



EUROPEAN COMMISSION

Brussels, 4.7.2011
COM(2011) 399 final

REPORT FROM THE COMMISSION

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

**OVERVIEW OF THIRD COUNTRY TRADE DEFENCE ACTIONS
AGAINST THE EUROPEAN UNION**

**(STATISTICS UP TO 31 DECEMBER 2010 BUT COMMENTARY ON CASES AND
TEXT IS UPDATED TO MARCH 2011)**

{SEC(2011) 856 final}

Executive Summary

The European Commission's monitoring activity during the year 2010 was quite intense given the unprecedented high number of investigations initiated in 2009, in the context of the global economic crisis.

Individual assistance was provided to several EU industries confronted with these investigations, and many interventions were necessary in order to ensure that EU access to foreign markets was not unduly restricted by unwarranted measures. Indeed, in times of crisis, EU exporters faced trade defence actions that are indeed sometimes used in order to shield the domestic industry in the importing country from foreign competition.

The EU's interventions were positive since many investigations did not result in measures, and at the end of 2010 the number of measures in force against the EU has reached its lowest level since years. The Commission's interventions thus often led to positive results and this is encouraging.

Unfortunately, not all the problems could be solved. The number of new investigations in 2010 remained relatively high, with a higher degree of complexity. In addition, despite some improvements, some of the weaknesses identified in the previous reports still exist, such as low standards of initiation and investigation, lack of transparency and misuse of the safeguard instrument.

The Commission has developed new tools to assist EU industries – a guide for EU exporters has been published and a new and more user-friendly website was developed – and it will continue to advocate for a prudent and disciplined use of trade defence instruments in order to promote free and fair trade worldwide.

1. INTRODUCTION

Last years' reports underlined the increased use of trade defence by third countries since the beginning of the global economic downturn, which resulted in 2009 in an unprecedented increase in the number of new measures imposed and of new investigations, notably safeguards. It was feared that the new investigations would result in even more new measures in 2010. This trend has been a matter of concern because it showed that various governments very often resorted to trade defence actions in order to shield their domestic industry from foreign competition.

The Commission had, therefore, to multiply its interventions and assistance to the EU exporters concerned. Some political interventions were also necessary in order to avoid deviations from the strict application of the relevant rules. As explained further in this report, these efforts were not in vain. Indeed, many investigations initiated in 2009 – often on weak basis – finally did not result in measures, and at the end of 2010 the number of measures in force against the EU has reached its lowest level since years.

Despite this very positive development, the number of new anti-dumping investigations remained high in 2010, and the problems identified in the past (lack of transparency, low standards of initiation and inappropriate use of the instruments) still exist. Even if some countries improved their standards, it is worrying that others are moving in the opposite direction and departing from them to a noticeable extent.

This report describes overall trends, the problems identified and the improvements recorded. It also gives in the annex a detailed analysis of trends and specific cases of the most important users of the instrument.

2. OVERALL TRENDS

Even if the number of **new investigations** decreased in 2010 as compared to 2009, it remained quite significant, and the degree of complexity of the new cases increased. The number of new investigations came down from 45 in 2009 to 39 in 2010, mainly due to a noticeable drop in the number of initiations of safeguard investigations (from 31 to 18) which was extremely high in 2009. Because of the *erga omnes* nature of safeguard investigations not all of them affect EU exports. By contrast, the number of new anti-dumping investigations increased from 13 in 2009 to 20 in 2010. The switch from safeguard to anti-dumping measures is a positive development since anti-dumping measures address exclusively unfair trade of a specific origin while safeguard measures affect imports irrespectively of their conditions of trade and origin. The number of new countervailing investigations did not change.

In 2010, 15 **new measures** were imposed, as compared to 33 in 2009. Over the 12 countries imposing measures against the EU in 2010, China was the one that imposed the highest number of measures (20% of the total). As compared to last year, the number of new safeguards and anti-dumping measures respectively decreased from 15 to 7 and from 18 to 8. Like in 2008 and 2009, no new countervailing measure was imposed in 2010.

At the end of 2010, there were 123 **measures in force** against the EU (against the EU as a whole or against single Member States), which is the lowest level reached since years. There were 136 measures in force in 2009 as opposed to the peak of 185 in 2004. This is a positive development, especially given the fact that, in 2009, a significant number of new investigations were initiated (45) and it was expected that many of them would result in more measures in the following year. Even if this is an encouraging trend, it should nevertheless be mentioned that those new investigations were often neither sufficiently substantiated nor legally justified and they should thus not have been opened. Indeed, even if no measures were imposed, they had a disturbing effect on trade flows by creating an uncertain business environment and put unnecessary additional pressure on businesses suffering already from the economic crisis.

Anti-dumping remains the most commonly used instrument (88 measures versus 93 in 2009), followed by safeguards (with 30 measures versus 37 in 2009) and anti-subsidy (4 measures versus 6 in 2009). The US remains the country having the higher number of measures in force against the EU in 2010 (24 measures in force) despite the fact that no new measures have been introduced in the last two years. China (14 measures in force), which has been particularly active in 2010, moved from the third to the second position, confirming the trend registered in previous reports. India and Turkey share the third position (13 measures in force). Other important users are Brazil, Argentina and Mexico (9 and 5 measures in force).

3. ONGOING PROBLEMS

The Commission's interventions have contributed to the termination of some of the weak investigations initiated under the pressure of the global economic downturn in 2009. The Commission's interventions have also resulted in a more positive outcome for EU exporters in certain individual cases. However, the problems identified in the past still exist, and more have been identified in 2010, such as the absence of implementation of WTO Panel findings, inadequate use of the instruments and excessive use of safeguards.

3.1. Lack of compliance with WTO obligations

In two WTO cases (DS294 and DS350), the EU has been successful in demonstrating that a large number of US anti-dumping duties in force against EU exports are either created or unduly inflated due to the use of "zeroing". The US has abolished zeroing in weighted-average comparisons in new investigations but has previously refused to change its practice in reviews, where most duties are collected. To comply with its WTO obligations the US would have to modify its review practice and recalculate the dumping margins with respect to a number of individual measures, as well as refund excess duties collected after the deadline for implementation lapsed.

Despite reiterated condemnations by the relevant WTO bodies and the convincing evidence provided, the US has not complied so far with its international obligations. As a positive step toward implementation of the relevant WTO rulings, the US published a proposal on 28 December 2010 proposing a new methodology to remove zeroing in reviews. However, the proposal remains unclear as well as the timeline for the changes. In addition, the US has so far refused to refund excess duties collected since the end of the implementation periods in both WTO cases. If the US does not comply with its obligations, an award from an arbitrator on a potential amount of sanctions is due to be issued on 15 September 2011. In another case

(TKAST), the US has been unwilling to correct an arithmetical error and revoke the anti-dumping measure.

3.2. Inadequate use to the instruments

As already mentioned in last year's annual report, following the imposition of anti-dumping measures by the European Commission, investigations concerning similar products have been initiated by the country targeted by these measures. This trend has continued in 2010, also now in relation to the choice of the instrument or the criteria used for imposition of measures. Indeed, the EU has been confronted with a countervailing investigation and imposition of measures based on threat of injury in another investigation shortly after having used the same instrument/criteria against the same country. In all these cases, it is very difficult to believe in a pure coincidence.

In addition, the patterns of these cases are always similar: very weak standards of initiation (often also lacking transparency by abusing the rules on confidentiality), and no evidence of injury. The Commission is actively intervening in such instances and is determined to scrutinise even more carefully the compliance of these investigations with WTO rules.

3.3. Abuse of the rules on confidentiality

In trade defence investigations the lack of disclosure of sufficient detail of the information submitted in confidence is a recurrent problem, which is particularly regrettable because it deprives interested parties from their legitimate right of defence. While rules on confidentiality are necessary to protect the interests of the cooperating parties, these rules can be very often used in an abusive manner so that the public versions of applications and/or public notices of preliminary or final determinations often do not allow a reasonable understanding of the matter.

According to the relevant rules, confidential data should be subject to a meaningful summary, and it is the role of the investigating authorities to request interested parties providing confidential information to furnish such non-confidential summaries. Unfortunately, the investigating authorities of several countries fail to comply with this obligation, thereby hampering the rights of defence of the EU exporters concerned.

3.4. Unnecessary recourse to safeguards

The use of the safeguard instrument virtually exploded in 2009 coinciding with the global economic downturn. Indeed, during that year more than two thirds of all new investigations initiated and almost half of all new measures imposed were safeguards. This trend slowed down in 2010, which is a very positive sign.

The problem of unnecessary recourse to safeguards, however, still exists. Some countries became heavy users of the instruments and had recourse to safeguards under circumstances that would rather warrant a targeted action against dumped imports from a specific country. While the WTO jurisprudence has underlined the high requirements necessary to impose safeguard measures, these are still too often considered as an easy-to-use instrument.

Given their *erga-omnes* nature (measures are imposed against all countries of origin), safeguards produce several co-lateral damages. Indeed, exporting countries which do not cause any injury to the domestic industry (e.g. because their prices are much more expensive than the domestic ones) are also subject to measures.

The European Commission intervened in many cases in order to highlight flaws in safeguard investigations. As a result in some cases the measures themselves or their negative impact on EU exports was avoided.

4. MAIN ACHIEVEMENTS

The Commission's role in relation to third country cases includes monitoring of investigations but also providing advice and assistance to European exporters concerned. The Commission intervenes directly with third country authorities both on case-specific issues, to support the companies concerned, and on systemic issues, in order to generally improve discipline among trading partners. The Commission also organises specialised trade defence seminars for third countries' officials in order to exchange and enhance best practices throughout the trade community.

Although, achievements in these areas are not always easy to measure, the Commission's intervention did bear fruit, and in several cases, the outcome for the companies was more favourable than it would have been without the Commission's intervention. From a general point of view, the fact that many of the numerous investigations initiated in 2009 did not result in measures can, at least partly, be attributed to the Commission's interventions. In particular, the following should also be highlighted:

Success stories

Guide for EU exporters, "fact sheets" and new website

EU exporting companies very often do not know how to react to trade defence investigations initiated by third countries. It is however crucial that these companies are aware of their rights and obligations in order to decide whether or not to co-operate to the investigations and what would be the cost/benefit of co-operating. For this purpose, in 2011, the Commission published a guide for EU exporters and "fact sheets" summarising the main characteristics of trade defence practices of the main users of these instruments against the EU.

The **guide for EU exporters** explains the main concepts of trade defence and the relevant procedural steps. It provides advice on how to react to trade defence investigations initiated by EU trade partners, by spelling out the rights and obligations of exporters, the advantages of cooperating with the investigating authorities, and what is the role of the various parties, including the Commission. This guide is available on-line and translated in all EU languages.

The Commission has also prepared '**fact-sheets**' on the main users of trade defence measures against the EU. These fact sheets briefly report by country the name and the address of the investigating authorities, the timelines of investigations, remarks on on-spot verifications, specific standards of investigation (such as the lesser duty rule and the public interest test), hearings, legal representation and any other salient issue. These fact-sheets are also available on-line.

Finally, it should also be mentioned that the Commission has developed a **new and more user-friendly website** where basic info on trade defence measures, statistics on on-going investigations and measures in force as well as the annual reports are easily accessible to everyone.

Turkey

Turkey used to be a very important user of safeguards and the Commission actively intervened in order to highlight the weaknesses of these investigations and the following measures. Judging from the most recent developments it appears that Turkey has somewhat reduced its use of safeguards. However, the Commission continues to be vigilant since there have been some signs of new safeguard activity (notably review of existing safeguard measures) in 2011.

Gulf countries

Last year's annual report mentioned the initiation by the Cooperation Council for the Arab States of the Gulf of two safeguard investigations concerning imports of uncoated paper and paperboard in rolls and sheets and steel angles, channels and beams. The Commission intervened and made a formal submission to express concern as to the lack of transparency and of objectivity of the injury analysis and the weak causal link analysis performed by the investigating authorities in these two cases. Both were terminated without measures in 2010.

Mexico

The expiry review concerning the countervailing measures on bovine meat, initiated in June 2009 was terminated in December 2010. The Commission had provided ample information and evidence, which allowed Mexico to conclude that, following the reform of the EU Common Agricultural Policy, the EU became a net importer of beef, and thus that there was no likelihood that injury would recur should measures lapse.

Canada

The expiry review of the countervailing measures regarding refined sugar from the EU and the parallel expiry review of the anti-dumping measures against imports of the same product from Denmark, Germany, the Netherlands and United Kingdom were terminated in November 2010. This positive outcome was the result of ample information and evidence provided by the European Commission, which allowed Canada to conclude that following the reform of the EU Common Agricultural Policy, production volumes had been reduced and that therefore there was no likelihood of recurrence of injury.

Morocco

Morocco initiated one new safeguard investigation in July 2010 concerning imports of machine-made carpets. The EU industry concerned co-operated with the investigating authorities and the Commission made a submission emphasising the total lack of a causal link between EU imports and any injury suffered by the domestic industry. The investigation was terminated in November 2010 without the imposition of measures given the lack of injury.

Israel

In 2010 the Commission has actively intervened with technical submissions in individual cases. At the same time, different occasions were used to highlight to the Israeli authorities at higher political level the persisting shortcomings pertinent to all the TDI investigations initiated by Israel. As a result, two anti-dumping investigations on recycled containerboards and white paper were concluded without the imposition of measures and the anti-dumping investigation against imports of stretch wrap was suspended after an undertaking agreement was reached with EU exporters. Finally, following repeated requests from the Commission, Israel has officially confirmed the termination of the safeguard investigation against imports of steel rebars.

Ukraine

Recently Ukraine started to be very active in the use of safeguards. The Commission actively monitored its actions and urged it to refrain from using the safeguard instrument when injurious imports come from only one or a few specific sources, to extend the period analysed from 1 to 3 years and to duly consider the national interest before the adoption of any measures. Ukraine finally terminated two important safeguard cases without imposition of any measures (Ferro-alloys and Fertilisers) and in case of Float glass it adopted definitive measures for 10 days only, in addition to provisional measures.

5. CONCLUSION

The monitoring activity in 2010 was strongly affected by the high number of new investigations initiated in 2009, when the effects of the global economic crisis appeared. Many of these investigations were terminated without measures in 2010 and thus the overall number of measures in force decreased. This positive trend has also been the result of the Commissions' numerous interventions.

Even if the number of new investigations decreased in 2010, it remained however important. While the use of safeguard measures diminished considerably, anti-dumping investigations has nevertheless increased in 2010 and is likely to lead to a higher number of measures in force in 2011.

Despite favourable trends in the figures, the Commission's monitoring activity in relation to third country trade defence actions remains crucial since more problems in the use of these instruments by some countries have been identified in 2010. Therefore, the Commission intervened in many cases to prevent, to the extent possible, deviations from WTO rules. Often these efforts have been successful and investigations were terminated without measures or measures did not affect EU exports.

The Commission is satisfied of the good cooperation established with the EU Member States, the European associations of producers, and the companies concerned on a case by base basis. In this context, the guide for EU exporters developed by the Commission and the new website are useful and powerful tools to improve the understanding of this highly technical subject by the EU businesses. The Commission continues also to strengthen exchanges with other investigating authorities in order to increase standards, transparency and predictability in the use of trade defence measures.