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

**36th Annual Report from the Commission to the Council and the European Parliament  
on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities (2017)**

{SWD(2018) 392 final}

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

## **36th Annual Report from the Commission to the Council and the European Parliament on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities (2017)**

### **INTRODUCTION**

This Report describes the European Union's anti-dumping, anti-subsidy and safeguard activities during 2017. It has been prepared 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 AD 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 AS Regulation') and Article 23 of Regulation (EU) 2015/478 of the European Parliament and of the Council on common rules for imports.

2017 was a milestone year for trade defence policy in the EU. First, on 20 December 2017, a change of the basic anti-dumping and anti-subsidy regulations entered into force, introducing a new methodology for calculating normal value in situations where prices and costs in the market of the exporting country are distorted. The new regulation was followed by the publication of a comprehensive country report describing significant distortions in China.<sup>1</sup> (See detailed description in Section 5 below).

Secondly, in December 2017, EU co-legislators achieved a breakthrough on a separate legislative proposal to modernise the EU's trade defence instruments and found an agreement on a broad range of topics (e.g. accelerated investigations, better application of the lesser-duty rule, better transparency by providing pre-disclosure prior to provisional measures, recognition of the role of trade unions). This agreement paved the way for the entry into force of this long-awaited legislation on 8 June 2018. These new rules apply to all investigations initiated after that date. Together both sets of amendments to the basic AD and AS Regulations constitute the first major overhaul of the EU's anti-dumping and anti-subsidy legislation since 1995.

It has to be noted that the law that entered into force on 20 December 2017 also changed the Commission's annual reporting requirements. Given that none of the EU's anti-dumping and anti-subsidy proceedings in 2017 were affected by these legislative changes, this report provides no information in that regard. This report is accompanied, as in previous years, by a Commission Staff Working Document, together with detailed annexes, providing, among others, a comprehensive overview of the existing legislation, terminology and procedures.

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<sup>1</sup> The next country report on market distortions for the purpose of trade defence investigations will concern Russia.

Case work by the Commission in 2017 remained significant, with provisional and definitive measures imposed in similar numbers to those in 2016 and with a much increased activity in terms of review of existing measures. The Commission has continued to use all available tools under the applicable legal framework to give the European industry effective relief from unfairly traded imports.

Moreover, many of the cases that the Commission investigated were particularly challenging because of their high complexity and the resources that had to be mobilised. The Staff Working Document gives a detailed account of the work done.

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](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 2017, the EU had 97 definitive anti-dumping measures (which were extended<sup>2</sup> in 29 cases) and 13 countervailing measures in force (which were extended in three cases).<sup>3</sup> This constitutes a slight increase (4%) as compared to the previous year.

Investigative work remained at a high level, reaching nearly that of 2016. The work consisted mainly of a high number of work-intensive investigations on new cases as well as of an increasing number of reviews. At the end of 2017, a total of 46 investigations were ongoing, as well as four refund investigations that cover 61 separate refund requests.

In 2017, 0,31% of total imports into the EU were affected by anti-dumping (AD) or anti-subsidy (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)**

In 2017, 11 new investigations were initiated (five concerned the chemical and allied sectors), and there were two re-openings of cases to implement judicial findings. Provisional duties were imposed in two proceedings. A total of 12 cases were concluded with the imposition of definitive duties, while two investigations were concluded without measures.

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<sup>2</sup> Measures have been extended to other third countries if circumvention in these countries had been found.

<sup>3</sup> The measures are counted per product and country concerned.

### **1.3. Review investigations**

Review investigations continue to represent a substantial part of the work of the Commission Trade Defence services. Table 1 in the Staff Working Document provides statistical information for the years 2013-2017.

#### *1.3.1. Expiry reviews (see Annex F)*

Articles 11(2) of the basic AD and 18 of the basic 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 2017, nine expiry review investigations were initiated and as many as 19 expiry reviews were concluded with a confirmation of the duty for a further period of five years. One expiry review was concluded by the termination of measures. During 2017, five measures (all anti-dumping) expired automatically, i.e. without review, following their five-year duration.

#### *1.3.2. Interim reviews (see Annex G)*

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

During 2017, a total of ten interim reviews were initiated. One interim review was concluded with an amendment of duty and one terminated without the amendment of the measures.

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

Two 'other' reviews, i.e. not falling within the reviews ordinarily commenced pursuant to Articles 11(3) of the basic AD or 19 of the basic AS Regulations, were initiated in 2017. There were five such reviews concluded during 2017. These reviews usually concern the implementation of court rulings.

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

Articles 11(4) of the basic AD and 20 of the basic 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 2017, six new exporter reviews were initiated. No such review was 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 basic AD and 19(3) of the basic AS Regulations.

In 2017, no anti-absorption reviews were initiated. One such review was concluded without an increase of the duty.

#### *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 basic AD and 23 of the basic AS Regulations.

In 2017, three such investigations were initiated. There was one anti-circumvention investigation concluded with an extension of the measures, and one without extension.

### **1.4. Safeguard investigations (see Annex L)**

During 2017, there was no safeguard investigation opened or 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 2017, there were 102 undertakings in force. During 2017, the undertakings of five companies were withdrawn as it was established that breaches had occurred or that the monitoring of the undertakings became impracticable. The undertakings of seven companies were also withdrawn at the request of these companies. The undertakings of 87 companies were repealed. No new undertaking was accepted. This brought the total number of undertakings in force at the end of 2017 to three.

## **3. REFUNDS**

Articles 11(8) of the basic AD and 21(1) of the basic 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 2017, 75 new refund requests were submitted. At the end of 2017, four refund investigations were on-going that cover 61 requests. In 2017, 26 Commission Implementing Decisions granting partial refund or rejecting refund requests were adopted.

#### **4. TDI MODERNISATION**

In April 2013, the Commission adopted a proposal to modernise the EU's trade defence instruments ('TDI'). After a long legislative process, on 5 December 2017, the Council and the European Parliament reached an agreement on the Commission's proposal that subsequently entered into force on 8 June 2018.

This is a major step forward, as it is – together with the new calculation methodology (see below section 5 of this Report) – the first major change of these instruments since the conclusion of the WTO Uruguay Round. They make the EU's trade defence instruments more effective, transparent and more adapted to face the challenges of the global economy. At the same time, they bring these instruments closer to the needs of smaller companies. They benefit EU producers but also take into account the interests of importers and downstream users who depend on imports.

Among the most important elements of the modernised EU's anti-dumping and anti-subsidy legislation are: an improved injury margin calculation method, a reconstruction of the non-injurious price calculation which will include a minimum profit of 6%, a shorter timeframe for the imposition of provisional measures, an early warning on the imposition of provisional anti-dumping and anti-subsidy measures, additional support for EU SMEs, an adaptation of the EU's "lesser duty rule" so as to take into account the existence of raw materials price distortions, as well as a new role for social and environmental aspects in trade defence proceedings.

#### **5. 2017 AMENDMENT OF THE EU'S AD AND AS LEGISLATION**

On 9 November 2016, the Commission adopted a proposal to amend the EU's anti-dumping and anti-subsidy regulations with the aim of introducing a new methodology to calculate the normal value to better address state-induced market distortions in third countries and to strengthen the anti-subsidy instrument. These amendments to the EU's basic AD and AS Regulations entered into force on 20 December 2017.

The new methodology seeks to address significant distortions induced by the State and to tackle new economic realities that have arisen over the last years. These distortions can exist in a country as a whole or in a given sector. In this respect, the new methodology is country-neutral and applicable to all WTO members. The legislation makes it clear that the adoption of a new dumping methodology is without prejudice to the treatment of any country as a non-market economy. Where it will be established that it is not appropriate to use domestic prices or costs in a third country due to state-induced distortions in its economy, the new methodology will apply to calculate a product's normal value.

In order to 'trigger' the application of the new methodology, it must be established that it is not appropriate to use domestic prices and costs due to significant

distortions in the exporting country. In determining the existence of distortions, several criteria will be considered, such as State policies and influence, the widespread presence of State-owned enterprises, discrimination in favour of domestic companies, or the lack of independence of the financial sector.

Reports prepared by the Commission on countries/sectors where distortions are identified may be used by the EU industry which will be able to rely on the evidence contained therein to make their case concerning countries where distortions exist. The Commission will select the countries on which to prepare reports by reference to their relative importance in the EU's overall anti-dumping activity as well as indications that significant distortions may exist. On the day the new legislation entered into force, DG Trade published on its website a report on market distortions in the Chinese economy, the country most subject to the EU's anti-dumping activity. The Commission also announced that the next country report will concern Russia.

The new rules apply to all new investigations and expiry reviews initiated after 20 December 2017. Interim reviews initiated after that date will be based on the new methodology if the measure itself is based on the new methodology. If the measure subject to review is still based on the methodology used previously, this methodology will continue to apply to any interim review before the initiation of the first expiry review after 20 December 2017.

The new legislation has also strengthened the anti-subsidy instrument to allow the Commission to better capture the full magnitude of subsidisation by making it possible to address also subsidies which were identified only in the course of an investigation.

## **6. COUNTRY-WIDE MARKET ECONOMY STATUS (MES)**

On the occasion of the entry into force of the new calculation methodology on 20 December 2017, the provision dealing with non-market economy countries (Article 2(7) of the basic AD Regulation) has been changed. Its scope now covers only non-WTO members that feature on Annex 1 of Regulation 2015/755<sup>4</sup>. In brief, in these cases the normal value is calculated on the basis of costs and prices found in a so-called 'analogue' country.

## **7. INFORMATION AND COMMUNICATION ACTIVITIES/ BILATERAL CONTACTS**

### **7.1. Small and medium sized enterprises (SMEs)**

During 2017, 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

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<sup>4</sup> Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries, OJ L 123, 19.5.2015, p. 33.



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 is an important part of the work of the TDI services. A number of bilateral meetings to exchange best practices with TDI officials from the U.S., China, Japan and Korea took place in 2017.

During 2017, the trade defence services maintained contacts with practically all key stakeholder organisations affected by trade defence, including regular meetings with Business Europe as well as sectoral associations. One of the key topics of these meetings was to discuss the legislative changes concerning TDI.

## **8. JUDICIAL REVIEW: DECISIONS RENDERED BY THE COURT OF JUSTICE (CJ) AND THE GENERAL COURT (GC)**

In 2017, the General Court ('GC') and the Court of Justice ('CJ') rendered 29 judgments in the areas of anti-dumping or anti-subsidy. 15 judgments were handed down by the GC. 12 concerned appeals of GC rulings which were decided by the CJ. Last but not least, the CJ also rendered two preliminary rulings in the TDI field.

Twenty new cases were lodged in 2017 (compared to 34 in 2016, 20 in 2015, 37 in 2014, 33 in 2013, 23 in 2012, and 16 in 2011). Eleven of these were lodged before the GC (ten actions for annulment and one application for taxation of costs) and nine before the CJ (six appeals and three preliminary rulings).

A list of the AD/AS cases before the GC and the CJ still pending at the end of 2017 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 5 September 2017, the Appellate Body circulated its report in the case against the EU on Anti-Dumping Measures on Imports of Certain Fatty Alcohols from Indonesia (DS442). The Appellate Body essentially upheld the Panel's finding that Indonesia had failed to demonstrate that the EU acted inconsistently with Article 2.4 of the WTO Anti-Dumping Agreement (ADA).

On 6 July 2017, the Panel issued its report in the case against the EU concerning Countervailing Measures on Certain Polyethylene Terephthalate from Pakistan (DS486). The Panel essentially found that the EU, by finding that the entire amount of the remitted duties was a countervailable subsidy under the SCM agreement, acted inconsistently with Article 3.1(a) of the SCM agreement.

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). A first round of consultations was held on 23 January 2017 and the panel was subsequently established on 3 April 2017.

On 23 October 2017, the EU informed the Dispute Settlement Body (DSB) that the adoption of a regulation<sup>5</sup> amending the WTO-inconsistent anti-dumping measures on biodiesel ensured the full implementation of the DSB recommendations and rulings in case against EU on Anti-Dumping Measures on Imports of Biodiesel from Argentina (DS473).

In 2017, dispute settlement proceedings were also ongoing in the case concerning the EU Anti-Dumping Measures on Imports of Biodiesel from Indonesia (DS480). The Panel circulated its report to Members on 25 January 2018. For more detailed information please refer to section 4.2.3 of the Staff Working Document accompanying this Report ("Other" reviews).

## **9.2. Other WTO activities**

In the course of 2017, intensive negotiations on fisheries subsidies were conducted in Geneva. While no substantive outcome was achieved at the 11<sup>th</sup> WTO Ministerial Conference that took place in December 2017 in Buenos Aires, WTO members agreed on a work programme that will form a basis for further negotiations in view of adopting a comprehensive agreement at the next Ministerial Conference in 2019. Members also committed to fully respect their notification obligations in the area of fisheries subsidies.

In 2017, the EU submitted a new notification of subsidies in line with its WTO obligations covering the years 2015 and 2016. The notification included all subsidies granted at EU level as well as subsidies granted by each of the Member States. In October 2017, a review of the submission began in the special session of the Subsidies and Countervailing Committee which will continue into 2018. In the special Committee, Commission services also participated in the continued review of the 2015 subsidy notification at the meetings held in April and October 2017.

In addition, the EU participated in the work of the regular Subsidies and Countervailing Committee in April and October 2017. In April, the EU (along with Canada, Japan and the U.S.) presented a paper in the WTO Subsidies and Countervailing Committee regarding the role of subsidies as a contributor to excess capacity in various sectors of economic activity. The EU also organized a seminar on the same issue in October 2017 at the WTO and presented the main conclusions of that seminar at the October session of the Committee. In addition to these discussions, the problem of poor transparency on subsidies by many WTO members was also addressed.

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<sup>5</sup> Commission Implementing Regulation (EU) 2017/1578 of 18 September 2017 amending Implementing Regulation (EU) No 1194/2013. (OJ L 239, 19.9.2017, p. 9)

Moreover, the EU participated actively in the regular work of the WTO Anti-Dumping and Safeguards Committees answering questions on EU cases and raising issues of concern on trade defence activity by other countries which affect EU exporters.

In the Informal Group on Anti-Circumvention, in April 2017, the EU trade defence services made a presentation on the EU's legislation and practice in dealing with the circumvention of anti-dumping measures. The Commission services also actively participated in both sessions of the Anti-dumping Working Group on Implementation (WGI).

## **10. CONCLUSION**

TDI activity in 2017 was intense. The number of investigations remained at a high level. European industry, suffering from dumped imports, in some instances exacerbated by persisting industrial overcapacities, as well as the pervasive use of subsidies in certain countries, continued to call on the Commission to provide relief by making use of EU's trade defence instruments. The number of provisional and definitive measures imposed remained fairly stable as compared to 2016. However, the number of review investigations initiated increased substantially, by 75% over the previous year. As was the case with previous years, no safeguard action was taken by the EU.

2017 stood out in terms of legislative activity. It led to the introduction of a new anti-dumping methodology for calculating normal value in investigations relating to countries where serious market distortions occur, as well as a strengthened anti-subsidy instrument. The new regulation was followed by the publication of a report on significant market distortions existing in China. Last but not least, 2017 paved the way for the modernisation of EU trade defence instruments. Taken together, these amendments to the basic Regulations constitute a major overhaul of the EU's trade defence policy and instruments for the benefit of all stakeholders.

This has served to ensure that the EU is equipped with sufficiently robust trade defence instruments to deal with distortions in the global economy.