EUROPEAN
COMMISSION

Brussels, 18.10.2016
COM(2016) 690 final

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL

Towards a robust trade policy for the EU in the interest of jobs and growth

Communication from the Commission to the European Parliament, the European Council and the Council

Towards a robust trade policy for the EU in the interest of jobs and growth

In the modern global economy, **trade is essential for growth, jobs and competiveness**, and the EU is committed to an open rules-based trading system. Exports now support almost one in seven manufacturing jobs in Europe (i.e. more than 30 million jobs – two thirds more than 15 years ago), while imports are a major source of productivity gains and allow consumers to benefit from access to more choice and lower cost products. Production in the EU is dependent not only on energy and raw material imports, but also on parts, components and capital goods like machinery. Together, these products make up 80% of EU imports.

However, we are not naïve. **Free trade must also be fair**, and unfair trading practices, such as dumping and subsidisation by foreign producers and governments cause serious harm to EU industry and workers, undermining support for free trade, which is already under attack from many directions. For the Commission, this issue is about making globalisation work fairly for the benefit of all.

The challenge of **unfair trade practices by third countries is getting more acute**. Government intervention, massive subsidies and policies that distort prices have resulted in huge overcapacities and ultimately in dumped exports on the EU market. This year has seen massive **overcapacities** harm the EU steel sector. The steel overcapacity in China alone has been estimated at around 350 million tonnes, almost the double of the Union's annual production. Steel imports from China to the EU have surged in the last three years. Market prices for some steel products fell by up to 40% due to the surge of volumes, particularly damaging in the steel sector which has seen 40.000 jobs lost since the beginning of the financial crisis[1].Overcapacities are also developing very fast in other sectors, for instance aluminium. China has almost 10 million tons of excess aluminium capacity, doubled from five years ago, boosted by subsidised energy (which represents up to 40% of the aluminium production cost).

In addition, the higher duties imposed by other major World Trade Organisation members can lead to **trade diversion** of dumped products into the EU market, further exacerbating the problem.

The EU's Trade Defence Instruments are an instrument to shield the EU against unfair trade. The Commission's use of these instruments is carefully targeted and evidence-based. The EU uses Trade Defence Instruments less than many other jurisdictions and only 0.21% of imports are affected.

Faced with massive overcapacities flooding the EU market, the European Commission has taken an unprecedented number of anti-dumping and anti-subsidies measures. **Around**

[1] https://ec.europa.eu/growth/sectors/raw-materials/industries/metals/steel_en

315,000 jobs in Europe have been protected, primarily in the iron and steel, chemical and allied industries, ceramics and mechanical engineering sectors. In the steel sector alone, the EU already has 39 anti-dumping and anti-subsidy measures in place to protect our steel industry from unfair competition, 17 of those concern China. Within the limits of existing EU law, the Commission has been deploying the full force of the existing Trade Defence Instruments, including registration of imports, increased transparency, faster imposition of measures, as well as – exceptionally - initiating cases on the basis of threat of injury.

However, we have reached the limit of what is feasible under the existing EU trade defence legislation to rein in external overcapacities and dumping. In order to preserve European jobs and ensure fair competition in open markets it is of crucial importance that the EU's trade defence instruments are effective in the face of these global challenges. This is why **the 2013 Commission proposal to modernise trade defence instruments**[2] **must be adopted as a matter of urgency.**

In addition, the international legal framework is changing as certain provisions on dumping calculations in the Accession Protocols of China, Vietnam and Tajikistan to the World Trade Organisation will shortly expire. The Commission envisages **further amendments to the current EU Trade Defence legislation**, including a new methodology for calculating dumping, allowing for action on newly revealed subsidies and ensuring an orderly transition to the new situation.

The Commission believes it is now imperative for the EU's Trade Defence Instruments to be updated, strengthened and made legally more robust.

1. The 2013 Commission proposal on the Modernisation of Trade Defence Instruments

In April 2013, the Commission adopted an ambitious proposal to modernise Trade Defence Instruments, including better transparency, faster procedures and more effective enforcement. The Commission notably proposed no longer to apply the lesser duty rule in certain well defined, narrow circumstances, i.e. for exports which benefit from significant raw material distortions (such as through dual pricing, export taxes etc.). The European Parliament adopted its position on the proposal in 2014.

What is the lesser duty rule?
To impose anti-dumping measures, there needs to be proven dumping from a third country and proven injury for EU industry with a causal link between them. The level of anti-dumping duties is then imposed at the level of the dumping margin or the level that removes injury, whichever is lower (the 'lesser duty'). For example, in the measures imposed on hot rolled coils originating in China[3], the dumping margin was 102% and the injury margin was 19%, which was the level of the duties set. **The lesser duty rule therefore caps the level of duties that can be imposed.**

The EU's systematic application of the lesser duty rule goes beyond the basic obligations set out in the WTO Anti-Dumping Agreement. **The vast majority of other WTO Members**

[2] COM(2013) 192 final
[3] OJ L 272, 7.10.2016, p. 33

(including the US) do not exercise this type of self-restraint. The US imposes twice as many anti-dumping measures as the EU, with typically much higher duties. For instance, in Cold rolled steel products, the US imposed a China countrywide anti-dumping rate of 266% in 2015, whereas in the EU, the equivalent rate was 21.1%[4]. In Steel rebars, the US imposed a countrywide duty rate of 133% on imports from China in 2012, compared to 22.5%[5] imposed by the EU in 2016. **This marked difference in duty levels risks diverting trade to the EU, putting additional pressure on EU industry and workers.**

In its Communication "Steel: Preserving sustainable jobs and growth in Europe" of March 2016 the Commission committed to using the existing Trade Defence Instruments to the maximum possible but also urged the Council to proceed swiftly to the adoption of the modernisation proposal. The Commission has also advanced ideas to the Council for legal changes on how to shorten trade defence investigations by two months and on how to change the present methodology for calculating the target profit.

The President of the Commission in the State of the Union Address in September 2016 said: "*we need to do more, as overproduction in some parts of the world is putting European producers out of business. This is why I was in China twice this year to address the issue of overcapacity. This is also why the Commission has proposed to change the lesser duty rule. The United States imposes a 265 % import tariff on Chinese steel, but here in Europe, some governments have for years insisted we reduce tariffs on Chinese steel. I call on all Member States and on this Parliament to support the Commission in strengthening our trade defence instruments. We should not be naïve free traders, but be able to respond as forcefully to dumping as the United States*. "[6]

However, despite numerous calls by the European Council to take swift action, including in March and June 2016, the Council has to this date not been able to find an agreement on the modernisation proposal, notably due to an impasse over the adaptation of the lesser duty rule.

The Commission has proposed possible compromises in which the lesser duty rule would be adapted in some specific and carefully-defined cases where there are massive overcapacities and/or raw material distortions (for example in energy prices).

Given the challenges currently faced by EU industry, **finding an agreement on this proposal has become critical.**

2. The Commission's forthcoming proposal: addressing situations where market prices do not prevail

In a world of global and complex supply chains, the traditional calculation of dumping does not capture all the factors and distortions that exist in some emerging and transition economies. The EU cannot remain defenceless against massive subsidies, government interference, lack of transparency and non-independent financial sector providing unfair advantages to exporters in some countries.

[4] OJ L210 of 4.8.2016, p.1.
[5] OJ L204 of 29.7.2016, p.70.
[6] http://europa.eu/rapid/press-release_SPEECH-16-3043_en.htm

In response to these new challenges and transitions in some world economies, the Commission intends to propose further amendments to the EU Trade Defence legislation. The proposal will not grant 'market economy status' to any country but ensure that the EU's Trade Defence Instruments are adapted to face the new challenges and legal and economic realities, while maintaining an equivalent level of protection.

The Commission will propose a new anti-dumping methodology to capture market distortions linked to state intervention in third countries that mask the true extent of dumping practices. In determining distortions, several criteria will be considered, such as inter alia, state policies and influence, the widespread presence of state - owned enterprises, discrimination in favour of domestic companies and the independence of the financial sector. This new methodology will be country neutral as it can be applied equally to all members of the World Trade Organisation. It will involve the removal of the list of non-market economy countries in the anti-dumping legislation. It would bring EU legislation and practice closer to that of some other international partners such as the US and Canada.

Where distortions are found, prices and cost will be disregarded for calculating dumping and the Commission will use other available benchmarks, including costs and prices in other economies. The Commission will draft specific reports for countries or sectors where it will identify distortions. As is the case today, it will be for the EU industry to file complaints, but they can rely on such reports by the Commission to make their case.

There is lack of transparency in many third countries regarding subsidies. Subsidies manifestly contribute to distortions and overcapacities. The EU's Trade Defence Instruments should be strengthened by allowing the Commission to take action on new subsidies which are only revealed in the course of an investigation.

In implementing its new methodology, the Commission will ensure an orderly and transparent transition to the new system ("grandfathering"). The Commission therefore intends to propose that the new system will only apply to investigations initiated after the legislative change enters into force.

3. Conclusion

The 2013 Commission proposal, coupled with this new methodology, will ensure that the EU's Trade Defence Instruments remain economically effective, legally robust and politically sustainable in safeguarding the principles of free and fair trade, on which the EU's trade policy is built.

The Commission invites the European Council to support its efforts in line with the approach outlined in this Communication. In particular, the Commission invites the European Council:

- to ensure a political agreement on the 2013 Commission proposal at the Council meeting of 11 November, including the adaptation of the lesser duty rule in well-targeted and specific circumstances of overcapacities and/or raw material distortions (for example in the case of energy), and
- to support the approach outlined in this Communication to address situations where market prices do not prevail and deal with forthcoming changes in various World Trade Organisation Accession Protocols.