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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT

**29th Annual Report from the Commission to the European Parliament on the EU's
Anti-Dumping, Anti-Subsidy and Safeguard activities (2010)**

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INTRODUCTION

This 2010 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 2010 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 MODERNISATION

The EU considers that a periodic review of the EU's trade defence instruments can help to ensure their effectiveness in response to unfair trading practises. In this context the Trade Commissioner stated at the 2009 hearing at the European Parliament that the Commission is open to a debate on this issue, but highlighted the need to obtain consensus among stakeholders.

In the meantime in September 2010, as part of the normal cycle of DG Trade's evaluation planning, the Commission published an invitation to tender for an evaluation of the European Union's trade defence instruments. Such an evaluation would help the Commission design or improve its policy interventions, and to monitor their effectiveness. It would also help citizens to exercise their right to scrutinize, criticise and influence the policies and activities conducted by the Commission on their behalf. Following the evaluation of the offers submitted, a contract was signed at the end of December 2010. The work was ongoing in 2011 with results expected early 2012.

The Commission already implemented in 2010 measures (such as revamp of TDI website; specific assistance for SMEs; improved disclosure etc.) that improve transparency in trade defence investigations.

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.

2010 saw the continued evaluation of five of the six requests for country-wide MES from China, Vietnam, Armenia, Kazakhstan, Mongolia and Belarus. All countries, except Belarus, continued to provide additional information in support of their claims throughout the year and their requests are at various stages of progress. The Consultations with the authorities of the Republic of Belarus were put on hold due to the political situation in the country. The other five applicant countries are at different stages of progress in terms of meeting the five criteria for MES.

Work continued on the MES request from China including the 10th thematic MES Working Group meeting in Beijing in September 2010. At the working group meeting both parties discussed, inter alia, the ongoing joint study on the accounting practices in the People's Republic of China, especially the issue of access by the consultants to the Chinese companies. Further work took place on the China MES file in 2011.

The first assessment report on Armenia's MES request was transmitted to the Armenian authorities early in 2010, informing them that they had fulfilled two of the five criteria for MES. This was followed by a request for information in June 2010 on further developments in their progress towards MES. However, by the end of 2010 no new information had been sent to the Commission by Armenia.

Vietnam's second preliminary assessment report was completed in February 2010, which concluded that Vietnam fulfils one of the five criteria which relates to the degree of government interference in the economy. Specific MES meetings took place in September 2010 with Vietnam. Further analysis took place on the file during 2011.

Regarding Kazakhstan at the end of 2010, DG Trade's services concluded that although there have been positive developments their progress had been hampered by their response to the impact of the global financial crisis on their economy. It is intended that a road map will be jointly developed with Kazakhstan setting out the next steps to be taken on MES.

At the EU-Mongolia Trade Committee in October 2010 the Commission provided information on progress of the MES assessment and requested further information in December 2010.

5. TRADE DEFENCE INSTRUMENTS – RAW MATERIAL STRATEGY

In the Annual Report for 2009 the role of TDI in addressing certain consequences of distortions in the supply of raw materials was highlighted for the first time. In particular, attention was drawn to the fact that for the first time MET had been refused to five Chinese companies manufacturing fasteners on the grounds that the costs of the major input, steel wire rod, did not substantially reflect market values, as required by Article 2(7)(c) of the Basic Regulation.

During 2010 the Commission continued this practice in evaluating any market economy treatment claims by examining, inter alia, any policies which result in distorted prices of raw materials. An example of one such case in 2010 where the issue arose is aluminium road wheels from China.

6. INFORMATION AND COMMUNICATION ACTIVITIES/ BILATERAL CONTACTS

6.1. Small and medium sized enterprises (SMEs)

At the end of 2009 the Commission, in recognising the important role that SMEs have in the EU's economy and the difficulties they face in participating in trade defence investigations, launched a study to identify the needs of SMEs in the EU when participating in trade defence investigations. At the end of 2010, the Commission received from a contractor the results of the study identifying the needs of SMEs in the 27 EU Member States when submitting a complaint or participating in trade defence investigations as an importer, as a user or as exporters in investigations initiated by third countries. The outcome of the study also laid down specific proposals on how the Commission and the Member States could better assist SMEs in all areas of such investigations.

The Review identifies a set of concrete measures to support SMEs growth and competitiveness and proposes in particular, actions to increase information and assistance to SMEs with regard to the use of the EU Trade Defence Instruments. Such actions were discussed with National authorities involved in Trade Defence and DG TRADE's Trade Defence services with the intention of adopting in 2011 a declaration outlining a number of concrete actions to address the difficulties encountered by SMEs involved in Trade Defence Instruments.

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. This TDI website was further updated, making it more accessible and user-friendly, especially for SMEs.

In 2010 these contact points received many requests for information, which were all immediately addressed. These requests concerned both the procedures and content of TDI proceedings.

6.2. 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.

A seminar on trade defence for officials from third countries took place in 2010. 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, Vietnam, India, Belarus and Australia held in 2010.

There were also several meetings with key stakeholder associations and companies in 2010, including a number of events with Business Europe (namely a seminar with all the most relevant members of the association and several bilateral meetings with Business Europe's Committee on Trade Policy), as well as a seminar and regular meetings with the most relevant associations of importers and distributors, such as Eurocommerce and FTA.

7. HEARING OFFICER

2010 was the third year of activity for the Hearing Officer for DG Trade, who became operational in April 2007. The Hearing Officer acts independently. He is attached for administrative purposes to the Director General of DG Trade to whom he reports.

The Hearing Officer's principal role is to safeguard the effective exercise of the procedural rights of interested parties and to ensure that the trade proceedings before the European Commission are handled impartially, fairly and within a reasonable time. The Hearing Officer also advises the Director General of DG Trade on issues related to due process and on any issue arising out of a trade proceeding, where appropriate.

An update of the Guidelines on cooperation between the Hearing Officer and the Commission trade investigation services was adopted. They set out a number of operating principles and introduce time windows for the organisation of hearings. There are rules on interventions with regard to confidentiality issues and access to files and a number of mechanisms for communication and follow-up on the interventions of the hearing officer. The updated guidelines were used as a basis for a draft Terms of Reference of the Hearing Officer. In the course of 2010 and 2011 this decision was subject of internal consultations with its adoption foreseen for early 2012.

In 2010 the Hearing Officer had 55 interventions in 29 trade defence cases and held 24 hearings which represent a significant increase in comparison with 2009. The Hearing Officer was contacted by interested parties, Commission investigation services, and stakeholders. He intervened on issues covering all stages of the investigation.

The main issues that the Hearing Officer faced in 2010 can be grouped in six categories: (i) MET determinations; (ii) non-confidential files and confidentiality; (iii) content and timing of disclosures; (iv) definition of a Union producer, an importer, or a user; (v) criteria for the selection of an analogue country; and (vi) use of experts.

A number of good practices have been adopted at the recommendation of the Hearing Officer and after the conclusions of working groups created by the Commission services. For example, the services have started including in the file for consultation by interested parties notes to the file on pre-decisions such as sampling. The timing of sending disclosure documents to interested parties also has improved. The Hearing Officer has not received many complaints with the exception of the Market Economy Treatment (MET) disclosure documents. In one case, the services contracted an expert who helped to analyse possible circumvention. The hearing officer expects that more experts will be used in future cases.

Taking into account the increased number of interventions and the variety of issues dealt with, it could be claimed that the function of the Hearing Officer is now well established.

8. OVERVIEW OF ANTI-DUMPING, ANTI-SUBSIDY AND SAFEGUARD INVESTIGATIONS AND MEASURES

8.1. General

At the end of 2010, the EU had 124 AD measures (see Annex O) and 11 AS measures (see Annex P) in force.

In 2010, 0.43% 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.

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

In 2010, 18 investigations were initiated¹. Provisional duties were imposed in 13 proceedings. 9 cases were concluded with the imposition of definitive duties. 10 investigations were concluded without measures. 14 measures expired automatically following their 5-year duration.

8.3. Review investigations

Review investigations continue to represent a major part of the work of the TDI services. In the period 2006-2010 they accounted for 61% of all investigations initiated. Table 2 in the Working Document provides statistical information for the years 2006-2010.

8.3.1. 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 2010, 14 expiry review investigations were initiated. 10 expiry reviews were concluded with a confirmation of the duty for a further period of 5 years. 1 expiry review was concluded by the termination of measures.

8.3.2. 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 2010, a total of 12 interim reviews were initiated. 9 interim reviews were concluded with confirmation or amendment of duty. No interim reviews were concluded with the termination of measures.

¹ Table 1 in the Working Document provides statistical information on the new investigations for the years 2006 – 2010 carried out under the provisions of Articles 5 and 10 of the basic Regulations.

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

There were no 'other' reviews, i.e. not falling under Articles 11(3) or 19 of the basic Regulations, initiated or concluded during 2010.

8.3.4. *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 2010, 3 new exporter reviews were initiated.

8.3.5. *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 2010, there were no anti-absorption reviews initiated or concluded.

8.3.6. *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 2010, 2 such investigations were initiated. 1 anti-circumvention investigation was concluded with extension of the duty and 1 was concluded without extension of the measures.

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

During 2010, 1 safeguard investigation was initiated.

9. **ENFORCEMENT OF AD/AS MEASURES**

9.1. **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.

9.2. 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 2010, there were 42 undertakings in force. During 2010, the following changes to the portfolio of undertakings took place: undertakings of 1 company came to an end due to the expiry of measures, undertakings of three companies were accepted and 22 undertakings were withdrawn by the Commission due to breaches found. This brings the total number of undertakings in force at the end of 2010 to 22.

10. 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 2010, 29 new refund requests were submitted. At the end of 2010, 15 investigations were ongoing, covering 27 requests. In 2010, 28 Commission Decisions were adopted: 23 granting partial refund and 5 rejecting the refund request. 12 requests were withdrawn.

11. JUDICIAL REVIEW: DECISIONS GIVEN BY THE COURT OF JUSTICE (COJ) / GENERAL COURT (GC)

In 2010, the Court of Justice (COJ) and the General Court (GC) rendered 13 judgments in total relating to the areas of anti-dumping or anti-subsidy. A summary of some of the judgments is given in the Working Document.

There were 13 new cases lodged in 2010, 8 before the GC and 5 before the COJ.

A list of the AD/AS cases before the GC and the COJ still pending at the end of 2010 is given in Annex S of the Working Document.

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

12.1. 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 February 2010, China requested consultations with the European Union concerning anti-dumping measures on certain leather footwear from China which had been imposed in 2006. Consultations were held in March 2010. Subsequently, in April 2010, China requested the establishment of a panel. The panel was established in May 2010 and its members were elected in July 2010. The panel report was issued in October 2011.

In December 2010, a report was circulated setting out the findings of a WTO panel in a dispute settlement case taken by China against the EU on anti-dumping measures on imports of certain iron or steel fasteners originating in China. The panel found that in the majority of the issues examined, the EU had acted in full compliance with WTO rules. There were, however, a number of issues where the Panel found that certain aspects of the EU's basic legislation and practice were inconsistent with certain elements of the WTO Anti-dumping Agreement. The case was subject to appeal and the WTO Appellate Body issued a report on the case in July 2011. On 18 August 2011, the European Union informed the Dispute Settlement Body (DSB) that it intends to implement the recommendations and rulings of the DSB in a manner that respects its WTO obligation within a reasonable period of time.

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

12.2. Other WTO activities

In 2010, H.E. Mr. Dennis Francis (Trinidad and Tobago) was appointed Chair of the DDA Negotiating Group on rules. Under his Chairmanship, the Group met regularly, including in Plurilateral format, to discuss the bracketed and unbracketed issues of the Chair's text of December 2008. Furthermore, several new textual proposals covering various aspects of the Subsidies and Countervailing Measures Agreement were submitted, including by India and China. However, no progress could be achieved in the anti-dumping and horizontal subsidies areas.

In fisheries, the group conducted intensive discussions on all aspects of possible disciplines. While this allowed the views of Members to be clarified on key issues, it did not help positions to converge but rather confirmed the deep division among Members (developing and developed countries alike) as well as the complexity and sensitivity of the situation of developing countries.

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.

CONCLUSION

2010 showed a slight decrease in both the number of new cases initiated over the previous year as well as the number of definitive measures imposed. The number of investigations terminated without the imposition of measures also dropped slightly while the number of provisional measures imposed over the previous year increased by almost a third. Regarding reviews these continue to represent a significant part of the work of the services with the number of reviews initiated dropping slightly when

compared to 2009. The number of reviews terminated was halved in comparison to 2009 figures.