Interest Groups and the Failure of EU Antidumping Reform

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Abstract

In this paper, we answer the question why the European Union recently attempted yet failed to reform its anti-dumping regulation. Anti-dumping procedures specify under which circumstances the EU is entitled to unilaterally impose higher duties on imports that EU trading partners are alleged to ‘dump’ on the European market. The policy pits producers against consuming industries, importers, and retailers. Despite an increase in producers outsourcimg production, a reduction in collective action costs for importers and retailers as a consequence of a wave of consolidation, producer groups of heavy manufacturing formed a coalition of trade associations that successfully thwarted the reform initiative, fearing concentrated losses for their member firms. We show how the degree of concentration of any economic sector is crucial for its potential for political mobilisation, and find some but only limited support for domestic bureaucratic reasons and close to no support for international sources for the maintenance of the status quo, as no legislative changes resulted after almost three years of intense lobbying activity by organised interests.
1. Introduction

On 6 December 2006, then European Commissioner for Trade Peter Mandelson held a well attended press conference to launch one of the initiatives within the Global Europe trade policy framework: the European Commission’s Green Paper for public consultation on Europe’s Trade Defence Instruments (TDI) (Commission of the European Communities 2006). Mandelson began the press conference by stating that the Commission had adopted the Green Paper because ‘in the ten years since the EU’s TDI’s were last looked at, the global economy has changed dramatically.’ As a consequence, he continued, the Commission is curious to hear what all interested parties (i.e. member states, business, NGO’s, individuals) think of the present system of trade defence instruments. The entire consultation process, Mandelson ensured his audience, will be undertaken in an ‘open and neutral way’.

With the latter remark Mandelson seemed to try to send the message that the Commission was not committed a priori to any reform of the system, yet the remainder of his speech, as well as the green paper itself, leaves little room for guessing his intentions. Especially when he comes to the point were he summarizes the Green Paper, it becomes evident that Mandelson did want to use the green paper to reform the trade defence system and, by doing so, show the world as The Economist (2006) puts it, ‘his liberal credentials’. He underlined this by asking the following (rather rhetorical) questions: Do we take enough account of the producers who have relocated parts of their production outside the EU in the present system? Do we need to look at new ways of reflecting the interests of retailers as well as consumers when imposing antidumping duties? Could we be more transparent in the way we handle antidumping cases? Are we using the right criteria in launching

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1 We would like to thank several experts as well as practitioners for sharing their views and information with us. All assessments, judgements and opinions in this paper are only our own, just like all factual errors. We especially would like to express our thanks to Adrian Van den Hoven (Director International Relations, BusinessEurope), Monique Jones (Director Trade and Competitiveness, Eurometaux & Chair Working Group on Trade Policy Instruments, BusinessEurope), Stuart Newman (Legal Adviser, Foreign Trade Association), Edwin Vermults (Attorney, Vermulst, Verhaeghe & Grafsma Advocaten), Colin Purvis (Director General CIRFS, International Rayon and Synthetic Fibres Committee), Ralph Kamphöner (Senior Adviser International Trade, EuroCommerce), Alasdair Gray (Director Brussels Office, British Retail Association), and Stefaan Depypere (Director Trade Defence, DG Trade, European Commission).


3 Trade defence instruments consist of antidumping measures, anti-subsidy or ‘countervailing duty’ policy and safeguards. The two latter instruments are rarely used, however, and understandably the political contentious reform centred on antidumping regulation.
investigations and in defining and implementing antidumping measures? And, finally, are we doing enough to ensure that the interests of small business are taken into account when imposing TDI’s?

Thus, the green paper was clearly aimed at reforming trade defence instruments and especially antidumping and the trade Commissioner and his cabinet had every reason to believe that the time was indeed right for reform. After all, many signs pointed in the direction of Mandelson finding enough support for such a reform.

Antidumping duties are the only available legal means to increase tariff levels above the so-called WTO bound tariff levels, i.e. the level of duties for a particular product a WTO member has committed to in its tariff schedule. In a nutshell, current antidumping policy goes as follows. If a quarter of the producers of a particular product allege that foreign producers are dumping products, i.e. selling below production cost, on the EU market, the Directorate for Trade Defence at DG Trade of the European Commission is obliged to investigate their request. The Commission investigates whether there has been dumping, whether this has caused injury to European producers, and whether imposing duties harms the public interest, a test that can include consideration for the interests of importers and consumers. The Commission can then impose preliminary duties (for 6 months) before submitting a proposal on definitive duties (for five years) to the trade policy committee of the Council of Ministers, which approves or declines by a simple majority of member states.

In this paper, we ask why the attempted antidumping reform failed despite changed preferences and lobbying dynamics. We analyse the political and economic origins of the antidumping reform initiative, review the role that interest groups played in this process, illustrate which reform proposals were under consideration, how the policy initiative generated opposition from concentrated producer groups, and how eventually there were no legislative changes to prevailing European antidumping policy. The paper is structured as follows. First, we explain how current EU policy works and which types of firms and economic sectors tend to make use of the policy

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4 The Directorate for Trade Defence has an impressive personnel capacity of a 164 Commission officials on a total of 468 officials working at the Directorate-General for Trade, one of the largest DG in the European Commission. The bulk of these employees are so-called Case Handlers (see the Distribution of officials and temporary agents by DGs and the Commission Directory at http://ec.europa.eu/civil_service/about/figures/index_en.htm and http://ec.europa.eu/staffdir/plsql/gsys_page.display_index?plang=EN; last visited on 1 April 2009). 

5 This is the so-called Article 133 Committee; when voting, abstentions count as approvals.
instrument. We illustrate how concentrated sectors are the main beneficiaries of antidumping policy and have a vested interest in the policy; how more fragmented sectors tend not to benefit; and how importers, retailers and consuming industries bear most of the costs of antidumping measures, and have acquired more incentives to mobilise against them. We then identify a set of economic and political reasons why the European Commission launched a review of the policy in 2006. These include production outsourcing and retail concentration, geographical concentration of production within the EU, and increasing foreign retaliation against EU antidumping measures. We go on by developing an analytical and chronologically structured narrative of the reform process from 2006 up to its suspension in 2008. We conclude with a couple of observations on interest group research, the mobilisation of concentrated interests, status quo politics, and the nature of European trade policy.

2. Collective action and antidumping policy

Once set-up, the antidumping instrument creates demand for certain types of collective action at the expense of others. The main and traditional users of the policy instrument of anti-dumping are producers in concentrated sectors. Concentrated economic sectors consist of a relatively low numbers of firms. Mostly, such firms rely on large economies of scale, as in manufacturing sectors such as steel, chemicals, metals, consumer electronics, and so on. Also called ‘oligopolistic’ sectors, firms in these market niches face lower collective action problems than do a high number of smaller firms in other product niches. The reasons for their relative advantage in organising collectively to influence public policy making are the following (see Olson 1965). First, producers in concentrated sectors need to coordinate their actions with a lower number of actors. Second, a set of dominant firms within the sector may have disproportionate incentives to assume the costs of getting organized. In antidumping action, this entitles compiling a file alleging dumping by competitors outside the EU internal market and maintaining relations with the European Commission’s Directorate of Trade Defence. Finally, and as consequence of the latter, firms in large

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6 In the course of this paper, we devote no attention to the mobilization of services providers and consumers, which bear diffuse costs from antidumping measures, but have little incentive to mobilise. The only conceivable way through which their interests could feed into the political process is through party political action, but we provide no empirical evidence on that, all the more as the European Parliament has no decisive say whatsoever in EU trade policy making and is only ‘informed’ about trade policy decided by the Commission and the Council. This might change if the Lisbon Treaty were to be adopted.
scale manufacturing rely on long-term investment and have an incentive to ensure that these turn a profit, also in the face of an increase in foreign competition in the course of their investment cycle. Their large economies of scale provide them with a high incentive to ensure that they can recoup their large-scale and long-term investments. The presence of one leader or a group of coalition leaders, facilitates the delegation of acquisition of specialized expertise to permanent service personnel in their branch or sector peak association, in casu their trade association in Brussels.

Next to the collective action advantages for more concentrated sectors, the dominance of a couple of large producers in a particular product market makes it easier to meet the requirement written into the EU-antidumping regulation that an antidumping complaint can only be initiated if its supported by a minimum of 25% of the total EC production of the product in question, and antidumping duties can only be imposed, if at least 50% of the producers of this product support the complaint (EC Regulation 384/96). It makes a difference whether you have to mobilize several thousands of firms are just a few dozen. And it makes a difference if you can get this act together more easily than others.

Looking at the past decades of antidumping complaints in the EC/EU, we can indeed see this logic at work. Throughout that period, most anti-dumping complaints have come from heavy industry and manufacturing such as raw materials, steel, chemicals, and metal products (Davis 2009; De Bièvre 2003; Messerlin 1990; 2001).

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7 The standing requirement as laid down in the Council Regulation governing the antidumping procedure, reads as follows: ‘the complaint shall be considered to have been made by or on behalf of the Community industry if it is supported by those Community producers whose collective output constitutes more than 50% of the total production of the like product produced by that portion of the Community industry expressing either support for or opposition to the complaint. However, no investigation shall be initiated when Community producers expressly supporting the complaint account for less than 25 % of total production of the like product produced by the Community industry’ (emphasis added), COUNCIL REGULATION (EC)No 384/96 of 22 December 1995 on “protection against dumped imports from countries not members of the European Community”. Available at http://ec.europa.eu/trade/issues/respectrules/anti_dumping/legis/adgreg01a.htm#2 (last visited on 25 March 2009). The legal obligation to observe this minimum support to start antidumping investigations does not come cheaply as it is enforceable by the EU’s trading partners and fellow WTO members in front of the WTO Dispute Settlement Body panels and, in cases of appeal, the WTO Appellate Body.

8 Economists tend to ascribe the prominence of industries dealing with raw materials, steel, chemicals, and the like in anti-dumping exclusively to ‘declining comparative advantage’, discounting the organisational variable of collective action advantages for concentrated sectors. It is hard to imagine though that you can be in decline for over 40 years and still be the leading producer like is the case for the European chemicals sector – an observation that makes it plausible that collective action and organisational characteristics play a role in explaining the industries’ predominance in antidumping complaints.

9 For a database on all antidumping cases initiated on behalf of European producers, see the database on EU antidumping petitions from 1980 until 2004 at http://www.ua.ac.be/dirk.debievre (left column ‘Documenten’, bottom of that page).
Such cases are relatively straight-forward. If dumping and injury can be established, the potential losers of the imposition of antidumping measures can easily be compensated by so-called price undertakings by the targetted foreign firms accused of dumping, or by raising quota to ensure supply for downstream users of the product in question.

A second but smaller group of firms that files for antidumping measures are consumer product manufacturers. The frequency of complaints coming from these producers used to be far lower than those from heavy industry, as these sectors tend to consist of a higher number of firms, tend to be less dominated by very large firms, and rely less on economies of scale. They consequently face larger collective action problems. Moreover, these consumer product manufacturing sectors tend to have international supply chains that turn them into importers next to remaining producers in a particular product market. This creates a divergence of interests within such transnational firms with production facilities outside the EU, as well as diverging preferences within the trade associations representing them. In the past, the question whether or not to turn to collective action in the form of compiling an antidumping complaint and submitting it to the European Commission, was answered in the negative more often than not. More recently, especially from the beginning of the years 2000 onwards, consumer goods manufacturers have increasingly filed for antidumping protection than before, generating more political conflict within these industrial sectors.

It is thus possible to discern a pattern of industry organisation that ranges from large, stable and established trade associations specialising in the provision of antidumping services, over smaller and more product-specific trade associations, up to ad hoc coalitions established for the filing of a complaint. In the first category, large and well-known Brussels-based European sectoral peak associations figure prominently, such as the European Confederation of Iron and Steel Industries (Eurofer) and the European Chemical Industry Council (CEFIC), and Eurometaux.

The chemical industry has traditionally displayed a high degree of concentration, and throughout the 1990s the steel industry has undergone a transformation from a nationally cartelized sector into a highly transnational and concentrated sector. Firms in both sectors have consistently delegated the processing of anti-dumping allegations to their sector-wide peak association, which have filed antidumping complaints with the Commission services. During the period from 1980
until 2004, CEFIC filed 66 and Eurofer 27 on a total of 393 antidumping investigations started by the European Commission. The large majority of antidumping complaints are compiled and filed by smaller branch-specific trade associations like the Committee for European Copier Manufacturers, the European Association for Textile Polyolefins, the European Bicycle Manufacturers Association, or the Liaison Committee of European Wire Rope Industries. Sometimes, also ad hoc coalitions form and file complaints. They are often committees within a particular product market, not created with the goal of achieving longevity, and carrying fanciful names such as ALARM (car radio receivers), Camera (TV cameras), Poetic (Televisions), or TUBE (seamless steel tubes and pipes). As a matter of fact, they are frequently only covers for one individual firm with a dominant position in the specific product market, and they disappear into oblivion once the complaint has been lodged. Firms going at it alone are even rarer, initiating only 30 EC anti-dumping actions.

In sum, antidumping policy attracts industry collective action from particular types of producers, and is unattractive to other types of firms and economic sectors. Highly fragmented economic sectors composed of small and medium sized enterprises, consuming industries, as well as services providers have few or no incentive to try and identify dumping and mobilise politically to file an antidumping complaint. Firms and sectors that frequently use the antidumping instrument on the other hand, develop a vested interest in the policy as well as long-standing relations with public authorities, in casu the case handlers at the Directorate for Trade Defence of the European Commission. Changes in the political economy of European industry however, have changed some of the traditional motives for mobilisation in favour or against the imposition of antidumping measures, and can account for the politicisation of EU antidumping regulation at about the middle of this decade.

3. The origins of the 2006 antidumping reform initiative

In this section, we analyse several developments that lead to change in organized interests’ preferences regarding antidumping policy. These in turn spurred the Commission to initiate a reform initiative for its antidumping policy, and adapt it ‘to a dramatically changed world economy’.10 First, over the last 15 years, a large number

of European firms have outsourced parts of their production to lower-cost locations outside the EU – to Eastern Europe, Asia, and especially China. This increase in outsourcing has divided producers’ preferences, with those producing exclusively within the EU remaining attached to strong antidumping policy, while those with production within as well as outside the EU becoming critical of the benefits of such a policy. Especially since in current antidumping practice these outsourcing firms are always considered non-Community producers, they suffer concentrated losses from the imposition of EU antidumping duties on their own intra-firm trade. The increase in imports from abroad has also strengthened importers’ preferences against antidumping duties (i.e. those of trading companies, consuming industries, and retailers). As the retail sector has seen a massive wave of concentration and is now dominated by a set of large firms, they now face lower collective action costs. Second, manufacturing in many economic sectors has undergone a geographical concentration (Davis 2009; Shu 2008). As a result, more and more member states no longer have manufacturing in particular goods sectors and have become indifferent or even opposed to initiating trade chilling antidumping investigations or imposing measures. A large number of small countries with a narrow industrial base joined the EU in 2004, swelling the ranks of member states that do not actively support the imposition of antidumping duties. Third, more WTO member states have introduced antidumping laws to their toolkit of trade policy instruments. This has spurred a concomitant rise of retaliatory antidumping measures against EU antidumping duties (Blonigen and Bown 2003; Prusa and Skeath 2002). Given the fact that these developments had generated opposition to the status quo, public actors had every incentive to limit political contestation of their policies in order to assure their re-election or re-appointment. We consider these economic developments in more detail below and spell out the consequences for political mobilisation.

3.1. Production outsourcing, retail concentration, and political mobilisation

The first development that had changed the preferences of organized interests and firms preferences about antidumping policy was the fact that production processes and international supply chains have been transformed in the last two decades. This is true for both producers as well as for importers, retailers and consuming industries.

To start with the producers, more than 80% of antidumping cases in the last decade have involved either raw materials or low-skilled manufacturing products. In
both sectors, considerably higher input-costs (e.g. wages) have placed European producers at a disadvantage vis-à-vis firms in developing/emerging economies, especially in Asia. As a consequence, European producers have experienced increasing import-competition from manufacturers in these developing and emerging economies and hence lost an important part of their traditional market share and saw a significant decline in production (Davis 2009). These developments prompted traditional industries in Europe to rethink their corporate strategies, entailing some far-reaching transformations from approximately the mid-1990s onwards. For one, companies in the EU tried to improve their competitiveness by substantially reducing mass production and concentrating on a wider variety of more value added products and niche-markets. In addition, the restructuring process involved the subcontracting and relocation of more labour-intensive, less value added operations to low-cost countries, mainly in Asia (in the footwear industry, Brenton et al. 2000; in the textiles and clothing industry, Nordås 2004).

These transformations changed the general trade policy preferences of many firms, and their position towards antidumping policy more in particular, in several ways. First, for those producers that had outsourced (part of their) production to low wage countries, antidumping duties on imports became a burden rather than a blessing. These firms started to oppose the imposition of antidumping measures. After all, (re-)imports had now become an important part of their production process and some of the most important target countries of EU antidumping actions are those countries to which most of them had subcontracted. Second, producers that had shifted production to more value-added, high-end products became much less enthusiastic about antidumping measures. They had consequently joined the ranks of exporters, becoming the potential target of retaliatory antidumping measures by other countries (see below for details on antidumping retaliation). What is more, they got involved in production that no longer competed directly with imports from low-cost producers (see for example Underhill 1998).

Thus, traditional import-competing producers were increasingly confronted with divergence of interests between them. On the one hand, producers with production only within the EU internal market continued to support the status quo of existing antidumping policy. On the other hand, European producers with production outside the EU, started favouring changes to that status quo to account for their relocation business strategy.
At the same time, importers, retailers and consuming industries – those bearing the largest cost of the imposition of antidumping duties – had equally undergone change. Particularly, these industries had undergone a remarkable wave of concentration (see for example, Fuchs and Kalfagianni forthcoming; Gereffi 1999). Spurred by an unprecedented growth in acquisitions and mergers, especially among retailers, a small number of large enterprises accounted for an increasingly large percentage of total turnover. Additionally, retailers and consuming industries – who used to be the key customers of EU (domestic) producers – have increasingly turned to imports. As a consequence, many retailers began to compete directly with their former suppliers and their trade preferences, in turn, became much more pro-free trade.

In short, over the last fifteen years, importers (i.e. import-users and retailers) increasingly developed preferences to oppose the use of antidumping measures. Sharing certain trade policy preferences is one thing, but entering the political arena to defend them is something else. The ability to pressure policy makers depends on whether the members of a group actually found a trade association (Hansen 1990; Hathaway 1998; Olson 1965). Having done the down payment of founding such a permanent representative organisation increases the likelihood of getting collective action on concrete issues off the ground and thus affects the political clout of an interest group. Concentrated costs or benefits for a group of actors is a strong incentive for such political mobilisation, facilitated and occasioned by the consolidation of the retail and importers’ sector. After a wave of concentration in the sector in the course of the 1990s, importers have indeed started to establish their own umbrella organizations at the EU level (e.g. Eurocommerce, the Foreign Trade Association). This has increased their opposition in individual antidumping cases as well as lead them to advocate a reform of current EU antidumping practice.

3.2. Geographical concentration and declining member state support

As the European single market deepened over the last two decades, some industries disappeared in one area and became geographically concentrated in others. Machinery to produce high-tech textiles for example is concentrated in the North of Italy, the Basque country, Baden-Württemberg, while employers and employees in other areas

\[11\] Moreover, groups tend to mobilize more in the face of concentrated and certain losses than for concentrated but uncertain benefits (Dür 2007; forthcoming; Goldstein and Martin 2000).
in Europe have no political stakes in this product market. Similarly, shoe production has drastically declined in Germany and the United Kingdom, while Italy has remained strong in footwear production, and Spain and Portugal have equally maintained a large share (Shu 2008). It is easy to imagine that requests for antidumping measures coming from European shoe manufacturers find lukewarm support at most from countries without production capacities and no investment or employment at stake. As geographical concentration in different economic sectors has increased (find some economic source), member state support for the imposition of antidumping measures has seen a steady decline (Evenett and Vermulst 2005).

According to calculations by Lucy Davis, industry support for the filing of antidumping complaints is equally concentrated geographically, with almost half the complaints receiving support from German companies, and about a third of complaints getting endorsements from French, Italian, and Spanish firms (Davis 2009).

Arguably to ensure themselves against concentrated losses, producers and manufacturers lobbied for and obtained the reduction of the decision threshold in the EU Council of Ministers to approve of Commission’s proposals to impose definitive duties in 2004. Voting on antidumping had been made subject to a simple majority vote in the Council in 1994 (Woolcock 2000) and was reduced further in 2004 when abstentions were from now on to be counted as votes in favour. This change in the decision-rule was arguably introduced to anticipate an anticipated further decline in political support for antidumping in new member states. These new EU member states had not been very active users of antidumping measures themselves, and consequently

3.3. Foreign antidumping measures as retaliation against EU duties

The third development that has lead to changes in preferences on the use of antidumping measures among European firms is the fact that the EU has increasingly become the target of antidumping duties itself. During the 1980s and most of the 1990s the EU was one among a few high income countries which used antidumping measures. The usual pattern was that high-income countries imposed duties on imports from firms in low-income countries. The scene has changed drastically however during the last two decades. Today, countries all over the world have adopted antidumping policies, as well as all over the development and income spectrum (Prusa 2005). Recent research has shown that this proliferation of
antidumping laws has inflicted considerable conflict over antidumping issues and an outbreak of retaliatory antidumping duties between countries. Prusa and Skeath (2002), for example, find that the “new” users of antidumping measures (e.g., Brazil, Mexico, India, China) use retaliation motives for AD use in 90% of their cases, whereas retaliation motives lay at the root of more than half of the recent AD measures imposed by traditional users (e.g. EU, US, Canada and Australia). In other words, strategic concerns (i.e. retaliation) have become more important than economic concerns (i.e. unfair competition) in recent antidumping activity.

Although the surge in antidumping measures in general, and the retaliatory actions more in particular, raised many concerns among free-trade protagonists, other students of trade policy making have shown that retaliatory antidumping actions may actually have a diminishing effect on AD activity. Bloningen and Bown (2003), in their study on the retaliation effects on US antidumping usage, found ample evidence for the hypothesis that once third countries have the ability to retaliate in kind, a complaining industry may no longer find it beneficial to file antidumping cases. This is logically consistent with two theoretical predictions: first, that domestic industries are concerned with the capacity of foreign firms to instigate antidumping investigations and retaliate with reciprocal duties; and second, that domestic antidumping authorities are using discretion when they are worried about the capacity of retaliation by third countries in a potential formal trade dispute (Blonigen and Bown 2003). What follows is that retaliatory antidumping actions may, in due course, even lead to a situation in which the traditional users of antidumping laws may not wish to enforce these laws as strictly as before or even start reforming the antidumping system in order to discourage the launch of antidumping investigations. For this to happen it is, however, necessary that domestic exporters are evidently hurt by third country antidumping measures, because only then do they become politically active and only then do policy makers start to consider the interests of all domestic producers, not just those of import-competing sectors (Lindsey and Ikenson 2001).

The logic described above applies exactly to what happened in the EU recently. As said, EU companies have increasingly, besides being one of the main users, also become a prime target of antidumping duties from third countries. Especially in the last decade European exporters witnessed an increasing number of antidumping cases being opened against them. This prompted the European Commission to start publishing reports on third country trade defence instruments against the EU
(Commission of the European Communities 2004). The report is especially highly critical of the ‘increasing’ and often ‘disproportionate’ use of antidumping measures by, mainly developing and transition, countries against European exports and explicitly stresses the negative consequences for EU exporters (Commission of the European Communities 2004, pp. 2-3). Hence, given the theoretical predictions and empirical evidence from the US case as described by Bloningen and Bown (2003), it was very likely in December 2006, when Mandelson presented his plans, that European decision-makers would support a reform of the antidumping system.

4. Current antidumping regulation and proposed reform

Having reviewed several of the economic and organisational developments in European industry over the last two decades, we now turn to the prevailing antidumping regime in the EU and assess which actors have asked for changes to that status quo. As we go through the different stages of the decision making process it becomes clear that producing firms and their interest associations play a decisive role. The political purpose of antidumping regulation is to protect import-competing industries against surges in imports. It is therefore no surprise that the rules governing the procedure accommodate the interests of such complaining industries, generating discontent with other sectors of industry.

An antidumping case in the EU goes through a multi-step process. First, a complainant (i.e., an individual firm or an interest association) initiates an antidumping case on behalf of a section of the producers of a particular product. If a quarter of the producers of a particular product allege that foreign producers are dumping, i.e. selling below production cost, products on the EU market, the Directorate for Trade Defence at DG Trade of the European Commission is obliged to investigate their request. This means that a set of producers determines the size of the industry and the product on behalf of which the complaint is filed. It does so by providing a list of all known Community producers of the so-called ‘like’ product. Consequently, complainants can relatively easily fulfil the standing requirement. Furthermore, firms that both produce and import the product in question may be excluded when defining the 25% proportion of Community industry. Consequently, producers that have engaged in outsourcing are potentially among the opponents of this low admissibility threshold. Other economic actors opposing this threshold include consuming industries, importers, retailers and consumers at large. It is
therefore not surprising that by launching its reform initiative, the European Commission considered reforming the standing requirement. First, they suggested raising the proportion of industry supporting the complaint. Second, in its Green Paper, the European Commission also suggested to include companies that are engaged in the production as well as the importation of a particular good in the Community industry, and not only those that exclusively produce within the European internal market (Commission of the European Communities 2006).

If the Commission decides to accept a complaint, it presents the case to the Antidumping Advisory Committee, comprised of representatives of the member states, before it launches a formal investigation of the firms allegedly dumping products on the EU market. In the aforementioned Green Paper, the European Commission considered introducing also the consultation of exporting third countries before the launching of a complaint. This would enable them to evaluate the potential for political friction over their initiation, or alternatively negotiate about so-called price undertakings before starting the investigation. This would clearly benefit European exporting industries as well as importers as the risk of retaliatory measures would be reduced, keeping European exporters’ market access at WTO bound tariff levels more stable while ensuring the stability of supply for European importing firms (see for more on trade retaliation in antidumping, see below).

During the third stage of the procedure, the Commission establishes dumping, the level of injury to domestic European firms, whether dumping was the cause of injury to the industry, and finally whether the imposition of antidumping duties would be in the “Community Interest”. The latter means, in theory, that the Commission is obliged to take into account the interests of four distinct groups when assessing the impact of a potential AD action: (a) the complainant, i.e. the domestic producers; (b) the retailers and their associations; (c) the import users and their representative associations and (d) consumer organisations (Vermulst and Waer 1996 quoted in Shu 2008). In other words, the Community interest test ‘operates as a safety valve in antidumping cases…[it] allows the possibility of avoiding the automatic imposition of duties where duties would create adverse, even disastrous economic effects on other sectors of industry’ (Wellhausen 2001, p. 1030). However, many have pointed out that the Community interest test is hardly ever used to reject AD measures (e.g., Sapir

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12 That is, raise the price of the exported product, so as to undo dumping.
2006; Wellhausen 2001). In many cases, once dumping and injury are proven and measures are expected to give relief to the complainant industry, it is presumed almost automatically that these measures are in the Community interest. Apart from expert opinion on this topic, importers and consuming industries have long disliked the neglect of their interests at this stage of the procedure. In their response to the Commission Green Paper questionnaire on the reform of EU trade defence instruments, the representatives of importers and retailers, the Foreign Trade Association and EuroCommerce, voiced their concern about the lack of consideration for their interests (FTA 2007a; 2007b; EuroCommerce 2007).

During the fourth stage, the Commission again consults the Council’s antidumping advisory Committee and can decide to impose so called provisional AD duties, which are initially imposed for six months (with the possibility of a three months extension) One month before the expiry of these provisional duties, the Commission is obliged to issue a proposal for definitive antidumping measures to the Council of ministers. In other words, the Commission does not need the support of the member states to start raising duties. Importers are notified of the measures … days prior to duties coming into effect, meaning that deliveries already under way may suddenly be faced with a far higher duty (of e.g. 40%). Consequently, FTA and EuroCommerce, as well as other importer associations; have advocated the legal requirement for the Commission to inform them further in advance of planned duties in order to increase certainty about supply.

Finally, this proposal is discussed in the Council. In order to impose definitive duties a simple majority in the Council must vote in favour of the definitive duties proposal of the Commission, with abstentions counted in favour of imposing duties (Shu 2008). The fact that abstentions are counted as “yes” votes is a rather new phenomenon. Before March 2004, abstentions by member states were in fact counted as votes cast against the imposition of duties. This change to the decision rule has made it easier to get a simple majority in favour of AD duties, all the more since votes on antidumping matters are often a very close call (Evenett and Vermulst 2005). The abstention rule was arguably introduced to forestall a situation in which member states that had recently joined the European Union would systematically vote against the imposition of antidumping duties. This expectation was far from unrealistic. Most of these new member states had very rarely used antidumping measures themselves
before joining the EU. Moreover, in many sectors, these countries lack their own production facilities.

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Table 1: Status quo of current antidumping Regulation and Commission reform considerations

Evidently, as this overview has revealed, the rules governing the respective stages of the antidumping procedure are beneficial to import-competing interests (i.e. the complainants) and detrimental to importers. Illustrative in this regard, is the amount of controversy that a particular antidumping case generated in the course of 2005 – a case of antidumping measures against shoes imported from China and Vietnam. Up until the end of 2004, the EU had quotas on shoe imports from China. With the lifting of the quotas at the beginning of 2005, China’s share in total shoe imports rose dramatically: in just a few months China saw its market share increase from 50% at the end of 2004 to 65% in the course of 2005. This created a lot of controversy between importers and import competing producers. The former saw big opportunities in the fact that they could now import as many Chinese shoes as they wanted, whereas the latter felt threatened by cheap imports from China and Vietnam, which they regarded as dumping. They filed a complaint, impelling a harsh confrontation between traditional producers, backed by the Southern European member states, and importers, supported by Northern member states. The debate centred around the question whether to impose duties and which products to include. The ensuing grim political battle forced the European Commission to play a difficult balancing act. Eventually, trade Commisioner Mandelson proposed the following compromise: antidumping duties for two years (instead of five); duties of 16.5% and 10% (where 30% to 40% is normal) against shoes from China and Vietnam.
respectively; and no duties on children shoes. Although at the end the compromise was accepted by a majority of the member states, no one was satisfied. (Kommerskollegium 2007). When those measures expired in 2008, they triggered the same discussion, ending in another prolongation.

In fact, the difference of opinion between economic operators (i.e. importers and producers) and between member states was so large that Commissioner Mandelson came to the conclusion that something had to be done. His plans were first and foremost aimed at giving greater weight to the interests of importers and consumers at every stage of the AD procedure. Importers hailed the ideas put forward in the 2006 Green Paper, especially on issues such as the standing requirements and the Community interest test, whereas producer groups quickly realised that the introduction of a distinction between outsourcing and exclusively European-based producers would cause them harm in the long run.

5. The reform process 2006-2009

Formally, the reform process started in December 2006, with the presentation by the European Commission of the report *Europe's Trade Defence Instruments in a Changing Global Economy. A Green Paper for Public Consultation* (2006). However, back in May 2006 Trade Commissioner Mandelson had suggested in a speech that current antidumping rules did not sufficiently take into account the interests of consumers and producers who have outsourced production. Therefore, Mandelson stated, that a ‘formal reflection on the use of antidumping measures’ would be one of his priorities in amending EU trade policy to the realities of a globalised economy.\(^\text{13}\)

After this announcement it became clear that Mandelson meant business: he invited several trade experts to present a reflection paper on EU trade defence instruments on 11 July 2006. This group that kicked off the reform debate consisted of the following people.\(^\text{14}\) Peter Bernert, President of EuroCommerce, the European association representing the commerce sector, expressed a clear preference for more consideration for importers’ interests. Jan Eggert, Secretary-General of the Brussels-based Foreign Trade Association and peak association of European retailers and


importers advocated a thorough reform, specifying a whole range of reforms for each stage of the antidumping procedure. As CEO of the German chemical firm K+S AG, R. Bethke advocated no fundamental changes to existing legislation. André Sapir, former advisor to Commission-President Prodi, professor at the ULB and Brueghel, gave an economic perspective on antidumping, proposing to more systematically take users and consumers into account when the Commission assesses the Community interest, and presented some concrete proposals to increase the transparency of proceedings as well as measures. Adrian Van den Hoven, director of international relations at the European employer’s peak association, BusinessEurope, presented some of the pro’s and contra’s of a rebalancing of interests to be taken into account when reforming antidumping. Two people reflected on the (negative) impact of antidumping measures on developing countries: Sheila Page from the International Economic Development Group in London, and Tariq Fatemi, Pakistan Ambassador to the EU. Also present were two professors of law, Claudio Dordi from Bocconi University, and Gary Horlick, Yale University and antidumping attorney.

Shortly after this preparatory meeting of experts, the Commission published its Communication *Global Europe, Competing in the World, A Contribution to the EU’s Growth and Jobs Strategy* on 10 October 2006, followed by the afore-mentioned Green Paper on antidumping on 6 December 2006 (see Table 3 for the chronology of the EU antidumping reform process).
Already in June 2006, producer groups were alarmed by the reform initiative coming from Commissioner Mandelson and started to get organised. More in particular, eight producer groups and traditional users of antidumping (see Table 2) thought that BusinessEurope would not be able to come to a unified position to defend their interests, as BusinessEurope would be split between their heavy manufacturing members and their downstream users of those products. They therefore mobilised on their own against any potential weakening of Europe’s trade defense instrument, and sent a two letters of concern to the Commission in the second half of the year.15 In other words, from early onwards concentrated interests mobilised against future losses. During that period producer groups also started to get the impression that the Commission services were informally changing the handling of pending antidumping cases to their disadvantage and to the benefit of outsourcers and importing interests. At the same time, efforts continued within BusinessEurope to come to a compromise between the diverging interests of different types of manufacturing industries, watering down some of the more radical parts of Mandelson’s reform ideas, while accommodating the interests of outsourcing producers, consuming industries, in order to maintain the mercantilistic outlook of the European employers’ peak association and

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its commitment to reciprocal trade liberalisation. Yet, two pragmatic compromise proposals coordinated within the organisation’s international relations department and committee, failed to get the enough support from BusinessEurope members.

After the adoption of the Green Paper, industry had three months to fill out a questionnaire for interested parties contained in the Green Paper publication, the answers to which were due at the end of March 2007. Shortly before that deadline, DG Trade held a public hearing on 13 March 2007, bringing together about 500 representatives from industry, the trading sector, member states, experts and parties interested in antidumping policy. At this event, participants could ask on beforehand to be allocated speaking time, most of which was taken up by representatives from producers reluctant or outrightly hostile to changes in current antidumping policy.¹⁶

A similar pattern became apparent in the responses to the questionnaire. Of the 514 replies by firms and trade associations, only 1/3 were unique, as producer groups had mobilised their member firms to express the same opinion as the view expressed by their representative organisation in Brussels. The importer and retail sectors on the other hand, had not engaged in this strategy of numbers, resulting in far less submissions on their behalf. Moreover, they had coordinated their responses to a lesser extent, resulting in mixed signals about their concrete preferences and desire for the reform options we reviewed in the section above. Although in the past, particular cases had elicited the voicing of objections to current practise, like in the aforementioned cotton and shoes cases, importers and retailers had not beefed up their lobbying representation in Brussels. Eurocommerce, the peak association representing small as well as large commercial enterprises has only two people working on trade issues, whereas every specialised producer group has permanent staff dealing with trade, and specialised organisations like CEFIC or EUROFER have a team of people working on the topic. Realising the disadvantages for small and medium-sized enterprises (SMEs), the Commission had indeed included a vaguely worded suggestion about ‘technical assistance’ to SMEs both at the complaint stage as well as during the investigation stage.

Commissioner Mandelson and his Cabinet were surprised and frustrated about the strong opposition and lack of support for their plans. Combined with his abrasive

personal style, his determination to carry on with revolutionary changes in decades old Commission practice ran against a wall of incomprehension and obstruction. Moreover, in the first five months of 2007 the Commission did not open any new antidumping investigation, feeding suspicion among traditional users of antidumping that the Commission was fudging the cases. In addition, the Commission directorate for trade defence was still staffed with leading officials that had been involved in EU antidumping policy for a long period of time and had even been instrumental in designing the administrative set-up of the Commission services dealing with interested parties in antidumping cases. It is difficult to imagine that the Trade Defence Directorate was of any help to bring the reform initiative forward.

Meanwhile the same Commission services were faced with the difficulty of drawing conclusions from the public consultation, which had not resulted in the backing for some of the reform options the Commissioner had put forward. The publication of the results were postponed several times until their eventual publication on 19 November 2007.

Opposition to reform became bluntly manifest in the middle of 2007. On the initiative of Monique Jones, Director Trade and Competitiveness at Eurometaux & Chair of the Working Group on Trade Policy Instruments at BusinessEurope, the original coalition of eight producers opposing the reform was now expanded to include a membership of 16 regular users of current antidumping regulation (see table 2).
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Trade association full name and sector</th>
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<tbody>
<tr>
<td>1. EUROMETAUX*</td>
<td>European Association of Non-ferrous Metal Industry</td>
</tr>
<tr>
<td>2. EUROCOTTON*</td>
<td>Committee of the Cotton and Allied Textile Industries of the EU</td>
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<tr>
<td>3. CEFIC*</td>
<td>European Chemical Industry Council</td>
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<td>4. EUROFER*</td>
<td>European Confederation of Iron and Steel Industries</td>
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<td>5. CIRFS*</td>
<td>International Rayon and Synthetic Fibre Committee</td>
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<td>6. EFMA*</td>
<td>European Fertilizers Association</td>
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<td>7. ESTA*</td>
<td>European Steel Tubes Association</td>
</tr>
<tr>
<td>8. EUROALLIAGE*</td>
<td>Association of European Ferro-alloy Producers</td>
</tr>
<tr>
<td>9. ECGA</td>
<td>European Carbon and Graphite Association</td>
</tr>
<tr>
<td>10. EUROMINES</td>
<td>European Association of Mining Industries</td>
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<td>11. EWRIS</td>
<td>European Federation of Wire Rope Industries</td>
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<td>12. CEPI</td>
<td>Confederation of European Paper Industries</td>
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<td>13. CEI-Bois</td>
<td>European Confederation of Woodworking Industries</td>
</tr>
<tr>
<td>14. CECED</td>
<td>European Association of Household Appliance Manufacturers</td>
</tr>
<tr>
<td>15. CERAME-UNIE</td>
<td>Liaison Office of the European Ceramic Industry</td>
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<tr>
<td>16. ACEA</td>
<td>Association of European Automobiles Manufacturers</td>
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**Table 2: TDI Coalition membership from July 2006 (with *) till mid 2007 (all)**


Members of this coalition also actively lobbied the German Presidency to get the Commission to stop its legislative initiative. According to one of our interview partners, together with members of this coalition, members of the *Bundesverband der Deutschen Industrie* (BDI) came over from Berlin to spend two weeks to talk to all the relevant decision-makers on the matter, such as Trade Commissioner Mandelson, Enterprise Commissioner Verheugen, European Commission President Barroso, and member state representatives in the Council committee on trade matters. One of their argumentative strategies was to warn that the introduction of a differentiation between foreign production facilities belonging to European firms versus non-EU firms would violate the non-discrimination rule of the WTO. As German support in the Council was widely considered as crucial on this matter, the reform initiative was effectively derailed and its advocates clearly put in a minority position.

On 23 October 2007, the College of the European Commission held a so-called Orientation Debate on the proposed reform.\(^{17}\) In this document, Commission services had summarised the results of the questionnaire from the Green Paper and submitted a first draft of proposed changes to the basic regulation on antidumping and antitrust. Areas of agreement included minor adaptions such as providing technical assistance.

\(^{17}\) *Orientation Debate at the College concerning the follow-up to the Green Paper on Europe’s trade defence instruments in a changing global economy*, internal European Commission document on file with authors.
to SMEs, increasing transparency, involving trade unions. Wide disagreement remained however, on the original purposes of the reform initiative, especially the broadening of the Community interest test to the interests of importers, consuming industries, and retailers; including outsourcers as European industries; raising the 25% standing requirement rule; levels and duration of measures. Despite the discussion between Commissioners on the topic, DG Trade had not yet officially released their analysis of the answers to the questionnaire.

Shortly afterwards, the pro-TDI-coalition staged a widely attended Seminar entitled ‘Competitiveness in a Global Economy – A Challenge to Trade Discipline?’ on 8 November 2007, at which they presented the results of the answers to the questionnaire. Since these results were publicly available on the Commission website at the time (no longer now), the coalition of 16 European producer trade associations had hired a consultant to analyse all responses. As late as 19 November 2007, the Commission finally released its own version of the results of the questionnaire.

On 11 January 2008, Commissioner Mandelson held a press conference at which he announced the shelving of the antidumping reform initiative: ‘I am not prepared to bring them forward unless and until greater consensus exists amongst the member states about the sort of reform they are prepared to embrace’. 18

6. Conclusion

In this paper, we have argued that the high degree of political mobilisation by concentrated producer groups and the weaker mobilisation of importers and retailers constituted the main cause for the recent failure of European EU antidumping reform. We identify several systematic developments that fed into an increase in political mobilisation against the prevailing EU antidumping policy. Increased consolidation in the importers and retail sector did lead to a reduction of collective action problems in the sector. A split among producers between trade associations representing firms producing exclusively within the EU on the one hand, and those that have outsourced parts of their production on the other hand, created the incentives to review the rules about who is allowed entitled to apply for antidumping measures. Furthermore, the geographic concentration of manufacturing in particular areas within the European

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The single market, has led to a gradual decline of active political support for antidumping measures when put to a vote in the Council of Ministers. Finally, fear of foreign retaliation against EU antidumping measures might well have moderated producers as well as policy makers inclination to resort to antidumping policy.

In the course of the reform initiative brought underway by the European Commission, heavy industry manufacturers and their trade associations successfully defended the status quo in antidumping legislation and practice by forming a solid coalition with a clearly coordinated strategy. While the political economy of interest mobilisation might go a long way to explaining this policy outcome after almost 3 years of intense private and public activity, it is equally interesting to speculate about the public nature of a policy that – due to organisational collective action effects – clearly privileges some groups of actors more than others. As long as the public interest test in antidumping policy remains procedurally mainly limited to the interests of a set of concentrated producers and their employees, economic sectors mainly composed of small and medium-sized enterprises facing prohibitively high collective action problems, as well as consuming industries, importers, retailers, and consumers bear the diffuse costs of a policy that basically appropriates private welfare goods for a small section of society. At this stage of the analysis, it is fair to object that other states generally take an even more protective stance for their traditional users of antidumping policy. Indeed, recent proposals by the Chair of the so-called Rules Committee at the WTO – the negotiating committee on antidumping policy -., Ambassador Galmes, showed how some of the EU’s negotiating partners, not to name the US, would like unilateral discretion on antidumping to be expanded.19

In the light of the findings of this study, it seems highly unlikely that the European Union will review its antidumping policy soon. It may even be unlikely that current initiatives by the Chech Presidency on increased transparency through clearer deadlines, the ex ante release of information on planned provisional duties and so on, have any chance of garnering support among interested and mobilised organised interests and their member state representatives. As industry demand for antidumping goes up and down with the business cycle, the current dramatic economic downturn does not create the preconditions for even minor, non-legislative changes to EU antidumping practice.

19 Include WTO source on proposal of Autumn 2008, which proposed to allow zeroing, abolish the public interest test as well as the lesser duty rule, a proposal that was not adapted. […]
References
Kommerskollegium (2007), Adding value to the European economy. How anti-dumping can damage the supply chains of globalised European companies. Five case studies from the shoe industry, Stockholm, Sweden: National Board of Trade.


*The Economist* (2006), "The perils of protectionism. Europe finds that trade retaliation can backfire." December 7, 2006:


