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# THE POLITICAL ECONOMY OF EU ANTI-DUMPING REFORM

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## ABSTRACT

IN THIS PAPER, we provide a political economy account of the European Union's failed attempt to reform its anti-dumping legislation between 2006 and 2008. We review the role played by different interest groups, and the way public authorities at both European Commission and member state level responded to conflicting societal demands. Despite declining support among outsourcing producers and a rise in organisational capacity among importers and retailers, a coalition of heavy manufacturing producers mobilised against a change in the status quo. While the diffuse interests of consumer organisations and NGOs remained mute, sector consolidation was key to the capacity to mobilise against concentrated losses in defence of the vested interests of a policy community of traditional anti-dumping users, supportive member states, and the European Commission Directorate of trade defence.



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## 1. INTRODUCTION<sup>1</sup>

ACCORDING TO PREVAILING EU anti-dumping legislation, European producers can lodge a complaint alleging dumping by non-EU producers on the European market, obliging the Directorate for Trade Defence of the European Commission to launch an investigation. If the Commission services find dumping as well as injury to European producers, the Commission is entitled to raise duty levels on foreign imports of the product in question.

By 2006, various societal groups, a qualified majority of member states, as well as the then Commissioner for Trade, Mandelson, favoured reform of existing procedures. Reform considerations were mainly concerned with European producers having outsourced parts of their production outside the EU, the interests of retailers and consumers, the transparency of and the criteria for the Commission's handling of cases, and the interests of small businesses. In December 2006, these considerations resulted in a Green Paper aimed at consulting with interested parties' positions on reforming trade defence instruments in general and anti-dumping in particular.<sup>2</sup>

In this paper, we address the question why anti-dumping reform failed, despite changed preferences and political mobilisation on the part of businesses, member states, and the European Commission. We start out by developing three plausible explanations that would lead us to expect a successful reform as well as three expectations that would speak for the maintenance of the status quo. These concerns changed incentives for societal interests and public authorities, both member states and European Commission, as well as potential international sources of preference formation. We thus review the relative impact of a whole range of factors, each of which raises contrasting expectations of reform or status quo. We test each of these rivalling hypotheses in a chronologically structured analytical 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. RIVALLING EXPECTATIONS OF REFORM AND STATUS QUO

IN THIS SECTION, we develop three theoretical expectations of successful reform as well as three rationales for the maintenance of the status quo. First, growth and consolidation in the importer and retail sector may well have facilitated sector collective action in favour of a reform that would reduce the number of import-chilling anti-dumping cases. Also, the increase in production outsourcing to outside the EU single market may temper enthusiasm for the imposition of anti-dumping duties. On the other hand, we can expect producers in consolidated sectors of manufacturing to mobilise against the certainty of concentrated losses. Second, geographical concentration of production within the EU may weaken both interest groups' and public authorities' inclination to support anti-dumping duties. Private interests and member states without production in particular sectors may thus be favourable to anti-dumping reform. On the other hand, anti-dumping investigating authorities and traditional private sector users of anti-dumping policy might well have a vested interest in keeping mutually-supportive relationships in the form of policy community of interest groups, politicians and the executive. Third, EU anti-dumping might increasingly trigger retaliatory anti-dumping from non-EU trading partners. On the other hand, the EU negotiators in the WTO Doha Round could well engage in a multilateral effort to

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limit the use and/or abuse of anti-dumping laws. We elaborate on each of these theoretical expectations, before engaging in an empirical test of each of them in sections 3 and 4.

## 2.1. SOCIETAL PREFERENCES: OUTSOURCING, CONSOLIDATION, AND POLITICAL MOBILISATION

TRADITIONAL USERS OF anti-dumping are very often producers in consolidated or 'oligopolistic' sectors, i.e. consisting of a low numbers of firms. Mostly, these firms rely on large economies of scale, as in the manufacturing sectors of steel, chemicals, metals, and consumer electronics. Firms in such market niches face lower collective action problems than do a high number of smaller firms, because producers in consolidated sectors need to coordinate their actions with fewer other actors, and because a set of dominant firms within the sector may have disproportionate incentives to assume the costs of getting organised (see Olson 1965). In anti-dumping, this entails compiling a file alleging dumping by competitors outside the EU and maintaining relations with the European Commission's Directorate of Trade Defence.<sup>3</sup> Firms with large economies of scale have an incentive to ensure that their long-term investments turn a profit, also in the face of an increase in foreign competition in the course of their investment cycle. The presence of one leading firm or a group of coalition leaders facilitates the delegation of acquisition of specialised expertise to permanent service personnel in their branch or sector peak association, *in casu* their trade association in Brussels. It also makes it easier to meet the requirement written into the EU anti-dumping regulation that an anti-dumping complaint can only be initiated if its supported by a minimum of 25% of the total EC production of the like product, and anti-dumping duties can only be imposed, if at least 50% of the producers of this product support the complaint (EC Regulation 384/96).<sup>4</sup> It makes a difference whether you *have to* mobilise several thousands of firms or just a few dozen. And it makes a difference if you *can* get this act together more easily than others.<sup>5</sup>

In the last three decades, most anti-dumping complaints came from heavy industry and manufacturing in raw materials, steel, chemicals, and metal products (Messerlin 1990; Messerlin 2001; De Bièvre 2003; Davis 2009).<sup>6</sup> Table 1 gives an overview of the degree of consolidation in different EU industries.

TABLE 1: DEGREE OF CONSOLIDATION OF SELECTED EU MANUFACTURING INDUSTRIES

Industry type	HHI
Publishing and printing*	0.0058
Food products*	0.0059
Machinery and equipment*	0.0062
Wood products*	0.0079
Medical appliances*	0.0125
Chemical products*	0.0153
Textiles*	0.0148
Paper and pulp products*	0.0193
Wearing apparel*	0.0245
Glass products*	0.0544
Rubber products*	0.0650
Beverages*	0.0738
Drugs and medicines	0.0839
Leather products*	0.0851
Shipbuilding and repairs*	0.1004
Steel**	0.1100
Non-ferrous metal*	0.1237

The higher the Hirschman-Herfindahl Index HHI, the less companies are active in the sector.

\* Source: OECD enterprise data, 2002 from Austria, Belgium, Finland, Italy, Sweden, UK.

\*\* Source: Commission of the European Communities (2008), Based on 2004 enterprise data from the then 15 EU member states.

The chemical industry has for long displayed a high degree of consolidation, especially in its sub-sector of petrochemicals, and throughout the 1990s the steel industry has undergone a transformation from a nationally cartelised sector into a highly transnational and consolidated one. Firms in both sectors have consistently delegated the processing and filing of anti-dumping allegations to their sector-wide, Brussels-based peak association – the *European Chemical Industry Council (CEFIC)*, the *European Confederation of Iron and Steel Industries (EUROFER)* –, which have developed routine interaction modes with Commission services. During the period from 1980 until 2004, *CEFIC* filed 66 and *EUROFER* 27 out of a total of 393 anti-dumping investigations started by the European Commission. Other anti-dumping complaints are compiled and filed by other, yet smaller branch-specific trade associations like *Eurometaux*, 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*. Occasionally, 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 it alone are even rarer, initiating only 30 EC anti-dumping actions over the last three decades.

Entirely absent as filers of anti-dumping requests are highly fragmented economic sectors composed of small and medium-sized enterprises, consuming industries, as well as services providers. These have few to no incentives to try and identify dumping and mobilise politically to file an anti-dumping complaint, and also do not develop privileged relationships with the case handlers of the Directorate for Trade Defence.

More recently though, the transformation of production processes and international supply chains during the last two decades have changed the preferences of organised interests and firms about anti-dumping policy. Traditional import-competing producers are increasingly confronted with a divergence of interests between them, as manufacturers producing only within the EU support the status quo, while outsourcers favour reform of prevailing anti-dumping policy. Meanwhile importers, retailers and consuming industries have increasingly consolidated, enabling collective action against import restrictions.

To start with the producers, more than 80% of anti-dumping cases in the last decade have involved either raw materials or low-skilled manufacturing products (Davis 2009). In both sectors, higher input-costs (e.g. wages) have placed European producers at a disadvantage vis-à-vis firms in developing and emerging economies, especially in Asia. As a consequence of increasing import-competition from manufacturers abroad, traditional European producers lost an important part of their traditional market share and saw a significant decline in production (Davis 2009). This prompted industry in Europe to reduce mass production and concentrate on higher value-added products and niche markets, as well as to subcontract and relocate labour-intensive, less value-added operations to low-cost countries, mainly in Asia (in the footwear industry, Brenton, Pinna et al. 2000; in the textiles and clothing industry, Nordås 2004). The creation of international supply chains that turn firms into importers next to remaining producers in a particular product market has also characterised the consumer goods producers.

As a consequence, anti-dumping duties on imports have become a burden rather than a blessing for outsourcing producers, occasioning them to oppose the imposition of anti-dumping duties. Producers of high value-added products became much less enthusiastic about anti-dumping

measures, joining the ranks of exporters in feeling the adverse effects of retaliatory anti-dumping measures by other countries (see below). What is more, they got involved in production that no longer competed directly with imports from low-cost producers (see, for example, Underhill 1998).

At the same time, importers, retailers and consuming industries – those bearing the most concentrated cost of the imposition of anti-dumping duties – have equally undergone change. Their share in total GDP in Europe has steadily grown, while traditional customers of domestic EU production – retailers and consuming industries – have increasingly turned to imports. Many retailers thus turned into direct competitors for their former suppliers. Furthermore, a remarkable wave of consolidation, especially among retailers, caused a small number of large enterprises to dominate the sector, enhancing their capacity for collective action on their shared preference for less import restrictions (see for example, Gereffi 1999; Fuchs and Kalfagianni 2007).

The ability to pressure policy makers depends to a large extent on whether the members of a group actually establish a trade association (Olson 1965; Hansen 1990; Hathaway 1998). The incentive to take this organisational step is given by the concentrated costs the imposition of anti-dumping duties generate for this now small group of actors. Moreover, groups tend to mobilise more in the face of concentrated and certain losses than for concentrated but uncertain future benefits (Goldstein and Martin 2000; Dür 2007; Dür 2010). Importers indeed started to establish their own umbrella organisations at the EU level immediately after consolidation in the sector (e.g. *Eurocommerce*, the *Foreign Trade Association*). Due to sector consolidation and easier collective action, importers' and retailers' preferences for cheap importers could now find a clearer political expression, resulting in political mobilisation against individual anti-dumping cases as well as support for a reform of prevailing EU anti-dumping practice.

## 2.2. PUBLIC PREFERENCES: ERODING SUPPORT VERSUS VESTED INTERESTS

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 is concentrated in the North of Italy, the Basque country, Baden-Württemberg, while employers and employees in other areas in Europe have no political stake 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; Davis 2009). As geographical concentration in different economic sectors has increased (see table 2), member state support in individual cases for the imposition of anti-dumping measures has seen a steady decline (Evenett and Vermulst 2005). Industry support in favour of single anti-dumping complaints is equally concentrated geographically, with almost half the complaints receiving support from German companies, and about a third of complaints getting endorsements from only French, Italian, and Spanish firms (Davis 2009).

**TABLE 2: GEOGRAPHICAL CONCENTRATION OF EU INDUSTRIES AND DOMINANT COUNTRIES (MIDELFART-KNARVIK, OVERMAN ET AL. 2002)**

<i>Heavily concentrated industries (that have remained concentrated or became even more concentrated over time)</i>	<i>Medium Concentrated industries (that have become more concentrated over time)</i>	<i>Medium Concentrated industries (that have become less concentrated over time)</i>
Motor Vehicles Motor Cycles Aircraft Electrical Apparatus Chemical Products Petroleum & Coal Products	Textiles Wearing Apparel Leather & Products (e.g. shoes) Furniture Transport Equipment	Beverages Tobacco Office & Computing Machinery TV & Communication Professional Instruments Machinery & Equipment
<b>Dominant countries: Germany, France, Italy, Spain</b>	<b>Dominant countries: Spain, France, Portugal, Italy</b>	<b>Dominant countries: Germany, Italy, Portugal, Spain</b>

It is worth noting that EU member states had reduced the decision threshold in the EU Council of Ministers to approve of Commission's proposals to impose definitive duties from a qualified to a simple majority vote back in 1994 (Woolcock 2000) and reduced it further in 2004 from when onwards abstentions were to be counted as votes in favour. Although this reduced the effects of declining member state support for granting individual anti-dumping protection for some time, a series of highly controversial cases has recently undermined the acceptance of anti-dumping practice.

Contrary to this potential source for an erosion of public actors' support for prevailing anti-dumping practice, the *status quo ante* creates the preconditions for a closely-knit policy community consisting of a large Commission Directorate in danger of losing its policy autonomy and of complaining industries with a vested interest in maintaining the current institutional set-up that might be changed to their disadvantage.

### 2.3. FOREIGN ANTI-DUMPING MEASURES AS RETALIATION AGAINST EU DUTIES

A THIRD POTENTIAL source of a change preferences of European firms on the use of anti-dumping measures is the fact that the EU has increasingly become the target of anti-dumping duties itself (Prusa and Skeath 2002; Blonigen and Bown 2003). During the 1980s and most of the 1990s, the EU was one among a few high-income countries that used anti-dumping measures, mainly against imports from firms in low-income countries. Today however, countries all over the world and across the whole development and income spectrum have adopted anti-dumping policies (Prusa 2005). This proliferation of anti-dumping laws has led to frequent recourse to retaliatory anti-dumping duties between countries (Prusa and Skeath 2002). Fear of retaliation may well induce complaining industries to refrain from filing anti-dumping requests and even entice authorities to start reforming the system (Blonigen and Bown 2003). When in addition to that, domestic exporters start to get hurt by third country anti-dumping measures and organise politically against it, policy makers may consider the interests of all domestic producers, and not just of import-competing sectors (Lindsey and Ikenson 2001).

Illustrative of this recent effect in EU anti-dumping dynamics has been the Commission's publication of reports on third country trade defence instruments against the EU. One report is especially highly critical of the 'increasing' and often 'disproportionate' use of anti-dumping 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).

In order to counter these pressures arising from retaliatory anti-dumping measures against European anti-dumping duties, one might imagine that the European Commission engage in multilateral negotiations to limit and discipline the use or misuse of anti-dumping policy. This is effectively what they did by participating in the so-called Rules Negotiations mandated by the Doha Ministerial Declaration.<sup>7</sup> However, given that the US arguably handles anti-dumping practice in a fashion that has greater potential to be disagreeable to non-American producers, the EU could hardly expect these negotiations to put a lid on the international spread in anti-dumping use. Table 3 gives an overview of the set of expectations leading us to expect reform and potential sources of a status quo of prevailing anti-dumping regulation.

TABLE 3: THREE SETS OF EXPECTATIONS PRO OR AGAINST REFORM

	Pro reform	Against reform
1.	Growth & consolidation in the import and retail sector; increase in outsourcing	Resistance from consolidated traditional producers
2.	Geographical concentration in production leading to declining support in member states without production	Existing vested interest policy community of traditional AD users and policy makers
3.	Prudence to avoid retaliatory AD by foreign countries	Difficulty to discipline AD use in WTO rules negotiations in Doha Round

### 3. CURRENT ANTI-DUMPING REGULATION AND PROPOSED REFORM

WE NOW TURN to the prevailing anti-dumping regime in the EU and then 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, as the political purpose of anti-dumping regulation is to protect import-competing industries against surges in imports.

An anti-dumping case in the EU goes through a multi-step process (see Table 4). First, a complainant, i.e. an individual firm or an interest association, initiates an anti-dumping 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. A set of producers defines the size of the industry and the nature of the product on behalf of which the complaint is filed, by providing a list of all known Community producers of the so-called 'like' product. Furthermore, firms that both produce and import the product in question – outsourcing firms – may be excluded when defining that 25% proportion of Community industry.

In a second step, the Commission presents the case to the anti-dumping advisory committee, comprised of representatives of the member states, before it launches a formal investigation of the foreign firms allegedly dumping products on the EU market.

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 anti-dumping 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). In other words, the Community interest test “operates as a safety valve in anti-dumping 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). However, the Community interest test is hardly ever used to reject AD measures (Wellhausen 2001; Sapir 2006). 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.

During the fourth stage, the Commission again consults the Council’s anti-dumping advisory committee and can decide to impose so called provisional AD duties, which are imposed for six months (with the possibility of a three-month extension). One month before the expiry of these provisional duties, the Commission is obliged to issue a proposal for definitive anti-dumping measures to the Council of ministers. In other words, the Commission does not need the support of the member states to start raising duties.

Finally, the Commission puts a proposal on definitive duties to a simple majority vote in the Council, with abstentions counted in favour (Shu 2008).

This prevailing status quo came under considerable pressure when several trade defence instrument (most notably anti-dumping) cases generated controversy over the last decade. One of those controversial anti-dumping cases has been the long-standing “bed linen saga” of the EU against India, Pakistan and Egypt. Between 1996 and 2002, *Eurocoton* (the Committee of the Cotton and Allied Textile Industries of the EU) initiated several anti-dumping cases against imports of cotton-type bed linen originating in the aforementioned countries. In all these cases the Council imposed definitive duties after investigations by the Commission. These Council decisions, however, did not come about easily. The Eurocoton complaints had impelled a harsh political confrontation between traditional producers of bed linen in the EU, backed by the Southern European member states with domestic production, and importers, supported by Northern member states. Unsurprisingly, the votes in the anti-dumping committee were very difficult. In case of duties against imports from India, for instance, the committee recorded a tie vote, seven-seven, with Germany initially postponing and eventually casting the tie-breaking vote (Dutta 2006). Similar voting patterns occurred in the cases against Pakistan and Egypt.

A similar clash occurred in cases of shoe as well as apparel imports from China. Up until the end of 2004, the EU had quotas on many shoe as well as textile and clothing products imported from China. With the lifting of the quotas at the beginning of 2005, China’s share in total imports in many product categories rose dramatically in the course of 2005. While importers saw big opportunities in imports of Chinese shoes and clothing, domestic EU import-competing producers felt threatened by these cheap imports. The latter group took action. In the case of shoe imports, European producers filed an anti-dumping complaint against shoes from China and Vietnam. During the investigations and discussions on duties that followed, opponents and supporters, again, aligned along geographical and thus member state lines with and without production facilities. Because member states could not agree on measures in the anti-dumping Committee, the Commission ended up proposing a compromise: duties for two years instead of five; duties of 16.5% against shoes from China, where 30% to 40% is normal; and no duties on children shoes.<sup>8</sup> Although in the end the compromise was accepted by a (small) majority of the member states, no one was satisfied (Kommerskollegium 2007).



Meanwhile, the 2005 quota phase-out on textiles imports from China unleashed an identical political battle, a battle which has become known as the 'bra wars.' In this case, producers in the EU did not file an anti-dumping case after the sharp surge in imports from China but demanded the introduction of safeguard measures (i.e. the re-introduction of quotas) on a whole range of products. After these demands, the Commission was confronted again with heavy political pressure from those in favour and those against such measures. In the end, the EU and China agreed to start talks on the issue in the course of 2005, which eventually led to the signing of a Memorandum of Understanding (MoU). In this MoU the EU and China declared that the EU could impose safeguard measures on 10 products until 2007. However, it took the Commission more than a month to get the MoU implemented and in this month European retailers placed very big orders with Chinese exporters on top of the goods already ordered. This created massive problems because these items (which were thus ordered before the MoU was implemented) reached Europe after the implementation of the MoU. Consequently, quotas for the entire year were full within no-time and an additional 77 million items (mainly bras, hence the 'bra wars') from China were blocked at European borders. This refuelled the debate between those in favour, and those against, the use of trade defence instruments. This time the debate focused on whether or not to enlarge the quotas and, by doing so, release the blocked garments. The debate, which generated a lot of media coverage, ended in another compromise: half the amount of the blocked garments were counted towards the 2005 quotas, while the other half towards the 2006 quotas (Eckhardt 2010).

Under pressure from so much politicisation and public criticism of current anti-dumping (and other trade defence) practices, then European Commissioner for Trade, Peter Mandelson, concluded that current anti-dumping rules did not sufficiently take into account the interests of consumers and producers who have outsourced production. This position led to the official launch, in December 2006, of one of the initiatives within the Global Europe trade policy framework: a public consultation on the basis of the report "*Europe's Trade Defence Instruments in a Changing Global Economy. A Green Paper for Public Consultation*" (Commission of the European Communities 2006).<sup>9</sup>

The intent of the Commission's reform initiative became clear from the questions that were to guide the consultation: 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 anti-dumping duties? Could we be more transparent in the way we handle anti-dumping cases? Are we using the right criteria in launching investigations and in defining and implementing anti-dumping measures? And, finally, are we doing enough to ensure that the interests of small business are taken into account when imposing TDI's? In other words, the reform considerations were all aimed at giving greater weight to the interests of importers and consumers at every stage of the AD procedure (see Table 4).

As we will see below, when we analyse the reform process in detail, 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.

**TABLE 4: STATUS QUO OF CURRENT ANTI-DUMPING REGULATION AND COMMISSION REFORM CONSIDERATIONS**

STAGES	CURRENT ANTI-DUMPING REGULATION	REFORM CONSIDERATIONS
Standing requirement	Firms representing 25% of Community production	Raise threshold to 40-50%; include outsourcers
Advice	Council advisory committee	Contact third country governments
'Community interest'	Mainly test injury to producers	Injury test also for importers & consuming industries
Provisional duties	Short notice	Advance notice
Council vote	Simple majority; abstentions as 'yes'	Only 'yes' votes

#### 4. THE REFORM PROCESS PROPER: 2006-2008

ALTHOUGH THE REFORM initiative was officially launched in December 2006, Commissioner Mandelson already gave a speech in May 2006 in which he hinted at reforming anti-dumping procedures.<sup>10</sup> Somewhat later, on 11 July 2006, the Commissioner invited several trade experts to present a reflection paper on EU trade defence instruments.<sup>11</sup> 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 anti-dumping procedure. As CEO of the German chemical firm K+SAG, R. Bethke advocated no fundamental changes to existing legislation. André Sapir, former advisor to Commission-President Prodi, professor of economics at the ULB and Brueghel, proposed that the Commission take better account of users and consumers when assessing 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 employers' peak association, *BusinessEurope*, presented some of the pros and cons of a rebalancing of interests when reforming anti-dumping. Two people reflected on the negative impact of anti-dumping 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, from Yale University and anti-dumping attorney, both critical of the current anti-dumping procedures in the EU.

Producer groups, alarmed by Mandelson's speech and the composition of the expert group, started to get organised around that same time. More in particular, eight producer groups and traditional users of anti-dumping (see Table 6 later in this paper) thought that *BusinessEurope* would not be able to come to a unified position to defend their interests, as this comprehensive peak association 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 defence instrument, and sent two letters of concern to the Commission in the second half of the year.<sup>12</sup> In other words, the concentrated interests of manufacturing in consolidated sectors fearing future losses found their political expression in early political mobilisation. During that period producer groups also started to get the impression that the Commission services were informally changing the handling of pending anti-dumping 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 mercantilist outlook of the European employers' peak association and its commitment to reciprocal trade liberalisation. Yet, two pragmatic compromise proposals coordinated within the organisation's international relations department and committee, failed to get enough support from *BusinessEurope* members.

So, the groups opposing anti-dumping reform were already very well organised when, on 10 October 2006, the Commission published its Communication *Global Europe, Competing in the World, A Contribution to the EU's Growth and Jobs Strategy* and its Green Paper from 6 December 2006 (see Table 5).

TABLE 5: TIMELINE EU ANTI-DUMPING REFORM

2005	August	Textile crisis
2006	Jan	Evaluation of EC TDI, final report of Law Firm Mayer et al.
	May 4	Commissioner Mandelson announces reform initiative
	Summer	AD on footwear from Vietnam & China
	July 11	<b>Expert group</b> , invitations to Directors and Sec.-Gen.
	Oct 10	European Commission Communication <i>Global Europe, Competing in the World, A Contribution to the EU's Growth and Jobs Strategy</i>
	Dec 6	European Commission <b>Green Paper</b> ' <i>Global Europe, Europe's TDI in a changing global economy</i> '
2007	March 13	<b>Hearing</b> : strong opposition
	March 30	Deadline questionnaire
	April – May	- informal case-by-case changes - no publication of results of questionnaire
	June 13	<i>Position on the follow-up to the Green Paper consultation on EU trade defence instruments (CEFIC, Eurometaux, EUROFER, ACEA, ...)</i>
	Oct 23	<b>Orientation debate at the College</b> concerning the follow-up
	Nov 8	Seminar ' <i>Competitiveness in a Global Economy – A Challenge to Trade Discipline?</i> ' organised by 16 producer associations (Eurometaux and others)
	Nov 19	<b>Evaluation of the responses</b> to the public consultation on Europe's TDIs in a changing global economy
2008	Jan	Press Release: Suspension of reform

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. 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 anti-dumping policy. At this event, participants could ask beforehand to be allocated speaking time and, due to good coordination efforts on behalf of the producers, most of this time was taken up by representatives from producers reluctant or thoroughly hostile to changes in current anti-dumping policy.<sup>13</sup>

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 file exactly the same opinion as the view their representative organisation had expressed 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 practice, like in the aforementioned cotton and shoes cases, importers and retailers had not beefed up their lobbying representation in Brussels. The *European Consumers' Organisation, BEUC*, apart from responding to the Commission questionnaire, failed to formulate a position paper on the Commission's reform suggestions, and continued to concentrate on protest against individual anti-dumping decisions, confirming the expectation that these diffuse interests failed to mobilise at all.<sup>14</sup> *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 frustrated about the strong opposition and lack of support for their plans. His determination to try and act as the agent on behalf of outsourcers, importers and retailers ran into a wall of incomprehension and obstruction, yet, practice in his services did change. In the first five months of 2007 the Commission did not open any new anti-dumping investigation, feeding suspicion among traditional users of anti-dumping that the Commission was fudging the cases. Commissioner Mandelson also tried but failed several times to have employees from European peak associations opposed to the reform removed from their positions, which only hardened fronts between supporters and opponents of the reform. Only in September 2008 however, did the Commissioner and the Secretary-General of the European Commission act upon corruption allegations against the Director of Trade Defence, Fritz-Harald Wenig, and moved him to another position after an exceptionally long tenure as Director of Trade Defence.<sup>15</sup>

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. Opposition to reform became bluntly manifest in the middle of 2007. On the initiative of Monique Jones, Director of 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 anti-dumping regulation (see table 6).

**TABLE 6: TDI COALITION MEMBERSHIP FROM JULY 2006 (WITH \*) TILL MID 2007 (ALL)**(source: [http://www.euractiv.com/29/images/AlliTDIJuly07\\_tcm29-165590.pdf](http://www.euractiv.com/29/images/AlliTDIJuly07_tcm29-165590.pdf), last visited on 2 April 2009)

	Abbreviation	Trade association full name and sector
1.	EUROMETAUX*	European Association of Non-ferrous Metal Industry
2.	EUROCOTTON*	Committee of the Cotton and Allied Textile Industries of the EU
3.	CEFIC*	European Chemical Industry Council
4.	EUROFER*	European Confederation of Iron and Steel Industries
5.	CIRFS*	International Rayon and Synthetic Fibre Committee
6.	EFMA*	European Fertilizers Association
7.	ESTA*	European Steel Tubes Association
8.	EUROALLIAGE*	Association of European Ferro-alloy Producers
9.	ECGA	European Carbon and Graphite Association
10.	EUROMINES	European Association of Mining Industries
11.	EWRIS	European Federation of Wire Rope Industries
12.	CEPI	Confederation of European Paper Industries
13.	CEI-Bois	European Confederation of Woodworking Industries
14.	CECED	European Association of Household Appliance Manufacturers
15.	CERAME-UNIE	Liaison Office of the European Ceramic Industry
16.	ACEA	Association of European Automobiles Manufacturers
	<i>Cooperation with ETUC</i>	<i>European Trade Unions Confederation</i>

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 talking 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 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.<sup>16</sup> 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 anti-dumping and anti-subsidy. Areas of agreement included minor adaptations such as providing technical assistance 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; and levels and duration of measures. Despite the discussion between Commissioners on the topic, DG Trade had not yet officially released its 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 anti-dumping reform initiative.<sup>17</sup> Faced with the effects of the professionally mounted lobbying campaign by producers, the Commissioner had failed in getting support from a qualified majority of member states for at least some of the reform proposals. Arguably, the final blow to the reform initiative came when Commission President Barroso engaged in his strategy of keeping all contentious issues off the EU table in order to get the Lisbon Treaty ratified.

## 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 EU anti-dumping reform. We identify several systematic developments that fed into an increase in political mobilisation against the prevailing EU anti-dumping 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 entitled to apply for anti-dumping measures. Furthermore, the geographic concentration of manufacturing in particular areas within the European single market, has led to a gradual decline of active political support for anti-dumping measures when put to a vote in the Council of Ministers. Finally, fear of foreign retaliation against EU anti-dumping measures might well have moderated producers as well as policy makers' inclination to resort to anti-dumping 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 anti-dumping 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 over others. As long as the public interest test in anti-dumping 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.

In the light of the findings of this study, it seems highly unlikely that the European Union will engage in legislative change to its anti-dumping policy any time soon. It may even be unlikely that Presidency and/or Commission initiatives on increased transparency through clearer deadlines, the ex ante release of information on planned provisional duties and so on, have a chance of garnering support among interested and mobilised organised interests and their member state representatives. As industry demand for anti-dumping goes up and down with the business cycle, the current dramatic economic downturn does not seem to create favourable preconditions. On the other hand, the advent of a new trade commissioner Karel De Gucht and his cabinet may bring in a more pragmatic style conducive to garnering consensus on increasing procedural clarity and predictability in the conduct of EU antidumping policy.

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## FOOTNOTES

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2. Trade defence instruments consist of anti-dumping measures, anti-subsidy – also called ‘countervailing duty’ – policy, and safeguards. The two latter instruments are rarely used in the EU and political contention was only about anti-dumping.
3. The Directorate for Trade Defence has an impressive personnel capacity of 164 Commission officials out of a total of 468 officials working at the Directorate-General for Trade, one of the largest DGs 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](http://ec.europa.eu/civil_service/about/figures/index_en.htm) and [http://ec.europa.eu/staffdir/plsql/gsys\\_page.display\\_index?pLang=EN](http://ec.europa.eu/staffdir/plsql/gsys_page.display_index?pLang=EN); last visited on 1 April 2009).
4. COUNCIL REGULATION (EC) No 384/96 of 22 December 1995 on “protection against dumped imports from countries not members of the European Community”. The legal obligation to observe this minimum support to start anti-dumping 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 Mechanism.
5. 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 as is the case for the European chemicals sector – an observation that makes it plausible that collective action and organisational characteristics play a key role in explaining the industries’ predominance in anti-dumping complaints.
6. For a database on all anti-dumping cases initiated on behalf of European producers, see the database on EU anti-dumping petitions from 1980 until 2004 at <http://www.ua.ac.be/dirk.debievre> (left column ‘Documenten’, bottom of that page).
7. See WTO –website: [http://www.wto.org/english/tratop\\_e/rulesneg\\_e/rulesneg\\_e.htm](http://www.wto.org/english/tratop_e/rulesneg_e/rulesneg_e.htm), last visited on 4 February 2010.
8. At the final stage, the concessions on children shoes were dropped and were included again in the case.
9. The full speech of Commissioner Mandelson from 6 December 2006 is available at [http://ec.europa.eu/commission\\_barroso/ashton/speeches\\_articles/sppm135\\_en.htm](http://ec.europa.eu/commission_barroso/ashton/speeches_articles/sppm135_en.htm) (last visited 25 March 2009).
10. See Commissioner Mandelson’s speech of 4 May 2006, available at [http://trade.ec.europa.eu/doclib/docs/2006/may/tradoc\\_128581.pdf](http://trade.ec.europa.eu/doclib/docs/2006/may/tradoc_128581.pdf) (last visited 5 November 2009).
11. All expert opinions are on file with the authors and available upon request.
12. See the letter to Commissioner Mandelson of 28 July 2006, available at: [http://www.euractiv.com/29/images/ADMand06\\_tcm29-160263.pdf](http://www.euractiv.com/29/images/ADMand06_tcm29-160263.pdf) (last visited 2 April 2009) and the second letter to Commission President Barroso of 29 November 2007, available at: [http://www.euractiv.com/29/images/ADBar06\\_tcm29-160262.pdf](http://www.euractiv.com/29/images/ADBar06_tcm29-160262.pdf) (last visited 2 April 2009).
13. A transcript of the entire public hearing is on file with the authors and available upon request.
14. See <http://www.beuc.eu/>, see ‘Policy issues A-Z’.

15. 'Commission to probe trade leak', <http://www.euractiv.com/en/pa/commission-probe-trade-leak/article-175182>, 9 September 2008.
16. *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.
17. See the online article on EurActiv: <http://www.euractiv.com/en/trade/member-state-divisions-delay-eu-trade-reforms/article-169527> and the press release from Reuters: <http://in.reuters.com/article/businessNews/idINIndia-31359720080111>.