



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3.8.2005
COM(2005) 360 final

**23rd ANNUAL REPORT FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

**ON THE COMMUNITY'S ANTI-DUMPING, ANTI-SUBSIDY AND SAFEGUARD
ACTIVITIES (2004)**

{SEC(2005) 1038}

INTRODUCTION

This 2004 report is submitted to the European Parliament (EP) following its resolution of 16 December 1981 on the Community's anti-dumping activities, and the report of the EP's Committee on industry, external trade, research and energy.

For administrative reasons, this report is limited to 10 pages and concentrates mainly on activities during the year 2004. More detailed information can however be found in the working document (WD) attached to this report, which is available in English only. The WD also contains Annexes to which reference is made throughout the report. The report also follows the same general structure of the WD and all its headings can also be found in the WD so that easy reference for more comprehensive information is possible.

The present report and the full WD are also available to the public at http://europa.eu.int/comm/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 WD. The basic AD and AS texts will hereafter be referred to as the "basic Regulation(s) (BR)".

1.1. Changes to the Community legislation in 2004

Experience in 2003, during which two proposals of the Commission (COM) for the imposition of definitive AD measures did not find the necessary majority in the Council, has highlighted a number of shortcomings in the decision-making process in the area of trade defence instruments (TDI).

In order to address this problem, the Council adopted on 8 March 2004 a Regulation amending the above-mentioned BRs. Along with changes in the decision-making process, this change introduces greater transparency, efficiency and predictability in the use of the TDI. Indeed, under the new rules, measures are considered adopted unless a simple majority of Member States opposes. Furthermore, it introduces mandatory deadlines for the completion of review investigations and clearer rules on enforcement of trade defence measures.

By introducing mandatory deadlines for the completion of review investigations and by making the TDI in general more transparent, account has been taken of a number of requests voiced by the EP in its Resolution PE 316.244.

1.2. Anti-subsidy and unfair pricing instrument for airline services

The EP and the Council adopted in April 2004 a Regulation which deals with the effect of subsidisation and unfair pricing for air services from third countries. The Regulation, which entered into force on 20 May, foresees the adoption of redressive measures if subsidised or unfairly priced airline services cause material injury to Community carriers on certain routes to and from the Community.

The EP actively participated in the drafting of the Regulation and most of its amendments clarifying the text and its implementation on several aspects were taken on board.

2. ENLARGEMENT

As for the Union in general, also in the area of TDI, enlargement triggered numerous activities. These activities concentrated on accompanying the administrations concerned in order to allow their smooth integration into the working of the EU, and on ensuring that economic operators could fully take up their new role.

This was the more so important, because, as from 1 May 2004, all on-going investigations and measures taken by the acceding countries before their accession lapsed and the Community's measures were automatically applied to the EU-25.

Furthermore, in March 2004, at the initiative of the COM, partial interim reviews were launched in order to examine whether the extension of trade defence measures on EU10 users and consumers would result in economic hardship/shock. As a result of the investigation carried out by the TDI "Enlargement Task Force", special transitional measures were introduced in May 2004 for four products subject to AD measures. The transitional measures took the form of price and/or quantitative undertakings limited to the traditional export flows to the new Member States for a limited period.

Moreover, on the basis of the positive experience with the former enlargement action plan, the TDI services will start a similar plan aimed at working towards a further enlargement of the Community in 2007.

3. COUNTRY-WIDE MARKET ECONOMY STATUS (MES)

The work on the MES requests has continued in 2004 and is now encompassing ever more countries. During 2004 and early 2005, further requests were received from Kazakhstan, Vietnam, Mongolia and Armenia. Additional information was requested in order to be able to assess these requests.

Conceptually, the country-wide criteria for determining whether a country can be considered a full market economy for the purpose of AD investigations are inspired from those applicable to individual companies located in economies in transition to a market economy, which are set out in Article 2(7) of the BR.

Significant work has been done in this respect during 2004. In particular, the request received in 2002 from Ukraine was assessed and the COM sent its definitive findings to the Ukrainian authorities in May. The conclusion reached was not to grant MES at that stage as certain criteria were not met.

The People's Republic of PRC's (PRC) request was received in September 2003. An extensive analysis was carried out by the COM, leading to a preliminary and substantive assessment delivered to the Chinese authorities in June 2004. In this assessment, certain shortcomings were identified in four areas, namely state influence, corporate governance, property and bankruptcy law and the financial sector. The issue of MES will be discussed further with China in more detail in the months to come.

4. INFORMATION AND COMMUNICATION ACTIVITIES / BILATERAL CONTACTS

In the framework of assisting small and medium sized enterprises, a Trade Defence Helpdesk for SMEs was set up. Furthermore, COM organised or participated in 11 information seminars for economic operators or third country administrations. Finally, a number of ad hoc meetings on TDI matters were organised with specific third country TDI services.

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

5.1. General

At the end of 2004, the Community had 137 AD measures (see Annex O) and 19 AS measures (see Annex P) in force.

In 2004, only 0,3% of total imports into the Community was affected by AD or AS measures.

Please note that details on the issues hereafter are given in the WD attached to this report. The references to the Annexes of the WD can be found beside the titles.

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

Table 1 in the WD provides statistical information on the new investigations for the years 2000 – 2004 carried out under the provisions of Articles 5 and 10 of the BRs.

In 2004, 29 investigations were initiated. Provisional duties were imposed in 6 proceedings, one of which concerned an AS proceeding.

Eleven cases were concluded with the imposition of definitive duties. In one of the cases (bed linen from Pakistan), the COM received an anonymous letter containing life threats addressed personally to the officials carrying out the verifications. The verification visits had therefore to be interrupted and a determination had to be made on the basis of the facts available. In this respect, resort was made to all verified information submitted by all interested parties.

Two proceedings were concluded without measures. They concern PET from Pakistan and stainless steel cold-rolled flat products from USA.

Another 14 measures were allowed to expire automatically following their 5-year duration. Furthermore, 16 measures which were in force against imports originating

in one or more of the 10 acceding countries lapsed automatically on the day of the enlargement.

5.3. Review investigations

Review investigations continue to represent a major part of the work of the TDI services. They represented more than 60% of all investigations initiated. Table 2 in the WD provides statistical information for the years 2000-2004.

5.3.1. Expiry reviews (see Annex F)

Articles 11(2) and 18 of the BRs provide for the expiry of measures after five years, unless an expiry review demonstrates that they should be maintained in their original form.

During 2004, 6 expiry review investigations were initiated and 7 were concluded with confirmation of duty. It should be noted that investigations initiated after 20 March 2004 are now under deadline, i.e. conclusions should be reached within 12 months but not later than 15 months from the date of initiation. Four reviews were terminated and the measures repealed.

5.3.2. Interim reviews (see Annex G)

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

During 2004, a total of 26 interim reviews were initiated, 10 of which were the so-called “enlargement reviews” (see point 3). Sixteen interim reviews were concluded with confirmation or amendment of duty and 2 investigations were terminated.

5.3.3. “Other” interim reviews (see Annex H)

A series of other reviews, not falling under Articles 11(3) or 19 of the BRs or for which no notice of initiation was published in the OJ, were concluded during 2004.

They more specifically concern, *inter alia*, the re-imposition of the duty following a judgment of the Court of First Instance, amendment of the duty rate following reports adopted by the WTO Dispute Settlement Body, acceptance, voluntary withdrawal or breach of undertakings, new exporters requests, etc.

5.3.4. New exporter reviews (see Annex I)

Articles 11(4) and 20 of the BRs respectively provide for a “newcomer” and “accelerated” review in order to establish an individual dumping margin or an individual countervailing duty.

In 2004, 2 new exporter review (no accelerated reviews) were initiated. Five investigations, of which 3 accelerated reviews, were concluded. Two investigations were terminated thereby maintaining the original level of duty.

5.3.5. *Absorption investigations (see Annex J)*

The possibility of "absorption" reviews, which deal with situations where the exporters directly or indirectly bear the cost of the duty and thereby increase the dumping margin without leading to sufficient movement in resale prices, is included in Articles 12 and 19(3) of BRs.

In 2004, one anti-absorption investigation concerning imports of sulphanilic acid originating in the PRC was concluded with an increase of the duty. The investigation concerning imports of lamps originating in the PRC was terminated without an increase of the duty.

5.3.6. *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 was introduced by Articles 13 and 23 of the BRs.

In 2004, 8 investigations were initiated and 8 were concluded with extension of the duty. A further 3 investigations were concluded without the extension of duty.

5.4. Safeguard investigations (see Annex L)

In 2004, there were only two SFG measures in place - one on satsumas (canned mandarins) and one on salmon (provisional measures).

The steel SFG cases which were previously in force to avoid that the EU market was flooded with steel products after the US protected their steel industry were terminated literally the day after the US terminated their measures.

6. ENFORCEMENT OF AD/AS MEASURES

6.1. Enforcement-related changes to the Community AD and AS legislation in 2004

As mentioned in point 1.1, the BRs were amended to provide a sounder legal basis for enforcement-related activities. Details on these provisions can be found in the WD attached to this report.

6.2. 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.

6.3. Monitoring of undertakings (see Annexes M and Q)

Monitoring of undertakings forms part of the enforcement activities, since undertakings are a form of AD or AS measures. They are accepted by the COM if it is satisfied that they can effectively eliminate the injurious effects of dumping or subsidisation.

In 2004, special regard has been given to the “Enlargement Undertakings” since not only the companies offering undertakings, but also their traditional customers in the EU have been subject to rigorous on-spot verifications, which ensured compliance.

At the beginning of 2004, there were undertakings in force accepted from 76 companies. During 2004 the following changes to the portfolio of undertakings took place: definitive AD duties were imposed on 7 companies following withdrawal of acceptance of their undertakings; undertakings of 30 companies came to an end for reasons other than withdrawal; undertakings of 7 companies were suspended pending the outcome of an ongoing review. In addition, 15 offers for undertakings have been accepted. This brings the total number of undertakings in force at the end of 2004 to 47.

7. REFUNDS (SEE ANNEX T)

Pursuant to articles 11(8) and 21(1) of the BRs, 10 new refund requests were lodged during the year. Three decisions were adopted rejecting refund requests whilst 6 other requests were withdrawn. One importer obtained a refund of all duties paid, whilst two others obtained partial refunds.

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

In 2004, one judgment relating to AD or AS was rendered by the CFI. It concerned the case on electronic weighing scales originating in the PRC. The judgment was particularly noteworthy as it confirmed, *inter alia*, that the burden of proof lies with an exporting producer wishing to avail itself of market economy status, and, in order for a regulation to be annulled, any error committed by the institutions in its injury assessment must also have had an impact on the determination of whether there is injury and thus on the content of the regulation itself. A summary of the judgment is given in the WD.

Nine new cases were lodged in 2004, all before the CFI.

A list of the AD/AS cases before the CFI and the CoJ still pending at the end of 2004 is given in Annex S of the WD.

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.

One dispute settlement procedure was concluded during 2004 and largely confirmed the Community's approach. It concerned the case on malleable fittings from Brazil.

Furthermore, a panel was established on 23 January 2004 following a request by Korea in the DRAMs case.

Details are given in the WD attached to this report.

9.2. Other WTO activities

The year 2004 saw a noticeable change in the way the Doha Development Agenda negotiations on the WTO Anti-dumping and Subsidies Agreements proceeded. The COM has continued to play an active role in the Negotiating Group on Rules.

Concerning AD, the situation can be described as follows : a large number of proposals have been tabled in the so-called "issue-identification" phase before the 5th Ministerial Conference in Cancun, many of them aiming at a wholesale re-negotiation of the agreements. Following the resumption of the Rules Group negotiations in March 2004, discussions have now shifted to a more substantive and technical stage which in turn will prepare the "solution-seeking" phase to follow thereafter.

With regard to subsidies, also in 2004, the discussions continued to focus on the issue of subsidies to fisheries. While most of 2004 was taken up by discussions amongst WTO Members about the way negotiations should proceed in the future, a consensus started to emerge around the "middle ground" proposals tabled by the Community.

In parallel to these activities, the regular work of the Anti-dumping, Subsidies and Countervailing Committees was on-going.

10. CONCLUSION

The year 2004 can be described as an average year in terms of workload as measured by the number of initiations of proceedings and imposition of measures. It has been "eventful" in a number of other aspects, such as the enlargement of the EU, the safeguards on citrus fruits and salmon and the adoption of the COM proposal on changing the decision-making process and the introduction of deadlines in reviews.

As in previous years also this year's report shows that the EC is a cautious user of TDI. When applied, TDI are subject to the highest level of discipline and restraint while providing effective guarantees against unfair trade practices. Transparency in the use of TDI is regarded as essential, and this high standard has been further increased through changes to the legislative framework in 2004. The COM is determined to continue to pursue this line of policy in the future.