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**24th ANNUAL REPORT FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT**

on the community's anti-dumping, anti-subsidy and safeguard activities

(2005)

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INTRODUCTION

This 2005 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 2005, but is supported as in previous years by a more detailed Commission Staff Working Document, together with detailed annexes. The report also follows the same general structure of the Working Document and all its headings can also be found in it so that easy reference for more comprehensive information is possible.

The present report and the full Working Document are also available to the public at http://europa.eu.int/comm/trade/issues/respectrules/anti_dumping/legis/index_en.htm

This report has to be seen against the general background of EU trade policy as set out more recently in the Commission's Communication on "Global Europe"¹. In this context the Commission adopted in December 2006 a "Green Paper" inviting a public reflection on how the EU can best use its trade defence instruments (TDI) in a changing global economic context. The results of this process will be reflected in future reports.

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)".

1.1. Changes to the Community legislation in 2005

In view of the significant progress made by Ukraine towards the establishment of market economy conditions, the Council adopted the Commission proposal graduating this country to become a full market economy for AD investigations. This thus allows normal value for Ukrainian exporters and producers to be established on the basis of their prices and costs. Regulation (EC) No 2117/2005 entered into force on 30 December 2005.

2. ENLARGEMENT

Following EU enlargement in May 2004, the Commission, during 2005, continued its efforts aimed at ensuring a smooth integration of the administrations of the new Member States concerned in the area of trade defence. Apart from regular exchange of information, these efforts involved holding dedicated training and stocktaking seminars.

¹ http://ec.europa.eu/trade/issues/sectoral/competitiveness/global_europe_en.htm

In 2005, the Commission also concluded the monitoring and application of the special transitional measures in the form of undertakings that were taken in respect to four cases (ammonium nitrate from Russia and Ukraine, grain oriented electrical sheets from Russia and silicon carbide from Ukraine) in order to avert economic hardship/shock to users and consumers in the new Member States after the 2004 enlargement.

On the basis of the positive experience with the 2004 enlargement, DG Trade set up an Action Plan to prepare Bulgarian and Romanian accession in the area of trade defence.

3. COUNTRY-WIDE MARKET ECONOMY STATUS (MES)

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 basic Regulation.

Significant work has been done in this respect during 2005. In particular, the request received in March 2002 from Ukraine was assessed and the Commission proposed granting MES to this country as all criteria were met (see point 1.1).

The People's Republic of China's request was received in September 2003 and a preliminary assessment was carried out by the Commission in June 2004. Following the assessment, a bilateral working group was set up to examine any progress made. At the EU-China summit in September 2005, this working group was up-graded, as "the two sides agreed to launch high-level dialogues to address outstanding issues with a view to achieving positive progress on the issue of MES".

During 2005, Vietnam, Mongolia and Armenia provided further information to complement their MES request. The Commission analysed the newly submitted information and followed up with questions on issues that had not been sufficiently addressed in the replies. The Commission also analysed external sources for all three countries. It also requested further information from Kazakhstan.

For all countries that are currently being examined, country-wide MES is conditional on the outstanding criteria being fulfilled.

4. INFORMATION AND COMMUNICATION ACTIVITIES / BILATERAL CONTACTS

The Trade Defence Helpdesk for Small and Medium Sized Enterprises (SME), set up in December 2004, continued its activity in addressing specific SME questions/problems regarding the trade defence instruments. The Commission also organised or participated in 10 information seminars for economic operators and third country administrations.

Furthermore, in December 2005, the Commission received the results of an evaluation study of its trade defence instruments.

(http://ec.europa.eu/trade/issues/respectrules/anti_dumping/legis/index_en.htm)

The evaluation was based on a survey of stakeholders, such as Member States, Community industry, exporters, importers and downstream users. The evaluators made a positive assessment of the general approach of the Community in trade defence investigations. While confirming the balanced nature of the EC system and the high standards applied, the evaluation also suggests reflecting on some specific issues and contains some interesting proposals for improvements. These proposals could contribute to improving certain aspects of our current system, in particular rights of parties and transparency.

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

5.1. General

At the end of 2005, the Community had 135 AD measures (see Annex O) and 12 AS measures (see Annex P) in force.

In 2005, only 0.45% 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 Working Document attached to this report. The references to the Annexes of the Working Document can be found beside the titles.

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

In 2005, 26 investigations were initiated². Provisional duties were imposed in 15 proceedings. Nineteen cases were concluded with the imposition of definitive duties. Ten proceedings were concluded without measures.

Another 27 measures, of which 7 countervailing measures, were allowed to expire automatically following their 5-year duration.

5.3. Review investigations

Review investigations continue to represent a major part of the work of the TDI services. They represented more than 64% of all investigations initiated. Table 2 in the Working Document provides statistical information for the years 2001-2005.

5.3.1. 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.

² Table 1 in the Working Document provides statistical information on the new investigations for the years 2001 – 2005 carried out under the provisions of Articles 5 and 10 of the basic Regulations.

During 2005, 23 expiry review investigations were initiated of which 7 concluded that there was a need for the duties to continue for a further five years. 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.

5.3.2. *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 2005, a total of 22 interim reviews were initiated. Eighteen interim reviews were concluded with confirmation or amendment of duty and 3 investigations were concluded, thereby terminating the measures.

5.3.3. *“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 2005.

They more specifically concern, *inter alia*, the acceptance, voluntary withdrawal or breach of undertakings, clarification of the product description, etc.

5.3.4. *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 2005, 5 new exporter review (of which 2 accelerated reviews) were initiated. Four investigations, of which 1 accelerated review, were concluded. One investigation was terminated thereby maintaining the original level of duty.

5.3.5. *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 2005, one anti-absorption investigation was initiated and one was concluded 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 is foreseen in Articles 13 and 23 of the basic Regulations.

In 2005, 3 investigations were initiated and one was concluded with extension of the duty.

5.4. *Safeguard investigations (see Annex L)*

During 2005, 2 safeguard investigations were initiated, one on textile products and one on frozen strawberries. The investigation on textile products was terminated later in the year. Definitive measures were imposed on farmed salmon but these measures were later revoked. At the end of 2005, only one safeguard measure was still in force, namely the one on imports of certain citrus fruits.

6. *ENFORCEMENT OF AD/AS MEASURES*

6.1. *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.

6.2. *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 Commission if it is satisfied that they can effectively eliminate the injurious effects of dumping or subsidisation.

At the beginning of 2005, there were undertakings in force accepted from 47 companies. During 2005, the following changes to the portfolio of undertakings took place: undertakings of 16 companies came to an end and 9 offers for undertakings have been accepted. This brings the total number of undertakings in force at the end of 2005 to 40.

7. *REFUNDS (SEE ANNEX T)*

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 2005, 12 new refund requests were lodged. Four decisions were adopted rejecting refund requests whilst one other request was withdrawn. For the first time, applications were submitted claiming refunds of countervailing duties.

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

In 2005, five judgments relating to AD or AS were rendered by the Court of First Instance and one by the Court of Justice. In 3 out of the 5 CFI judgments, the Court confirmed the Eurocoton Judgment (see 22nd Annual Report to the European Parliament) and annulled the Council's non-adoption of definitive AD measures proposed by the Commission on the ground of lack of reasoning. The fact that no positive simple majority was reached amongst Member States is not considered as an adequate reasoning; any rejection of proposed measures should be justified along the lines of the basic Regulation's provisions. The other 2 cases were withdrawn by the applicants. A detailed summary of the judgments is given in the Working Document.

Six new cases were lodged in 2005, five before the CFI and one before the CoJ.

A list of the AD/AS cases before the CFI and the CoJ still pending at the end of 2005 is given in Annex S of the 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.

One dispute settlement procedure was concluded during 2005 and largely confirmed the Community's approach. It concerned the anti-subsidy case on DRAMs from the Republic of Korea.

Details are given in the Working Document attached to this report.

9.2. Other WTO activities

In 2005, negotiations under the Doha Development Agenda have intensified and deepened with the discussion of proposals offering concrete legal texts for possible changes. Besides the plenary meetings, the Community actively participated in bilateral and multilateral meetings aimed at discussing in more detail with other WTO Members the different proposals made. In this context, the Community continued to be committed to stronger rules on transparency and enforcement, stricter rules on reviews, a mandatory "lesser duty rule"³ and public interest test, as well as reduced costs for parties to cooperate in investigations, and defended a

³ The lesser duty rule requires the measures imposed by the Community to be lower than the dumping or subsidy margin, if such lower duty rate is sufficient to remove the injury suffered by the Community industry.

number of proposals in this regard. In addition, the Community remained one of the most active members in the working group on questionnaires and verification outlines, which had been created on our initiative.

On subsidies to fisheries, a “middle ground” position as reflected in the proposals tabled by the Community gathered support from an increasing number of countries. The Community also advocated a strong enforcement and transparency mechanism that would ensure that any new disciplines are actually implemented by all. On industrial subsidies, the discussions gradually focused on a limited number of substantive issues. On procedure, the Community promoted improved rules on anti-subsidy investigations.

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

In December 2005, Ministers agreed in Hong Kong to intensify and accelerate the negotiation process, on the basis of detailed textual proposals, and to complete the process of analysing proposals as soon as possible. In addition, Ministers mandated the Chair of the Group on Rules to prepare consolidated texts that shall be the basis for the final stage of the negotiations.

10. CONCLUSION

2005 was the first full year of the new, enlarged Commission. It was an average year in trade defence activity in terms of the initiation of new cases and the number of measures imposed. However, the number of measures that expired during the year significantly increased bringing the number of measures in force back to 147, compared to 156 in 2004 – reflecting the different stage of the economic cycle for the global economy compared to the end of the 1990s. It was “eventful” in a number of other aspects, such as the preparation for the further enlargement of the EU in 2007 and the safeguard case on textile products and salmon.

This report shows the EC's moderate use of trade defence instruments, while confirming its practice of ensuring that investigations are rigorously and professionally carried out. At the same time, where proven, the Community is ready to take a tough stand against unfair trade practices. Transparency goes hand in hand with the rigorous application of the trade defence instruments, reflecting the changes made to the legislative framework in 2004 and 2005. The Commission is committed to pursuing such a line in the future.