



COMMISSION OF THE EUROPEAN COMMUNITIES

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

**27th annual report on the community's anti-dumping, anti-subsidy and safeguard
activities**

(2008)

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INTRODUCTION

This 2008 report is submitted to the European Parliament following its resolution of 16 December 1981 on the Community'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 2008 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

At the beginning of 2008 the Trade Commissioner concluded that more reflection time is needed to allow convergence of views on the way forward concerning the Trade Defence Instruments review ("Green Paper process"). An important pre-condition of improving the functioning of the Trade Defence system is to reinforce consensus among all stakeholders concerned over the application of these instruments. Such a consensus does not yet exist – not among industry, not in the European Council and not in the European Parliament.

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 2008 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.

The countries concerned are at various stages in their progress as are the evaluations for MES.

In addition to a number of bilateral meetings with the countries concerned, April 2008 saw the eighth meeting of the dedicated China MES Working Group. A comprehensive preliminary assessment report followed in which progress was acknowledged but certain shortcomings were underlined as well. The report was discussed with Member States in September 2008 and got unanimous support. Close cooperation with China will continue in 2009.

Conceptual and drafting work for the next Vietnam preliminary assessment report was launched at the end of 2008. The report is to be expected for discussion with Member States at the end of first half 2009. In October 2008 the Kazakhstan – EU Cooperation Council took place at which the issue of MES was discussed. The Commission was ready to conduct a further verification mission to Mongolia in autumn 2008. However, as a consequence of a decision of the Mongolian Government this mission had been postponed. The work on the Armenia file was characterized by in-depth analysis of the information received from the Armenian government and other sources.

5 HEARING OFFICER

2008 was the first 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 good administration and on any issues arising out of trade proceedings, where appropriate.

In 2008 the Hearing Officer received 19 requests for hearings in 11 anti-dumping proceedings (including one undertaking) and held 16 hearings. The Hearing Officer also held two adversarial meetings during which interested parties, including the Community industry, the exporting producers and the importers could present their arguments.

While the most frequent reason for interested parties to refer to the Hearing Officer appears to be a need for more detailed explanations where claims/arguments are rejected other issues addressed included the quality of the non-confidential files, product scope, non-cooperation, MET/IT conclusions and arguments concerning injury and Community interest.

Further details regarding the hearings and meeting including the main issues covered can be found in the Working Document to the Annual Report.

6. INFORMATION AND COMMUNICATION ACTIVITIES / BILATERAL CONTACTS

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 2008 these contact points received many requests for information, which were all immediately addressed. These requests concerned both the procedures and content of TDI proceedings.

There were a number of seminars organised for third countries on TDI Issues – the countries included Indonesia, Serbia, Jordan, Ukraine, GCC, Albania and Lebanon. In addition a round table discussion was held with India on subsidy issues.

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

7.1. General

At the end of 2008, the Community had 128 AD measures (see Annex O) and 8 AS measures (see Annex P) in force.

In 2008, 0.6% of total imports into the Community 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 2008, 20 investigations were initiated¹. Provisional duties were imposed in 5 proceedings. 16 cases were concluded with the imposition of definitive duties. 3 proceedings were concluded without measures. Another 2 anti-dumping measures were allowed to expire 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 2004-2008 they accounted for 62% of all investigations initiated. Table 2 in the Working Document provides statistical information for the years 2004-2008.

¹ Table 1 in the Working Document provides statistical information on the new investigations for the years 2003 – 2007 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 2008, 7 expiry review investigations were initiated. 9 expiry reviews were concluded with a confirmation of the duty for a further period of 5 years. 5 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 2008, a total of 13 interim reviews were initiated. 20 interim reviews were concluded with confirmation or amendment of duty. 6 investigations were concluded with the termination of measures.

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

A series of other reviews, not falling under Articles 11(3) or 19 of the basic Regulations or for which no notice of initiation was published in the Official Journal, were concluded during 2008.

13 such reviews were concluded in 2008 with confirmation or amendment of the measures and 1 was concluded by terminating the measures. They specifically concern, *inter alia*, the effective monitoring of undertakings, actions following WTO DSU proceedings, suspension of measures, etc.

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 Community after the investigation period. As such, an individual duty, which is usually lower than the country-wide duty, can be calculated for them.

In 2008, 1 new exporter review was 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 Community, 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 2008, 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 2008, 1 such investigation was initiated. 1 anti-circumvention investigation was concluded with extension of the duty and 1 was concluded without the extension of the duty.

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

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

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 be more pro-active rather than simply reactive in the enforcement field.

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 2008, there were 38 undertakings in force. During 2008, the following changes to the portfolio of undertakings took place: undertakings of 3 companies came to an end and 11 offers for undertakings have been accepted. This brings the total number of undertakings in force at the end of 2008 to 46.

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, on the basis of which duties were paid, has been eliminated or reduced to a level below that of the duty in force.

During 2008, 25 new refund requests were lodged (covering 55 submissions). 9 cases were closed, no full or partial refunds were granted, 3 refund requests were rejected and 6 requests were withdrawn.

10. JUDICIAL REVIEW: DECISIONS GIVEN BY THE COURT OF JUSTICE (COJ) / COURT OF FIRST INSTANCE (CFI)

In 2008, the Court of Justice (COJ) and the Court of First Instance (CFI) rendered 8 judgments in total relating to the areas of anti-dumping or anti-subsidy. They also issued 10 orders between them in the course of the year on AD and AS matters. A summary of some of the judgments is given in the Working Document.

There were 16 new cases lodged in 2008, 10 before the CFI and 6 before the COJ.

A list of the AD/AS cases before the CFI and the COJ still pending at the end of 2008 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

January 2008 saw the adoption of the Report by the WTO which had been issued by a WTO Panel during 2007 in a case taken by Norway challenging EU AD measures on Salmon. Measures to implement the findings of the report were undertaken by the EU during 2008.

In December 2008 India lodged a request in the WTO for consultations with the EU regarding the AD and AS measures in place on Polyethylene terephthalate (PET).

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

11.2. Other WTO activities

In 2008, the DDA Negotiating Group on rules met in the first half of the year to discuss the first Chair's draft text which was circulated in November 2007. A vast majority of the WTO membership, including the EU, stressed the unbalanced nature of the text overall. This was particularly the case of the anti-dumping and fisheries subsidies draft texts. Many called for the Chair to issue a new, more balanced, text at the earliest possible time. The year culminated in the Ministerial Conference that was held late July; however, rules were not specifically addressed then.

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. On Anti-dumping a new common format for the semi-annual reporting of Anti-dumping actions was agreed in the committee. On Subsidies the EC's 2007 New and Full Subsidy notification was being dealt with in the committee and numerous replies were provided to Members' questions.

12. CONCLUSION

2008 saw a significant increase in the number of new cases initiated in comparison to the previous year as well as an increase in definitive measures imposed. However, there was a considerable drop in the number of investigations terminated without the imposition of measures and the number of provisional measures imposed. Regarding reviews, the level of activity overall dropped with initiations and reviews concluded or terminated down from 2007 levels.

With regard to the 'Green Paper' process there was an overall acceptance in 2008 that more reflection time is needed to strengthen consensus on the operation of the Trade Defence Instruments.

The TDI services continued to carry out investigations at the highest standards in 2008. In this context the services continued to ensure that the rights of all parties were taken into account in the process. It was the first full year of activity for the Hearing Officer. Finally through seminars for many various stakeholders as well as third country authorities the TDI services ensured a greater awareness and understanding of the many issues involved.