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European Union

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DRAFT STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union"
– Draft Statement of the Council's reasons

I. INTRODUCTION

1. On 11 April 2013, the Commission submitted to the Council and to the Parliament the above-mentioned proposal on the modernisation of Trade Defence Instruments which amends the anti-dumping and anti-subsidy regulations presently in force ("TDI modernisation").¹
2. The European Parliament adopted its first reading position at the plenary session on 16 April 2014.²
3. In its meeting on 13 December 2016, the Permanent Representatives' Committee agreed on the mandate for the Presidency to enter into negotiations with the European Parliament with a view to an early second-reading agreement.³
4. On this basis, eight trilogue meetings took place during the Maltese and Estonian Presidencies in 2017, namely on 21 March, 27 April, 31 May, 13 June, 18 October, 7 and 23 November and 5 December.
5. At the last political trilogue on 5 December 2017, a provisional compromise was reached with the Parliament on the text of the draft Regulation on a modernisation of trade defence instruments.
6. On 15 December 2017, the Working Party on Trade Questions expressed very broad support for the compromise found with the European Parliament.
7. Subsequently, in its meeting on 20 December 2017, the Permanent Representatives' Committee analysed the final compromise text with a view to agreement.⁴
8. The European Parliament's Committee on International Trade (INTA) voted on the political agreement on 23 January 2018, which reflected the outcome of the negotiations, and approved it with an overwhelming majority.⁵

¹ doc. 8495/13 + ADD 1-2.

² doc. PE T7-0420/2014

³ doc. 15466/16

⁴ doc. 15530/17

⁵ doc. PE 616.540

By letter dated 30 January 2018, the Chair of the European Parliament's Committee on International Trade informed the President of Coreper that, should the Council transmit formally to the European Parliament its position at first reading as agreed, subject to legal-linguistic verification, he will recommend to the Plenary that the Council's position be accepted without amendments at Parliament's second reading.⁶

9. On 7 February 2018, the Permanent Representatives' Committee confirmed the final compromise text with a view to an agreement.⁷

II. OBJECTIVE

11. The aim of the proposal was to update and modernise the EU Trade Defence Instruments, which have not been substantially revised since the completion of Uruguay Round in 1995, in order to make them more efficient and effective for the support of EU operators.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

A. General

12. The Regulation improves a number of important issues for operators, such as: increased transparency in the proceedings, better access to information by SMEs, enhanced role of the Hearing Officer and SME helpdesk with a new task of guiding them in the investigation proceedings, anti-circumvention and consolidation of current practices, etc.

These improvements will make the TDI instruments more predictable and will provide practical solutions for real problems that EU stakeholders encounter in the use of the instruments.

⁶ doc. PE 616.821

⁷ doc. 5810/18

B. Particular elements - the most contentious issues

Lesser Duty Rule (LDR)

13. Of particular concern for the Council were provisions related to the proposed disapplication of the LDR in case of distortions of raw materials. The compromise reached by the two co-legislators in the final trilogue allows for disapplication of the LDR in well-defined situations:
 - distorted raw materials accounting for more than 17% of the cost of production, taken individually (single threshold);
 - raw material distortions as defined in the OECD list but with the possibility to update this list via a delegated act to bring it in line with future OECD considerations;
 - in cases of dumping, the Commission will have to clearly conclude that the disapplication of the LDR is in the Union's interest ("positive Union interest test").
14. Regarding the minimum target profit (which is the level of profitability needed to cover full costs and investments, R&D and innovation), the Council accepted the level of minimum 6%.
15. Social and environmental standards will be taken into account when establishing the injury elimination margin. In addition, there will be a possibility to take into account future costs stemming from implementing these standards if such costs are clearly foreseeable and objectively quantifiable. This is a novelty pursued by the European Parliament, but the Council has ensured that there is no double-counting of costs and that the costs are duly substantiated.⁸
16. For the anti-subsidy instrument, the lesser duty rule may no longer be applied.

⁸ The agreement also includes other provisions in relation to social and environmental aspects, but not related to Lesser Duty Rule, in the areas of price undertakings, interim reviews and the Commission's yearly report.

Pre-disclosure

17. A period of 3 weeks of pre-disclosure has been agreed in combination with three additional safety nets which will address the potential risks of stockpiling: wider use of registration of imports; revamped collection and communication of statistics; and an additional injury margin to be added to the definitive duty in order to compensate any stockpiling during the period of pre-disclosure.
18. In addition, a review clause of the duration of the pre-disclosure period was agreed. Two years from the entry into force, the Commission will assess how effective the three safety nets were in addressing stockpiling. In light of that assessment, the Commission should propose via a delegated act, to:
 - decrease the period of pre-disclosure to two weeks if a substantial rise in imports has occurred that the Commission was unable to address;
 - increase the pre-disclosure period to four weeks in order to improve predictability for Union operators if no substantial rise in imports has occurred or if the Commission was able to address it.

Continental Shelf and Exclusive Economic Zone

19. In the course of the discussions with the Parliament and the Commission, the Council furthermore accepted the introduction of an enabling clause allowing to extend measures to the continental shelf and the exclusive economic zone via a future implementing act. The Council has ensured that the customs authorities will be given sufficient time to examine the matter.

Reimbursement of duties

20. The European Parliament agreed to the Council's and Commission's position to safeguard the possibility of reimbursement for operators. If measures are repealed, the duties collected in excess during the expiry review investigations will be reimbursed to importers. This principle was fully in line with the Council mandate.

Trade Unions

21. The Council accepted the Parliament's amendment that trade unions will be able to submit complaints together with industry. They will also be able to support complaints filed by the industry.

Trade unions become "interested parties" in the proceedings. The Council had already accepted the role of trade unions in trade defence in the related new antidumping methodology file⁹, which modified the same legal acts.

Duration of investigations

22. The duration for the imposition of provisional measures will be "normally 7 months but not later than 8 months". Definitive duties will have to be imposed within 14 months. The European Parliament accepted the Council mandate.

⁹ Regulation (EU) 2017/2321 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union, OJ L 338, 19.12. 2017.

IV. CONCLUSION

23. The Council's Position at first reading reflects the compromise reached in negotiations between the Council and the European Parliament, with the support of the Commission.

The Council believes that its position represents a balanced package and that, once adopted, the new Regulation puts in motion modernised EU's trade defence instruments which are effective and predictable in the face of global trade challenges.
