EUROPEAN PARLIAMENT 2009 - 2014

Plenary sitting

A7-0053/2014

27.1.2014

***I
REPORT

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 subsidised imports from countries not members of the European Community
(COM(2013)0192 – C7-0097/2013 – 2013/0103(COD))

Committee on International Trade

Rapporteur: Christofer Fjellner

Symbols for procedures

*	Consultation procedure
***	Consent procedure
***I	Ordinary legislative procedure (first reading)
***II	Ordinary legislative procedure (second reading)
***III	Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▌ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.
By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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 subsidised imports from countries not members of the European Community
(COM(2013)0192 – C7-0097/2013 – 2013/0103(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2013)0192),

– having regard to Article 294(2) and Article 207(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0097/2013),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to Rule 55 of its Rules of Procedure,

– having regard to the report of the Committee on International Trade (A7-0053/2014),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation
Recital 3

Text proposed by the Commission	*Amendment*
(3) Following the review, certain provisions of the Regulations should be amended in order to improve transparency and predictability, provide for effective	(3) Following the review, certain provisions of the Regulations should be amended in order to improve transparency and predictability, provide for effective

measures to fight against retaliation, improve effectiveness and enforcement and optimise review practice. ***In addition, certain practices that in recent years have been applied in the context of anti-dumping and anti-subsidy investigations should be included in the Regulations***.	measures to fight against retaliation ***by third countries***, improve effectiveness and enforcement and optimise review practice.

Justification

To clarify who may initiate retaliation against the EU.

Amendment 2

Proposal for a regulation
Recital 4

Text proposed by the Commission	*Amendment*
(4) In order to improve transparency and predictability of anti-dumping and anti-subsidy investigations, the parties affected by the imposition of provisional anti-dumping and countervailing measures, in particular importers, should be made aware of the impending imposition of such measures. The time given should correspond to the period between the submission of the draft implementing act to the anti-dumping committee established pursuant to Article 15 of Regulation (EC) No 1225/2009 and the anti-subsidy committee established pursuant to Article 25 of Regulation (EC) No 597/2009 and the adoption of that act by the Commission. This period is fixed in Article 3(3) of Regulation (EU) No 182/2011. Also, in investigations where it is not appropriate to impose provisional measures, it is desirable that parties are aware sufficiently in advance of such non-imposition.	***deleted***

Amendment 3

Proposal for a regulation
Recital 6

Text proposed by the Commission	*Amendment*
(6) In order to ensure effective measures to fight against retaliation, Union producers should be able to rely on the Regulations without fear of retaliation by third parties. Existing provisions, under special circumstances, provide for the initiation of an investigation without having received a complaint, where sufficient evidence of the existence of dumping, countervailable subsidies, injury and causal link exists. Such special circumstances should include threat of retaliation.	(6) In order to ensure effective measures to fight against retaliation, Union producers should be able to rely on the Regulations without fear of retaliation by third parties. Existing provisions, under special circumstances, ***in particular where diverse and fragmented sectors largely composed of small and medium-sized enterprises (SMEs) are concerned,*** provide for the initiation of an investigation without having received a complaint, where sufficient evidence of the existence of dumping, countervailable subsidies, injury and causal link exists. Such special circumstances should include threat of retaliation ***from third countries***.

Amendment 4

Proposal for a regulation
Recital 7

Text proposed by the Commission	*Amendment*
(7) When an investigation is not initiated by a complaint, ***an obligation*** should be ***imposed on*** Union producers to provide the necessary information in order for the investigation to proceed, in order to ensure that sufficient information is available for carrying out the investigation in case of such threats of retaliation.	(7) When an investigation is not initiated by a complaint, ***a request for cooperation*** should be ***made to*** Union producers to provide the necessary information in order for the investigation to proceed, in order to ensure that sufficient information is available for carrying out the investigation in case of such threats of retaliation. ***Small-sized enterprises and microenterprises should be exempt from that obligation in order to spare them from unreasonable administrative burden and costs.***

Justification

This cannot be an "obligation" because there are no sanctions foreseen. Therefore, it is more sensible to refer to a request for cooperation, leaving it up to Union producers to respond positively to it or not.

Amendment 5

Proposal for a regulation
Recital 10

Text proposed by the Commission	*Amendment*
(10) In order to optimise the review practice, duties collected during the investigation should be reimbursed to importers, where measures are not prolonged after the conclusion of an expiry review investigation. This is appropriate given that the conditions required for the continuation of the measures have not been found to exist during the investigation period.	***deleted***

Amendment 6

Proposal for a regulation
Recital 11 a (new)

Text proposed by the Commission	*Amendment*
	(11a) Any document aimed at clarifying the established practices of the Commission with regard to the application of this Regulation (including the four draft guidelines on the selection of analogue country, on expiry reviews and the duration of measures, on the injury margin and on the Union interest) should be adopted by the Commission only after entry into force of this Regulation and proper consultation of the European Parliament and Council and

should then fully reflect the content of this Regulation.

Justification

To ensure that any revisions made by the European Parliament and Council to the proposed regulation have been taken into account in the guidelines that are finally adopted by the Commission.

Amendment 7

Proposal for a regulation
Recital 11 b (new)

Text proposed by the Commission	*Amendment*
	(11b) The Union is not party to ILO Conventions, but its Member States are. For the time being, only "core" ILO Conventions have been ratified by all Union Member States. In order to keep the definition of sufficient level of social standards based on ILO Conventions listed in Annex Ia to Regulation (EU) No 1225/2009 up to date, the Commission will, by means of delegated acts, update that Annex, as soon as Union Member States will have ratified other ILO "priority" Conventions.

Justification

The benchmark for determining a "sufficient level of social standards" is based on ILO Conventions. This is consistent with the approach the EU has been using also in FTAs' Trade and Sustainable Development chapters and for the GSP+ scheme. However, since the Member States, and not the EU, are parties to ILO Conventions, it is important to make sure, for the sake of consistency, that all Member States have ratified those conventions in order to identify a minimum common denominator that can be used for the benchmark. For the time being, such minimum common denominator is represented by the "Core" ILO Conventions; but, as soon as all Member States have ratified other ILO Conventions, notably "Priority" Conventions, the Commission should update the benchmark according to such new minimum common denominator.

Amendment 8

Proposal for a regulation
Recital 12 a (new)

Text proposed by the Commission	*Amendment*
	(12a) Diverse and fragmented sectors largely composed of SMEs have difficulties in acceding to trade defence proceedings due to the complexity of the procedures and the high costs related thereto. SMEs' access to the instrument should be facilitated by strengthening the role of the SME Help Desk, which should support SMEs in filing complaints and in reaching the necessary thresholds for investigations to be launched. Administrative procedures relating to trade defence proceedings should also be better adapted to SMEs' constraints.

Amendment 9

Proposal for a regulation
Recital 12 b (new)

Text proposed by the Commission	*Amendment*
	(12b) In anti-dumping cases, the duration of investigations should be limited to nine months and those investigations be concluded within 12 months of initiation of the proceedings. In anti-subsidy cases, the duration of investigations should be limited to nine months and those investigations should be concluded within 10 months of initiation of the proceedings. In any event, the provisional duties should be imposed only during a period commencing 60 days after the initiation of the proceedings until six months after the initiation of the proceedings.

Amendment 10

Proposal for a regulation
Recital 12 c (new)

Text proposed by the Commission	*Amendment*
	(12c) Non-confidential elements of undertakings submitted to the Commission should be better disclosed to the interested parties, the European Parliament and the Council. Consulting Union industry should become an obligation of the Commission before accepting any offer of undertaking.

Amendment 11

Proposal for a regulation
Recital 18 a (new)

Text proposed by the Commission	*Amendment*
	(18a) The annual report by the Commission to the European Parliament and the Council on its implementation of Regulation (EC No 1225/2009 and Regulation (EC) No 597/2009 allows a regular and timely monitoring of the Trade Defence Instruments as part of the establishment of a structured interinstitutional dialogue on this issue. The public release of that report, six months after presentation to the European Parliament and the Council, ensures the transparency of the Trade Defence Instruments for stakeholders and the public.

Amendment 12

Proposal for a regulation
Recital 18 b (new)

Text proposed by the Commission	*Amendment*
	(18b) The Commission should ensure greater transparency with regard to proceedings, internal procedures and outcomes of investigations, and all non-confidential files should be made accessible to interested parties through a web-based platform.

Amendment 13

Proposal for a regulation
Recital 18 c (new)

Text proposed by the Commission	*Amendment*
	(18c) The Commission should inform the European Parliament and the Council of the initiation of any investigations and of developments relating to those investigations on a regular basis.

Amendment 14

Proposal for a regulation
Recital 18 d (new)

Text proposed by the Commission	*Amendment*
	(18d) Where the number of producers in the Union is so large that resort must be made to sampling, the Commission should, when choosing a sample of producers, fully take into account the proportion of SMEs in the sample, in particular in the case of diverse and fragmented industry sectors largely composed of SMEs.

Amendment 15

Proposal for a regulation
Article 1 – point -1 (new)
Regulation (EC) No 1225/2009
Title

Present text	*Amendment*
Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European ***Community***	Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European ***Union***
	(This amendment applies throughout Council Regulation (EC) No 1225/2009)

Amendment 16

Proposal for a regulation
Article 1 – point -1 a (new)
Regulation (EC) No 1225/2009
Recital 11 a (new)

Text proposed by the Commission	*Amendment*
	(11a) Third countries increasingly interfere in trade with a view to benefitting domestic producers, for instance by imposing export taxes or operating dual pricing schemes. Such interferences create additional distortions of trade. As a consequence, Union producers are not only harmed by dumping, but suffer, compared to producers from third countries engaged in such practices, additional distortions of trade. Differences in the level of labour and environmental standards can also result in additional distortions of trade. Therefore, the lesser duty rule should not apply in such cases, when the exporting country has an insufficient level of social and environmental standards. A sufficient level is defined by the ratification of core International Labour Organisation (ILO) Conventions and of Multilateral

Environmental Agreements (MEAs) to which the Union is party. SMEs particularly suffer from unfair competition because their small size prevents them from adapting to it. Therefore, the lesser duty rule should not apply when the complaint has been presented on behalf of a sector largely composed of SMEs. The lesser duty rule should always apply, however, when structural raw material distortions are the result of a deliberate choice made by a least developed country to protect the public interest.

Justification

In order to discourage EU's trading partners from engaging in practices that create structural trade distortions, the LDR shall not apply in those cases, when the exporting country has an insufficient level of social and environmental standards or when complainants are SMEs. It shall always apply, however, when structural raw material distortions are the result of a deliberate choice made by a least-developed country to protect public interest and legitimate development goals.

Amendment 17

Proposal for a regulation
Article 1 – point -1 b (new)
Regulation (EC) No 1225/2009
Article 1 – paragraph 1 – subparagraph 2 (new)

Text proposed by the Commission	*Amendment*
	-1b. In Article 1(1), the following subparagraph is added:
	"The use of any dumped product in connection with the exploration of the Continental Shelf or the Exclusive Economic Zone of a Member State, or the exploitation of its resources, shall be treated as an import under this Regulation and shall be charged to duty accordingly, when causing injury to the Union industry."

Justification

In line with the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS) and the international practices, the EU should apply the anti-dumping instrument also to goods meant to be used in the Continental Shelf or the Exclusive Economic Zone of its Member States.

Amendment 18

Proposal for a regulation
Article 1 – point -1 c (new)
Regulation (EC) No 1225/2009
Article 1 – paragraph 4 a

Text proposed by the Commission	*Amendment*
	-1c. In Article 1, the following paragraph is added:
	"4a. For the purpose of this Regulation, it shall be understood that a raw material is the input of a given product which has a significant impact on its cost of production."

Justification

Certain definitions need to be given to clarify what is meant by 'raw materials' for the purpose of this regulation. These include energy, materials and any other type of element which corresponds to the above criteria.

Amendment 19

Proposal for a regulation
Article 1 – point -1 d (new)
Regulation (EC) No 1225/2009
Article 1 – paragraph 4 b (new)

Text proposed by the Commission	*Amendment*
	-1d. In Article 1, the following paragraph is added:
	"4b. A raw material shall be considered to be subject to structural distortion when its price is not solely the result of a normal

operation of market forces reflecting supply and demand. Such distortions are the outcome of interference from third countries, which includes, inter alia, export taxes, export restrictions and dual pricing schemes."

Justification

Certain definitions need to be given in this regulation to clarify the term of 'structural distortion', due to the non-application of the lesser duty rule. The second sentence mentions some current types of distortion, whilst leaving the Commission room for manoeuvre to take into account new kinds of distortion, in line with this definition, which could come to light in the future.

Amendment 20

Proposal for a regulation
Article 1 – point 1 a (new)
Regulation (EC) No 1225/2009
Article 5 – paragraph 1 a (new)

Text proposed by the Commission	*Amendment*
	1a. In Article 5, the following paragraph is inserted:
	"1a. The Commission shall facilitate access to the instrument for diverse and fragmented industry sectors, largely composed of small and medium-sized enterprises (SMEs), in the context of anti-dumping cases, through an SME Help Desk.
	The SME Help Desk shall raise awareness of the instrument, provide information and explanations on cases, how to file a complaint and how to better present evidence of dumping and countervailable subsidies and injury.
	The SME Help Desk shall make available standard forms for statistics to be submitted for standing purposes and questionnaires.

After the initiation of an investigation, it shall inform SMEs and their relevant associations likely to be affected by the initiation of proceedings and the relevant deadlines for registering as an interested party.

It shall assist in addressing questions regarding the completion of questionnaires, where special attention shall be given to queries of SMEs as regards investigations initiated under Article 5(6). To the extent possible, it shall assist in reducing the burden caused by language barriers.

In the event that SMEs provide prima facie evidence of dumping or countervailable subsidies, the SME Help Desk shall provide SMEs with information on the evolution of the volume and value of imports of the product concerned in accordance with Article 14(6).

It shall also provide guidance on additional methods of contact and liaison with the Hearing Officer and national customs authorities. The SME Help Desk shall also inform SMEs on the possibilities and conditions under which they can request a review of the measures and refund of the anti-dumping duties paid."

Amendment 21
Proposal for a regulation
Article 1 – point 1 b (new)
Regulation (EC) No 1225/2009
Article 5 – paragraph 4 – subparagraph 2 (new)

Text proposed by the Commission	*Amendment*
	1b. In Article 5(4), the following subparagraph is added:
	"In the case of diverse and fragmented industrial sectors, largely composed of

small and-medium-sized entreprises, the Commission shall assist in reaching those thresholds through the support of the SME Help Desk."

Amendment 22

Proposal for a regulation
Article 1 – point 1 c (new)
Regulation (EC) No 1225/2009
Article 5 – paragraph 6

Present text	*Amendment*
	1c. In Article 5, paragraph 6 is replaced by the following:
6. If in special circumstances, ***it is decided*** to initiate an investigation without having received a written complaint by or on behalf of the ***Community*** industry for the initiation of such investigation, this shall be done on the basis of sufficient evidence of dumping, injury and a causal link, as described in paragraph 2, to justify such initiation.	"6. If in special circumstances, ***in particular where diverse and fragmented sectors largely composed of small and medium-sized enterprises are concerned, the Commission decides*** to initiate an investigation without having received a written complaint by or on behalf of the ***Union*** industry for the initiation of such investigation, this shall be done on the basis of sufficient evidence of dumping***, the existence of countervailable subsidies***, injury and a causal link, as described in paragraph 2, to justify such initiation."

Amendment 23

Proposal for a regulation
Article 1 – point 1 d (new)
Regulation (EC) No 1225/2009
Article 6 – paragraph 9

Text proposed by the Commission	*Amendment*
	1d. In Article 6, paragraph 9 is replaced by the following:
9. For proceedings initiated pursuant to Article 5(9), an investigation shall,	"9. For proceedings initiated pursuant to Article 5(9), an investigation shall be

whenever possible, be concluded within ***one year.*** In any event, such ***investigations*** shall in all cases be concluded within ***15 months*** of initiation, in accordance with the findings made pursuant to Article 8 for undertakings or the findings made pursuant to Article 9 for definitive action.	concluded within ***nine months.*** In any event, such ***an investigation*** shall in all cases be concluded within ***one year*** of initiation, in accordance with the findings made pursuant to Article 8 for undertakings or the findings made pursuant to Article 9 for definitive action. ***Investigation periods shall, whenever possible, especially in the case of diverse and fragmented sectors largely composed of SMEs, coincide with the financial year.***"

Amendment 24

Proposal for a regulation
Article 1 – point 2
Regulation (EC) No 1225/2009
Article 6 – paragraph 10

Text proposed by the Commission	*Amendment*
Union producers of the like product are ***obliged*** to cooperate in proceedings that have been initiated pursuant to Article 5(6).	Union producers of the like product ***with the exception of small-sized and micro-sized Union producers*** are ***requested*** to cooperate in proceedings that have been initiated pursuant to Article 5(6).

Amendment 25

Proposal for a regulation
Article 1 – point 2
Regulation (EC) No 1225/2009
Article 6 – paragraph 10 a (new)

Text proposed by the Commission	*Amendment*
	10a. The Commission shall ensure the best possible access to information to all interested parties by allowing for an information system whereby interested parties are notified when new non-confidential information is added to the investigation files. Non-confidential

information shall also be made accessible through a web-based platform.

Amendment 26

Proposal for a regulation
Article 1 – point 2
Regulation (EC) No 1225/2009
Article 6 – paragraph 10 b (new)

Text proposed by the Commission	*Amendment*
	10b. The Commission shall safeguard the effective exercise of the procedural rights of the interested parties and shall ensure that proceedings are handled impartially, objectively and within a reasonable time period, through a Hearing Officer, where appropriate.

Justification

To ensure the producers' and consumers' trust in, and to maintain the legitimacy of, the instrument, transparency ought to be improved.

Amendment 27

Proposal for a regulation
Article 1 – point 2
Regulation (EC) No 1225/2009
Article 6 – point 10 c (new)

Text proposed by the Commission	*Amendment*
	10c. The Commission shall issue questionnaires used in investigations, in all official languages of the Union, upon request of interested parties.

Justification

To reduce the burden placed on SMEs in proceedings, and to improve the level of cooperation, questionnaires ought to be available upon request in all official languages of the Union.

Amendment 28

Proposal for a regulation
Article 1 – point 3 – point a
Regulation (EC) No 1225/2009
Article 7 – paragraph 1 –sentences 1 and 2

Present text	*Amendment*
1. Provisional duties may be imposed if proceedings have been initiated in accordance with Article 5, if a notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments in accordance with Article 5(10), if a provisional affirmative determination has been made of dumping and consequent injury to the Community industry, and if the Community interest calls for intervention to prevent such injury. The provisional duties shall be imposed no earlier than 60 days from the initiation of the proceedings but no later than ***nine*** months from the initiation of the proceedings.	1. Provisional duties may be imposed if proceedings have been initiated in accordance with Article 5, if a notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments in accordance with Article 5(10), if a provisional affirmative determination has been made of dumping and consequent injury to the ***Union*** industry, and if the ***Union*** interest calls for intervention to prevent such injury. The provisional duties shall be imposed no earlier than 60 days from the initiation of the proceedings but no later than ***six*** months from the initiation of the proceedings.

Justification

To improve predictability, investigations leading up to provisional measures ought to be shortened from nine to seven.

Amendment 29

Proposal for a regulation
Article 1 – point 3 – point a
Regulation (EC) No 1225/2009
Article 7 – paragraph 1

Text proposed by the Commission	*Amendment*
(a) in paragraph 1, the following sentence is added:	***deleted***
"Provisional duties shall not be applied within a period of two weeks after the information is sent to interested parties	

under Article 19a. The provision of such information shall not prejudice any subsequent decision that may be taken by the Commission."

Amendment 30

Proposal for a regulation
Article 1 – point 3 – point b
Regulation (EC) No 1225/2009
Article 7 – paragraph 2

Text proposed by the Commission	*Amendment*
The amount of the provisional anti-dumping duty shall not exceed the margin of dumping as provisionally established. ***Unless*** structural ***raw material distortions*** were found to exist with regard to the product concerned in the exporting country***, it should be less than the margin of dumping if such*** lesser duty ***would be adequate to remove the injury to the Union industry***.	The amount of the provisional anti-dumping duty shall not exceed the margin of dumping as provisionally established***, but it should be less than the margin if such lesser duty would be adequate to remove the injury to the Union industry***.
	Such a lesser duty shall not apply in any of the following circumstances:
	(a) structural ***distortions or significant State interference regarding, inter alia, prices, costs and inputs, including for instance raw materials and energy, research and labour, outputs, sales and investments, currency exchange rate and fair trade finance conditions,*** were found to exist with regard to the product concerned in the exporting country***;***
	(b) the exporting country does not have a sufficient level of social and environmental standards, where sufficient levels are determined on the basis of the ratification and effective implementation by the third country of Multilateral Environmental Agreements, and protocols thereunder, to which the Union is party any point in time, and of ILO

Conventions listed in Annex Ia;

(c) the complainant represents a diverse and fragmented industry, largely composed of SMEs;

(d) the investigation or a separate anti-subsidy investigation has established at least provisionally that the exporting country provides one or more subsidies to exporting producers of the product concerned.

However, such a lesser duty ***shall always be granted when structural raw materials distortions are found to exist with regard to the product concerned in the exporting country and such country is a least-developed country listed in Annex IV to Regulation (EU) No 978/2012 of the European Parliament and of the Council*.***

**** Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008.***

Justification

The lesser duty rule shall not apply in anti-dumping cases when it is established that the exporting country engages in practices that significantly distort the regular course of trade, when the exporting country has an insufficient level of social and environmental standards or when complainants are SMEs. It shall always apply, however, when structural raw material distortions are the result of a deliberate choice made by a least developed country to protect its public interest and legitimate development goals.

Amendment 31

Proposal for a regulation
Article 1 – point 3 a (new)
Regulation (EC) No 1225/2009
Article 8 – paragraph 1

Present text	*Amendment*
	3a. In Article 8, paragraph 1 is replaced by the following:
1. Upon condition that a provisional affirmative determination of dumping and injury has been made, the Commission may accept satisfactory voluntary undertaking offers submitted by any exporter to revise its prices or to cease exports at dumped prices, if, after specific consultation of the Advisory Committee, ***it is satisfied that*** the injurious effect of the dumping ***is thereby eliminated.*** In such a case and as long as such undertakings are in force, provisional duties imposed by the Commission in accordance with Article 7(1) or definitive duties imposed by the Council in accordance with Article 9(4) as the case may be shall not apply to the relevant imports of the product concerned manufactured by the companies referred to in the Commission decision accepting undertakings, as subsequently amended. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping and they should be less than the margin of dumping if such increases would be adequate to remove the injury to the ***Community*** industry.	"1. Upon condition that a provisional affirmative determination of dumping and injury has been made, the Commission may accept voluntary undertaking offers submitted by any exporter to revise its prices or to cease exports at dumped prices, after specific consultation of the Advisory Committee, ***provided that such offers effectively eliminate*** the injurious effect of the dumping. In such a case and as long as such undertakings are in force, provisional duties imposed by the Commission in accordance with Article 7(1) or definitive duties imposed by the Council in accordance with Article 9(4) as the case may be shall not apply to the relevant imports of the product concerned manufactured by the companies referred to in the Commission decision accepting undertakings, as subsequently amended. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping and they ***shall*** be less than the margin of dumping if such increases would be adequate to remove the injury to the ***Union*** industry, ***unless the Commission, in the imposition of provisional or definitive duties, had decided that this lesser duty shall not be applied.***"

Amendment 32

Proposal for a regulation
Article 1 – point 3 b (new)
Regulation (EC) No 1225/2009
Article 8 – paragraph 4

Present text	*Amendment*
	3b. In Article 8, paragraph 4 is replaced by the following:
4. Parties which offer an undertaking shall be required to provide a non-confidential version of such undertaking, so that it may be made available to interested parties to the investigation.	"4. Parties which offer an undertaking shall be required to provide ***a meaningful*** non-confidential version of such undertaking, so that it may be made available to interested parties to the investigation***, the European Parliament and the Council***. ***The parties shall be requested to disclose as much information as possible regarding the content and nature of the undertaking with due regard to the protection of confidential information within the meaning of Article 19. Furthermore, before accepting any such an offer the Commission shall consult the Union industry with regard to the main features of the undertaking.***

Justification

In order to improve transparency on price undertakings, information ought to be shared with interested parties within the Union and with companies subject to measures.

Amendment 33

Proposal for a regulation
Article 1 – point 4 – point b
Regulation (EC) No 1225/2009
Article 9 – paragraph 4 – last sentence

Text proposed by the Commission	*Amendment*
The amount of the anti-dumping duty shall not exceed the margin of dumping established. ***Unless*** structural ***raw material distortions*** were found to exist with regard to the product concerned in the exporting country***, it shall be less than the margin of dumping if such*** lesser duty ***would be adequate to remove the injury to the Union industry***.	The amount of the anti-dumping duty shall not exceed the margin of dumping established ***but it should be less than the margin if such lesser duty would be adequate to remove the injury to the Union industry***.

Such a lesser duty shall not apply in any of the following circumstances:

(a) structural ***distortions or significant State interferences regarding, inter alia, prices, costs and inputs, including for instance raw materials and energy, research and labour, outputs, sales and investments, currency exchange rate and fair trade finance conditions,*** were found to exist with regard to the product concerned in the exporting country***;***

(b) the exporting country does not have a sufficient level of social and environmental standards, where sufficient levels are determined on the basis of the ratification and effective implementation by the third country of Multilateral Environmental Agreements, and protocols thereunder, to which the Union is party any point in time, and of ILO Conventions listed in Annex Ia;

(b) the complainant represents a diverse and fragmented industry, largely composed of SMEs;

(c) the investigation or a separate anti-subsidy investigation has established that the exporting country provides one or more subsidies to exporting producers of the product concerned.

However, such a lesser duty ***shall always be granted when structural raw materials distortions are found to exist with regard to the product concerned in the exporting country and that country is a least-developed country listed in Annex IV to Regulation (EU) No 978/2012***.

Justification

The lesser duty rule shall not apply in anti-dumping cases when it is established that the exporting country engages in practices that significantly distort the regular course of trade, when the exporting country has an insufficient level of social and environmental standards or when complainants are SMEs. It shall always apply, however, when structural raw material distortions are the result of a deliberate choice made by a least developed country to protect its public interest and legitimate development goals.

Amendment 34

Proposal for a regulation
Article 1 – point 5
Regulation (EC) No 1225/2009
Article 11 – paragraph 2

Present text	*Amendment*
2. A definitive anti-dumping measure shall expire five years from its imposition or five years from the date of the conclusion of the most recent review which has covered both dumping and injury, unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of dumping and injury. Such an expiry review shall be initiated on the initiative of the Commission, or upon request made by or on behalf of Community producers, and the measure shall remain in force pending the outcome of such review.	2. A definitive anti-dumping measure shall expire five years from its imposition or five years from the date of the conclusion of the most recent review which has covered both dumping and injury, unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of dumping and injury. Such an expiry review shall be initiated on the initiative of the Commission, or upon request made by or on behalf of Community producers, and the measure shall remain in force pending the outcome of such review.
An expiry review shall be initiated where the request contains sufficient evidence that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury. Such likelihood may, for example, be indicated by evidence of continued dumping and injury or evidence that the removal of injury is partly or solely due to the existence of measures or evidence that the circumstances of the exporters, or market conditions, are such that they would indicate the likelihood of further injurious dumping.	An expiry review shall be initiated where the request contains sufficient evidence that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury. Such likelihood may, for example, be indicated by evidence of continued dumping and injury or evidence that the removal of injury is partly or solely due to the existence of measures or evidence that the circumstances of the exporters, or market conditions, are such that they would indicate the likelihood of further injurious dumping. ***Such likelihood may also be indicated by continuing interference by other countries.***
In carrying out investigations under this paragraph, the exporters, importers, the representatives of the exporting country and the Community producers shall be provided with the opportunity to amplify, rebut or comment on the matters set out in	In carrying out investigations under this paragraph, the exporters, importers, the representatives of the exporting country and the Community producers shall be provided with the opportunity to amplify, rebut or comment on the matters set out in

the review request, and conclusions shall be reached with due account taken of all relevant and duly documented evidence presented in relation to the question as to whether the expiry of measures would be likely, or unlikely, to lead to the continuation or recurrence of dumping and injury.	the review request, and conclusions shall be reached with due account taken of all relevant and duly documented evidence presented in relation to the question as to whether the expiry of measures would be likely, or unlikely, to lead to the continuation or recurrence of dumping and injury.'
A notice of impending expiry shall be published in the Official Journal of the European Union at an appropriate time in the final year of the period of application of the measures as defined in this paragraph. Thereafter, the Community producers shall, no later than three months before the end of the five-year period, be entitled to lodge a review request in accordance with the second subparagraph. A notice announcing the actual expiry of measures pursuant to this paragraph shall also be published.	

Justification

The persistence of structural distortions should be an additional piece of evidence to show that the measures should be prolonged.

Amendment 35

Proposal for a regulation
Article 1 – point 5 – point a
Regulation (EC) No 1225/2009
Article 11 – paragraph 5

Text proposed by the Commission	*Amendment*
(a) in paragraph 5, the following subparagraph is added:	***deleted***
"If following an investigation pursuant to paragraph 2, the measure expires, any duties collected from the date of the initiation of such investigation shall be repaid provided that this is requested from national customs authorities and granted by those authorities in accordance with the applicable Union customs legislation	

concerning repayment and remission of duty. Such repayment does not give rise to the payment of interest by the national customs authorities concerned."

Justification

In order to maintain the balance of the instrument, this new, but bureaucratic and complex, form of reimbursement is not desired.

Amendment 36

Proposal for a regulation
Article 1 – point 6 a (new)
Regulation (EC) No 1225/2009
Article 14 – paragraph 3

Present text	*Amendment*
	6a. In Article 14, paragraph 3 is replaced by the following:
3. Special provisions, in particular with regard to the common definition of the concept of origin, as contained in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, may be adopted pursuant to this Regulation.	"3. Special provisions, in particular with regard to the common definition of the concept of origin, as contained in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ***or in accordance with Article 2 thereof***, may be adopted pursuant to this Regulation."

Justification

In order to avoid circumvention of anti-dumping measures, the scope of trade defence legislation should be fully aligned with the relevant provisions of the Customs Code.

Amendment 37

Proposal for a regulation
Article 1 – point 6 b (new)
Regulation (EC) No 1225/2009
Article 14 – paragraph 5

Present text	*Amendment*
	6b. In Article 14, paragraph 5 is replaced by the following:
5. The Commission may, after consultation of the Advisory Committee, direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration. Imports ***may*** be made subject to registration following a request from the ***Community*** industry which contains sufficient evidence to justify such action. ***Registration shall be introduced by regulation which shall specify the purpose of the action and, if appropriate, the estimated amount of possible future liability.*** Imports ***shall not*** be made subject to registration ***for a period longer than nine months.***	"5. The Commission may, after consultation of the Advisory Committee, direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration.
	Imports ***shall*** be made subject to registration following a request from the ***Union*** industry which contains sufficient evidence to justify such action. Imports ***may also*** be made subject to registration ***on the Commission's own initiative.***
	Imports shall be made subject to registration from the date of initiation of the investigation where the complaint of the Union industry contains a request for registration and sufficient evidence to justify such action.
	Registration shall be introduced by regulation which shall specify the purpose of the action and, if appropriate, the estimated amount of possible future liability. Imports shall not be made subject to registration for a period longer than nine months."

Justification

To mitigate the risk of stockpiling, registration of imports ought to take place following the submission of any justified request, and from the date of initiation when justified by the

complaint. The Commission should also have the possibility of ordering registration on its own initiative.

Amendment 38

Proposal for a regulation
Article 1 – point 6 c (new)
Regulation (EC) No 1225/2009
Article 14 – paragraph 6

Present text	*Amendment*
	6c. In Article 14, paragraph 6 is replaced by the following:
6. Member States shall report to the Commission every month, on the import trade in products subject to investigation and to measures, and on the amount of duties collected pursuant to this Regulation.	‘6. Member States shall report to the Commission every month, on the import trade in products subject to investigation and to measures, and on the amount of duties collected pursuant to this Regulation. ***The Commission may, upon receiving a specific reasoned request from an interested party, and after receiving the opinion of the Advisory Committee on it, decide to provide them with information concerning the volume and import values of those products.’***

Justification

In order to improve transparency, the Commission ought to share information on imports.

Amendment 39

Proposal for a regulation
Article 1 – point 6 d (new)
Regulation (EC) 1225/2009
Article 14 – paragraph 7 a (new)

Text proposed by the Commission	*Amendment*
	6d. In Article 14, the following paragraph is added:
	"7a. Whenever the Commission intends to adopt or publish any document aimed at

	clarifying the established practice of the Commission with regard to the application of this Regulation in any of its elements, the Commission, prior to the adoption or publication, shall consult the European Parliament and the Council, aiming at a consensus with a view to the approval of the given document. Any subsequent modification of such documents shall be subject to such procedural requirements. In any event, any of those documents shall be in full conformity with the provisions of this Regulation. No such document shall broaden the discretion of the Commission, as interpreted by the Court of Justice of the European Union, in adopting measures."

Amendment 40

Proposal for a regulation
Article 1 – point 7
Regulation (EC) No 1225/2009
Article 17 – paragraph 1

Text proposed by the Commission	*Amendment*
"1. In cases where the number of Union producers, exporters or importers, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of information available at the time of the selection, or to the largest representative volume of production, sales or exports which can reasonably be investigated within the time available."	"1. In cases where the number of Union producers, exporters or importers ***that cooperate in the investigation with their consent***, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of information available at the time of the selection, or to the largest representative volume of production, sales or exports which can reasonably be investigated within the time available. ***In the case of diverse and fragmented industry sectors, largely composed of SMEs, the final selection of parties should, where possible, take into account their proportion of the sector concerned.***"

Justification

To ensure better data, sampling should include both complainants and non-complainants.

Amendment 41

Proposal for a regulation
Article 1 – point 8
Regulation (EC) No 1225/2009
Article 19 a – paragraph 1

Text proposed by the Commission	*Amendment*
1. The Union producers, importers and exporters and their representative associations, and representatives of the exporting country, may request information on the planned imposition of provisional duties. Requests for such information shall be made in writing within the time limit prescribed in the notice of initiation. Such information shall be provided to those parties, at least two weeks before the expiry of the deadline mentioned in Article 7(1) for the imposition of provisional duties. Such information shall include:	***deleted***
(a) a summary of the proposed duties for information purposes only, and	
(b) details of the calculation of the dumping margin and the margin adequate to remove the injury to the Union industry, due account being taken of the need to respect the confidentiality obligations contained in Article 19. Parties shall have a period of three working days to provide comments on the accuracy of the calculations.	

Justification

The pre-disclosure of information on the planned imposition of provisional duties increase the risk of a further politicization of the proceeding. Trade defence investigations should be conducted on a technical basis and the opportunities for lobbying should be reduced.

Amendment 42

Proposal for a regulation
Article 1 – point 9
Regulation (EC) No 1225/2009
Article 21 – paragraph 2

Text proposed by the Commission	*Amendment*
9. Article 21(2) is replaced by the following:	***deleted***
'2. In order to provide a sound basis on which the authorities can take account of all views and information in the decision as to whether or not the imposition of measures is in the Union interest, the Union producers, importers and their representative associations, representative users and representative consumer organisations may, within the time-limits specified in the notice of initiation of the anti-dumping investigation, make themselves known and provide information to the Commission. Such information, or appropriate summaries thereof, shall be made available to the other parties specified in this Article, and they shall be entitled to respond to such information.'	

Justification

The current practice of the Commission on this aspect of the Union interest test should not be modified

Amendment 43

Proposal for a regulation
Article 1 – point 9 a (new)
Regulation (EC) No 1225/2009
Article 22 – paragraph 1 a (new)

Text proposed by the Commission	*Amendment*
	9c. In Article 22, the following paragraph

shall be added:

"1a. As soon as all Member States have ratified new ILO Conventions, The Commission shall update Annex Ia accordingly, in conformity with the procedure set out in Article 290 TFEU."

Amendment 44

Proposal for a regulation
Article 1 – point 9 b (new)
Regulation (EC) No 1225/2009
Article 22 a (new)

Text proposed by the Commission	*Amendment*
	9b. The following article is inserted:
	"Article 22a
	Report
	1. In order to facilitate the monitoring of the implementation of the Regulation by the European Parliament and the Council, the Commission shall, with due regard to the protection of confidential information within the meaning of Article 19, present an annual report on the application and implementation of this Regulation to the European Parliament and to the Council, as a part of a trade defence instrument dialogue between the Commission, the European Parliament and the Council. The report shall include information about the application of provisional and definitive measures, the termination of investigations without measures, undertakings, reinvestigations, reviews and verification visits, and the activities of the various bodies responsible for monitoring the implementation of this Regulation and fulfilment of the obligations arising therefrom. The report shall also cover the use of trade defence instruments by third countries targeting the Union, information on the recovery of the Union industry concerned by the

measures imposed and appeals against the measures imposed. It shall include the activities of the Hearing Officer of the Commission's Directorate General for Trade and those of the SME Help Desk in relation to the application of this Regulation.

2. The European Parliament may, within one month of the Commission's presentation of the report, invite the Commission to an ad hoc meeting of its responsible committee to present and explain any issues related to the implementation of this Regulation. The report may also be subject to a resolution.

3. No later than six months after presenting the report to the European Parliament and to the Council, the Commission shall make the report public."

Justification

Amendment 45

Proposal for a regulation
Article 1 – point 9 c (new)
Regulation (EC) No 1225/2009
Annex I a (new)

Text proposed by the Commission	*Amendment*
	9c. The following annex is added:
	"Annex Ia
	ILO Conventions referred to in Articles 7, 8, 9
	1. Convention concerning Forced or Compulsory Labour, No 29 (1930)
	2. Convention concerning Freedom of Association and Protection of the Right to Organise, No 87 (1948)

	3. Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, No 98 (1949)
	4. Convention concerning Equal Remuneration of Men and Women Workers for Work of Equal Value, No 100 (1951)
	5. Convention concerning the Abolition of Forced Labour, No 105 (1957)
	6. Convention concerning Discrimination in Respect of Employment and Occupation, No 111 (1958)
	7. Convention concerning Minimum Age for Admission to Employment, No 138 (1973)
	8. Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, No 182 (1999)"

Amendment 46

Proposal for a regulation
Article 2 – point -1 (new)
Regulation (EC) No 597/2009
Title

Present text	*Amendment*
Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European ***Community***	Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European ***Union***
	(This amendment applies throughout Council Regulation (EC) No 597/2009.)

Amendment 47

Proposal for a regulation
Article 2 – point -1 a (new)
Regulation (EC) No 597/2009
Recital 9 a (new)

Text proposed by the Commission	*Amendment*
	-1a. The following Recital shall be inserted:
	"(9a) Within the Union, countervailable subsidies are as a general rule prohibited pursuant to Article 107(1) TFEU. Therefore, countervailable subsidies granted by third countries are particularly distortive of trade. The amount of State aid authorised by the Commission has steadily been reduced over time. For the anti-subsidy instrument, the lesser duty rule should hence no longer be applied to imports from a country or countries engaged in subsidisation."

Justification

In order to discourage EU's trading partners from engaging in subsidisation practices, the LDR shall not apply in those cases. Recital 9 of the Commission's legislative proposal has to be transferred into the Basic anti-subsidy Regulation.

Amendment 48

Proposal for a regulation
Article 2 – point -1 b (new)
Regulation (EC) No 597/2009
Article 1 – paragraph 1 – subparagraph 2

Text proposed by the Commission	*Amendment*
	-1b. In Article 1(1), the following subparagraph shall be added:
	"The use of any subsidised products in connection with the exploration of the Continental Shelf or the Exclusive Economic Zone of a Member State, or the exploitation of its resources, shall be treated as an import under this Regulation and shall be charged to duty accordingly, when it causes injury to the Union industry."

Justification

In line with the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS) and the international practices, the EU should apply the anti-subsidy instrument also to goods meant to be used in the Continental Shelf or the Exclusive Economic Zone of its Member States.

Amendment 49

Proposal for a regulation
Article 2 – point 1 a (new)
Regulation (EC) No 597/2009
Article 10 – paragraph 8

Present text	*Amendment*
	1a. In Article 10, paragraph 8 shall be replaced by the following:
8. If, in special circumstances, ***the Commission decides*** to initiate an investigation without having received a written complaint by or on behalf of the ***Community*** industry for the initiation of such investigation, this shall be done on the basis of sufficient evidence of the existence of countervailable subsidies, injury and causal link, as described in paragraph 2, to justify such initiation.	"8. If in special circumstances, ***in particular where diverse and fragmented sectors largely composed of SMEs are concerned,*** the Commission decides to initiate an investigation without having received a written complaint by or on behalf of the Union industry for the initiation of such investigation, this shall be done on the basis of sufficient evidence of dumping/the existence of countervailable subsidies, injury and a causal link, as described in paragraph 2, to justify such initiation."

Amendment 50

Proposal for a regulation
Article 2 – point 2
Regulation (EC) No 597/2009
Article 11 – paragraph 2 (new)

Text proposed by the Commission	*Amendment*
"11. Union producers of the like product are obliged to cooperate in proceedings that have been initiated pursuant to	***deleted***

Article 10(8)."

Amendment 51

Proposal for a regulation
Article 2 – point 2
Regulation (EC) No 597/2009
Article 11 – paragraph 9

Present text	*Amendment*
9. For proceedings initiated pursuant to Article 10(11), an investigation shall, whenever possible, be concluded within ***one year.*** In any event, such investigations shall in all cases be concluded within ***13 months*** of their initiation, in accordance with the findings made pursuant to Article 13 for undertakings or the findings made pursuant to Article 15 for definitive action.	9. For proceedings initiated pursuant to Article 10(11), an investigation shall, whenever possible, be concluded within ***nine months.*** In any event, such investigations shall in all cases be concluded within ***10 months*** of their initiation, in accordance with the findings made pursuant to Article 13 for undertakings or the findings made pursuant to Article 15 for definitive action. ***Investigation periods shall, whenever possible, especially in the case of diverse and fragmented sectors largely composed of SMEs, coincide with the financial year.***

Amendment 52

Proposal for a regulation
Article 2 – point 2
Regulation (EC) No 597/2009
Article 11 – paragraph 11 a (new)

Text proposed by the Commission	*Amendment*
	11a. The Commission shall facilitate the access to the instrument for diverse and fragmented sectors, largely composed of SMEs, in the context of anti-dumping cases, through the SME Help Desk.

The SME Help Desk shall raise awareness of the instrument, provide information and explanations on cases, how to file a complaint and how to better present evidence of dumping/countervailable subsidies and injury. The SME Help Desk shall make available standard forms for statistics to be submitted for standing purposes and questionnaires.

After the initiation of an investigation, it shall inform SMEs and their relevant associations likely to be affected by the initiation of proceedings and the relevant deadlines for registering as an interested party.

It shall assist addressing questions regarding the completion of questionnaires, where special attention shall be given to queries of SMEs as regards investigations initiated under Article 10(8). To the extent possible, it shall assist reducing the burden caused by language barriers.

In case SMEs provide prima facie evidence of dumping or countervailable subsidies, the SME Help Desk shall provide SMEs with information on the evolution of the volume and value of imports of the product concerned in accordance with Article 24(6).

It shall also provide guidance on additional methods of contact and liaison with the Hearing Officer and national customs authorities. The SME Help Desk shall also inform SMEs on the possibilities and conditions under which they could request a review of the measures and refund of the anti-dumping duties paid.

Amendment 53

Proposal for a regulation
Article 2 – point 2
Regulation (EC) No 597/2009
Article 11 – paragraph 11 b (new)

Text proposed by the Commission	*Amendment*
	11b. The Commission shall ensure the best possible access to information to all interested parties by allowing for an information system whereby interested parties are notified when new non-confidential information is added to the investigation files. Non-confidential information shall also be made accessible through a web-based platform.

Justification

To ensure the producers' and consumers' trust in, and to maintain the legitimacy of, the instrument, transparency ought to be improved.

Amendment 54

Proposal for a regulation
Article 2 – point 2
Regulation (EC) No 597/2009
Article 11 – paragraph 11 c (new)

Text proposed by the Commission	*Amendment*
	11c. The Commission shall safeguard the effective exercise of the procedural rights of the interested parties and shall ensure that proceedings are handled impartially, objectively and within a reasonable time period, through a Hearing Officer, where appropriate.

Justification

To ensure the producers' and consumers' trust in, and to maintain the legitimacy of, the instrument, transparency ought to be improved.

Amendment 55

Proposal for a regulation
Article 2 – point 2
Regulation (EC) No 597/2009
Article 11 – paragraph 11 d (new)

Text proposed by the Commission	*Amendment*
	11d. The Commission shall issue questionnaires used in investigations, in all official languages of the Union upon request of interested parties.

Justification

To reduce the burden placed on SMEs in proceedings, and to improve the level of cooperation, questionnaires ought to be available upon request in all official languages of the Union.

Amendment 56

Proposal for a regulation
Article 2 – point 3 – point -a (new)
Regulation (EC) No 597/2009
Article 12 – paragraph 1 – subparagraph 2

Present text	*Amendment*
	(-a) the second subparagraph shall be replaced by the following:
"The provisional duties shall be imposed no earlier than 60 days from the initiation of the proceedings but no later than ***nine*** months from the initiation of the proceedings."	"The provisional duties shall be imposed no earlier than 60 days from the initiation of the proceedings but no later than ***six*** months from the initiation of the proceedings."

Amendment 57

Proposal for a regulation
Article 2 – point 3 – point b
Regulation (EC) No 597/2009
Article 12 – paragraph 1 – subparagraph 3 a

Text proposed by the Commission	*Amendment*
(b) the following subparagraph is added at the end:	***deleted***
'Provisional duties shall not be applied within a period of two weeks after the information is sent to interested parties under Article 29b. The provision of such information shall not prejudice any subsequent decision that may be taken by the Commission.'	

Amendment 58

Proposal for a regulation
Article 2 – point 3 a (new)
Regulation (EC) No 597/2009
Article 13 – paragraph 1

Present text	*Amendment*
	3a. In Article 13, paragraph 1 is replaced by the following:
1. Upon condition that a provisional affirmative determination of subsidisation and injury has been made, the Commission may accept ***satisfactory*** voluntary undertakings offers under which:	"1. Upon condition that a provisional affirmative determination of subsidisation and injury has been made, the Commission may accept voluntary undertakings offers under which:
(a) the country of origin and/or export agrees to eliminate or limit the subsidy or take other measures concerning its effects; or	(a) the country of origin and/or export agrees to eliminate or limit the subsidy or take other measures concerning its effects; or
(b) any exporter undertakes to revise its prices or to cease exports to the area in question as long as such exports benefit from countervailable subsidies, ***so*** that the Commission, after specific consultation of the Advisory Committee, ***is satisfied*** that the injurious effect of the subsidies is thereby eliminated.	(b) any exporter undertakes to revise its prices or to cease exports to the area in question as long as such exports benefit from countervailable subsidies, ***provided*** that the Commission, after specific consultation of the Advisory Committee, ***has determined*** that the injurious effect of the subsidies is thereby effectively eliminated.
In such a case and as long as such undertakings are in force, the provisional	In such a case and as long as such undertakings are in force, the provisional

duties imposed by the Commission in accordance with Article 12(3) and the definitive duties imposed by the Council in accordance with Article 15(1) shall not apply to the relevant imports of the product concerned manufactured by the companies referred to in the Commission decision accepting undertakings and in any subsequent amendment of such decision.	duties imposed by the Commission in accordance with Article 12(3) and the definitive duties imposed by the Council in accordance with Article 15(1) shall not apply to the relevant imports of the product concerned manufactured by the companies referred to in the Commission decision accepting undertakings and in any subsequent amendment of such decision.
Price increases under such undertakings shall not be higher than is necessary to offset the amount of countervailable subsidies, and should be less than the amount of countervailable subsidies if such increases would be adequate to remove the injury to the Community industry.	***The lesser duty rule shall not apply to prices agreed under such undertakings in the framework of anti-subsidy proceedings.***"

Justification

Undertakings can only be accepted if they effectively eliminate the injurious effect of the subsidy. Moreover, consistently with the other provisions on the lesser duty rule, the lesser duty rule shall not apply in anti-subsidy proceedings.

Amendment 59

Proposal for a regulation
Article 2 – point 3 b (new)
Regulation (EC) No 597/2009
Article 13 – paragraph 4

Present text	*Amendment*
	3b. In Article 13, paragraph 4 is replaced by the following:
4. Parties which offer an undertaking shall be required to provide a non-confidential version of such undertaking, so that it may be made available to interested parties to the investigation.	"4. Parties which offer an undertaking shall be required to provide ***a meaningful*** non-confidential version of such undertaking, so that it may be made available to interested parties to the investigation***, the European Parliament and the Council***. ***The parties shall be requested to disclose as much information as possible regarding the content and nature of the undertaking with due regard to the***

	protection of confidential information within the meaning of Article 29. Furthermore, before accepting any such offer the Commission shall consult the Union industry with regard to the main features of such undertaking."

Amendment 60

Proposal for a regulation
Article 2 – point 6 – point a
Regulation (EC) No 597/2009
Article 22 – paragraph 1 – subparagraph 7 a

Text proposed by the Commission	*Amendment*
(a) in paragraph 1 the following subparagraph is added:	***deleted***
'If following an investigation pursuant to Article 18, the measure expires, any duties collected after the date of the initiation of such investigation shall be reimbursed. The reimbursement should be requested from national customs authorities in accordance with the applicable Union customs legislation.'	

Justification

In order to maintain the balance of the instrument, this new, but bureaucratic and complex, form of reimbursement is not desired.

Amendment 61

Proposal for a regulation
Article 2 – point 7 a (new)
Regulation (EC) No 597/2009
Article 24 – paragraph 3

Present text	*Amendment*
	7a. In Article 24, paragraph 3 is replaced by the following:
3. Special provisions, in particular with	"3. Special provisions, in particular with

regard to the common definition of the concept of origin, as contained in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, may be adopted pursuant to this Regulation.	regard to the common definition of the concept of origin, as contained in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ***or in accordance with Article 2 thereof***, may be adopted pursuant to this Regulation."

Justification

In order to avoid circumvention of anti-subsidy measures, the scope of trade defence legislation should be fully aligned with the relevant provisions of the Customs Code.

Amendment 62

Proposal for a regulation
Article 2 – point 7 b (new)
Regulation (EC) No 597/2009
Article 24 – paragraph 5

Present text	*Amendment*
	7b. In Article 24, paragraph 5 is replaced by the following:
5. The Commission may, after consultation of the Advisory Committee, direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration.	"5. The Commission may, after consultation of the Advisory Committee, direct the customs authorities to take the appropriate steps to register imports, so that, ***for instance***, measures may subsequently be applied against those imports from the date of such registration.
Imports ***may*** be made subject to registration following a request from the ***Community*** industry which contains sufficient evidence to justify such action.	Imports ***shall*** be made subject to registration following a request from the ***Union*** industry which contains sufficient evidence to justify such action. ***Imports may also be made subject to registration on the Commission's own initiative.***
	Imports shall be made subject to registration from the date of initiation of the investigation where the complaint of the Union industry contains a request for registration and sufficient evidence to justify such action.
Registration shall be introduced by	Registration shall be introduced by

Regulation which shall specify the purpose of the action and, if appropriate, the estimated amount of possible future liability. Imports shall not be made subject to registration for a period longer than nine months.	Regulation which shall specify the purpose of the action and, if appropriate, the estimated amount of possible future liability. Imports shall not be made subject to registration for a period longer than nine months."

Justification

To mitigate the risk of stockpiling, registration of imports ought to take place following the submission of any justified request, and from the date of initiation when justified by the complaint. The Commission should also have the possibility of ordering registration on its own initiative.

Amendment 63

Proposal for a regulation
Article 2 – point 7 c (new)
Regulation (EC) No 597/2009
Article 24 – paragraph 6

Present text	*Amendment*
	7c. In Article 24, paragraph 6 is replaced by the following:
6. Member States shall report to the Commission every month, on the import trade in products subject to investigation and to measures, and on the amount of duties collected pursuant to this Regulation.	***'***6. Member States shall report to the Commission every month, on the import trade in products subject to investigation and to measures, and on the amount of duties collected pursuant to this Regulation. ***The Commission may, upon receiving a specific reasoned request from an interested party, and after receiving the opinion of the Advisory Committee on it, decide to provide them with information concerning the volume and import values of these products.'***

Amendment 64

Proposal for a regulation
Article 2 – point 7 d (new)

Regulation (EC) No 597/2009
Article 24 – paragraph 7 a (new)

Text proposed by the Commission	*Amendment*
	7d. In Article 24, the following paragraph is added:
	"7a. Whenever the Commission intends to adopt or publish any document aimed at clarifying the established practice of the Commission with regard to the application of this Regulation in any of its elements, the Commission, prior to the adoption or publication, shall consult the European Parliament and the Council, aiming at a consensus with a view to the approval of the given document. Any subsequent modification of such documents shall be subject to such procedural requirements. In any event, any of these documents shall be in full conformity with the provisions of this Regulation. No such document can broaden the discretion of the Commission, as interpreted by the Court of Justice of the European Union, in adopting measures."

Amendment 65

Proposal for a regulation
Article 2 – point 8
Regulation (EC) No 597/2009
Article 27 – paragraph 1

Text proposed by the Commission	*Amendment*
8. ***In Article 27(1), the first subparagraph*** is replaced by the following***:***	8. ***In Article 27, paragraph 1*** is replaced by the following***:***
"1. In cases where the number of Union producers, exporters or importers, types of product or transactions is large, the investigation may be limited to:	"1. In cases where the number of Union producers, exporters or importers, ***that cooperate in the investigation, or*** types of product or transactions is large, the investigation may be limited to:

(a) a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of information available at the time of the selection; or

(b) the largest representative volume of the production, sales or exports which can reasonably be investigated within the time available.

In the case of diverse and fragmented industry sectors, largely composed of SMEs, the final selection of parties shall, where possible, take into account their proportion of the sector concerned."

Justification

To ensure better data, sampling should include both complainants and non-complainants.

Amendment 66

Proposal for a regulation
Article 2 – point 9
Regulation (EC) No 597/2009
Article 29b

Text proposed by the Commission	*Amendment*
9. After Article 29, the following Article is inserted:	***deleted***
"Article 29b	
Information about provisional measures	
1. The Union producers, importers and exporters and their representative associations, and the country of origin and/or export, may request information on the planned imposition of provisional duties. Requests for such information shall be made in writing within the time limit prescribed in the notice of initiation. Such information shall be provided to those parties, at least two weeks before the expiry of the deadline mentioned in Article 12(1) for the imposition of	

provisional duties.

Such information shall include:

(a) a summary of the proposed duties for information purposes only, and

(b) details of the calculation of the subsidy margin and the margin adequate to remove the injury to the Union industry, due account being taken of the need to respect the confidentiality obligations contained in Article 29. Parties shall have a period of three working days to provide comments on the accuracy of the calculations.

2. In cases where it is intended not to impose provisional duties but to continue the investigation, interested parties shall be informed of the non-imposition of duties two weeks before the expiry of the deadline mentioned in Article 12(1) for the imposition of provisional duties."

Amendment 67

Proposal for a regulation
Article 2 – point 10
Regulation (EC) No 597/2009
Article 31 – paragraph 2

Text proposed by the Commission	*Amendment*
10. Article 31(2) is replaced by the following:	***deleted***
"2. In order to provide a sound basis on which the authorities can take account of all views and information in the decision as to whether or not the imposition of measures is in the Union interest, the Union producers, importers and their representative associations, representative users and representative consumer organisations may, within the time-limits specified in the notice of initiation of the countervailing investigation, make themselves known and provide	

information to the Commission. Such information, or appropriate summaries thereof, shall be made available to the other parties specified in this paragraph, and they shall be entitled to respond to such information."

Justification

The current practice of the Commission on this aspect of the Union interest test should not be modified.

Amendment 68

Proposal for a regulation
Article 2 – point 10 a (new)
Regulation (EC) No 597/2009
Article 33 a (new)

Text proposed by the Commission	*Amendment*
	10a. The following article is inserted:
	"Article 33a
	Report
	1. In order to facilitate the monitoring of the implementation of the Regulation by the European Parliament and the Council, the Commission shall, with due regard to the protection of confidential information within the meaning of Article 19, present an annual report on the application and implementation of this Regulation to the European Parliament and to the Council, as a part of a trade defence instrument dialogue between the Commission, the European Parliament and the Council. The report shall include information about the application of provisional and definitive measures, the termination of investigations without measures, undertakings, reinvestigations, reviews and verification visits, and the activities of the various bodies responsible for monitoring the implementation of this Regulation and fulfilment of the obligations arising therefrom. The report

	shall also cover the use of trade defence instruments by third countries targeting the Union, information on the recovery of the Union industry concerned by the measures imposed and appeals against the measures imposed. It shall include the activities of the Hearing Officer of the Commission's Directorate General for Trade and those of the SME Help Desk in relation to the application of this Regulation.
	2. The European Parliament may, within one month of the Commission's presentation of the report, invite the Commission to an ad hoc meeting of its responsible committee to present and explain any issues related to the implementation of this Regulation. The report may also be subject to a resolution.
	3. No later than six months after presenting the report to the European Parliament and to the Council, the Commission shall make the report public."

Amendment 69

Proposal for a regulation
Article 3

Text proposed by the Commission	*Amendment*
This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.	This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.
	It shall be consolidated with Regulation (EC) No 1225/2009 and Regulation (EC) No 597/2009 by ...*.
	_____
	**** OJ: please insert date: three months after the date of entry into force of this Regulation.***

EXPLANATORY STATEMENT

Introduction

The Commission proposal, aiming at modernising both the anti-dumping and anti-subsidy regulations, entails four central changes: the removal of the lesser duty rule in anti-dumping cases where structural raw material distortions are present and in all anti-subsidy cases, the obligation for Union producers to cooperate in ex-officio investigations, the reimbursement of duties collected during expiry reviews, and the two weeks' notice before provisional duties are introduced, commonly referred to as the shipping clause. The Commission's rationale is based on three objectives: to increase the effectiveness of the instruments, to reduce the threat of retaliation from third country, and to increase transparency and predictability. The Rapporteur welcomes these three objectives and believes that they have to be combined in order to keep public trust in the instruments. The Rapporteur therefore wishes to outline the core of the Draft Report by raising the below questions.

To what extent does the Commission proposal ensure the effective use of the instruments?

The Rapporteur agrees with the Commission that effectiveness is fundamental to ensure that the instrument serves its purpose: to prevent injury from illegal dumping and subsidisation. In relation to effectiveness, the Commission has argued that the reimbursement of duties collected under expiry reviews and the partial removal of the lesser duty rule are central.

Reimbursement of duties collected under expiry reviews

The Commission proposes to reimburse duties collected under expiry reviews, if proven that dumping or subsidisation has been terminated, claiming that it would ensure effectiveness. However, it must be asked from where such a conclusion arrives. It could be argued that the reimbursement proposed is not necessary, since a refund procedure is already present in the regulations. Therefore, the Rapporteur proposes to delete this paragraph.

Partial removal of lesser duty rule

The Commission proposes to remove the lesser duty rule in anti-dumping cases, where structural raw material distortions are found, and in all anti-subsidy cases, arguing that this removal will improve the effectiveness of the instruments. Again, however, it is difficult to ascertain from where such conclusion arrives. In accordance with WTO, dumping per se is not illegal, but injurious dumping is. Hence, the lesser duty rule ensures the removal of the injury caused on the Union producers, and it is questionable whether higher tariffs would bolster effectiveness. Deterrence might be the motivation behind the proposed change, but the potential effects have to be kept in mind. Considering the much more globalised value chain of today, where more than 50 per cent of the imports to the Union consists of intermediate goods, the increased duty level will not only keep dumped and subsidised third country goods out of the EU market, but might have a significant impact on the Union's access to the intermediate goods used in the Union's exports. Therefore, when increasing tariffs beyond rectifying the injury, the Union's exports, ensuring economic growth, are also targeted.

Furthermore, the lack of a precise definition of structural raw material distortions may prove problematic. As of yet, the Commission has not presented a uniform definition, which has resulted in numerous of speculations to arise. It has been suggested that there will be an ad hoc determination, but also that energy and labour costs are included in such a concept. By using an undefined and unpredictable concept as the basis for input, the output could be equally as unpredictable, which puts the effectiveness of the removal of the lesser duty rule into question. The concept also blurs the lines between anti-dumping and anti-subsidy, which might be considered to be in breach of Article 32.1 of the WTO Agreement on Subsidies and Countervailing Measures. Consequently, prior of knowing the intended use of the concept of structural raw material distortions, it is difficult to determine to what extent it would increase the effectiveness of the instrument, or whether the legal uncertainty could in fact reduce effectiveness.

Does the proposal appropriately address the threat of retaliation by third countries?
In the Commission proposal, the Commission acknowledges the Union producers' growing concern in regards to the threats of retaliation by third country producers after lodging an anti-dumping or anti-subsidy complaint, and has therefore presented the obligation to cooperate in ex-officio proceedings. However, as previously mentioned, the Rapporteur has concerns in regards to other parts of the Commission proposal that might undermine the objective of securing the Union against a trend of increasing retaliation, such as the partial removal of the lesser duty rule.

Obligation to cooperate in ex-officio proceedings
According to the Commission, the threat of retaliation can be managed by initiating ex-officio investigations, i.e. warranting the Commission to initiate investigation without a formal complaint issued by a Union producer. There are significant benefits of this proposal, not least the extended access to data. This could improve the quality of the sampling in the investigation, where better and firmer conclusions can be drawn. However, there are issues still unresolved and not addressed by this proposal. Firstly, it must be stated that the Commission's ability to initiate ex-officio proceedings already exists in the regulations, which raises the question why the Commission sees ex-officio as the answer to the threat of retaliation at this point in time. Secondly, despite the argument that this reduces the risk of retaliation, it does not entirely remove it. It is safe to assume that a well-informed third country producer can without difficulties conclude on which Union producers' behalf the Commission is acting. Thirdly, one should not underestimate the administrative burden of taking part in an investigation, especially for SMEs, and some companies might not be comfortable providing the Commission with sensitive business information. Fourthly, the consequences of potential noncompliance with such information requests are unclear.

Furthermore, a more recent and worrying phenomena is the tendency of third countries to penalise and retaliate against certain EU member states, or vital sectors not necessarily connected to the sector affected by third country dumping or subsidisation. Hence, it could be argued that instead of suffering from intra-sector retaliation, there is an increased risk for creating a much more harmful and unjust inter-sector retaliation, or cross-retaliation. In this sense, Union producers from other sectors, that have no interest in the outcome of the investigation, are affected by initiatives taken by the Commission. The Rapporteur sees this as a trend that is less than desirable.

Nevertheless, despite these concerns, it could be argued that the benefits of the better sampling outweigh the disadvantages, and might thus be considered legitimate. To counterbalance the concerns outlined above, the Rapporteur proposes to strengthen the SME Help Desk, but also to weigh in the potential negative effects of other policy changes, such as the partial removal of the lesser duty rule.

Partial removal of the lesser duty rule

As mentioned, the Commission's proposal to partially remove the lesser duty can be seen to have an impact on the threat of retaliation. Removing the lesser duty rule could be perceived as changing the nature of the instruments from being a corrective measure into a penalising measure. This, in combination with the fact that there is no uniform definition of structural raw material distortions, could be seen to create more room for a tit-for-tat mentality. The primary objective of the lesser duty rule is to remove the injury caused, not to penalise the Union's trading partners, which is the logic behind the Union's drive to including the lesser duty rules in WTO negotiations. Therefore, it must be asked whether the limiting of the lesser duty rule will increase effectiveness or in fact exacerbate the threat of retaliation. It is the Rapporteur's view, that the attempts to make the instrument more effective might render fruitless if the threat of retaliation is exacerbated. Again, the concerns raised in the previous section about intra-sector retaliation becoming inter-sector retaliation have to be reiterated. Therefore, the Rapporteur proposes to delete the partial removal of the lesser duty rule.

Does the proposal ensure sufficient transparency and predictability?

Transparency and predictability are vital for all involved parties, and are aimed at ensuring public trust, accountability and legitimacy of the instruments. The Rapporteur wishes to discuss three areas: the shipping clause, the timing of the imposition of provisional duties and the access to information.

Shipping clause

The shipping clause, or the two weeks' notice before provisional duties are introduced, would provide importers with a legal certainty that business can carry on as normal until initial proof of dumping and subsidisation is available. According to the Commission, this proposal aims at increasing the predictability of the investigations, and many stakeholders regard this as a measure of fairness. However, stakeholders have also raised the issue that the fixed period will either be too long or too short. Imports from Russia do not necessitate a shipping clause of two weeks, but perhaps only four or five days. Imports from East Asia, however, might require a shipping clause of six weeks. Others have warned about the potential danger of stockpiling. In addition, there is a discriminatory factor imbedded in the proposal, since only registered interested parties can make use of the shipping clause. Therefore, the Rapporteur proposes to replace the advance notice with a real shipping clause with inspiration taken from the safeguard regulation, stating that the product in question on the way to the Union should not be subject to provisional duties.

Timing of provisional duties

In combination with a real shipping clause, there are other areas of the anti-dumping and anti-subsidy investigations where transparency and predictability can be enhanced. In an overwhelming majority of the cases, provisional duties are introduced on the nine month

deadline or in the last week before the deadline. Only in exceptional cases have the provisional duties been introduced earlier. With this information at hand, the Rapporteur proposes to introduce a clause stating that provisional duties can only be imposed during the last week of the investigation.

Access to information

Under the current regulations, interested parties have very limited access to relevant files of investigations. This concern has been raised by stakeholders, arguing that the accessible non-confidential files are of a too poor quality in order to be of use. Therefore, to avoid miscalculations and the improper use of data, more ought to be done to facilitate greater access to the both non-confidential, but also confidential, files. The Rapporteur therefore proposes several provisions. In addition to the Hearing Officer, the Commission should guarantee improved transparency by introducing a notification system where legal representatives or interested parties are notified when new files are added to the investigation, along with an online access of all non-confidential files.

To what extent does the proposal take into account the challenges of the future?

The Commission proposal is commonly referred to as a modernisation, an adaptation to modern trade patterns. With this background, the Rapporteur considers it necessary to take into account both Omnibus and the wider policy concerns of the Union.

Omnibus

With the upcoming adoption of the Trade Omnibus I and II, it is sensible for the Parliament to scrutinise the increased powers that the Commission will gain. The balance of the modernisation has to be seen in the light of these upcoming changes, which renders the question to what extent the present proposal takes this into account. The Rapporteur acknowledges that the modernisation cannot and should not per se alter or reverse Omnibus I and II, but instead gives impetus for strengthening the scrutiny of the instruments, and creating better legal certainty of the regulations. Therefore, the Rapporteur proposes to strengthen the annual report on trade defence instruments, introduced after the adoption of Omnibus I, which is subject to a Parliament resolution.

Other policy concerns

In regards to making the instrument apt for the modern environment, other policy concerns might have to be taken into account to a greater extent than before. It has become salient that trade faces challenges that are not in essence trade-related, but nevertheless influence trade policy. Trade defence instruments are no exception. The Union Interest Test is a vital part of ensuring this policy coherence. However, there is a danger of, and in, politicising the instrument if the framework of the Union Interest is not properly defined. The Union Interest test in TDI investigations should guarantee that the Commission speaks with one voice towards its citizens and consumers, as well as towards third countries. Therefore, the Rapporteur proposes to strengthen the criteria of the Union Interest by using the Commission's guideline.

Conclusion

In conclusion, the Rapporteur welcomes the objectives pursued by the Commission. Effectiveness, reducing the threat of retaliation, transparency and predictability are admirable objectives that in combination ensure the public trust in the instrument. In essence, the

Rapporteur does not wish to go beyond these objectives, but sees areas where these objectives can be strengthened by finding answers to the questions raised above.

PROCEDURE

Title	Protection against dumped and subsidised imports from countries not members of the EC
References	COM(2013)0192 – C7-0097/2013 – 2013/0103(COD)
Date submitted to Parliament	10.4.2013
Committee responsible Date announced in plenary	INTA 18.4.2013
Rapporteur(s) Date appointed	Christofer Fjellner 25.4.2013
Discussed in committee	10.7.2013 28.11.2013 17.12.2013
Date adopted	21.1.2014
Result of final vote	+: 24 –: 6 0: 0
Members present for the final vote	Laima Liucija Andrikienė, Maria Badia i Cutchet, Nora Berra, David Campbell Bannerman, Daniel Caspary, María Auxiliadora Correa Zamora, Christofer Fjellner, Yannick Jadot, Metin Kazak, Franziska Keller, Bernd Lange, David Martin, Vital Moreira, Paul Murphy, Godelieve Quisthoudt-Rowohl, Niccolò Rinaldi, Helmut Scholz, Peter Šťastný, Robert Sturdy, Henri Weber, Jan Zahradil, Paweł Zalewski
Substitute(s) present for the final vote	Catherine Bearder, Béla Glattfelder, Syed Kamall, Elisabeth Köstinger, Katarína Neveďalová, Tokia Saïfi, Peter Skinner, Jarosław Leszek Wałęsa
Date tabled	27.1.2014