



Second AEGIS Europe Report on the EU's Trade Defence Instruments



Executive summary

The AEGIS Europe Alliance represents more than 20 EU manufacturing sectors and companies often injured by unfair trade practices. The Alliance therefore has an interest in ensuring that the trade defence instruments work effectively to counter the distortions caused by the dumping, and/or the subsidisation, of imports.

This second AEGIS Europe Report on the Functioning of the Trade Defence Instruments (TDI) argues that the effective use of TDI contributes significantly to the economic security of the Union. The Trade Defence Instruments, if used robustly, remain the best tools to counter, and root out, the damage that unfair trade causes to European jobs and economic well-being. As President von der Leyen told the European Parliament in April 2023:

*The second point is **becoming bolder and better at using our existing trade defence instruments**. We have given ourselves the right tools to deal with security concerns and economic distortions. So, we must be more assertive in using them when we need them!¹*

The EU remains a very modest user of TDIs compared to other OECD economies such as Australia, Canada and the United States. In addition, the EU has a WTO+ policy for anti-dumping which makes the instrument less effective than in other countries. By way of example, the EU almost lost its solar panel and magnesium industries because the anti-dumping measures put in place at that time were ineffective.

The EU has not made sufficient use of the safeguard instrument. AEGIS Europe calls for more openness to the imposition of safeguards. In addition, there needs to be an “emergency brake mechanism” based on the GATT XXI Security Article. When shocks in the economy happen or when there is unfairness in the market place, a quicker and stronger response is needed.

In the past year, the Commission has acted to address problems related to the calculation of dumping margins where there is high inflation, or subsidies from one country boosting manufacturing in another county. However, much remains to be done. SMEs, the core of the Union’s manufacturing, still have difficulties in using TDI, and the lesser duty rule still applies in most cases to lower anti-dumping duties and makes them less effective and certainly lower than in other countries.

AEGIS Europe calls on the Member States to recognise the damage caused by unfair trade practices and to promote more robust implementation of the anti-dumping, the anti-subsidy and the safeguard instruments now more than ever since the industrial base in the EU is shrinking to the detriment of the Union and its values.

¹ [Speech by President von der Leyen at the European Parliament Plenary on the need for a coherent strategy for EU-China relations, 18 April 2023.](#)

INTRODUCTION

The 2023 AEGIS Europe Report on the functioning of the EU's Trade Defence Instruments² comes at a time of deep reflection, in the Union, on issues such as 'economic security',³ critical raw materials, resilience',⁴ 'open strategic autonomy' and a 'rules-based' international order.

Other than the citation from President von der Leyen in the executive summary, very little has been said about the traditional trade defence instruments (anti-dumping, anti-subsidy, safeguards),⁵ even though the trade defence instruments are the proven tools that allow the Union to address unfair trade practices, to ensure a rules-based global trading environment and ensure a level playing field for EU industry.

Addressing coercion, short supply chains, strategic domestic production, inward and outward investment, systemic rivals, war economies, and national champions, are all important. And these concepts must inform how the Commission implements trade defence. But the instruments adopted and policies being discussed are not a substitute for the robust implementation of the tools that already have the potential to provide the economic remedies that the Union needs.

The first AEGIS Europe Report on the EU's Trade Defence Instruments from September 2022 made 27 recommendations on how implementation of the anti-dumping and anti-subsidy instruments could be improved. In the 2023 Report, AEGIS Europe emphasises the need for more attention to be given to the better use of the trade defence instruments in achieving economic security in the Union.

The European Union remains reluctant to robustly implement the trade defence instruments. This reluctance is seen in many Member States but also in the EU institutions. This reluctance is softening, but change is not coming fast enough. In presenting the Commission's 2022 Report on TDI, Executive Vice-President Dombrovskis stated:

In an increasingly challenging global trade environment, the Commission's robust use of trade defence instruments is essential for protecting the interests of our industry and maintaining a level playing field. Our goal is to restore fair and competitive conditions when dumped and subsidised imports threaten the EU's manufacturing base. We have put in place an unprecedented number of measures

² Anti-Dumping, Anti-Subsidies and Safeguards.

³ An EU approach to enhance economic security from 20 June 2023 accessible [here](#).

⁴ Resilient EU2030 A future-oriented approach to reinforce the EU's Open Strategic Autonomy and Global Leadership accessible [here](#).

⁵ On 6 September 2023 at the launch of the Commission's Report on TDI in 2022, Executive Vice President Dombrovskis states: '*In an increasingly challenging global trade environment, the Commission's robust use of trade defence instruments is essential for protecting the interests of our industry and maintaining a level playing field.*' However, the evidence in the Commission's Report shows that the number of new (and necessary) measures is very low.

to minimise the impact of unfairly priced import products, for example wind towers and optical fibres that are essential for the EU's green and digital transition.

AEGIS Europe is not convinced that all Member States or all the institutions of the Union share Commissioner Dombrovskis' understanding of the need to react robustly to the challenging global trade environment. The incidence of unfair trade is increasing. EU industry is not playing on a level field. The Union is too slow to react.

The issue is not just wind towers and optical fibres but solar panels, batteries, critical raw materials and the EU's traditional manufacturing base in chemicals, cars, steel and aluminium, to name but a few. EU manufacturing is under threat. It is losing market share at home and in its export markets.

Trade Defence is not the only remedy. But it is an important one. The Union must be quicker and tougher in imposing trade defence measures to ensure that the Union has a healthy and innovative manufacturing sector able to implement the Union's ambitions to decarbonise, have secure supply chains and a circular economy.

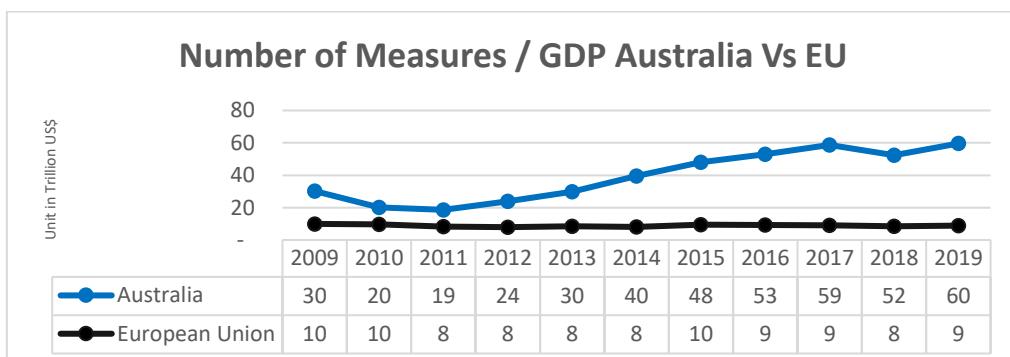
TRADE DEFENCE INSTRUMENTS

The EU's trade defence instruments (TDI) are made up of the Anti-Dumping instrument, the Anti-Subsidy instrument and the Safeguard instrument.

Introduction

All three instruments are part of the international rules-based order with specific agreements under the auspices of the World Trade Organisation (WTO). The instruments are accepted as necessary by the 164 Members of the WTO including the United States, China, Russia, India, Brazil and Saudi Arabia, to name but a few.

The European Union applies a WTO+ policy on trade defence. It implements rules which are stricter than necessary such as the lesser duty rule. When rebased against the EU's GDP or its trade intensity, the EU is the most modest user of TDI when compared to other major OECD economies.⁶ This can be seen most clearly in the following slides.

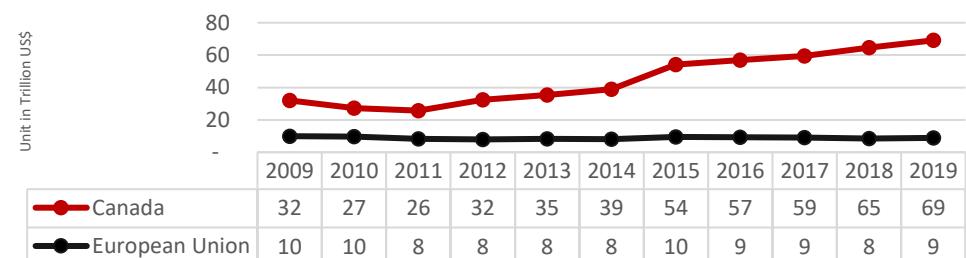


⁶ See the First AEGIS Europe Report on the EU's Trade Defence Instruments available [here](#).

Number of Measures / Imports Australia Vs EU



Number of Measures / GDP Canada Vs EU



Number of Measures / Imports Canada Vs EU



Number of Measures / GDP US Vs EU



Number of Measures / Imports US Vs EU



Despite WTO+ and the evident restrained use of TDI, some Member States make policy objections to the very use of TDI at all. If the EU is to achieve economic security, ideological positions must be dropped. AEGIS Europe calls on those Member States opposing the effective use of the trade defence instruments on the basis of ideological positions to review their strategies and to recognise the effectiveness of TDI in achieving the EU's strategic goals.

Anti-dumping

Dumping is the selling on the export market of goods at less than the normal value of those same goods on the market of production. Companies engage in dumping so as to boost exports and gain a foothold, and subsequently grow market share, in export markets and eventually to displace the domestic industry in the export market.

The WTO condemns such practices as being unfair and gives Members the right, within the rules, to take measures to stop the damage that this practice does to the world trade order and to the domestic industry in the export market. The most common remedy is the imposition of anti-dumping duties on imports.

Anti-dumping is what it says. It is the taking of measures, within the rules-based international trade order, to counter dumping and prevent further damage to the industry in the export market.

The European Union is vulnerable to dumping. It has one of the most attractive markets for exports. The terms of trade are good. Prices are good and generally internationally attractive. Commerce thrives in the Union because our markets work. Many exporters will take whatever steps are necessary to gain a foothold in the Union. And, more and more, the governments of exporting countries are helping their preferred companies, their national champions, to grow in the Union while our industry is losing ground because it cannot compete with unfair and government-promoted trade.

Where dumping into the Union is not countered, it ultimately kills off the EU domestic industry. Two of many examples stand out:

- The Union's solar panel industry was killed off by aggressive dumping from China and an ineffective response by the Union. Today, the solar panel industry is considered strategic and is considered an industry necessary for economic security. If effective anti-dumping measures had been taken 10 to 15 years ago, the EU would currently have a healthy solar panel industry.
- The EU's magnesium industry was also killed off by aggressive dumping, with the last of EU magnesium production ending in 2001. The very low trade defence measures imposed at the time were insufficient to prevent this, and, regrettably, in the meantime, magnesium has been qualified as both a strategic and critical raw material by the EU Commission.

Given the level of imports into the Union and the incidence of dumping in those imports, the anti-dumping instrument needs to be used more, quicker and become more effective in stopping dumping and stopping the injury to the Union industry.

Anti-subsidy

The WTO provides two remedies against the damage to the global economy from the subsidisation of industries or specific companies. The subsidy can be attacked at source in WTO dispute settlement,⁷ or individual members can take action at their borders to counter the effect of the subsidy and prevent damage to the domestic industry.

Subsidies allow exporters to the Union to sell at below the cost of production in volumes they would not be able to achieve in the absence of subsidies. Selling below the cost of production or at increased volumes in the Union undermines EU pricing and injures the Union industry.

Governments grant subsidies in many ways. The most common are grants, equity infusion, tax relief, subsidised inputs or energy. Energy subsidies are mainly in the form of (but not limited to) dual pricing (i.e. selling energy in the domestic market at below the international or export price of the same energy): a quite common way to subsidise energy is to use abnormally low-priced coal.

The most common remedy against subsidies is the imposition, at the border, of anti-subsidy duties which has the effect of raising the price of the imports and limiting the undercutting of Union producers.

Safeguards

The WTO allows the imposition of safeguards where a product is being imported in such increased quantities or under such conditions as to cause serious injury or threaten serious injury to the domestic producers of that product.

Unlike anti-dumping and anti-subsidy measures, which apply to specific export origins, safeguard measures apply to imports from all origins. They must also be temporary in nature (unlike anti-dumping and anti-subsidy measures which last for 5 years).

And yet, the EU has only one safeguard in place. This is in relation to certain steel products.⁸ Requests have been made to introduce other safeguards but these have always been rejected by the Union.

⁷ Addressing subsidies in WTO dispute settlement is still weakened by the terms of GATT Article XVI which, in essence, did not discipline subsidies in the same way they can now be disciplined in anti-subsidy investigations.

⁸ Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products; OJ L 31, 1.2.2019, p. 27 and subsequent implementing regulations adopted in relation to this one accessible [here](#).

Non market economies and systemic rivals

More and more markets around the world are being distorted by their governments. There can be distortions to the whole market of a country or to specific product markets in that country. The distortions can be in the form of subsidies, restrictions on market access, promotion of exports, favouring domestic production over imports, the creation of national ‘champions’ etc. China engages in all of these practices. Other countries in some of them.

The EU needs to be ever vigilant to these changing practices and in adapting the implementation of the trade defence instruments to ensure that all distortions are countered before they undermine the Union industry.

If the Union is to maintain its social market economy, in other words, to maintain the social and societal values set out in the Lisbon Treaty, we must recognise that there is systemic economic rivalry not only from China but in other countries such as Russia, India, and countries in north Africa and the Gulf.

THE EU REMAINS A MODEST USER OF TDI

In 2022, AEGIS Europe examined the use by the EU of the TDI instruments and compared this use with other OECD countries such as the US, Canada and Australia. What emerged from this comparison was that, if the use of TDI was rebased against either GDP or the volume of imports, the EU has only 25% of the measures in the US, and less than 14% of Australia.⁹ This clearly shows that the EU does not tackle all the unfair practices. Countries like China engage in dumping in Australia, Canada and the US just like in the EU. These countries counter the dumping. The EU does not do so in the same degree.

Statistics on TDI use in 2022

The Commission has published statistics on the use of the TDI in 2022.¹⁰ The statistics demonstrate that the EU remains a modest user of TDI.

47 investigations were initiated, split up as follows:

- 5 new investigations, of which 1 anti-subsidy;
- 27 expiry reviews, of which 3 anti-subsidy;
- 4 interim reviews, of which 0 anti-subsidy;
- 5 other reviews;
- 2 new exporter reviews, of which 0 accelerated;
- 1 anti-absorption investigation;
- 2 anti-circumvention investigations;

⁹ See the First AEGIS Europe Report on the EU’s Trade Defence Instruments available [here](#).

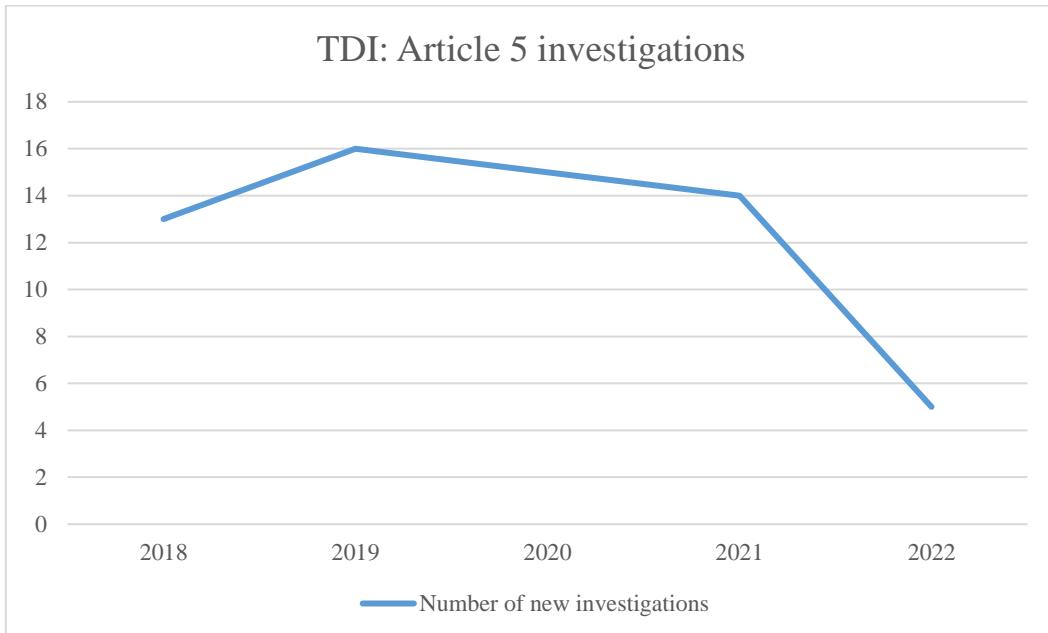
¹⁰ The TDI statistics were sourced on the DG TRADE website [here](#).

- 1 safeguard investigation was initiated.

While it is clear that the Commission has been busy, only 5 new investigations were initiated. This means that the majority of the Commission's work (42 out of 47 investigations or nearly 90%) has been the maintenance or enforcement of existing measures. In other words, 42 of the investigations did not concern products that were newly suffering injury but only those sectors where it had already been determined that injury was being caused by unfair trade practices.

- In 2018 there were 10 new investigations;
- In 2019 there were 16 new investigations;
- In 2020 there were 15 new investigations;
- In 2021 there were 14 new investigations
- In 2022 there were 5 new investigations.

This trend is highlighted by the following graph.



The Commission 2022 Report on TDIs¹¹ argues that the reason for the low number of Article 5 (or new product) investigations is the slowdown in global trade post-Covid-19 and the low number of complaints from EU industry. The Commission also notes that WTO statistics show a drop of new initiations of 47% globally.

Many AEGIS Europe Members challenge this analysis. The incidence of unfair trade practices does not necessarily decrease, just because the overall volume of world trade decreases and, in practice, dumping and subsidisation increased in this period.

¹¹ 4th Annual Report from the Commission to the European Parliament and the Council on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities and the Use of Trade Defence Instruments by Third Countries targeting the EU in 2022 accessible [here](#). See the core argumentation in the Executive Summary.

Even if EU manufacturers increased market share or made profits during this period as claimed in the 2022 Report,¹² EU industry complained to the Commission about the underlying unfair practices and claimed injury would recur once the post-Covid-19 situation stabilised.

AEGIS Europe notes that the Commission's reasoning as to why the number of new investigations was low in 2022 does not stand up. Why? Because the situation persists in 2023. As of September 2023, only 3 new investigations based on Article 5 have been opened. This is in a situation where imports returned to pre-Covid-19 levels and the Union industry is suffering significant injury.

It is clear that the Commission can do more.¹³ Besides increasing the number of investigations, actions can include: liaising better with the Union Industry and Trade Unions on the evolution of trade flows; helping SMEs to build cases; initiating investigations *ex officio*; and making it easier to show *prima facie* evidence of dumping or subsidisation.¹⁴ In this way, the Commission can work with the Union industry and the Trade Unions to ensure that unfair trade practices are identified and tackled effectively. If Australia, Canada and the USA can do more, why can't the Union?

THE COMMISSION AND THE MEMBER STATES

Innovation by the Commission in the implementation of TDI

AEGIS Europe recognizes that the Commission is not standing still. In the last years the Commission has innovated by:

- Countervailing subsidies from one country but used in a second country to produce goods that injure EU producers;¹⁵
- Reopening investigations to repair errors of calculation and application while maintaining the effectiveness of the original measures;

¹² Ibid.

¹³ The Commission has announced a fourth investigation into electric cars originating in China but, as of 15 September, no official notice of initiation has appeared in the Union's Official Journal.

¹⁴ AEGIS Europe recognises that the Commission should not start investigations that are not likely to result in measures as i) it is a requirement of WTO law that complainants must show *prima facie* evidence of dumping, subsidisation, injury and causation; ii) the Commission must marshal wisely its limited resources. However, AEGIS Europe members are being injured and need effective TDI.

¹⁵ Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 imposing definitive countervailing duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt and amending Commission Implementing Regulation (EU) 2020/492 imposing definitive anti-dumping duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt accessible [here](#), while the investigation history may be found [here](#).

- Changing the times for comparing orders and actual deliveries so as to avoid the impact of inflation;¹⁶
- Opening *ex officio* an anti-circumvention investigation.

However, as highlighted in the AEGIS Europe 2022 Report, much more can be done. That Report identified 27 specific approaches to TDI that would make the instruments more effective. In addition to those specific recommendations, this 2023 AEGIS Europe Report has a number of observations on the implementation of the trade defence instruments.

Suspension of measures

In the course of 2021, the Commission suspended the application of TDI measures on Aluminium products on the basis of a claimed imbalance in supply and demand on the Union market. In that particular case, a data-based examination of supply and demand was not carried out by the Commission prior to the decision to suspend. It must be recognised that subsequently, there have been no further suspensions.

Susensions must be the exception and not the rule and must only be based on hard data such as the data needed to show dumping, subsidisation, injury and causation.

A greater understanding of TDI is needed in Brussels and the Member States

Dumped and subsidised imports undermine the economic health of the EU. Unfair competition destroys jobs, inhibits innovation, and restrains enterprise. EU manufacturing is essential to the wellbeing not only of the economy but society as a whole.

AEGIS Europe calls for:

- i) The allocation of more policy time and resources to foster debate and discussion, leading to a greater understanding of – and effective measures to – counter unfair trade;
- ii) Greater publicity towards EU industries and Trade Unions of the availability of trade defence remedies;
- iii) Continued dialogue between the EU institutions and industry on the needs of EU manufacturing and the ability of the trade defence tools to counter unfair trade; and
- iv) More investment by the Member States in the understanding the role that TDI can play ensuring economic security in the Union.

What is needed is stronger and more effective implementation of trade defence law and policy by the Commission and by the Member States.

¹⁶Commission Implementing Regulation (EU) 2023/1597 of 3 August 2023 amending Implementing Regulation (EU) 2023/265 imposing a definitive anti-dumping duty on imports of ceramic tiles originating in India and Türkiye; OJ L 196/21, 4.8.2023, accessible [here](#).

MORE INNOVATION IS NEEDED IN THE IMPLEMENTATION OF TDI

AEGIS Europe considers that more innovation is needed to make TDI more effective and to contribute more to the economic security of the Union.

Registration of imports at the initiation of investigations

To trigger the initiation of an investigation, the Union industry usually has to demonstrate that there has been a significant increase in the volume of imports. The initiation of an investigation does not stop the import and even triggers a further surge in imports by traders seeking to stock up and avoid a possible future duty.

Currently, once an investigation has been initiated, the Union industry can seek the registration of the imports such that duties, if imposed, can be backdated to the imports that have been registered. The industry has to show not only an increase in imports prior to the initiation, but a rapid increase after initiation.

This should change. Registration should be based on the volume of imports prior to initiation of the investigation. The Notice of Initiation of an investigation should order the national customs authorities to start registering imports from the date of initiation. This would put a brake on stockists gaming the investigation and give some immediate relief to the Union industry.

Threat of Injury

WTO law allows for the early investigation of unfair trade practices where injury to the Union industry has not fully materialized but is likely to occur.

The Union interprets this opportunity restrictively and requires that the threat of injury is imminent, and that signs of injury are already apparent. This approach limits the availability of a rules-based WTO solution to a very real problem. Union producers and sellers feel injury before statistics demonstrate injury. Reliance on statistics and data hides real effects in the market place.

Fair comparison of environmental costs and social costs

The TDI modernisation package introduced the idea that the Commission should take future environmental costs (for the most part, the costs associated with decarbonisation) into consideration when calculating the margin of injury to the Union industry.

This innovation is not enough. Environmental and Social costs must be taken into consideration also on the side of the calculation of the dumping margin.

The dumping margin is the difference between the normal value in the market of origin and the export price to the Union. The Commission calculates the normal value and the export price separately. To ensure that the comparison is fair, WTO law allows for adjustments to either the normal value or the export price.

The export price is derived from the price that the imported goods obtain in the Union. They are therefore influenced by the cost level in the Union. This cost level is in turn influenced by

the high social and environmental costs in the Union. Many exporting countries do not have the same ambitions to protect workers or the environment. This is seen most clearly in relation to costing carbon so as to address climate change. But it is also seen in social conditions.

There cannot be a fair comparison between the normal value in the country of origin and the export price to the Union if the export price is set in a situation of high environmental and social standards and the normal value is set in a situation of low standards. An adjustment must be made to either the normal value or the export prices to make the comparison of these two values fair. WTO law does not restrict the adjustments that can be made.

An emergency brake

Trade defence in times of crisis should allow for the more active use of the existing Safeguard instrument. This does not require legislative change. However, as seen above, the Union has been reluctant to use the Safeguard instrument. This must change in the EU. Change has already happened in the WTO so there is room for the EU to move.¹⁷

A new 'emergency brake' instrument is needed. This must allow new border measures to stop imports of products or product groups, to allow for the peculiar circumstances of the crisis – economic, political or military – and to be flexible on the definition of injury with causality criteria directly linked to the crisis that has been identified.

An emergency brake instrument can be based on GATT Article XXI Security and the empirical experiences of recent major crisis situations, i.e. the financial crisis 2008/2009, the COVID-19 crisis in 2020 and the Ukraine War in 2022 and associated energy crisis.

The lesser duty rule

The possibility of disapplying the lesser duty rule in certain circumstances merits deeper examination as the Commission has recently published a Communication¹⁸ to the Council and the Parliament on how the new rules have been applied since modernisation of the TDI in 2018.

In anti-dumping investigations, the lesser duty rule still applies in most cases, but if significant raw material distortions exist, the Commission can impose measures at the full dumping margin, addressing the additional injury caused by such distortions. Article 7(2a) of the basic anti-dumping Regulation sets out several cumulative conditions to be met, including the existence of significant raw material distortions, the raw material individually accounting for more than 17% of production costs, a significantly lower price compared to representative international markets, and the determination that higher measures are in line with the Union's interest ('Union interest' test). However, under WTO and EU rules the duty

¹⁷ This is, in part, because Safeguards have often been found to be incompatible with WTO in dispute settlement. However recent WTO case law shows a greater openness to the use of Safeguards.

¹⁸ [Communication](#) from the Commission to the European Parliament and the Council on the revised lesser duty rule in anti-dumping and anti-subsidy investigations in the EU, 7 June 2023.

level imposed cannot be higher than the dumping margin, therefore the distortions are assessed only after it has been established that the dumping margin is higher than the underselling margin.

The Parliament¹⁹ had sought to have an expansive idea of the distortions that would trigger the non-application of the lesser duty rule to include not only distortions in raw materials but, for example, on dual pricing or where social and environmental standards were not complied with in the country of origin or where that country engaged in currency manipulation.

The Commission Review found that in 34 cases where the Commission imposed definitive anti-dumping duties, significant raw material distortions were found in 13 instances.

Except in four investigations²⁰, where the dumping margins were lower than the injury margins, the Commission examined in nine cases whether the conditions under Article 7(2a) of the Basic Anti-Dumping Regulation were met:

- In the cases of *Calcium Silicon* (2022), *Aluminium flat rolled products* (2021), *Aluminium converter foil* (2021), and *Aluminium extrusions* (2020) from China, the raw materials individually accounted for more than 17% of the production costs. However, no evidence was found to support allegations of distorted electricity prices in China's Northern provinces or significantly lower aluminium prices compared to representative international markets. As a result, measures were imposed at the level of the underselling margin.
- In the case of *Stainless steel cold-rolled flat products from India* (2021), although chromium accounted for more than 17% of the production costs, the Commission did not continue the analysis since the Indian exporting producer did not, in fact, use the raw material subject to distortions.
- In the investigations on *Certain hot rolled stainless steel sheets and coils from Indonesia and China* (2020), measures were not imposed at a higher dumping level due to Union interest considerations.
- In the case of *Urea ammonium nitrate (UAN) from Russia* (2019), Union producers were not only harmed by dumping of natural gas, but also suffered from additional distortions of trade compared to Russia's exporting producers. A duty lower than the margin of dumping would not be sufficient to remove said injury, therefore measures were imposed based on the dumping margins.
- In the investigations on *Electrolytic chromium coated steel (ECCS) from China* (2022) and *Fatty Acid from Indonesia* (2023), significant distortions were found for specific companies in the form of VAT refunds and export taxes on raw materials.

¹⁹ See the Position of the European Parliament from April 2014 on the Commission proposal to amend the anti-dumping and anti-subsidy Regulations.

²⁰ *Aluminium extrusions from China* (2021); *Hot rolled flat products of iron/steel from Türkiye* (2021); *Stainless steel cold-rolled flat products from Indonesia* (2021) and *Graphite electrodes from China* (2022).

Higher duties were imposed to address the spare capacity in China and Indonesia – which had the potential to increase global supply, depress prices and undermine the effectiveness of the measure – with no adverse effects for users.

On the other hand, the application of the lesser duty rule in anti-subsidy investigations is limited to cases where the Commission determines that it is *not* in the Union interest to set the amount of measures at the level of the countervailable subsidies found.²¹

Since 8 June 2018, the Commission has imposed countervailing measures in eight cases. Six of these involved separate anti-dumping investigations on the same products from the same origins. In all the cases the Commission concluded that it was in the Union's interest to impose countervailing measures at the full amount of the countervailable subsidies. In two cases, this conclusion was reached at a provisional stage.

Prior to the revision, the lesser duty rule applied to both anti-dumping and anti-subsidy investigations, limiting the combined measures to the injury elimination level. However, under the current rules, countervailing measures are imposed in addition to separate anti-dumping duties, providing additional protection. This is demonstrated in cases such as Aluminium converter foil from China, Stainless steel cold rolled flat (SSCR) from India (2022), and glass fibre fabrics (GFF) from China (2020). However, in the case of optical fibre cables from China, the new rules had no significant impact as the combined anti-dumping duty and countervailing measures were below the injury margin, corresponding to the maximum allowed under WTO rules.

In the two anti-subsidy cases without separate anti-dumping investigations, the amount of subsidisation was lower than the underselling margins, so the full subsidy amount would have been imposed even under the pre-modernisation rules.

Overall, the Commission concluded that the changes introduced by the modernised provisions on the application of the Lesser Duty Rule in AD and AS investigations has resulted in more effective remedies and stronger protection against significant raw material distortions and overall subsidisation practices. In certain anti-dumping cases²² initiated during the review period, the Commission was able to impose higher duties than would have been possible before the legislative changes, ensuring a more balanced protection against raw material distortions, whereas the removal of the lesser duty rule in anti-subsidy cases provided higher protection for EU producers facing subsidised imports.

Based on these considerations, the Commission did not propose further legislative changes as part of the review and evaluation process. However, it will continue to closely monitor the situation, considering evolving policy priorities and the complex geopolitical landscape.

²¹ See Articles 12(1) and 15(1) of the BASR.

²² See Commission Implementing Regulation (EU) 2019/1688 of 8 October 2019 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America accessible [here](#).

AEGIS Europe considers that the Commission has been too strict in the application of the new possibility of not applying the lesser duty rule. This is evident from the limited number of occasions that it has been used (2) as opposed to the number of times the Union industry has sought its application (13).

AEGIS Europe also considers that the objective sought by the Parliament, i.e. more effective TDI remedies has not been achieved.

Most WTO members do not have a lesser duty rule and apply duties at the level of the dumping margin. In effect, this means that our trade partners can protect their domestic industries more effectively from the effects of unfair trade practices.

The EU must not be ‘naïve’ in its trade relations. It will not achieve economic security if it continues not to use the tools available to it in a manner that eliminates the distortions effectively.

Small and Medium Sized Enterprises

The Modernisation reform showed broader political support in favour of facilitating the better (and more effective) participation of small and medium sized enterprises (SMEs) in trade defence investigations, by establishing a help desk and providing for a shorter and lighter injury questionnaire.

AEGIS Europe recognises that some progress has been made but problems still remain. First of all, the “new” SME questionnaire does not allow consolidation of data with the normal questionnaire. If both SMEs and larger companies are part of the sample of Union producers, SMEs are *de facto* required to fill out the normal and larger questionnaire, which defeats the purpose of the smaller questionnaire. This is a burden that the vast majority of SMEs are not able to meet, particularly if they are suffering injury from distorted imports, and for this reason do not participate in TDI investigations. If SMEs are to be able to participate fully in investigations, changes are needed that, at least partially, remove this burden and, in particular, of providing data transaction-by-transaction or the classification of sales according to the product control numbers created specifically for each investigation.²³

In this respect, AEGIS Europe has proposed to determine the injury by means of two distinct evaluations:

- One for the larger producers based on the full questionnaire; and
- One for smaller producers based on, or the same as, the complaint mini questionnaire and data already available to SMEs from their most recent annual accounts.²⁴

²³ As the WTO rules to determine injury do not impose the approach taken in the EU, there is room for change in practice that gives greater recognition to the difficulties SMEs face.

²⁴ Questions remain as to the integration, or not, of the two sets of data that result from this second approach. Non integration of the data is administratively easier. The SME data could be used as part of the narrative on the impact on SMEs. The normal verified questionnaire data from the sampled

On its part, the European Commission has raised the following observations:

- The performance of SMEs is not always homogeneous and, in some cases, smaller companies suffer less injury due to their market positioning;
- It is not possible to establish injury levels without a proper cost/pricing analysis, therefore the compilation of the injury questionnaire (with full product control numbers) is unavoidable;
- As for the weight of SMEs in a specific sector in the injury picture, it is properly reflected in the overall injury margin, by weighting the percentage for SMEs not on the basis of the sampled companies but on the basis of the percentage in total EU production;
- With regard to the product control number (PCN), while challenges for smaller companies still remain, the system is necessary to reflect the complexity of certain goods and compare like products. However, the Commission advises the complainants to develop, to the extent possible, a reasonable classification and avoid overly sophisticated PCNs that do not necessarily reflect all cost items – a simpler PCN can facilitate the compilation of the questionnaire by sampled SMEs, especially in cases where the PCN classification is done manually.

Nonetheless, AEGIS Europe recognises that the Commission has put in place several tools to facilitate smaller companies to approach trade defence, among others:

- Full-time employees at the helpdesk;
- SMEs are exempted from filling in some parts of the questionnaire;
- Events at Member States level to raise awareness on trade defence;
- An [online course](#) on the essential aspects of trade defence instruments (TDIs) that SMEs should know for their daily business.

Finally, the European Commission has requested for support in identifying the sectors in which assistance for SMEs is most needed and is interested in receiving concrete feedback on the difficulties encountered when completing the questionnaire. Some SMEs could really benefit from being able to fill out an injury questionnaire in their national language so we suggest to translate the questionnaire in all the EU official languages.²⁵ AEGIS Europe welcomes this proactivity and is willing to collaborate towards a more simplified and accessible approach to trade defence for smaller companies.

companies would be used for the injury margin. If the data was in some way to be integrated, then the weighting to be given to the injury data from the mini-questionnaire should be based on the total production of all SMEs.

²⁵ The Commission has made its on-line information package available in all EU languages but the investigations documents remain in English.

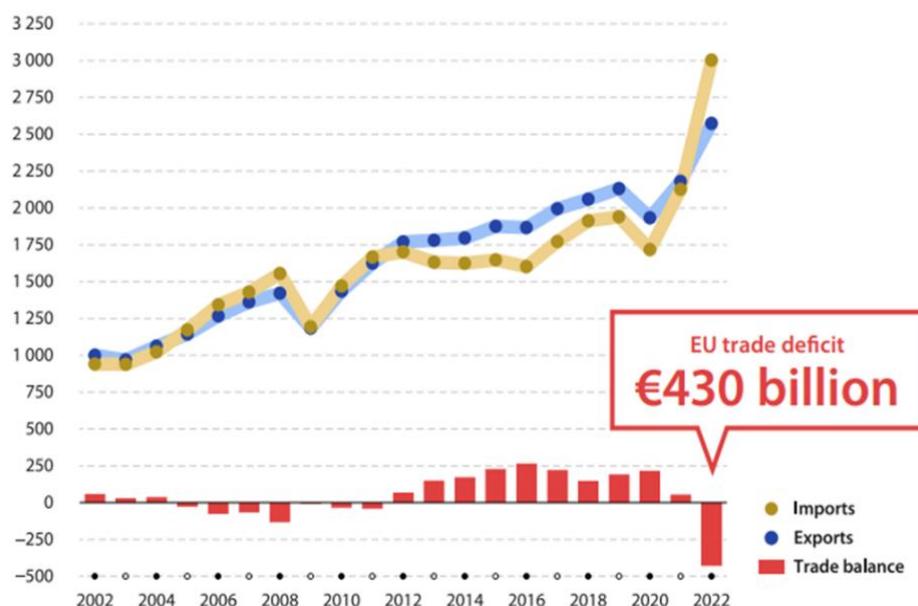
COMMENTS ON THE COMMISSION 2022 TDI REPORT

The Report from the Commission to the European Parliament and the Council on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities,²⁶ was published on 6 September and comes just as the AEGIS Europe report for 2023 is being completed.

AEGIS Europe recognizes that the level of investigative work during 2022 was in line with previous years, however the level of new Article 5 investigations is significantly below previous years.²⁷ AEGIS Europe considers that more and more sectors and products within those sectors are subject to unfair trade practices. Dumping and subsidisation did not decrease because the overall incidence of trade decreased. AEGIS Europe considers that the Commission needs to be more sensitive to the underlying unfair practices and be quicker to act when the criteria for imposing measures are met.

The Commission argues that the reason that only 5 new Article 5 (or Article 10 for subsidies) investigations were opened in 2022 was due to: i) a decrease in total world trade resulting in a drop in new investigations not only in the EU but worldwide; ii) increased profitability of Union producers as industry emerged from Covid-19; and iii) absence of complaints by the Union industry.

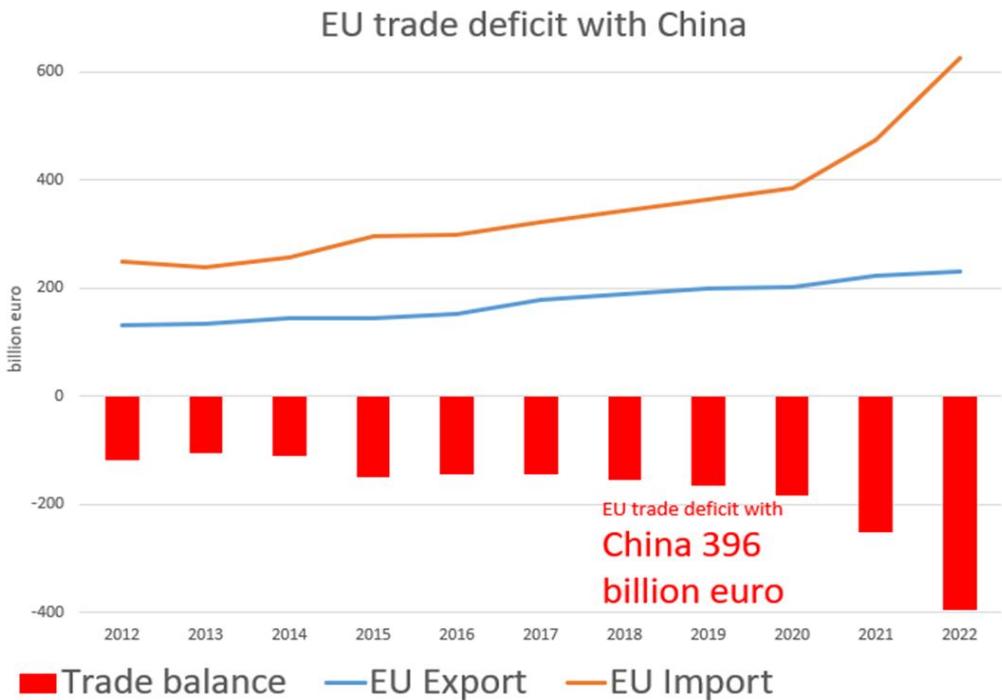
AEGIS Europe contests this analysis. The Commission has not provided detailed trade figures. In fact, global trade volumes (and imports) increased significantly in the second half of the year. This can also be seen in the fact that over the course of the year, the EU was in a trade deficit for the first time in 10 years. This trade deficit is most marked with China.



Source: Eurostat (online data code: ext_lt_intratrld)

²⁶ COM(2023) 506 final published on 6 September 2023, available [here](#).

²⁷ See section above. There were only 5 new Article 5 investigations in 2022 compared to 14 in 2021. 2023 is not likely to see an increase either. As of end August 2023, there have been only 3 new Article 5 investigations.



The profitability of EU industry decreased sharply in the second half of the year. Thus, the Union industry was injured during this period. And in the first half of 2022, the Union industry knew it was threatened with injury. This is not reflected in the Commission approach to opening new investigations.

Members of AEGIS Europe did make complaints to the Commission services but in many situations, the complaints on the basis of threat of injury were rejected. In effect, these Members were told to return when they could demonstrate material injury.

The bluntest proof that the Commission has not been reacting as needed to the crisis in EU manufacturing is the simple fact that, up to September 2023, there have been only 3 new Article 5 investigations opened and no Article 10 investigations.²⁸ Even if the Commission opens 2 or 3 new investigations before year end, it is still not enough and does not reflect the real injury suffered by Union producers from unfair trade practices.

²⁸ AD692 on Electrolytic manganese dioxides, AD693 on PET, and AD694 on Alkyl Phosphate Esters.

CONCLUSIONS

The Trade Defence Instruments are WTO sanctioned tools to allow open economies to counter the damaging impact of unfairly traded imports on domestic manufacturing. They must be applied with vigour and adequate speed, if our economy is to remain open.

The robust application of the Trade Defence Instruments is essential for an open economy to maintain its openness. Member States cannot be naïve. Systemic rivals seek to undermine EU manufacturing by killing off EU industries with low-priced, unfairly traded exports to gain control of global markets. This can be seen in Solar Panels and other key new technology raw materials.

AEGIS Europe calls on the Union to be more vigilant in implementing the Trade Defence Instruments to ensure that EU manufacturers can compete on a level playing field.