



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.12.2004
COM(2004) 828 final

**22nd ANNUAL REPORT FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

**ON THE COMMUNITY'S ANTI-DUMPING, ANTI-SUBSIDY AND SAFEGUARD
ACTIVITIES (2003)**

{SEC(2004)1707}

INTRODUCTION

This 2003 report is submitted to the European Parliament following its resolution of 16 December 1981 on the Community's anti-dumping activities¹, and the report of the European Parliament's Committee on industry, external trade, research and energy².

For administrative reasons, this report is limited to 10 pages and concentrates mainly on activities during the year 2003. 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 the Annexes to which reference is made throughout the report.

Furthermore, this edition no longer includes an overview of the activities in relation to measures adopted by third countries against imports from the Community or its Member States. These activities will now be dealt with in a separate report, which is submitted at the same time as the current report.

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

1.1. Changes to the Community anti-dumping (AD) and anti-subsidy (AS) legislation in 2003

The current basic texts (Council Regulations (EC) No 384/96³ and (EC) No 2026/97⁴) will overall be referred to as the "basic Regulation(s)".

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, 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 COM adopted and submitted to the Council on 26 June 2003⁵ a proposal for a Regulation amending the basic Regulations. This proposal covered the decision-making process only.

Subsequent discussions in the Council led the COM to adopt and submit to the Council on 15 December 2003⁶ a modified proposal, which was adopted on 8 March 2004⁷. Along with changes on the decision-making process, the Regulation introduces greater transparency, efficiency and predictability in the use of the TDI.

¹ OJ C 11, 18.1.1982, p. 37.

² PE 141.178/fin of 30.11.1990, reporter Mr Gijs DE VRIES.

³ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Council Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

⁴ OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Council Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

⁵ COM(2003) 380 final.

⁶ COM(2003) 799 final.

⁷ Council Regulation (EC) No 461/2004 of 8 March 2004 (OJ L 77, 13.3.2004, p. 12).

Indeed, under the new rules, measures will be considered adopted unless a simple majority 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 European Parliament⁸.

1.2. Changes to the Community safeguards (SFG) legislation in 2003

The basic SFG regulations (Council Regulations (EC) No 3285/94⁹, (EC) No 519/94¹⁰ and (EC) No 517/94¹¹) will overall be referred to as the "basic SFG Regulation(s)".

The proposal which was submitted in 2002 by the COM for a Council Regulation on a "Transitional Product-Specific Safeguard Mechanism" ('TPSSM') for imports originating in China, was adopted on 3 March 2003¹². The regulation is a transposition into Community law of provisions contained in the Accession Protocol of the People's Republic of China to the WTO.

In November 2003, the second pillar of the TPSSM Regulation – which foresees the gradual phasing-out of certain non-textile quotas - was amended, thereby increasing the quotas in view of the enlargement on 1 May 2004¹³.

1.3. Council Regulation on measures that the Community may take in relation to the combined effect of AD or AS measures with SFG measures

Following a proposal by the COM, the Council adopted and published in March 2003¹⁴ the so-called "double protection" Regulation. The Regulation specifies that where the COM considers that a combination of AD or AS measures with SFG tariff measures on imports of the same product could lead to effects greater than is desirable in terms of the Community's trade defence policy, it may propose to the Council to amend, suspend or repeal existing AD/AS measures, to exempt imports in whole or part from AD or countervailing duties or to adopt any other special measures considered appropriate in the circumstances.

In applying for the first time this "double protection" Regulation, the Council, following a proposal by the COM, adopted on 6 May 2003 an amendment to the Regulations imposing definitive measures on hot-rolled coils and tube and pipe fittings¹⁵.

⁸ Resolution PE 316.244 of 3 October 2002.

⁹ OJ L 349, 31.12.1994, p. 53. Regulation as last amended by Regulation (EC) No 2474/2000 (OJ L 286, 11.11.2000, p. 1).

¹⁰ OJ L 67, 10.3.1994, p. 89. Regulation as last amended by Regulation (EC) No 427/2003 (OJ L 65, 8.3.2003, p. 1).

¹¹ OJ L 67, 10.3.1994, p. 1. Regulation as last amended by Regulation (EC) No 2309/2003 (OJ L 342, 30.12.2003, p. 21).

¹² OJ L 65, 8.3.2003, p. 1.

¹³ OJ L 295, 13.11.2003, p. 43.

¹⁴ OJ L 69, 13.3.2003, p. 8.

¹⁵ OJ L 114, 8.5.2003, p. 1.

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

In March 2002, the COM adopted its proposal for a trade defence instrument concerning the supply of airline service from non-EC Countries¹⁶. The first reading of the Parliament took place in January 2003, following which an amended proposal was adopted by the COM in May 2003 taking into account modifications suggested by the Parliament.

The Common Position was adopted by the Council in December 2003. The second reading at the Parliament took place in March 2004 and was followed shortly by the approval of the Council. The Regulation entered into force in May 2004¹⁷.

1.5. Notice on the consequences of the Severe Acute Respiratory Syndrome ('SARS')

In view of the significant threat of SARS transmission and the subsequent impossibility of verifications on spot in the framework of AD/AS investigations, the COM decided to publish a notice in the Official Journal (OJ)¹⁸. The notice outlined on how the COM would proceed in the above-mentioned cases and gave interested parties the opportunity to comment on the proposed approach. Indeed, it was decided to stay within the mandatory deadlines of the investigations and to base the findings on the verified or other proven facts on the record of the investigation.

2. BASIC CONCEPTS

As to the basic concepts on AD, AS and SFG investigations, reference is made to heading 2 of the WD attached to this report.

3. ENLARGEMENT

As far as enlargement is concerned, the TDI services continued their efforts to ensure a smooth transition. These consisted, *inter alia*, in identifying the specific challenges posed by enlargement in the field of TDI, in implementing an "action plan" to assist the acceding countries, in organising a series of seminars for the administrations and economic operators and in creating a website (See following links for consultation http://europa.eu.int/comm/trade/issues/respectrules/tdi_enlarg/index_en.htm and http://europa.eu.int/comm/trade/issues/respectrules/tdi_enlarg/contacts.htm).

Furthermore, a TDI "Enlargement Task Force" was set up, in order to examine whether the extension of trade defence measures to the enlarged Community would cause, in individual cases, an "economic hardship" to their industries. To this end, all interested parties were urged to identify such cases and meetings were held with them, which resulted in about 50 submissions of this kind.

Most importantly, it should be noted that, from the day of enlargement, any trade defence measures taken by the acceding countries lapsed and the Community's measures were automatically extended to cover the EU-25.

¹⁶ COM(2002) 110 final of 12.3.2002.

¹⁷ OJ L 162, 30.4.2004, p. 1.

¹⁸ OJ C 191, 13.8.2003, p. 2.

4. OVERVIEW OF AD AND AS INVESTIGATIONS AND MEASURES

4.1. General

At the end of 2003, the Community had 156 AD measures¹⁹ (see Annex O) and 17 countervailing measures (see Annex P) in force. Of the measures, the large majority was in the form of duties; however, in a number of cases, undertakings were accepted.

It should be noted that in 2003, only 0,3%²⁰ of total imports into the Community was affected by AD or AS measures.

4.2. New investigations

Table 1 in the WD provides statistical information on the new investigations for the years 1999 – 2003. One notices a decrease in the number of investigations initiated and in the number of provisional and definitive measures imposed during 2003 in comparison to the previous years. A number of factors are behind this sharp fall. First, the stabilisation of the steel market following the imposition in 2002 of the safeguard measures. Second, no further investigations were initiated on imports from the 10 countries acceding to the EU. And third, the submission of complaints by the Community industry and the consequent initiation of investigations have always shown to be of a cyclic character.

During 2003, 8 new investigations were initiated pursuant to Articles 5 and 10 of the basic Regulations. In 10 cases, provisional measures were imposed.

5 cases were concluded with the imposition of definitive measures, 2 of which merit to be highlighted here. DRAMs from Korea is an example of a case where a company (Hynix) was allowed, despite their dire financial situation – to continue their operations via government subsidies. The measures were challenged by Hynix before the Court of First Instance²¹ and by the Government of Korea under the WTO Dispute Settlement Understanding²².

The case paracresol from China is an example of a case where users participated very actively in the investigation. One user claimed that paracresol was in short supply after the imposition of provisional measures. In fact, the supply problem had subsided before the imposition of definitive measures. One of the Chinese exporters challenged the measures before the Court of First Instance²³.

21 proceedings were terminated without the imposition of measures. 8 of these concern cases which did not obtain the required majority in the Council (hot-rolled coils and carbon blacks). The Eurocoton Judgment (see point 7) will in future play an important role should a similar situation arise.

¹⁹ The measures are counted per product and country concerned.

²⁰ Source Comext.

²¹ T-383/03, Hynix Semiconductor Inc. v. Council, OJ C 21, 24.1.2004, p. 43.

²² WT/DS299/1/Rev.1/Add.1 of 2 September 2003.

²³ T-413/03, Shandong Reipu Biochemicals Co. Ltd. v. Council, OJ C 59, 6.3.2004, p. 24.

Another 21 measures were allowed to expire automatically following their 5-year duration.

Details on the above-mentioned investigations and a description of certain cases are given in the WD attached to this report. The references to the OJs can be found in Annexes A through E and Annex N.

4.3. Review investigations

Review investigations continue to represent a major part of the work of the TDI services. These review investigations represented almost 51% of all investigations initiated. Table 2 in the WD provides statistical information for the years 1999 - 2003.

4.3.1. Expiry reviews

Articles 11(2) and 18 of the basic Regulations provide for the expiry of measures after 5 years, unless an expiry review demonstrates that they should be maintained in their original form.

In 2003, 5 expiry reviews were initiated and 4 were concluded with confirmation of duty. 5 reviews were terminated.

Details are given in the WD attached to this report. The references to the OJs can be found in Annex F.

4.3.2. Interim reviews

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 2003, a total of 9 interim reviews were initiated. Eleven interim reviews were concluded with confirmation or amendment of duty and 18 investigations were terminated. All these investigations covered a wide range of products. Of the 29 investigations concluded, 12 concerned imports from China.

Details are given in the WD attached to this report. The references to the OJs can be found in Annex G.

4.3.3. "Other" interim reviews

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 OJ, were concluded during 2003.

They more specifically concern, *inter alia*, name changes of companies benefiting from individual AD duties, new exporters requests, acceptance, voluntary withdrawal or breach of undertakings, etc.

More information can be obtained from the OJ to which reference is given in Annex H of the WD.

4.3.4. *New exporter reviews*

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.

In 2003, 3 new exporter review and 4 accelerated reviews were initiated. No investigations were concluded during 2003.

More information can be obtained from the OJ to which reference is given in Annex I of the WD.

4.3.5. *Absorption investigations*

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 the basic Regulations.

In 2003, one anti-absorption investigation was initiated. No investigations were concluded during 2003.

More information can be obtained from the OJ to which reference is given in Annex J of the WD.

4.3.6. *Circumvention investigations*

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 basic Regulations.

In 2003, 4 investigations were initiated and 2 were concluded with extension of the duty. More information can be obtained from the OJ to which reference is given in Annex K of the WD.

4.4. **Safeguard investigations**

In January 2003, the COM terminated the since 2002 on-going review on 3 steel products. Furthermore, in December 2003, the COM repealed its SFG measures on steel products.

In July 2003, 2 SFG investigations were initiated relating to citrus fruits (satsumas): one pursuant to the WTO general *erga omnes* rules for which provisional measures were imposed in November 2003; the other one pursuant to the TPSSM Regulation, which was terminated in December 2003.

5. **MONITORING OF UNDERTAKINGS**

Undertakings are a form of AD or countervailing measure. They are accepted by the COM if it is satisfied that they can effectively eliminate the injurious effects of dumping or subsidisation.

At the beginning of 2003, there were undertakings in force accepted from 195 companies. During 2003, the following changes to the portfolio took place: definitive AD and/or countervailing duties were imposed on 4 companies following withdrawal of acceptance of their undertakings, undertakings of 119 companies came to an end for reasons other than withdrawal (included here are the 117 undertakings in the salmon case which expired with the measures) and 4 offers for undertakings were accepted. This brings the total number of undertakings in force at the end of 2003 to 76.

Details concerning the above can be found in Annex M of the WD and an overview of all undertakings in force can be found in Annex Q.

6. REFUNDS

Article 11(8) of the basic AD Regulation allows importers to request the reimbursement of AD duties collected where it is shown that the dumping margin, on the basis of which duties were paid, has been eliminated, or reduced to a level below the duty in force.

During 2003, 6 new refund requests were lodged, 2 decisions were adopted rejecting refund requests whilst 5 other requests were withdrawn.

Further details on refunds can be found in Annex T of the WD.

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

In 2003, 2 judgments relating to TDI were rendered by the CFI (ferro-silicon and lamps) and 3 by the CoJ (seamless pipes and tubes, salmon and cotton fabrics). The latter, the so-called Eurocoton case²⁴, can be regarded as a landmark judgment as it confirmed that the Council has to provide reasons in the light of the basic Regulation if a COM proposal does not obtain the necessary majority in the Council as a consequence of which no measures will be imposed. Summaries of these judgments are given in the WD attached to this report.

A list of the cases still pending at the end of 2003 is given in Annex S of the WD.

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

8.1. Dispute settlement in the field of AD, AS and SFG

The WTO provides for a rigorous procedure for the settlement of disputes between WTO Members concerning the application of the WTO agreements.

The two dispute settlement procedures initiated against the Community, which were summarized in the 2002 report, were concluded during 2003.

²⁴ Case C-76/01P, Eurocoton v. Council, Judgment of 30 September 2003 (not yet published).

As concerns the cotton-type bed linen procedure initiated by India, there was no specific follow-up of the Appellate Body report since, on 17 December 2003, a partial interim review was terminated without the imposition of measures²⁵ for reasons unconnected with the result of the WTO dispute settlement case.

As concerns the malleable tube or pipe fittings procedure initiated by Brazil, the panel and Appellate Body reports were issued on 7 March 2003 and 22 July 2003 respectively. They rejected the vast majority of the more than 40 original claims made by Brazil. The claims accepted by the panel and Appellate Body led to a reduction of the duty from 34,8 to 32%. The implementation was concluded with Council Regulation 436/2004²⁶.

8.2. Other WTO activities

The year 2003 saw the continuation of the first phase of the negotiations on the WTO Anti-dumping and Subsidies Agreements, as agreed at the 4th Ministerial Conference in Doha. The COM has continued to play an active role by submitting negotiating proposals both on anti-dumping and subsidies²⁷.

In parallel to these activities, the regular work of the Committees was on-going.

9. CONCLUSION

Although the year 2003 distinguishes itself in comparison with the previous years by a decrease in the number of investigations initiated and measures imposed, it has been “eventful” in a number of other aspects, such as the safeguards on steel and citrus fruits, the proposal on changing of 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.

²⁵ OJ L 333, 20.12.2003, p. 3.

²⁶ OJ L 72, 11.3.2004, p. 15.

²⁷ EC submissions on anti-dumping: WTO document TN/RL/W/67 of 7 March 2003 and TN/RL/W/138 of 17 July 2003; EC submission on fisheries subsidies: WTO document TN/RL/W/82 of 23 April 2003.