-brief](http://www.kommers.se/TDI-brief)*

## The Union Interest Test in Trade Defence Investigations

► The EU's interest as a whole, i.e. the 'Union interest test', must be taken into consideration before imposing TDI measures. The Union interest test is often highlighted by the Commission in WTO negotiations, as well as in various negotiations on free trade agreements as a 'WTO-plus' requirement that goes beyond the WTO rules. However, the test is insufficient and does not cover all aspects of the Union's interest. In fact, real-world implications when assessing the Union's interest are seldom mentioned. This needs to be improved in the modernisation review!

### What are the shortcomings of the Union interest test?

The Commission states that "the Union interest analysis is based on an appreciation of all various interests taken as a whole." The EU's TDI regulations state that TDI measures may not be applied if it is possible to clearly conclude that it is not in the Union interest to apply such measures. But how does the Commission establish the Union interest test? In our view, the test in its present form fails to ensure that all of the EU's interested parties have a say before measures are imposed.

First, interested parties are, in general, unaware of what TDI measures are, which products are covered in the investigations and when, and to what level, the TDI measures will be imposed. This makes business decisions based on predictable information impossible.

If, by chance, they are aware, it is difficult for importers, user industries and consumers to make their voices heard. While the Union industry, which advocates the measures, has several months to present a proposal in close cooperation with the Commission, the interested parties opposing the imposition of TDI measures have only a couple of weeks to make themselves known and to reply to the Commission's detailed questionnaires. Hence, the Union interest test, as applied today, is characterised by an uneven playing field when it comes to information and opportunities to influence the TDI proceedings.

These weaknesses mean that the great majority of the interested parties do not have the opportunity to present their views in the TDI proceedings.

Second, when interested parties do get involved in TDI proceedings, their arguments are often rejected by the Commission on vague grounds. The Commission states that "there is a ... presumption that [TDI] measures are normally in the Union interest if injurious dumping or subsidization has been found" and that "measures would normally be against the Union interest if it can be established that the Union industry would not be able to benefit from such measures." Many claims are also rejected due to the fact that only a few interested parties made themselves known to the Commission.

Third, another fundamental weakness is that the Union interest test, as of today, does not regard the product scope or the level of duties. Instead, the result of the Union interest test is only a decision as to whether measures will be imposed or not, i.e. a 'yes' or 'no' to the imposition of measures. Hence, the burden of proof is on the interested parties opposing the measures to prove that it is against the EU's interest to impose the TDI measures.

In almost all cases, as of today, the Union interest test has resulted in anti-dumping duties being imposed. This implies that the Union interest test, as applied today, does not affect the outcome of the TDI investigations and is therefore meaningless in its current form.

The lack of a meaningful use of the Union interest test and the fact that socio-economic aspects, e.g. economic, environmental and consumer needs are not considered to a greater extent reduces the chance that the actual interest of the EU as a whole is really taken into account.



## Proposals on how the Union interest test can be improved

The existence of global production and value chains in the EU and the rest of the world must be considered in the Union interest test if the TDI modernisation review really aims to 'modernise'. Interested parties must, accordingly, be considered to a higher degree and the Commission must be more proactive in its analysis. The Union interest test should also comply with other EU policies to a higher extent.

Presented below are some proposals on how to improve the Union interest test:

- Today, the EU industry has global production and value chains all over the world in order to increase its competitiveness. This implies that intermediate products cross borders at various times during the production process. The Union interest analysis must, accordingly, consider the value-added that is produced in the EU, even though the final assembling takes place in other parts of the world.
- In the same sense, EU producers opposing the imposition of TDI measures should not be dismissed merely because they are also importers, but should rather be seen as part of the *global* Union industry, contributing to EU production, employment and exports.
- In order for the Union interest test to be more representative, interested parties must have more time to make themselves known to the Commission and to reply to the Commission's questionnaire. In addition, their arguments must be considered not only in the Union interest test, but also in the definition of product scope and duty levels, so that valuable know-how from all ends of the industry is represented.
- In addition, the Commission needs to be more proactive in the Union interest test, making its own analysis, representing all parties, and not exclusively relying on the replies from the questionnaires. This is important when it comes to the analysis of the EU's production and trade statistics, which are sources that are immediately available to the Commission.
- For a more comprehensive and representative test, the complainants' share of the EU's GDP and employment must be considered in relation to the GDP and employment for those parties affected negatively by the measures. Present and future competitiveness must also be considered.
- Similarly, in order to provide a more balanced analysis, injury indicators should be developed for both the Union industry and interested parties. The injury indicators could be weighted in order to reflect the EU's priorities.
- In order for the Union interest test to actually work in the interest of the EU, various socio-economic aspects should be taken into account. The Union interest test must be consistent with other EU policies, such as competition and environmental policies, in order to be transparent, predictable and efficient. This has to be assured by the Commission in consultation within the Commission and external stakeholders.



“It is a fact that a lot of our imports are inputs for manufacturing that takes place here and that a significant share of the value of the finished goods we import has its origin in Europe: we all know the difference between ‘Made in China’ and ‘Made by China’.”

– Trade Commissioner Karel De Gucht