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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT

**31st Annual Report from the Commission to the European Parliament on the EU's
Anti-Dumping, Anti-Subsidy and Safeguard activities (2012)**

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INTRODUCTION

This 2012 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 2012 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)". During 2012 there were two amendments to the Basic anti-dumping regulation. In light of the Court of Justice Ruling in the *Brosmann footwear case*¹, it was considered appropriate to codify the practice of restricting the examination of MET claims to companies that were sampled. It was also necessary to modify the legal conditions under which exporting producers in non-market economy countries obtain an individual dumping margin to comply with the WTO ruling in the *Dispute Settlement*² case concerning fasteners from the People's Republic of China.

2. BASIC CONCEPTS

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

3. TDI MODERNISATION

An exercise to modernise the trade defence instruments (TDI's) was launched in October 2011. Given that the global trading environment has changed significantly over the last decade and the fact that the EU's trade defence system has remained largely unchanged since the conclusion of the Uruguay Round almost 15 years ago, a need to adapt the TDIs to the current needs of business was identified.

The aim of the ongoing modernisation project is to improve the EU's current trade defence system for the benefit of all stakeholders. The focus lies on finding practical solutions to real problems which Union producers, importers, traders, etc. encounter through the use of the instruments. The aim is to render the system more efficient and measures more effective without, however, changing the underlying principles and balance of the system.

Important progress towards meeting this goal was made in 2012. A public consultation in order to seek stakeholders' views was held from April to July 2012.

¹Case C-249/10 P *Brosmann Footwear (HK) and others v Council*, judgment of 2 February 2012.

² (2) WTO, Report of the Appellate Body, AB-2011-2, WT/DS397/AB/R, 15 July 2011. WTO, Report of the Panel, WT/DS397/R, 3 December 2010.

In May 2012 a high level conference was organised in order to inform stakeholders and hear their concerns. An impact assessment, which is a requirement for EU law making, was carried out and presented to the Commission's internal high-level impact assessment board in December 2012. On this basis, a legislative proposal and a communication were adopted by the Commission in April 2013. In addition draft guidelines on four subjects were issued. The legislative proposal was transmitted to Council and Parliament where it is following the ordinary legislative procedure. The draft guidelines have been subject to public consultation and after taking into account the comments received as appropriate, the final guidelines will be adopted by the Commission in due course. The Commission aims at concluding the modernisation exercise during the current legislature, i.e. in spring 2014 and works constructively with the other institutions in order to achieve this goal.

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.

2012 saw the continued evaluation of two of the six requests for country-wide MES from China, Vietnam, Armenia, Kazakhstan, Mongolia and Belarus. Only Mongolia and Vietnam provided further information in support of their claims throughout the year and their requests are at various stages of progress. The remaining other four countries, China, Armenia, Kazakhstan and Belarus did not submit any relevant information that allowed further analysis of their 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 of Armenia's progress towards MES were sent. However, by the end of 2012 still 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.

As regards China, while on several occasions the Chinese authorities agreed in principle to hold a further working group meeting on MES during 2012, the meeting was cancelled. The Commission remains willing to discuss further progress made by China towards MES, and it is hoped that the Chinese authorities will continue to engage in the exercise and deliver the necessary data for the MES analysis by the Commission.

The EU-Vietnam MES working group meeting took place in Vietnam in November 2012. A draft MES report was discussed and the Vietnamese authorities replied to many questions from the Commission on outstanding issues related to the four criteria that still need to be fulfilled. The final MES report is expected to be shared with the Vietnamese authorities in 2013.

The information collected during the EU-Mongolia working group that took place in Ulan-Bator in September 2011 along with additional information received in December 2012 continues being analysed and an MES report will be ready in 2013.

5. INFORMATION AND COMMUNICATION ACTIVITIES/ BILATERAL CONTACTS

5.1. Small and medium sized enterprises (SMEs)

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 2012, 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.

The Commission organized a training seminar on trade defence for officials from third countries in 2012. 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, Morocco and Malaysia held in 2012.

There were also several meetings with key stakeholder associations and companies in 2012, amongst which Business Europe and Eurocommerce. This included a full one day seminar for Business Europe in November 2012.

6. HEARING OFFICER

In February 2012, the role and the powers of the Hearing Officer for DG Trade, who became operational in 2007, were set out in a formal mandate by a Decision of the President of the European Commission. Since 2012, the Hearing Officer is attached, for administrative purposes, to the Commissioner responsible for trade policy, thus reinforcing the position's independence.

The terms of reference also lay out detailed rules on hearings conducted by the hearing officer on all aspects of a trade proceeding, from initiation to disclosure of final findings to final action taken. Furthermore, the mandate grants the hearing officer decision making powers in case of dispute on access to file, confidentiality of information in the possession of the Commission and the granting of extensions of deadlines. The Hearing Officer is empowered to raise with the Commissioner responsible for trade policy and the Director General for Trade any concerns about the conduct or content of a trade investigation.

The ever expanding trend of the intervention requests since the creation of the function of the Hearing Officer in 2007 made another step in 2012 and increased sharply by more than 50% compared to 2011. In the reporting period, the Hearing Officer had 132 intervention requests (81 in 2011), out of which 128 related to TDI and concerned 41 TDI proceedings. The number of hearings also increased significantly by 50% compared to 2011: 39 hearings were held (26 in 2011), out of which 12 were multiparty hearings where altogether 43 interested parties with similar interests allied in common hearings.

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 with an aim to strengthen the exercise of rights of defence.

The main issues that the Hearing Officer faced in 2012 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 2012, the EU had 102 AD measures and 10 AS measures in force.

In 2012, 0.17% 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 2012, 19 new investigations were initiated. Provisional duties were imposed in 9 proceedings. 3 cases were concluded with the imposition of definitive duties. 9 investigations were concluded without measures.

7.3. Review investigations

Review investigations continue to represent a major part of the work of the TDI services. In the period 2008-2012, they accounted for 60% of all investigations initiated. Table 2 in the Working Document provides statistical information for the years 2008-2012.

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 2012, 13 measures expired automatically following their 5-year duration.

During 2012, 14 expiry review investigations were initiated. 9 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 2012, a total of 5 interim reviews were initiated. 6 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 4 'other' reviews, i.e. not falling under Articles 11(3) or 19 of the basic Regulations, initiated during 2012 while 3 such reviews were concluded in the period.

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 2012, 1 new exporter review was initiated while 2 such reviews were concluded.

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 2012, 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 2012, 13 such investigations were initiated. 2 anti-circumvention investigations were concluded with extension of the measures and 1 was concluded without extension of the measures.

7.4. Safeguard investigations (see Annex L)

During 2012 there was no safeguard activity.

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 2012, there were 18 undertakings in force. During 2012, the following changes to the portfolio of undertakings took place: undertaking of one company came to an end due to the expiry/repeal of the measures. Undertakings of two companies were withdrawn as their monitoring would become unworkable and impracticable. This brought the total number of undertakings in force at the end of 2012 to 15.

9. REFUNDS

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 2012, 26 new refund requests were submitted. At the end of 2012, 10 refund investigations were on-going, covering 35 requests. In 2012, 26 Commission Decisions were adopted: 12 granting partial refund and 14 rejecting the refund requests. 8 requests were withdrawn.

10. JUDICIAL REVIEW: DECISIONS GIVEN BY THE COURT OF JUSTICE (COJ) / GENERAL COURT (GC) (SEE ANNEX S)

In 2012, the General Court rendered 13 judgments relating to the areas of anti-dumping or anti-subsidy.

In 2012, the Court of Justice rendered 9 judgments relating to the area of anti-dumping. 6 of those judgments concerned appeals against the judgments of the General Court. In addition the Court of Justice rendered 3 judgments in reply to requests for a preliminary ruling.

There were 23 new cases lodged in 2012, 17 before the GC and 6 before the COJ.

A list of the AD/AS cases before the GC and the COJ still pending at the end of 2012 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 2012, Indonesia requested WTO consultations with the European Union with respect to anti-dumping measures imposed by the European Union on the imports of fatty alcohols and with respect to certain aspects of the investigation underlying these measures.

11.2. Other WTO activities

The Negotiating Group on Rules held a formal meeting on 29 February 2012. The sole purpose of the meeting was to confirm the appointment of H.E. Mr. Wayne McCook (Jamaica) the Chairperson-Designate by the Group.

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. In addition the informal technical group on Anti-dumping met a number of times during 2012.

CONCLUSION

2012 showed a decrease as regards the number of new cases initiated, provisional and definitive measures imposed over the previous year. The number of investigations terminated without the imposition of measures also decreased slightly compared to the previous year. Regarding reviews, these continue to represent a significant part of the work of the services with the number of reviews initiated increasing by more than a half when compared to 2011. The number of reviews terminated decreased by a third when compared to 2011 figures. In 2012 trade defence measures in place affected 0.17% of total imports into the EU.