



Brussels, 17.10.2017
COM(2017) 598 final

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

**35th Annual Report from the Commission to the Council and the European Parliament
on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities (2016)**

{SWD(2017) 342 final}

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INTRODUCTION

This is the report of the European Union's anti-dumping, anti-subsidy and safeguard activities during 2016. It is presented to the European Parliament and the Council pursuant to the provisions of Article 23 of Regulation (EU) 2016/1036 of the European Parliament and of the Council on protection against dumped imports from countries not members of the European Union ('basic anti-dumping Regulation'), Article 34 of Regulation (EU) 2016/1037 of the European Parliament and of the Council on protection against subsidised imports from countries not members of the European Union ('basic anti-subsidy Regulation') and Article 23 of Regulation (EU) 2015/478 of the European Parliament and of the Council on common rules for imports. This report is accompanied, as in previous years, by a Commission Staff Working Document, together with detailed annexes

The anti-dumping (AD), anti-subsidy (AS) and safeguard (SFG) investigations conducted by the Commission are governed by the above mentioned European Parliament and Council Regulations. A comprehensive overview of the existing legislation, terminology and procedures is available in the accompanying Staff Working Document.

2016 was a very busy and challenging year in the area of trade defence. In November 2016, the Commission adopted a legislative proposal that provides for a new calculation methodology of normal values in case prices and costs in the market of the exporting country are distorted. The proposal is presently undergoing the ordinary legislative procedure. Since the start of the steel crisis, intensive case work was carried out so that the European industry would get swift and effective relief from unfairly traded imports. The Commission has used all available tools under the existing trade defence legal framework. The steel crisis also demonstrated the need to modernise trade defence instruments and proved to be an important impetus for the Council to agree on a position in December 2016 on this legislative initiative that the Commission already adopted in April 2013. The European Council conclusions of June 2016 also called for the swift completion of that work. The proposal is presently under the ordinary legislative procedure.

Many of the trade defence investigations conducted were highly complex, such as the investigation into hot rolled coils, the expiry review on solar panels and the investigation concerning concrete reinforcing bars and rods. These cases required in-depth analysis which presented itself as a very resource-intensive process.

The present report and the Staff 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 ANTI-DUMPING, ANTI-SUBSIDY AND SAFEGUARD INVESTIGATIONS AND MEASURES

1.1. General

At the end of 2016, the EU had 90 definitive anti-dumping measures and 12 definitive anti-subsidy measures in force.

The number of measures in force has shown a slight increase (4%) over the previous year while the number of ongoing investigations (20) at the end of the year corresponded to the end of 2015. The number of new cases (15) initiated increased

slightly while a significant number of cases (9) were re-opened in order to implement judicial findings. The number of reviews initiated (15) was still important although it was lower than in 2015. The majority of the reviews were expiry reviews.

In 2016, 0,27% of total imports into the EU were affected by AD or AS measures. Although comprehensive data are not available, the expiry review investigations show, in many cases, that the imposition of measures leads to a significant reduction of the imports of the product concerned.

A detailed overview is given in the Staff Working Document accompanying this report. The references to the Annexes of the Staff Working Document can be found beside the titles.

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

In 2016, 15 new investigations were initiated (12 concerned the sector of steel and metals), while there were 9 re-openings of cases to implement judicial findings. Provisional duties were imposed in 9 proceedings. A total of 7 cases were concluded with the imposition of definitive duties while 8 investigations were concluded without measures.

1.3. Review investigations

Review investigations continue to represent a substantial part of the work of the Commission Trade Defence services. Table 2 in the Staff Working Document provides statistical information for the years 2012-2016.

1.3.1. Expiry reviews (see Annex F)

Articles 11(2) of the AD and 18 of the AS 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 2016, 5 measures expired automatically following their 5-year duration.

During 2016, 13 expiry review investigations were initiated and 5 expiry reviews were concluded with a confirmation of the duty for a further period of 5 years. Only 1 expiry review was concluded by the termination of measures.

1.3.2. Interim reviews (see Annex G)

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

During 2016, a total of 2 interim reviews were initiated. There were 4 interim reviews concluded with confirmation or amendment of duty. There were 5 interim reviews concluded with the termination of the measures.

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

There were 3 'other' reviews, i.e. not falling within the reviews ordinarily commenced pursuant to Articles 11(3) of the AD or 19 of the AS Regulations, concluded or terminated during 2016. No new reviews falling within the 'other' category were initiated. These reviews usually concern the implementation of rulings by the Court.

1.3.4. *New exporter reviews (see Annex I)*

Articles 11(4) of the AD and 20 of the AS 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 2016, no new exporter reviews were either initiated or concluded.

1.3.5. *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 of the AD and 19(3) of the AS Regulations.

In 2016, no anti-absorption reviews were either initiated or concluded.

1.3.6. *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 provided for in Articles 13 of the AD and 23 of the AS Regulations.

In 2016, 1 such investigation was initiated. There were 6 anti-circumvention investigations concluded with extension of the measures. The most important one related to the circumvention of measures on imports of solar modules and cells from the People's Republic of China by transshipment via Malaysia and Taiwan.

1.4. Safeguard investigations (see Annex L)

During 2016, there was no safeguard investigations opened nor measures imposed.

2. ENFORCEMENT OF AD/AS MEASURES

2.1. Follow-up of measures

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 Commission - in cooperation with Member States - to pro-actively ensure the proper enforcement of trade defence measures in the European Union.

2.2. 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, after an investigation, that they can effectively eliminate the injurious effects of dumping or subsidisation.

At the beginning of 2016, there were 122 undertakings in force. During 2016, the following changes to the portfolio of undertakings took place: The undertakings of 13 companies were withdrawn as it was established that breaches had occurred or that the monitoring of the undertakings became impracticable. The undertakings of 7 companies were withdrawn as these companies had notified the Commission that they wished to withdraw from the undertaking. No new undertaking was accepted by the Commission. This brought the total number of undertakings in force at the end of 2016 to 102.

3. REFUNDS

Articles 11(8) of the AD and 21(1) of the AS 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 2016, 42 new refund requests were submitted. At the end of 2016, 4 refund investigations were on-going, covering 80 requests. In 2016, no Commission Decision granting full or partial refund or rejecting refund requests was adopted.

4. TDI MODERNISATION

In April 2013, the Commission adopted a proposal and a communication in order to modernise the EU's trade defence instruments ('TDI'). The aim of the proposed Regulation was to increase transparency, efficiency and effectiveness of the EU's TDI in the face of proliferating unfair trade practices.

While the European Parliament adopted its position in April 2014, the Council was not able to achieve its position. However, in light of the steel crisis, the Council put the modernisation file on the agenda again, as of spring 2016. The Council subsequently adopted its position on 13 December 2016. The proposal is under the ordinary legislative procedure.

5. LEGISLATIVE PROPOSAL TO AMEND THE EU'S AD AND AS LEGISLATION

On 9 November 2016, the Commission adopted a proposal to change the EU's anti-dumping and anti-subsidy legislation. The main elements of the proposal are:

- (a) Introduction of a new anti-dumping methodology to capture market distortions linked to state intervention in third countries. These distortions can exist in a country as a whole or in a given sector. The purpose of the new methodology is to address any pervasive state influence over the economy and to address new economic realities. This new methodology is to be country neutral and applied equally to all WTO countries. This would mean that in the future, there would no longer be a distinction between WTO Members that are market economy countries and WTO Members that are not. However, if a third country maintains state-induced distortions in its economy, the new methodology could apply.
- (b) Strengthening the anti-subsidy instrument to increase the EU's ability to capture the full magnitude of subsidisation (by making it possible to address also subsidies which were identified only in the course of an investigation).

The proposal was accompanied by an Impact Assessment, a public consultation and a dedicated public event where all parties affected by trade defence investigations were invited to participate. There was active engagement from parties representing industry, trade, users and third countries. The proposal is under the ordinary legislative procedure.

6. COUNTRY-WIDE MARKET ECONOMY STATUS (MES)

The current practice is that a country can be considered a market economy for the purposes of anti-dumping investigations if it fulfils five criteria as set out in the Staff Working Document accompanying this report. Six countries have requested country-wide MES: China, Vietnam, Armenia, Kazakhstan, Mongolia and Belarus.

During 2016, dedicated discussions regarding the MES process for China, Vietnam, Armenia, Kazakhstan and Mongolia were put on hold while the Commission considered making changes to the EU's anti-dumping legislation which could have an impact on the legislative framework applicable to these countries.

In December 2016, Belarus signalled its intention to engage in the MES process. In this context, Belarus agreed to update the Commission on progress in relation to its ongoing WTO accession negotiations.

7. INFORMATION AND COMMUNICATION ACTIVITIES/ BILATERAL CONTACTS

7.1. Small and medium sized enterprises (SMEs)

During 2016, the SME Helpdesk continued to deal with requests for information relating to the trade defence instruments. The assistance offered to SMEs by the helpdesk covered specific case related queries as well as provisions on both procedural and substantial elements of anti-dumping and anti-subsidy proceedings. This helpdesk was set up in 2004 as a response to the difficulties which SMEs face, owing to their small size and resource constraints, when dealing with the complexities of trade defence investigations.

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

Explaining the legislation and practice of the EU's trade defence activity and exchanging views on third country practices continues to be an important part of the work of the TDI services.

In 2016, the Commission organized its yearly training seminar on trade defence for officials from third countries (participants from Egypt, Tunisia, Turkey, Vietnam, Thailand, Japan and the WTO secretariat). In addition, there were a number of other bilateral contacts dedicated to discussing various trade defence topics with a number of third countries including China, Japan, Australia, Brazil, Mexico, Turkey, USA, Russia, Indonesia, Thailand, Canada, India, Switzerland.

During 2016, the trade defence services participated in meetings with various key stakeholder organisations, continuing the regular meetings with Business Europe as well as other sector associations.

8. JUDICIAL REVIEW: DECISIONS RENDERED BY THE COURT OF JUSTICE (CJ) / GENERAL COURT (GC) (SEE ANNEX S)

In 2016, the General Court ('GC') and the Court of Justice ('CJ') rendered 38 judgments in the areas of anti-dumping or anti-subsidy. Out of them, 23 actions were brought before the GC¹. Seven of the judgments were of the CJ and concerned appeals against the General Court. In 2016, the CJ also rendered 8 preliminary rulings in the Trade Defence Instruments field.

There were 34 new cases lodged in 2016. Of these, 20 were lodged before the GC and 14 before the CJ.

A list of the AD/AS cases before the GC and the CJ still pending at the end of 2016 is presented in Annex S of the Staff Working Document.

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

9.1. 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.

On 6 October 2016, the Appellate Body circulated its report in the case against the EU on Anti-Dumping Measures on Biodiesel from Argentina. The Appellate Body confirmed the panel's findings that Article 2(5) of the basic anti-dumping EU regulation which is the provision used in the biodiesel case to adjust the costs of the Argentinian producers was WTO-consistent. It also confirmed all other findings of the panel and rejected all the appeals made by the European Union and Argentina.

In the case concerning Anti-Dumping Measures on Imports of Certain Fatty Alcohols from Indonesia (DS442), the panel issued its report on 16 December 2016. In that report the panel rejected Indonesia's claims that (i) the EU's treatment of commissions paid by exporters to related traders in dumping calculations and (ii) the analysis of "other known factors" also causing injury to EU industry analysis was inconsistent with WTO rules.

On 12 December 2016, the People's Republic of China requested consultations with the EU on the provisions of the EU Basic anti-dumping regulation which govern the establishment of normal value in relation to imports from China (DS516).

In the second complaint by Russia against the EU's Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia (DS494), further consultations were held in 2016 and a panel was established 16 December 2016.

In the dispute concerning Countervailing Measures on Imports of PET from Pakistan (DS486), the panel continued its work during 2016 holding meetings with the parties. The EU submitted its second written submission in the case.

9.2. Other WTO activities

In 2016 discussions on fisheries subsidies were reinvigorated with the adoption of Sustainable Development Goal 14 target 6 ('SDG 14.6'). The EU has a clear interest in strengthening disciplines on fisheries subsidies in the WTO. Therefore, in October 2016 the European Union tabled at the WTO a concrete textual proposal which aims

¹ The cases counted are direct actions seeking the annulment or partial annulment of a Commission Decision and interim measures. The 1 rectification request in 2016 is not counted as a separate request.

at implementing SDG 14.6, namely to prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing (IUU) and refrain from introducing new such subsidies. The proposal also contains provisions on enhanced transparency as well as disciplines on special and differential treatment for developing and least developed countries. The EU is actively involved in WTO negotiations with the aim of achieving a multilateral agreement on fisheries subsidies at the WTO Ministerial Conference 11 to be held in December 2017 in Buenos Aires.

In 2016, in line with its WTO obligations, the EU participated in the continuing review of the 2015 subsidy notification in the two special sessions of the Subsidies and Countervailing Committee which were held in April and October 2016. In addition the Commission services participated in the regular work of the WTO Anti-dumping, Subsidies and Countervailing and Safeguards Committees. In October 2016 the EU (along with Canada, Japan and the US) presented a paper in the WTO Subsidies and Countervailing Committee regarding the links between subsidies and the creation of excess capacity in various sectors of economic activity.

, At two meetings of the Implementation Group (a sub-group of the Anti-dumping Committee), in April and October 2016, members shared information on 'Gathering and compilation of injury data' and 'Treatment of confidential data in Anti-dumping investigations'. In this context, the EU presented information on the relevant rules and practice applicable for trade defence in the EU.

The Technical Group, a subgroup of the DDA Negotiating Group, was convened twice during the year. The group discussed a number of issues relating to the practical aspects of conducting anti-dumping investigations including product matching and adjustments and alternative methods for determining normal value.

10. CONCLUSION

2016 saw a slight increase in the number of new investigations opened, against the backdrop of a prolonged crisis caused largely by industrial overcapacities in China, notably in, but not limited to, the steel sector. Given that the level of activity in anti-dumping investigations is complaint-driven, the number of cases reflects the number of complaints received from industry which contained sufficient evidence from EU industry to support allegations of injurious dumping or subsidies. There was a slight decrease in the number of provisional and definitive measures imposed as well as the number of review investigations opened. At the same time, many of the investigations conducted, notably those in the steel sector, have been very complex and resource-intensive. As was the case with previous years, no safeguard action was taken by the EU.

Moreover, 2016 was marked by the preparation for, and adoption by the Commission of, a legislative proposal to change the EU's trade defence legislation in order to ensure that the EU would be equipped with sufficiently robust instruments to deal with the challenges faced by industry. In this context the Commission conducted an impact assessment as well as a public consultation and actively engaged with interested parties across the whole spectrum of economic interest in the EU and also from third countries.

At the same time, the Commission actively engaged with the Council in relation to the Trade Defence Instruments Modernisation proposal. These efforts culminated in

the Council reaching a position at the end of 2016 allowing for the ordinary legislative procedure to progress.