

# Customs & Trade

## ■ I. FOCUS

### European Union

#### New trade defence instruments (TDI): what to expect?

Following a [proposal of the European Commission in 2013](#), the EU decided to update its 1995 trade defence law to counter unfair trade practices.

Five years later, [Regulation No 2018/825](#) amending the basic anti-dumping (Regulation No 2016/1036) and anti-subsidy (Regulation No 2016/1037) Regulations was published in the Official Journal on June 7, 2018. The provisions of this Regulation entered into force the day following its publication, June 8, 2018, and will apply to all investigations whose notice of initiation was published in the OJ after the date of entry into force of the Regulation.

The Regulation improves a number of important points such as: increased transparency and predictability of procedures, better access to information for SMEs, adoption of effective measures to counter retaliation by third States, etc. In addition, certain practices that have been applied in recent years by the European Commission in anti-dumping and anti-subsidy investigations have been included in the new regulation.

The new measures complement the entered into force on 20 December 2017 anti-dumping rules focusing on third countries that interfere heavily in the economy ([Regulation \(EU\) No 2017/2321](#)). Thus, the European Commission skillfully circumvented the obstacle on China's market economy status as the new regulation would use the same anti-dumping methodology for all WTO members, regardless of the fact if a market economy status had been granted or not.

The main aspects of the TDI modernization are:

- complaints may be lodged by the Union industry

without any further reference to the thresholds for the initiation of a procedure; unions will from now on also be able to file complaints jointly with industry or support complaints from industry;

- a stricter interpretation of the so-called lesser-duty rule, which allows authorities to impose which allows the authorities to impose more moderate tariffs, based on the injury suffered by the complaining companies rather than on the objective level of dumping if that is deemed sufficient to remove injury caused by unfair imports;

- a minimum profit target for European businesses would be included into the calculation of duties;

- costs for EU industry resulting from international and environmental agreements would be reflected in the calculation of the duties;

- investigations into anti-dumping cases would be significantly shorter and the new rules introduce the mandatory prior notification to the parties before the imposition of provisional measures;

- a SMEs help-desk would deal with complaints and investigative proceedings; all products arriving into the EU between the notice of an investigation and its actual start would be strictly monitored and registered to avoid stockpiling;

- continental shelves and economic exclusive zones (sea zones, mainly used for energy production) would from now on be also covered by the European legislation.

As the new TDI modernization package introduced, among other things, significant changes to the timetable and deadlines previously applicable in anti-dumping proceedings, the [Commission published a memorandum](#) to illustrate by means of a typical anti-dumping investigation how the proceeding will be structured from a procedural point of view focusing on the key steps and time-limits of the investigation process.

You can consult our [DS Antidumping blog](#) where

this issue has been largely commented and a more [detailed analysis of the new provisions](#) has been provided.

*Jean-Marie SALVA & Dimana TODOROVA,  
DS Avocats, Brussels*

## ■ II. BRIEF OVERVIEW

### EUROPEAN UNION

#### [Pre-import surveillance of certain aluminum products](#)

The Commission has adopted the Implementing Regulation (EU) 2018/640 which has placed surveillance on certain aluminum products originating in certain third countries in order to collect statistical information to analyze the evolution of imports from third countries. The classifications subject to prior Union surveillance are: 7601, 7604, 7605, 7606, 7607, 7608, 7609 and 7616.99. This requirement began to apply as of May 12, 2018.

#### [EU retaliatory measures against US taxes on steel and aluminum entered into force on June 22](#)

The Commission implemented retaliatory measures against the US following the adoption by the later of additional customs duties applicable to steel and aluminum of European origin.

The first package of measures entered into effect on June 22, 2018 and applies to the products listed in Annex I to Regulation No 2018/886 imposed with additional ad valorem duties amounting to a maximum rate of 25%.

#### [EU and Vietnam finalize talks on free trade agreement and investment protection agreement \(IPA\)](#)

The EU and Vietnam have agreed on a final text for the EU-Vietnam Trade Agreement, formally concluding the legal review of the document. At a meeting in Brussels on 25 June, they also concluded

discussions on an IPA.

The Commission will now translate the text of the trade agreement into the other 22 official languages of the EU and launch the legal revision of the IPA text, paving the way for the signature and conclusion of these two agreements by the Council and the European Parliament.

[EU develops tool to help companies check eligibility for preferential treatment under FTAs](#)

The Market Access Database offers a tool helping operators to determine the acquisition of preferential EU origin. Interested companies can test the flow chart by a product and by a preferential agreement.

Access to this tool is preceded by a questionnaire that economic operators are invited to fill in order to identify difficulties encountered in connection with FTAs' rules of origin. Participation in this questionnaire can be done until July 31, 2018.

[Commission's notice on the customs consequences of Brexit on preferential origin](#)

According to this notice, at the date of withdrawal, the EU's preferential trade arrangements with third countries in the area of PCC and customs will no longer apply in the United Kingdom.

However, during the transition period, the UK will be treated as a Member State for the purposes of these preferential agreements.

## ASIA

### HONG KONG

[Hong Kong released updated circular on importing and exporting of encryption products](#)

The Strategic Trade Controls Branch of the Hong Kong Department of Commerce and Industry has issued an updated circular describing the licensing requirements for the import and export of encryption products.

## NORTH AMERICA

### CANADA

[New CBSA Proceedings](#)

On May 17, 2018, Canada has amended its Special Import Measures Act in order to address concerns raised by Canadian producers. Three new investigative and administrative tools were added to the CBSA's mandate:

- 1) [Anti-Circumvention Proceedings](#);
- 2) [Scope Proceedings](#); and
- 3) A means of addressing price distortions.

These new proceedings and measures have not been used in a published decision, but provide some interesting possibilities for the CBSA's enforcement capabilities.

[New time frames for the release of commercial goods](#)

On July 5, 2018, Canada issued Customs Notice 18-09, alerting the public of upcoming changes in the time frames for the release of commercial goods which will replace the Mode Specific Time Frames in [Memorandum D17-1-4 - Release of Commercial Goods](#) and give the following options instead:

Pre-arrival release options: importers can submit [Pre-Arrival Review System \(PARS\)](#) to the CBSA as early as 30 days prior to arrival, or an [Integrated Importer Declaration \(IID\)](#) which can be submitted up to 90 days prior to arrival.

Post arrival release options: Importers/brokers can submit a [Release on Minimum Documentation \(RMD\)](#), or an IID after the goods have arrived at their final destination.

[Canada introduces surtaxes on US Steel and Aluminum and Other Goods, but a remission of those surtaxes is available](#)

Canada has implemented its own [surtaxes](#) on US steel (25%), US Aluminum (10%) and on other goods (10%) in retaliation for US Tariffs.

However, Canada has also announced a [process](#)

[for requesting remission of surtaxes that apply on certain goods from the US](#). The process provides

case-by-case relief from the surtaxes.

proceso podría generar la imposición de las tarifas de importación o de cuotas que protegerán los productores de la Unión Europea contra las importaciones excesivas.

La investigación lanzada comprende 26 categorías de productos de acero y será desarrollada en 9 meses.

Por otra parte, el 16 abril la Unión Europea ha interpuesto una consulta ante la OMC sobre las medidas arancelarias adoptadas por los Estados Unidos.

## UNITED STATES

### NAFTA NEGOTIATION UPDATE

There is still no new NAFTA agreement. With the United States' continued trade tariffs, amounting to a trade war, Mexico's new president-elect not taking office until December 1, 2018 and President Trump saying he is refusing a new NAFTA until the US Mid-Term Elections, it remains uncertain whether any new deal can be reached this year, or at all.

### UPDATE US TARIFFS ON STEEL AND ALUMINUM

The number of [complaints submitted to the WTO](#) against the United States for the tariffs imposed on Steel and Aluminum Products continues to grow. There are now complaints by Russia, Norway, Mexico, Canada, the EU, Indian and China.

## ■ III. PRESS REVIEW

[Customs valuation and UCC. Echanges internationaux, May 2018, n° 111](#)

Jean-Marie SALVA, Partner, DS Avocats  
Arnaud FENDLER, Associate, DS Avocats  
Delphine NEVEUX-VAN-DEN-HOMBERG, Director Customs affairs, Michelin Group

**For any further information, please contact:**

[dscustomsdouane@dsavocats.com](mailto:dscustomsdouane@dsavocats.com)

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