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

**30th Annual Report from the Commission to the European Parliament on the EU's  
Anti-Dumping, Anti-Subsidy and Safeguard activities (2011)**

{SWD(2012) 346 final}

## INTRODUCTION

This 2011 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 2011 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](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 MODERNISATION

In order to explore ways on how to improve the current system of the Trade Defence instruments (TDI), in October 2011 the Commission launched an initiative for the Modernisation of TDI. While the economic environment has changed significantly over the last decade, the rules of the European Union's trade defence instruments have remained substantially unchanged since the last legislative changes to the Basic Regulations in 2004. In this framework, and taking into account the difficult economic environment that companies are presently faced with, the Commission has decided to analyse the strong and weak points of the current TDI rules, with the aim of adapting and improving them in a balanced way, for the benefit of all stakeholders concerned.

In order to explore possible areas of improvement, the Commission launched a public consultation in spring 2012. In preparing the public consultation, the Commission took into account, not only the results of an evaluation study on the EU's trade defence instruments (see below) but also information from a number of interviews with experts. The modernisation exercise is on-going and any Commission proposal will not be adopted before November/December 2012.

During 2011, work continued on an evaluation study of the European Union's trade defence instruments by an independent consultant. The final report was published at the start of 2012. The aim of the evaluation was to help the Commission design or improve its policy interventions and to monitor their effectiveness. It was also

considered that it would help citizens exercise their right to scrutinize, criticise and influence the policies and activities conducted by the Commission on their behalf.

#### **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.

2011 saw the continued evaluation of four of the six requests for country-wide MES from China, Vietnam, Armenia, Kazakhstan, Mongolia and Belarus. All countries, except Belarus and Armenia, continued to provide additional information in support of their claims throughout the year and their requests are at various stages of progress. Already in 2010 the Consultations with the authorities of the Republic of Belarus were put on hold due to the political situation in the country. In June 2010, additional questions on further developments in their progress towards MES were sent to Armenia. However, by the end of 2011, no new information had been sent to the Commission by Armenia. The other four applicant countries pursued their MES applications and are at different stages of progress in terms of meeting the five criteria for MES.

Work continued on the MES request from China including the 11<sup>th</sup> thematic MES Working Group meeting in Brussels in November 2011. At the working group meeting both parties discussed China's progress in the area of Intellectual Property Rights and Anti-monopoly law. In 2011, the study on the accounting practices in the People's Republic of China was finalised. Unfortunately, the results of the study were only partial and insufficient to make sound conclusions on China's progress in this field.

The EU-Vietnam MES working group meeting took place in Brussels in December 2011. The Vietnamese authorities replied to questions from the Commission on the outstanding four criteria. It was agreed that Vietnam would send additional information on issues raised during the meeting. By the end of 2011 no further information had been sent to the Commission by Vietnam.

Regarding Kazakhstan, in February 2011, a Note Verbale was sent to the Kazakhstan authorities setting out the main problems regarding the 5 MES criteria. While it had been agreed in 2010 to jointly develop a road map with Kazakhstan on the next steps to be taken on MES, no progress was made on this during 2011.

A working group meeting with the Mongolian authorities took place in Ulan-Bator in September 2011. Information on Mongolia's progress on the MES criteria was shared and discussed.

#### **5. INFORMATION AND COMMUNICATION ACTIVITIES/ BILATERAL CONTACTS**

##### **5.1. Small and medium sized enterprises (SMEs)**

In 2011, the Commission published the "Paper on Actions to Address the Difficulties Encountered by SMEs Involved in Trade Defence Instruments". It contains a number of concrete actions which could be easily implemented to better assist SMEs in all

areas of trade defence and on which a certain degree of convergence was achieved with Member States. This paper, which was based on the results of the study carried out by an independent contractor, was discussed with, and approved by, the Member States in 2011. The objective of the study was 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 or as exporters in investigations initiated by third countries, given the important role that SMEs have in the EU's economy and the difficulties they face in participating in trade defence 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.

In 2011, these contact points received many requests for information, which were all immediately addressed. These requests concerned both the procedures and content of TDI proceedings.

## **5.2. Bilateral contacts/information activities – industry and third countries**

Explaining the legislation and practice of the EU's trade defence activity is an important part of the work of the TDI services.

A seminar on trade defence for officials from third countries took place in 2011. In addition, there were a number of bilateral contacts dedicated to discussing various trade defence related topics with a number of third countries including China, Korea, Turkey and Australia held in 2011.

There were also several meetings with key stakeholder associations and companies in 2011, amongst which Business Europe and Eurocommerce.

## **6. HEARING OFFICER**

2011 was the fifth year of activity for the Hearing Officer in DG Trade, who became operational in April 2007. The Hearing Officer acts independently. The Hearing Officer acts independently and is now attached, for administrative purposes, to the Commissioner for Trade. In 2011, he was attached for administrative purposes to the Director General of DG Trade. The formal mandate of the Hearing Officer was published early 2012<sup>1</sup>.

The principal role of the Hearing Officer is to guarantee the effective exercise of rights of defence in trade proceedings before the European Commission. The rights of defence include not only the right to be heard and to have access to the file but comprises a wider set of rights described in the EU Charter of Fundamental Rights as follows: the right of every person (i) "to be heard, before any individual measure which would affect him or her adversely is taken", (ii) "to have his or her affairs handled impartially, fairly and within a reasonable time" and (iii) "to have access to his or her file, while respecting the legitimate interests of confidentiality and of

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<sup>1</sup> OJ L 107, 19.04.2012, p.5

professional and business secrecy". 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.

Requests for intervention by the Hearing Officer show a growing trend ever since the creation of the function in 2007. In 2011, the Hearing Officer had 81 interventions in 35 trade defence cases and held 26 hearings, of which 4 were joint hearings of parties with similar interests. The interventions were requested by exporting producers in third countries, by the Union industry, by users and importers as well as by Governments of third countries. The Hearing Officer intervened on issues covering all stages of the investigation and made a number of recommendations to the Commission services which were largely followed. The main aim of the HO recommendations is to strengthen the rights of defence of stakeholders.

The main issues that the Hearing Officer faced in 2011 can be grouped in three categories (i) content and quality of disclosure (ii) access to files and quality of non-confidential files and (iii) disagreement with determinations, findings and conclusions.

## **7. OVERVIEW OF ANTI-DUMPING, ANTI-SUBSIDY AND SAFEGUARD INVESTIGATIONS AND MEASURES**

### **7.1. General**

At the end of 2011, the EU had 117 AD measures (see Annex O) and 10 AS measures (see Annex P) in force.

In 2011, 0.25% 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.

### **7.2. New investigations (see Annexes A through E and Annex N)**

In 2011, 21 investigations were initiated<sup>2</sup>. Provisional duties were imposed in 10 proceedings. 13 cases were concluded with the imposition of definitive duties. 11 investigations were concluded without measures. 21 measures expired automatically following their 5-year duration.

### **7.3. Review investigations**

Review investigations continue to represent a major part of the work of the TDI services. In the period 2007-2011, they accounted for 63% of all investigations initiated. Table 2 in the Working Document provides statistical information for the years 2007-2011.

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<sup>2</sup> Table 1 in the Working Document provides statistical information on the new investigations for the years 2007 – 2011 carried out under the provisions of Articles 5 and 10 of the basic Regulations.

### 7.3.1. *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 2011, 8 expiry review investigations were initiated. 8 expiry reviews were concluded with a confirmation of the duty for a further period of 5 years. 4 expiry reviews were concluded by the termination of measures.

### 7.3.2. *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 2011, a total of 9 interim reviews were initiated. 7 interim reviews were concluded with confirmation or amendment of duty. 5 interim reviews were concluded with the termination of the measures.

### 7.3.3. *“Other” interim reviews (see Annex H)*

There were 2 'other' reviews, i.e. not falling under Articles 11(3) or 19 of the basic Regulations, initiated during 2011 .

### 7.3.4. *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 2011, 2 new exporter reviews were initiated.

### 7.3.5. *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 2011, there were no anti-absorption reviews initiated or concluded.

### 7.3.6. *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 2011, 3 such investigations were initiated. 4 anti-circumvention investigations were concluded with extension of the measures and 2 were concluded without extension of the measures.

### 7.4. **Safeguard investigations (see Annex L)**

During 2011, no safeguard investigation was initiated. 1 safeguard investigation, which had been initiated in 2010, was terminated without the imposition of measures.

## 8. **ENFORCEMENT OF AD/AS MEASURES**

### 8.1. **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.

### 8.2. **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 2011, there were 22 undertakings in force. During 2011, the following changes to the portfolio of undertakings took place: undertakings of 5 companies came to an end due to the expiry/repeal of measures and an undertaking of one company was accepted. This brings the total number of undertakings in force at the end of 2011 to 18.

## 9. **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 has been eliminated or reduced to a level below that of the duty in force.

During 2011, 26 new refund requests were submitted. At the end of 2011, 12 investigations were on-going, covering 18 requests. In 2011, 24 Commission

Decisions were adopted: 12 granting partial refund and 12 rejecting the refund requests. Seven requests were withdrawn.

## **10. JUDICIAL REVIEW: DECISIONS GIVEN BY THE COURT OF JUSTICE (CoJ) / GENERAL COURT (GC)**

In 2011, the Court of Justice (COJ) and the General Court (GC) rendered 9 judgments in total relating to the areas of anti-dumping or anti-subsidy. A summary of some of the judgments is given in the Working Document.

There were 16 new cases lodged in 2011, 12 before the GC and 4 before the COJ.

A list of the AD/AS cases before the GC and the COJ still pending at the end of 2011 is given in Annex S of the Working Document.

## **11. ACTIVITIES IN THE FRAMEWORK OF THE WORLD TRADE ORGANIZATION (WTO)**

### **11.1. 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 July 2011, the WTO Appellate Body issued a report on the dispute settlement case taken by China against the EU on anti-dumping measures on imports of certain iron or steel fasteners originating in China. This was the first WTO challenge launched by China against the EU since it joined the WTO in 2001. The panel had circulated its report to WTO Members in December 2010 and in March 2011 the EU appealed certain aspects of the panel report. The Appellate Body issued its report in July 2011 and at its meeting on 28 July 2011 the Dispute Settlement Body (DSB) adopted the Report. While the large majority of China's claims with respect to the fasteners regulation were rejected by the Panel and by the Appellate Body, certain aspects of that regulation were considered to be in breach of WTO law. The Panel and the Appellate Body also, found that Article 9(5) of the Basic Regulation was inconsistent with the European Union's obligations the WTO AD Agreement. In September 2011, the European Union informed the WTO DSB that it intended to implement the recommendations and rulings of the DSB in this dispute in a manner that respects its WTO obligations. In February 2012, the Commission proposed to the European Parliament and the Council an amendment to the Basic Anti-Dumping Regulation to take account of the DSB Ruling<sup>3</sup>.

In October 2011 the WTO Panel report on the dispute concerning anti-dumping measures on certain leather footwear from China was issued. The panel had been established in May 2010. The panel concluded that, in the great majority of the issues examined, the EU acted in full compliance with WTO rules. The panel confirmed the findings reached in the fasteners dispute as regards Article 9(5) of the Basic Regulation. Since the Regulations imposing measures on imports of footwear expired in March 2011, the Panel concluded that there was no basis for a recommendation to “bring the [expired] measure[s] into conformity” under

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<sup>3</sup> COM (2012) 41 Final



Article 19.1 of the DSU. However the Panel recommended that the European Union bring Article 9(5) of the Basic Regulation into conformity with its obligations under the WTO Agreements.

## **11.2. Other WTO activities**

In 2011, the Chair of the DDA Negotiating Group on rules launched a process of informal plurilateral consultations on various topics where it was felt that the gaps remaining among Members should be further worked on. This resulted in the circulation of a new text on anti-dumping disciplines highlighting areas of convergence and outstanding problematic issues, whereas progress on subsidies and fisheries subsidies negotiations was treated in a report (WTO Document TN/RL/W/254 of 21 April 2011). While these documents accurately reflected the state of the negotiations in those areas, it did not prove possible to take the latter forward in 2011 partly because of the overall dynamics of the DDA negotiations. Following resignation by the Chair Francis, a consensus among Members was found to appoint Ambassador McCook (Jamaica) as Chairman of the Negotiating Group on Rules. His appointment was confirmed at a formal meeting held in February 2012. Subsequently, the Technical Group, a subgroup of the negotiating group, was convened twice (in February and April 2012).

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**

2011 showed an increase in both the number of new cases initiated over the previous year, as well as the number of definitive measures imposed. The number of investigations terminated without the imposition of measures also increased slightly while the number of provisional measures imposed over the previous year dropped by almost a quarter. Regarding reviews, these continue to represent a significant part of the work of the services although the number of reviews initiated dropped by almost a sixth when compared to 2010. The number of reviews terminated increased significantly when compared to 2010 figures.

Finally, it should be recalled that the trade defence measures in place in 2011 affected only 0.25% of total imports, reflecting the moderate and rules-based approach in the use of these instruments by the EU.