

EN

EN

EN



EUROPEAN COMMISSION

Brussels, 13.10.2010
COM(2010) 558 final

**REPORT FROM THE COMMISSION TO
THE EUROPEAN PARLIAMENT**

**28th annual report on the European Union's anti-dumping, anti-subsidy and safeguard
activities**

(2009)

SEC(2010) 1194

**REPORT FROM THE COMMISSION TO
THE EUROPEAN PARLIAMENT**

28th annual report on the European Union's anti-dumping, anti-subsidy and safeguard activities

(2009)

INTRODUCTION

This 2009 report is submitted to the European Parliament following its resolution of 16 December 1981 on the European Union's anti-dumping activities, and the report of its Committee on industry, external trade, research and energy.

This short report provides an overview of the highlights during 2009 and is supplemented, as in previous years, by a more detailed Commission Staff Working Document, together with detailed annexes. This report follows the same general structure of the Working Document, including all its headings, for easy reference to more comprehensive information.

The present report and the full Working Document are also available to the public at http://ec.europa.eu/trade/issues/respectrules/anti_dumping/legis/index_en.htm

1. OVERVIEW OF THE LEGISLATION

Anti-dumping (AD), anti-subsidy (AS) and safeguard (SFG) investigations are conducted on the basis of basic Council Regulations. An overview of the existing legislation is given in the Working Document. The basic AD and AS texts will hereafter be referred to as the "basic Regulation(s)".

2. BASIC CONCEPTS

Heading 2 in the working document gives an overview of the terminology and procedures used in TDI investigations.

3. TDI REVIEW– REFLECTION TIME COMMENCED

The TDI review, which was launched in 2006 ("Green Paper process"), is still on hold due to a clear lack of consensus among Member States and the European Parliament. Nevertheless the EU still considers that a periodic review can help to ensure that the EU's trade defence instruments remain effective in response to unfair trading practises. The Commission's intention is to revisit the question of whether our instruments can be further refined. In this context the Trade Commissioner stated at the 2009 hearing at the European Parliament that the Commission is open to a debate on this issue, but that certain conditions should be fulfilled before launching such a process. One important element would be to await the results of the WTO Doha Development Agenda negotiations on TDI. This view is shared by most stakeholders.

In the meantime around mid 2009 after an intensive, wide ranging consultation phase, the Commission agreed with Member States ways in which transparency in trade defence investigations could be improved. The measures proposed (e.g. revamp of TDI website; specific assistance for SMEs; improved disclosure etc) can be carried out without any legislative changes and full implementation is expected to be concluded in 2010.

4. COUNTRY-WIDE MARKET ECONOMY STATUS (MES)

For the purposes of anti-dumping investigations a country can be considered a full market economy if it fulfils five criteria which are set out in detail in the Working document attached to this report.

During 2009 the Commission services continued to evaluate requests for country-wide MES from China, Vietnam, Armenia, Kazakhstan and Mongolia. All five countries continued to provide additional information in support of their claims throughout the year and their requests are at various stages of progress. In May 2009 the authorities of the Republic of Belarus addressed an official request to the Commission to be granted market economy status. The Commission will start analysing their request once completed documentation has been submitted.

In addition to a number of bilateral meetings with the countries concerned, the 9th MES Working Group China met in Brussels in July 2009 in a good and constructive atmosphere. The Commission's proposal to launch a study on the accounting practices in China was finally agreed by China in autumn 2009. The Commission published the relevant tender document at the end of 2009. The result of that study will be available at the end of 2010. In second half of 2009 the Commission started working on a further preliminary MES China assessment report which is now expected early 2010.

In April 2009 the COM repeated its readiness to conduct a further on spot verification mission to Mongolia. Mongolia responded positively on the Commission's proposal and discussions on the arrangements commenced.

In August 2009 the Commission addressed further questions to the Government of Kazakhstan concerning recent developments in legislation that may impact on costs and prices for the purpose of anti-dumping investigations.

The first assessment report on Armenia's MES request was completed by the Commission services in 2009 and was transmitted to the Council in December 2009. The report concluded that Armenia had made good progress in certain areas fulfilling two of the five criteria for MES.

The second Vietnam assessment report was near completion in late 2009.

5. TRADE DEFENCE INSTRUMENTS – RAW MATERIAL STRATEGY

TDI provides certain tools to address some consequences of distortions in the supply of raw materials in line with the overall Commission's trade policy on raw materials. In 2009 definitive anti-dumping measures were imposed on fasteners originating in China. In the context of this investigation five Chinese companies selected in the sample had requested Market economy treatment. However all five were denied

MET on the grounds that the costs of the major input, steel wire rod, did not substantially reflect market values, as required by Article 2(7)(c) of the basic Regulation. This was the first case where MET was refused on these grounds.

The existence of such distortions is also taken into account when assessing claims for Market Economy Status (MES) by non-market economies. In this context the role of the country concerned is examined vis-à-vis their interference in the market and any policies which result in distorted prices of raw materials.

6. INFORMATION AND COMMUNICATION ACTIVITIES/ BILATERAL CONTACTS

6.1. Small and medium sized enterprises (SMEs)

The Commission recognises the important role that SMEs have in the EU's economy. The Commission is also aware of the fact that SME's involved either as Union producers, importers or users in trade defence investigations initiated by the Commission or as exporters in investigations initiated by third countries find it difficult to participate in such investigations.

The Trade Defence Helpdesk for SMEs was set up in view of the complexity of TDI proceedings, especially for SME's, because of their small size and their fragmentation. Its role is to address specific SME questions and problems regarding TDIs, both of a general nature or case-specific. A part of the TDI website is dedicated to SMEs, and refers to the Trade Defence Helpdesk contact points. During 2009 this website was completely revised, making it more accessible and user-friendly, especially for SMEs.

In 2009 these contact points received many requests for information, which were all immediately addressed. These requests concerned both the procedures and content of TDI proceedings.

At the end of 2009, the Commission launched a study to identify the needs of SMEs in the 27 EU Member States when submitting a complaint or participating in trade defence investigations as an importer or as a user. The outcome of the study should also include specific proposals on how the Commission could better assist SMEs in all areas of such investigations.

A contractor is selected and the final study report will be ready at the last quarter 2010.

6.2. Bilateral contacts/information activities – industry and third countries

A seminar on trade defence for officials from third countries had been scheduled to take place in 2009 but had to be deferred to 2010. However there were a number of bilateral contacts dedicated to discussing various trade defence related topics with a number of third countries including China, Korea and Ukraine held in 2009.

There were also several meetings with key stakeholder associations and companies in 2009, including a number of events with Business Europe (namely a general meeting with all the most relevant members of the association and several bilateral meetings with Business Europe's Committee on Trade Policy), as well as a one-day seminar with the most relevant associations of importers and distributors in April 2009.

7. HEARING OFFICER

2009 was the second full year of activity for the Hearing Officer for DG Trade, who became operational in April 2007. The Hearing Officer is administratively attached to the Director General of DG Trade but acts independently. He reports to the Director General.

The main task of the Hearing Officer is to guarantee the full exercise of rights of defence in trade proceedings before the European Commission. The Hearing Officer also advises the Director General of DG Trade on issues related to due process and on any issues arising out of trade proceedings, where appropriate.

In 2009 the hearing officer had 30 interventions in 24 cases and held 14 hearings. He intervened at different stages of the investigations – at complaint's stage, sampling, MET/IT, choice of an analogue country, provisional, undertaking and definitive stage. The requests also concerned issues covering almost all aspects of an investigation.

The majority of requests for intervention of the hearing officer in 2009 concerned the access to and the quality of the non-confidential files. The other main field of activity of the hearing officer concerned the timing and content of disclosures.

An update of the Guidelines on cooperation between the Hearing Officer and the trade investigation services should soon be approved. Thereafter information about their content will be made available on the internet site of the Hearing Officer. The discussion about a Commission decision on the terms of reference for the Hearing Officer of DG Trade will follow soon.

Further details regarding the activity of the Hearing Officer can be found in the Working Document to the Annual Report.

8. OVERVIEW OF AD, AS AND SFG INVESTIGATIONS AND MEASURES

8.1. General

At the end of 2009, the EU had 135 AD measures (see Annex O) and 8 AS measures (see Annex P) in force.

In 2009, 0.6% of total imports into the EU were affected by AD or AS measures.

Please note that details on the issues hereafter are given in the Working Document attached to this report. The references to the Annexes of the Working Document can be found beside the titles.

8.2. New investigations (see Annexes A through E and Annex N)

In 2009, 21 investigations were initiated¹. Provisional duties were imposed in 10 proceedings. 10 cases were concluded with the imposition of definitive duties. 11

¹ Table 1 in the Working Document provides statistical information on the new investigations for the years 2005 – 2009 carried out under the provisions of Articles 5 and 10 of the basic Regulations.

proceedings were concluded without measures. 4 measures expired automatically following their 5-year duration.

8.3. Review investigations

Review investigations continue to represent a major part of the work of the TDI services. In the period 2005-2009 they accounted for 54% of all investigations initiated. Table 2 in the Working Document provides statistical information for the years 2005-2009.

8.3.1. Expiry reviews (see Annex F)

Articles 11(2) and 18 of the basic Regulations provide for the expiry of measures after five years, unless an expiry review demonstrates that they should be maintained in their original form.

During 2009, 11 expiry review investigations were initiated. 5 expiry reviews were concluded with a confirmation of the duty for a further period of 5 years. No expiry reviews were concluded by the termination of measures.

8.3.2. Interim reviews (see Annex G)

Articles 11(3) and 19 of the basic Regulations provide for the review of measures during their period of validity. Reviews can be limited to dumping/subsidization or injury aspects.

During 2009, a total of 14 interim reviews were initiated. 13 interim reviews were concluded with confirmation or amendment of duty. 1 investigation was concluded with the termination of measures.

8.3.3. "Other" interim reviews (see Annex H)

2 'other' reviews, not falling under Articles 11(3) or 19 of the basic Regulations were initiated during 2009.

6 such reviews were concluded in 2009 with confirmation or amendment of the measures. They specifically concern, *inter alia*, actions following court judgements, following WTO DSU proceedings, clarification of the scope of measures, etc.

8.3.4. New exporter reviews (see Annex I)

Articles 11(4) and 20 of the basic Regulations respectively provide for a "newcomer" and "accelerated" review in order to establish an individual dumping margin or an individual countervailing duty for new exporters located in the exporting country in question which did not export the product during the investigation period. Such exporters have to show that they are genuine new exporters and that they have actually started to export to the EU after the investigation period. As such, an individual duty, which is usually lower than the country-wide duty, can be calculated for them.

In 2009, 6 new exporter reviews were initiated.

8.3.5. *Absorption investigations (see Annex J)*

Where there is sufficient information showing that, after the original investigation period and prior to or following the imposition of measures, export prices have decreased or that there has been no or insufficient movement in the resale prices or subsequent selling prices of the imported product in the EU, an "absorption" review may be opened to examine whether the measure has had effects on the above-mentioned prices. Dumping margins may as such be recalculated and the duty increased to take account of such lower export prices. The possibility of "absorption" reviews is included in Articles 12 and 19(3) of basic Regulations.

In 2009, there were no anti-absorption reviews initiated or concluded.

8.3.6. *Circumvention investigations (see Annex K)*

The possibility of investigations being re-opened in circumstances where evidence is brought to show that measures are being circumvented is foreseen in Articles 13 and 23 of the basic Regulations.

In 2009, 1 such investigation was initiated. 1 anti-circumvention investigation was concluded with extension of the duty.

8.4. **Safeguard investigations (see Annex L)**

During 2008, there was no safeguard activity in the EU.

9. **ENFORCEMENT OF AD/AS MEASURES**

9.1. **Follow-up of measures**

The follow-up activities concerning measures in force were centred on four main areas: (1) to pre-empt fraud; (2) to monitor trade flows and market developments; (3) to improve the effectiveness with the appropriate instruments and (4) to react to irregular practices. These activities enabled the TDI services to pro-actively in cooperation with Member States ensure the proper enforcement of trade defence measures in the European Union.

9.2. **Monitoring of undertakings (see Annexes M and Q)**

Monitoring of undertakings forms part of the enforcement activities, given that undertakings are a form of AD or AS measures. They are accepted by the Commission if it is satisfied that they can effectively eliminate the injurious effects of dumping or subsidisation.

At the beginning of 2009, there were 46 undertakings in force. During 2009, the following changes to the portfolio of undertakings took place: undertakings of 3 companies came to an end due to the expiry of measures 2 undertakings were withdrawn by the Commission due to breaches found and 1 undertaking offer was accepted. This brings the total number of undertakings in force at the end of 2009 to 42.

10. REFUNDS (SEE ANNEX U)

Articles 11(8) and 21(1) of the basic Regulations allow importers to request the reimbursement of the relevant collected duties where it is shown that the dumping/subsidy margin, on the basis of which duties were paid, has been eliminated or reduced to a level below that of the duty in force.

During 2009, 39 new refund requests were submitted. At the end of 2009, 7 investigations were ongoing, covering 25 requests. 5 Commission Decisions were adopted: 3 were granting partial refund and 2 were rejecting the refund request. 7 requests were withdrawn.

11. JUDICIAL REVIEW: DECISIONS GIVEN BY THE COURT OF JUSTICE (COJ) / GENERAL COURT (GC)

In 2009, the Court of Justice (COJ) and the General Court (GC) rendered 13 judgments in total relating to the areas of anti-dumping or anti-subsidy. Of these, one was a judgment interpreting another judgment. A summary of some of the judgments is given in the Working Document.

There were 17 new cases lodged in 2009, 10 before the GC and 7 before the COJ.

A list of the AD/AS cases before the GC and the COJ still pending at the end of 2009 is given in Annex S of the Working Document.

12. ACTIVITIES IN THE FRAMEWORK OF THE WORLD TRADE ORGANIZATION (WTO)

12.1. Dispute settlement in the field of AD, AS and SFGs

The WTO provides for a rigorous procedure for the settlement of disputes between WTO Members concerning the application of the WTO agreements.

In April 2009, following India's request for consultations addressed to the EU at the WTO, consultations were held regarding the AD and AS measures in place on Polyethylene terephthalate (PET).

Following China's request for consultations addressed to the EU at the WTO, consultations regarding the AD measures in place on certain iron or steel fasteners were held in September 2009.

Further details on these cases are given in the Working Document attached to this report.

12.2. Other WTO activities

In 2009, the DDA Negotiating Group on rules met regularly to discuss the revised Chair's draft text which was circulated in December 2008 and the fisheries subsidies "roadmap". In this revised version, most contentious issues were taken out from the anti-dumping and subsidies texts and were replaced by "placeholders" which summarised the points of contention among Members on each issue.

No progress could be achieved on any of these issues in the anti-dumping and horizontal subsidies areas. In fisheries, the group conducted intensive discussions on the basis of the questions contained in the Chair's roadmap. While this allowed the views of Members to be clarified on key issues, it did not help positions to converge.

In parallel to these activities, participation by the Commission services in the regular work of the Anti-dumping, Subsidies and Countervailing and Safeguards Committees continued. The Committees met twice in regular sessions to review notifications and raise issues of special interest.

CONCLUSION

2009 showed a slight increase in the number of new cases initiated over the previous year with a decrease in the number of definitive measures imposed. There was a considerable increase in the number of investigations terminated without the imposition of measures and a doubling of the provisional measures imposed over the previous year. Regarding reviews, the number of reviews initiated increased significantly while the number of reviews terminated showing a huge drop over 2008 figures.

2009 brought improvements in the transparency of trade defence investigations. The Commission started implementing a number of initiatives which had been agreed following consultations with the Member States. The actions included revamp of TDI website, specific assistance for SMEs and improved disclosure. This work will be ongoing.