

**The EU trade
defence instruments**

**Anti-dumping,
Anti-subsidy
and safeguards**

July 2006

Introduction

1. Who are we?

- European Commission – DG Trade – Directorate B, in charge of trade defence (anti-dumping, anti-subsidy, safeguards)
- On EC **external** trade: exclusive EC competence
- EC **internal** trade dealt with by other DGs (Competition, Internal market, Transport...)

2. Content of the presentation ?

Information on:

- international unfair trade,
- instruments available to European companies for defending themselves, and
- trade defence practices by third countries affecting EU companies

Structure of the presentation

- 1. What is international unfair trade?**
- 2. What are the trade defence instruments and how do they work?**
- 3. Examples and figures**
- 4. How to react vis-à-vis trade defence actions by third countries?**
- 5. What is the role of EU companies?**

1. What is international unfair trade?

What is **international "fair" trade**?

GATT/WTO philosophy = trade follows rules:

- any trade restriction other than tariffs is forbidden, including quantitative restrictions
- "most favoured nation" principle (exception: regional free-trade zones, preferential agreements with developing countries)
- progressive decrease of customs tariffs through successive "rounds"
- dumping is an "unfair" trade practice which can be countered
- export subsidies are prohibited (except for agricultural products and DCs under certain conditions)
- unilateral sanctions are forbidden in case of breach of the rules (exception: trade defence instruments)

N.B.: Those principles apply only to trade in goods – not to services

1. What is international unfair trade?

What is **dumping**?

Dumping happens where companies from a third country sell a good on EC market at a lower price than on their domestic market

Ex: Producers in Country X sell city bicycles at:

80 € when the product is exported and sold on EC market	<	100 € when the product is sold on the market of Country X
= dumping of 20 € (or 25%)		

What are the **causes of dumping**?

- Often: market segregation (i.e. third country market protected by high tariff or non-tariff barriers, where competition is weak and thus domestic prices are higher)
- More rarely: strategic or predatory dumping (i.e. voluntary and aggressive market-share conquest with the aim of weakening/destroying competition or another strategic objective)

1. What is international unfair trade?

What is a **subsidy**?

Definition of subsidy: financial contribution (or other type of pecuniary advantage) granted by government / public bodies of a third country where a benefit is conferred.

Example: direct fund transfer, revenue foregone, supply of free good or service, loan with favourable interest rate, etc...

Which **subsidies** are **prohibited** or **actionable**?

- export subsidies,
- subsidies contingent upon the use of national products,
- specific subsidies (granted only to certain companies or sectors).

1. What is international unfair trade?

BE AWARE ...

- Do not confuse trade defence (focused on trade flows with non-EU third countries) with **competition rules** (focused on EC internal market)
- Trade defence encompasses only **goods**, not **services**
- Do not confuse dumping with:
 - **social** or **environmental dumping**,
 - simply **low and competitive prices**
 - breach of **intellectual property rights**, etc

2. What are the trade defence instruments and how do they work?

- WTO members have agreed to allow each others to directly counter dumping and prohibited/actionable subsidies through the imposition of **anti-dumping or countervailing measures**...
- WTO members have also agreed to allow each others to temporarily impose **safeguard measures** (i.e. quantitative, tariffs or other types of restrictions) on products imported fairly but flowing massively and suddenly...

...on the condition that:



a quasi-judicial **contradictory investigation** is conducted (in the EU, the Commission conducts investigations), which outcome can be attacked in front of the WTO Dispute Settlement Body and the EC Court of First Instance

2. What are the trade defence instruments and how do they work?

Instrument	Target	Scope	Practice concerned	Criteria for imposing measures
Antidumping (85 % of EU TDI cases)	Unfair trade	Country specific imports from companies	Dumping: prices below normal value in third country	<ul style="list-style-type: none"> - dumping/subsidy - injury (or threat of injury) - on EC producers of like product - causality link - Community interest to act ("OMC+")
Anti-subsidy (14 % of EU TDI cases) + Airlines Regulation	Unfair trade	Country specific imports from companies	Actionable or prohibited subsidy	
Safeguards (1 % of EU TDI cases) + Transitory safeguard mechanism	Fair trade - "safety valve" (exceptional use)	In general "erga omnes" – all imports from all countries	Sudden and massive surge of imports	<ul style="list-style-type: none"> - import surge - <u>serious</u> injury - on EC producers of like product or <u>directly competing product</u> - causality link - Community interest to act ("OMC+")

2. What are the trade defence instruments and how do they work?

Legal basis:

- WTO regulates trade defence actions of its members.
- WTO legislation is transposed into EU law. EU law goes beyond the WTO legislation in certain aspects.

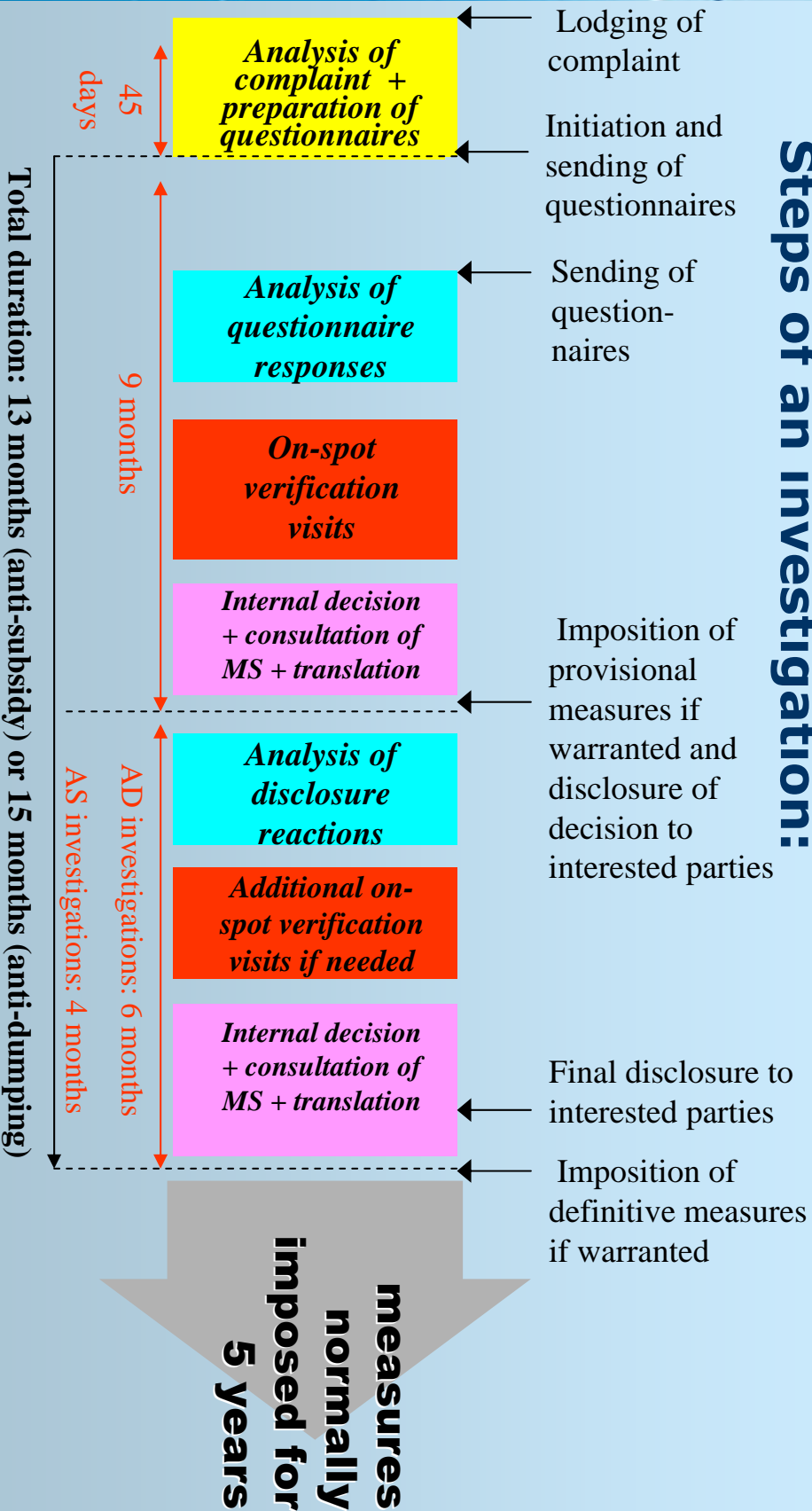
Nature of the investigations conducted by the Commission – DG Trade:

- Technical quantitative analysis
- Based on information provided by interested parties
- Legal, quasi-judicial:
 1. Regulated by legal rules (deadlines, right of parties, etc.)
 2. Subject to ECJ and WTO review

External Trade

2. What are the trade defence instruments and how do they work?

Steps of an investigation:



N.B.: Safeguards investigations follow a very similar process but last only 9 or 11 months and the interim deadlines and steps are less clearly defined. Safeguards measures are normally imposed for 3 or 4 years.

2. What are the trade defence instruments and how do they work?

- Investigations are initiated on the basis of a **complaint** lodged by EC industry (anti-dumping, anti-subsidy), a Member State (safeguards) or upon Commission's own initiative (very rare).
- **Complaints:**
 - must be representative:
 - for anti-dumping/anti-subsidy: complainants must represent minimum 25% of EC production and opponents must not represent a proportion of EC production higher than the complainants
 - for safeguards: a major proportion of EC production must be concerned
 - must contain prima facie evidence of:
 - dumping, subsidy or upsurge,
 - injury/threat of injury or serious injury,
 - causality.

For more info: see « guide on how to draft a complaint » on our website.

2. What are the trade defence instruments and how do they work?

Investigations must show that there is:

- **Dumping** (anti-dumping) or **subsidy** (anti-subsidy) or **sudden and massive upsurge of imports** (safeguards)
- **Injury/threat of injury** (or **serious injury**) for a major proportion Community industry

E.g.: drop of sales, drop in profitability, job-losses, loss of market shares, decrease of productivity

- **Causality**: dumping, subsidy or upsurge must be the main cause of the injury
- That imposing measures would not be against the **Community interest** as a whole (i.e. negative impact of measures must not outweigh positive impact in the short and long term on users, consumers, producers, suppliers, level of competition, etc...)

2. What are the trade defence instruments and how do they work?

What type of measures can be imposed?

- Additional *ad valorem* custom duties or price undertakings offered by third countries' exporters (antidumping, anti-subsidy, safeguards) or quotas (normally safeguards only)
- "Lesser duty" rule: measures are set at a lower level than the dumping margin (or the level of actionable/prohibited subsidy) if this is sufficient to offset the injury
- Normal duration of measures: 5 years in the case of anti-dumping and anti-subsidy measures (can be continued every 5 years for an indeterminate period) or 4 years in the case of safeguards (can be continued up to maximum 8 years)

N.B.: Ad valorem duties are imposed / collected operationally by national custom administrations of each Member State

2. What are the trade defence instruments and how do they work?

What may happen after measures are imposed?

- Reviews:
 - expiry reviews
 - interim reviews
 - newcomer reviews
 - Anti-absorption investigation
 - Anti-circumvention investigation
 - Suspension of measures
 - Refunds
 - Judicial control:
 - EC Court of First Instance
 - WTO Dispute Settlement Body.
- 
- May result in:**
- ✓ continuation,
 - ✓ amendment or
 - ✓ repeal of measures

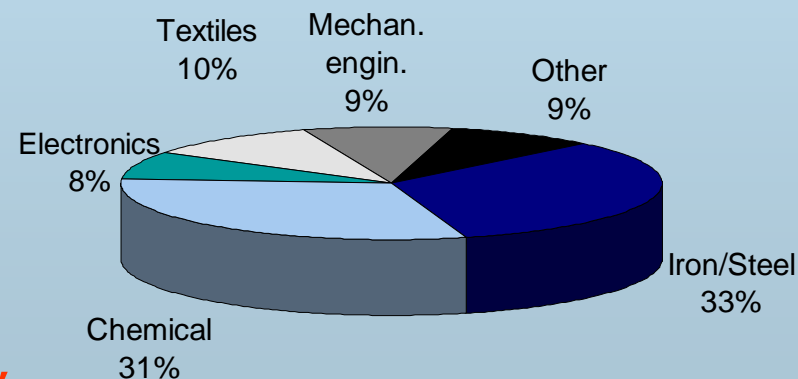
2. What are the trade defence instruments and how do they work?

What is the decision-making process?

- **European Commission:**
 - **conducts investigations** and
 - **decides** concerning **initiations, provisional measures, proposals for definitive measures, terminations, acceptances of undertakings**
- **Member States:**
 - **give their opinion on any decision or action by the Commission** within an advisory committee
 - **decide** by simple majority within the Council regarding the imposition of **definitive measures** (special provisions for safeguard measures, including necessity to obtain qualified majority)

3. Examples and figures

- Yearly initiation of **40 investigations** on average
- **60%** of investigations result in measures
- Yearly adoption of **85 Regulations** imposing, continuing, or modifying measures on average
- Approximately **150 measures** currently in force
- **Half of measures** expire after 5 years
- **Countries mainly affected** by our measures:
China, India, Russia
- **Sectors mostly concerned:**
chemicals, steel, textile, electronics
- **Example of investigations:**
heavy industry (steel bars, fertilizers) and SMEs (textiles, shoes, bicycles, salmon)



3. Examples and figures

Example of cases involving SMEs:

- Salmon:
 - Complainants: more or less 20
 - Employment: more or less 8000
 - Turnover: 1,5 billion €
- Bicycles:
 - Complainants: more or less 20
 - Employment: more or less 20000
 - Turnover: 4 billion €
- Bed linen:
 - Complainants: more or less 15
 - Employment: more or less 15000
 - Turnover: 1,7 billion €

4. How to react vis-à-vis trade defence actions by third countries?

The problem:

- EU is the first exporter in the world and thus the main target of trade defence actions engaged by third countries
- EU is a “prudent user” of trade defence instruments and applies consistently WTO rules and its own rules and wishes to ensure that third countries do the same

Our aims:

- Support and defend the interests of affected companies in EU Member States
- Reduce the economic impact of measures taken by third countries
- Ensure that third countries respect WTO and bilaterally-agreed rules

4. How to react vis-à-vis trade defence actions by third countries?

Key facts and figures regarding trade defence actions by third countries vis-à-vis the EU:

- End 2005: **181 measures in force against EU** including 130 anti-dumping, 21 anti-subsidy and 30 safeguards
- Mains users: **United States** (44 measures against EU), **India** (28), **Brazil** (11), **China** (10), **South Africa** (10), **Canada** (9), **Argentina** (8), **Ukraine** (7), **Australia** (6), **Russia** (6)
- Most affected sectors: **chemicals** (33%), **steel** (24%), **agri-food products** (15%)
- **In the last 4 years, measures vis-à-vis EU increased significantly**
- **“New” users (notably developing countries) largely over-took “traditional” users**

4. How to react vis-à-vis trade defence actions by third countries?

What kind of support do we provide to EU companies?

- **Basic principle:** the Commission cannot replace companies or their legal advisers
- **Different frameworks/actions** are possible depending on the general political context (existence of a bilateral trade agreement or not, possible action in front of WTO Dispute Settlement Body, etc)
- **Different degrees** of participation depending on the instrument used:
 - Anti-dumping: more limited participation of EU
 - Anti-subsidy: direct role of EU as entity granting subsidy
 - Safeguards: EU “natural coordinator” given that safeguards affect all countries of the EU

5. What is the role of EU compaignies?

In order to defend yourself against unfair trade:

- Monitor vigilantly trade flows and practices by third countries' companies
- If conditions for using trade defence instruments are fulfilled:
 - Community producers must group together (complainants must represent major proportion of EC production) or alert public authorities (safeguards),
 - Gather sufficient information to put together and lodge a complaint,
 - Co-operate during the investigation.

If you are caught in a third country action:

- Monitor vigilantly third country practice
- Co-operate in the investigation and protect your interest intelligently

Conclusion

- Trade defence instruments exist and are efficient (mandatory deadlines for completing investigations, real protection of EC market).
- However, condition for using them must be fulfilled.
- In the absence of vigilant and pro-active EC companies, no efficient trade defence action is possible.

More information on our website:
http://europa.eu.int/comm/trade/issues/respectrules/tpi_en.htm

Complaint office / SME heldesk :

Office of Complaints

Trade Defence Services (Office J79 06/33)

Rue de la Loi 200, B-1049 Bruxelles, Belgique

tel: +32 22 98 78 73, fax: +32 22 95 65 05,

e-mail: TRADE-Defence-Complaints@cec.eu.int

Specific informations for SMEs:

http://europa.eu.int/comm/trade/issues/respectrules/tdi_sme/index_en.htm