Trade Defense Instruments: Analysis of the Negotiated Proposal on Modernization

Trade defense instruments ("TDIs"), including those for anti-dumping and anti-subsidy, aim to tackle unfair commercial practices caused by imports from third countries that are not part of the European Union ("EU") that have an injurious effect on the state of the EU industry. The legal basis for imposing such measures is currently found in Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union ("Basic AD Regulation")[1] and Regulation (EU) 2016/1037 on protection against subsidized imports from countries not members of the European Union ("Basic AS Regulation").[2]

On December 5, 2017, the European Commission ("Commission"), the European Parliament and the Council reached a provisional agreement on the proposal made in 2013 by the Commission to amend the Basic AD Regulation and the Basic AS Regulation with a view to modernize the trade defense instruments of the European Union (the "Negotiated Proposal").[3] The text of the Negotiated Proposal was finally made available on January 23, 2018, following its endorsement by the European Parliament's Committee on International Trade ("INTA").[4]

Together with the recent adoption of the new dumping methodology addressing cost and price distortions,[5] the Negotiated Proposal, which still needs to be formally adopted, constitutes the first major amendment of the European Union's trade defense legislation since 1995 following the establishment of the World Trade Organization ("WTO").

1. The difficult path towards the Negotiated Proposal

The in-depth review of the European Union's trade defense rules was first proposed by then-Commissioner for Trade Peter Mandelson in 2006, but faced a large opposition and was eventually postponed *sine die*. Contemplating the stalemate of the WTO Doha Round negotiations, his successor, Commissioner Karel De Gucht, took the initiative to carry on with the modernization of the anti-dumping and anti-subsidy rules, resulting in an extensive proposal in April 2013.[6]

The proposal of the Commission was, however, subject to intense discussions within the European Parliament, which proposed substantial amendments thereto in April 2014.[7] Eventually, the proposal, as amended by the European Parliament, was sent for adoption to the Council, but member states remained divided on certain controversial amendments and the overhaul of the EU trade defense rules was, again, postponed. The Council finally agreed on a negotiating position under the Slovak presidency in December 2016.[8]

On February 28, 2017, INTA voted for the opening of inter-institutional negotiations. Eight so-called “trilogues” (discussions between the European Commission, the Council and the European Parliament) took place between March 21, 2017 and December 5, 2017, when the three delegations agreed on the Negotiated Proposal.

2. The amendments contemplated in the Negotiated Proposal

The Negotiated Proposal provides for substantial amendments that will impact not only the conduct of TDI investigations, but also the level of the measures that may be imposed pursuant to these investigations.

A. INVESTIGATION PERIODS ARE TO BE SHORTENED

Under the Agreement, anti-dumping investigations will need to be concluded within 14 months instead of 15 months. On the other hand, the time limit for concluding an anti-subsidy investigation remains unchanged, i.e., 13 months.

Surprisingly however, the time limits for concluding anti-dumping reviews are not amended under the Negotiated Proposal. Thus, anti-dumping expiry and interim reviews could, theoretically, last for up to 15 months.

Nevertheless, in both anti-dumping and anti-subsidy investigations, provisional measures will need to be imposed within seven to eight months from the initiation of the proceedings instead of nine months.[9]

Similarly, the deadline for interested parties to make themselves known and to submit the relevant information to be considered for inclusion in, where applicable, the sample of investigated interested parties will be shortened to one week from the initiation of the proceedings. It is worth noting, however, that, under the current practice of the European Commission, interested parties are to submit this information within 15 days from the publication of the notice of initiation, while they can submit any additional relevant information regarding the selection of the sample within 21 days.[10]

In the same vein, the deadline for interested parties to comment on the application of provisional measures, in the context of the Union interest assessment, will be shortened to 15 days instead of 25, from the date of application of such provisional measures.

B. THE LESSER DUTY RULE WOULD NO LONGER SYSTEMATICALLY APPLY, ALLOWING FOR THE IMPOSITION OF HIGHER DUTIES

Under the currently applicable TDI legislation, provisional and definitive duties are subject to the so-called "lesser duty rule." In accordance with this principle, duties must be set based on the lowest of the dumping / subsidy margin or the injury margin (see below for additional clarifications regarding the concept of "injury margin").

Whether the lesser duty rule should continue to apply in TDI investigations has been at the core of the negotiations on the modernization of the European Union's TDI legislation. More trade-liberal member states opposed the non-application of the lesser duty rule, emphasizing that its removal would lead to protectionism. Other countries have conversely insisted on the fact that the lesser duty rule is a non-mandatory, WTO+, commitment that is only championed by a handful of countries, jeopardizing the recovery of EU industries facing unfair competition.

In anti-dumping cases, the Negotiated Proposal foresees that the lesser duty rule would no longer apply if the following conditions are simultaneously met:

i. The exporting country is characterized by raw material distortions, defined as including "dual pricing schemes, export taxes, export surtax, export quota, export prohibition, fiscal tax on exports, licensing requirement, minimum export price, VAT tax refund reduction or withdrawal, restriction on customs clearance point for exporters, qualified exporters list, domestic market obligation, captive mining if the price of that raw material is significantly lower as compared to prices in the representative international markets."

   This list is to be amended and expanded by the Commission based on the OECD's *Inventory data on export restrictions on*

industrial raw materials or any other OECD database replacing this inventory.[11]

ii. The raw materials, whether unprocessed or processed and including energy, for which a distortion is established must account, taken individually, for at least 17 percent of the cost of production of the product concerned. To perform this calculation, a non-distorted price of the raw material, as established in representative international markets, is to be used.

iii. The non-application of the lesser duty rule is in the Union interest.[12]

Although the non-application of the lesser duty rule is based on the existence of "raw materials distortions", this concept differs, both in scope and in nature, from the "significant distortions" principle under the new, non-standard dumping methodology. While the latter impacts the determination of the dumping margin, the former simply determines whether duties are to be set on the basis of the dumping margin or the injury margin; it being understood that duties can never exceed the dumping margin established.

In practice, however, the combined effect of the non-standard dumping methodology and the non-application of the lesser duty rule may lead to unprecedented levels of anti-dumping duties being applied by the European Union.

In anti-subsidy cases, the lesser duty rule will simply no longer apply and the amount of the duties will correspond to the total amount of countervailable subsidies as established by the Commission, unless it is established that the non-application of the lesser duty rule is not in the Union interest. In the latter case, the duties will be based on the injury margin, if lower than the subsidy margin.[13]

C. AMENDMENTS TO INJURY MARGIN CALCULATIONS SHOULD FURTHER PROTECT THE EU INDUSTRY

In most cases, in the context of TDI proceedings, the Commission calculates so-called "injury margins", which correspond to the level of the duty that is needed to eliminate the injury incurred by the EU industry. This margin is generally based on the target price of the EU industry, corresponding to its costs of production, including selling, general and administrative expenses, to which a target profit is added.

Codifying the existing practice, the Negotiated Proposal provides that, in such cases, the target profit used to determine the target price shall take into account "factors such as the level of profitability before the increase of imports from the country under investigation, the level of profitability needed to cover full costs and investments, R&D and innovation, and the level of profitability to be expected under normal conditions of competition."

Importantly however, the Negotiated Proposal provides for two additional considerations that should drive upward the determination of the target price and, therefore, the injury margins established in TDI proceedings:

i. The target profit shall in any case be higher than 6 percent, whereas previously this was assessed on a case-by-case basis, with most often a target profit of 5 percent eventually established.

ii. The costs of production to be taken into consideration should include costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the European Union is a party, and from the ILO Conventions defined in a new Annex to the Basic AD Regulation and the Basic AS Regulation. Importantly, not only actual costs are to be considered, but also future costs resulting from these Negotiated Proposals and conventions, to

the extent they will be incurred during the period of application of the anti-dumping or anti-subsidy measures.

D. THE INTRODUCTION OF SOCIAL AND ENVIRONMENTAL CONSIDERATIONS

First, and as explained above, social and environmental considerations will, under the Negotiated Proposal, be taken into account in the construction of the target price for the purpose of determining injury margins.

They will also be taken into account for the acceptance of undertakings. While undertakings could already be refused on the basis of "reasons of general policy", the Negotiated Proposal clarifies that this comprises reasons linked to the Multilateral Environmental Agreements, and protocols thereunder to which the European Union is a party, and the ILO Conventions defined in the new Annex to the Basic AD Regulation and the Basic AS Regulation.

It is worth emphasizing also that recital 12 of the Negotiated Proposal mentions that the Commission would be entitled to initiate interim reviews, including on an *ex officio* basis, in case:

i. Costs of the EU industry increase as a result of higher social and environmental standards; or

ii. Circumstances in the exporting countries change related to social and environmental standards.

The recital further clarifies that the scope of these reviews would depend on the precise nature of the change but provides as an example that "if a country under measures withdraws from a social or environmental Negotiated Proposal, the interim review investigation could result in the withdrawal of the undertakings in force."[14]

These amendments, however, are not found in the operative part of the Negotiated Proposal and, as such, would not become binding law.

E. PRE-DISCLOSURE INFORMATION WILL INCREASE PREDICTABILITY AT THE PROVISIONAL STAGE

The Negotiated Proposal provides for a "period of pre-disclosure" of three weeks from the moment the Commission has informed interested parties of and published on its website its intention to impose provisional measures ("Provisional Disclosure"),[15] during which provisional duties shall not be applied.

Interested parties would, in addition, have three working days, from the Provisional Disclosure, to provide comments on the accuracy of the calculations so that the latter may be corrected before the actual application of any provisional duties.

Conversely, if the Commission does not intend to impose provisional measures but to continue the investigation, interested parties should be notified three weeks before the deadline for the imposition of provisional measures.

The purpose of this pre-disclosure period is to ensure predictability for Union operators, which, as the law currently stands, can be disrupted by the imposition of provisional measures that are directly applicable, as from their publication.

This notwithstanding, the introduction of a so-called "shipping clause", whereby interested parties would be informed of the upcoming imposition of provisional duties in advance of their actual application, has been a much-debated subject between the EU institutions. The opposition to this mechanism was mainly justified by risks of stockpiling, i.e., that important volumes be shipped to the EU prior to the application of provisional duties, thereby undermining the remedial effects of the provisional duties.

To address these concerns, the Negotiated Proposal provides for the following mechanisms:

i. In the context of TDI proceedings, TARIC codes (i.e., 10-digits customs codes) are created to cover specifically those products that are subject to the

investigation. Under the Negotiated Proposal, member states will be required to report on imports under these TARIC codes and interested parties may request that the Commission disclose, in a non-confidential form, those figures.

ii. The Commission will have an obligation to register imports during the pre-disclosure period if it determines that there has been a further substantial rise in imports which, in the light of its timing and volume and other circumstances, is likely to seriously undermine the remedial effect of the duties.[16] Such determination shall consider the information collected based on the TARIC codes established for the product under investigation.

    Once imports are registered, duties may be potentially be retroactively collected up to 90 days prior to the date of application of provisional measures. This means that duties could be imposed retroactively over the pre-disclosure period.

iii. If at the time of imposition of the definitive duties the Commission has not registered imports but finds that there has been a substantial rise in imports subject to the investigation during the period of pre-disclosure, the additional injury resulting from such increase is to be reflected in the injury margin.

    There is, however, no clarification as to how this should be reflected in the injury margin.

iv. Finally, the Commission is to review whether this three-week period is suitable two years after the entry into force of the Negotiated Proposal.

    The period of pre-disclosure should be extended to four weeks in case a substantial rise in imports occurred during the period of pre-disclosure causing additional injury to the EU industry and the Commission was not able to address it.

    Conversely, and to further enhance predictability, the pre-disclosure period is to be shortened to two weeks if there was no such rise or the Commission was able to address it.

F. THE POSSIBILITY TO TACKLE DUMPED PRODUCTS SHIPPED OFFSHORE

Under the Negotiated Proposal, anti-dumping or countervailing duties may be imposed in the Continental Shelf of a member state or the Exclusive Economic Zone declared by a member state pursuant to the United Nations Convention on the Law of the Sea (UNCLOS).

The Negotiated Proposal, however, provides that this possibility shall be subject to the adoption by the Commission of an implementing act laying down the conditions for the incurrence of duties and customs tools allowing for such imposition of duties. Until such customs tools are operational, duties should not apply to the member states' Continental Shelf or Exclusive Economic Zone.

In that respect, it is worth noting that EU customs authorities have, in the past, already insisted on the fact that collecting such levies would be logistically very hard.[17]

The recitals to the Negotiated Proposal give, however, some information on the intended extension of the application and collection of duties to the member states' Continental Shelf and Exclusive Economic Zone:[18]

i. Measures would only be extended "provided that the product subject to measures is used in any of both places with the purpose of exploring or exploiting of the non-living natural resources of the seabed and its subsoil or in order to produce energy from the water, currents and winds, and provided that the product subject to measures is consumed there in significant quantities."

ii. This extension would be procedurally framed as, the "intention to extend the application in that manner should be set out in the notice of initiation, and should be supported by sufficient evidence in the request."

G. BETTER SUPPORT FOR EU SMALLER COMPANIES

The Negotiated Proposal aims at facilitating access to TDIs for small and medium-size enterprises ("SMEs") in diverse and fragmented industry sectors by reinforcing the role of the SME Help Desk to ensure that SMEs can be assisted and obtain advice from the Commission's TDI experts on both case-specific and general queries.[19]

Although not specific to SMEs, the Negotiated Proposal also provides that investigation periods shall, whenever possible, coincide with the financial year, "especially in the case of diverse and fragmented sectors largely composed of SMEs." The purpose of this provision is to facilitate the data collection exercise required in the context of TDI proceedings. This exercise has proven particularly difficult for SMEs when information must be reported for specific periods of time that do not coincide with their regular reporting periods.

H. PARTICIPATION OF TRADE UNIONS IN TDI PROCEEDINGS

Recognizing the importance of trade unions and their role in the representation of workers whose jobs are at stake due to unfair competition from abroad, the Negotiated Proposal seeks to increase their participation in TDI proceedings by allowing them to:

i. Prepare complaints jointly with the EU industry or expressly support complaints prepared by the EU industry.

ii. Access the non-confidential file of ongoing investigations, upon a written request.

iii. Comment on the application of any provisional duties.

Furthermore, the Negotiated Proposal provides that the interests of trade unions should be considered in the assessment of the Union interest.

I. *EX-OFFICIO* INITIATION OF INVESTIGATIONS BY THE COMMISSION

Under the current TDI legislation, the Commission can self-initiate an investigation without having received a complaint in "special circumstances."

Although the Basic AD Regulation and the Basic AS Regulation are left unchanged in that respect, Recital 6 of the Negotiated Proposal provides that "to ensure effective measures to fight against retaliation, Union producers should be able to rely on the [TDI legislation] without fear of retaliation by third parties." Accordingly, this Recital clarifies that "special circumstances should include threat of retaliation by third parties."

Nonetheless, the Negotiated Proposal has specifically amended the Basic AD Regulation and the Basic AS Regulation to clarify that, in case of *ex-officio* initiation, EU producers are requested to cooperate. The purpose of this cooperation is to ensure that the Commission can gather sufficient evidence to conduct its investigation and make its findings.

This notwithstanding, the situation remains, in fact, unchanged. There is no new penalty for any failure to cooperate. Consequently, non-cooperation would simply lead to the application of "facts available", which are, in principle, adverse to the non-cooperating parties to avoid granting a bonus to non-cooperation. In practical terms, this means that, should EU producers fail to cooperate, the Commission is likely to terminate the investigation without imposing measures.

J. FACILITATING REGISTRATION OF IMPORTS

In addition to imposing a mandatory consideration of registration during the period of pre-disclosure, the Negotiated Proposal will

considerably increase cases of registration of imports by:

i. Clarifying that registration may be ordered as from the initiation of the investigation.

ii. Denying the Commission's discretion in deciding whether or not to register imports. Whereas currently, the Commission may order registration if a request containing sufficient evidence has been submitted, the Negotiated Proposal, provides that the Commission shall order registration in such a case.

iii. Allowing the Commission to order registration on its own initiative.

K. CLARIFICATIONS REGARDING THE ACCEPTANCE OF UNDERTAKINGS

The Negotiated Proposal clarifies that undertakings may only be accepted when, among others, the following conditions are met:

i. If the injurious effect of dumping / subsidization is thereby eliminated, whereas previously the Commission had to be "satisfied" that such injurious effect would be eliminated.

ii. After considering whether the lesser duty rule should apply, if the undertaking proposes prices lower than the margin of dumping or countervailable subsidies but corresponding to the injury margin.

iii. If they have been offered, at the latest, five days prior to the end of the period for commenting on the Commission's definitive disclosure of its findings, save in exceptional circumstances.

iv. After the EU industry has been given an opportunity to comment on the main features of the undertaking.

L. AMENDMENTS RELATING TO EXPIRY REVIEW PROCEEDINGS, IN PARTICULAR REGARDING THE REIMBURSEMENT OF DUTIES PAID DURING SUCH PROCEEDINGS

The initiation of an expiry review procedure is based on the existence of a likelihood of continuation or recurrence of dumping / subsidization and injury. The Negotiated Proposal clarifies that such a likelihood may be indicated *inter alia* by evidence of continued raw material distortions.

Importantly, anti-dumping or countervailing duties continue to be due pending the outcome of an expiry review procedure. As the law stands, even if the expiry review procedure concludes that anti-dumping or countervailing measures should be terminated, the duties that have been paid while the procedure was ongoing are not reimbursed.

The Negotiated Proposal, however, provides that duties paid in such cases would need to be reimbursed, based on requests to be addressed to national customs authorities and in accordance with the applicable EU customs legislation. No interests would, however, be due by the national customs authorities.

M. AMENDMENTS RELATING TO ANTI-CIRCUMVENTION PROCEEDINGS

Currently, the Commission may, upon the initiation of an anti-circumvention investigation, request that imports be registered. Under the Negotiated Proposal, such registration would become mandatory.

Moreover, in anti-circumvention proceedings, exporting producers are entitled to request an exemption from registration or the extended scope of the duties if they can establish *inter alia* that they are not engaged in circumvention practices.

For companies located in the European Union, they had to demonstrate in addition that they were not related to producers subject to the

measures. The Negotiated Proposal will remove this condition as "experience shows that sometimes producers of the product concerned are found not to be engaged in circumvention practices but are found to be related to a producer subject to the original measures. In such cases the producer should not be denied an exemption merely on the grounds that the company is related to a producer subject to the original measures. Also, when the circumvention practice takes place in the Union, the fact that importers are related to producers subject to the measures should not be decisive in determining whether the importer may be granted an exemption."[20]

N. CODIFICATION OF EXISTING PRACTICE

The Negotiated Proposal also codifies a number of existing practices, namely that:

i. Several provisions of the Basic AD Regulation and the Basic AS Regulation have been amended to clarify that reference to the EU industry should not cover only the complaining EU producers (e.g., clarifications that non-complaining EU producers may be part of the sample or that their views should also be taken into account for the purpose of the Union interest assessment). In practice, the Commission already considered the EU industry as a whole, rather than only those EU producers that were specifically complainants.

ii. A Hearing Officer shall safeguard the effective exercise of procedural rights in accordance with a mandate adopted by Commission decision. In practice, the function was created in 2007 and the current terms of the mandate of the Hearing Officer for trade proceedings have already been defined in a Commission Decision of February 29, 2012.[21]

iii. Exporting producers found to have a *de minimis* dumping/subsidy margin should not be subject to subsequent reviews. This was already an existing practice, as maintaining such exporting producers in subsequent reviews had been found to be WTO-inconsistent.

iv. The Commission is empowered to adopt non-binding interpretative notices providing general guidance to possible interested parties on the application of the Basic AD Regulation and the Basic AS Regulation. Although non-binding, the Commission would not be entitled to depart from the interpretation provided therein, in accordance with the principles of equal treatment and legitimate expectation. While not new,[22] the Negotiated Proposal, however, clarifies that such interpretative notices may only be adopted after a public consultation has been held, and after having consulted the European Parliament and the Council.

v. Recital 16 of the Negotiated Proposal requires that the Commission provides access to the non-confidential file through an information system, whereby interested parties are informed that new non-confidential information has been added to the file and that non-confidential information shall be accessible through a web-based platform. Although this requirement does not appear in the operative part of the Negotiated Proposal, it must be noted that the requested features are already available through the recently established TRON platform.[23]

O. EXTENSION OF THE REPORTING OBLIGATIONS BEARING ON THE COMMISSION

The yearly reporting obligations of the Commission to the European Parliament and the Council have been extended to cover:

i. The use of TDI by third countries against the European Union and appeals against such measures,
ii. The activities of the Hearing Officer and of the SME Help Desk, and
iii. Details on how social and environmental standards have been considered and taken into account in the investigations.

Furthermore, the Commission will be required to submit to the European Parliament a report every five years on the application of the provisions relating to the non-application of the lesser duty rule and those on the acceptance of undertakings.

3. When will the Negotiated Proposal be formally adopted and enter into force?

The Negotiated Proposal has been endorsed by INTA and must now be formally adopted by the European Parliament and the Council before it becomes binding law. This process is, however, expected not to raise any concern as the proposed text is the result of a political compromise between representatives of both institutions. The Negotiated Proposal should therefore be adopted without any substantial change and is expected to enter into force by the end of May 2018.

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Endnotes

[1] OJ EU, L 176, 30.6.2016, p. 21.

[2] OJ EU, L 176, 30.6.2016, p. 55.

[3] See the Commission's press release of December 5, 2017, *Commission welcomes landmark deal modernising the EU's trade defence*, available at: http://europa.eu/rapid/press-release_IP-17-5136_en.htm.

[4] Available at: http://www.emeeting.europarl.europa.eu/committees/agenda/201801/INTA/INTA(2018)0122_1P/sitt-7666743.

[5] See our Legal Update of December 21, 2017, *EU Adopts New Dumping Methodology Addressing Cost and Price Distortions*, available at: https://www.mayerbrown.com/EU-Adopts-New-Dumping-Methodology-Addressing-Cost-and-Price-Distortions-12-21-2017/.

[6] See the Commission's Proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1225/2009 on protection of dumped imports from countries that are not members of the European Community

and Council Regulation (EC) No 597/2009 on protection against subsidized imports from countries not members of the European Community, COM(2013)0192, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52013PC0192.

[7] See the European Parliament's Legislative resolution of April 16, 2014 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community and Council Regulation (EC) No 597/2009 on protection against subsidized imports from countries not members of the European Community, 2013/0103(COD), available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2014-0420+0+DOC+PDF+V0//EN.

[8] See the Council's press release of December 13, 2016, *Trade defence instruments: Council agrees negotiating position*, available at: http://www.consilium.europa.eu/en/press/press-releases/2016/12/13/trade-defence-instruments-general-approach/.

[9] However, provisional duties can still, at the earliest, be imposed 60 days from the initiation of the proceedings.

[10] See, for instance, the notice of initiation of an anti-dumping proceeding concerning imports of silicon originating in Bosnia and Herzegovina and in Brazil, OJ C483, 19.12.2017, p. 39.

[11] Available at: https://qdd.oecd.org/subject.aspx?Subject=ExportRestrictions_IndustrialRawMaterials.

[12] Under the Negotiated Proposal, the Commission has, with regard to the determination of whether applying the lesser duty rule is in the Union interest, a specific duty to actively seek information and to examine all pertinent information.

[13] Provisions relating to the consideration of whether the lesser duty rule is in the Union interest that are foreseen under the Negotiated Proposal in the context of anti-dumping investigations are not provided for in the context of anti-subsidy investigations. The Commission will only be required to apply the lesser duty rule if, "on the basis of all the information submitted, it can clearly conclude that the non-application of the lesser duty rule is not in the Union's interest."

[14] See Negotiated Proposal, Recital (12).

[15] The Negotiated Proposal provides that the information to be provided at the provisional stage shall include a summary of the proposed duties for information purposes only and details of the calculation of the dumping margin and the margin adequate to remove the injury to the Union industry.

[16] In principle, the Commission must also determine that there is, for the product in question, a history of dumping or subsidization or that importers were aware or should have been aware of the dumping or subsidization. This condition is, however, systematically considered to be fulfilled to the extent the notice of initiation of the investigation has made importers aware of the possibility of dumping or subsidization.

[17] See Mlex, *New EU trade-defense regime seen moving closer with political deal tomorrow*, December 4, 2017.

[18] Negotiated Proposal, Recital (25).

[19] More specifically, the Negotiated Proposal provides that the SME Help Desk should assist by "raising awareness of the instrument, provide general information and explanations on procedures, how to file a complaint, releasing standard questionnaires in all languages and by replying to general, not case-specific queries. The SME Help Desk shall make available standard forms for statistics to be submitted for standing purposes and questionnaires."

[20] See Negotiated Proposal, Recital (20).

[21] See Decision of the President of the Commission of February 29, 2012 on the function and terms of reference of the hearing officer in certain trade proceedings, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012D0199.

[22] For instance, the Commission had in the past published guidelines for the calculation of the amount of subsidy in countervailing duty investigations.

[23] Available at: https://webgate.ec.europa.eu/tron/TDI.

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