

How do I find my way?

# GUIDE FOR EU EXPORTERS

**TRADE DEFENCE INSTRUMENTS**  
ANTI-DUMPING ANTI-SUBSIDY SAFEGUARDS



# Foreword



**ALFREDO  
BONET BAIGET**

*Spanish  
Secretary  
of State  
for Trade*

There has been a remarkable increase in the use of Trade Defence Instruments by third countries since the beginning of the economic crisis, both in terms of initiation of new investigations as well as in the number of measures adopted. Although the use of these instruments is legitimate, they have to be applied in line with the WTO provisions.

However, in the current context, WTO standards have been frequently overlooked and in an increasing number of cases poor standards at initiation and during the investigation have been observed. The indiscriminate use of safeguards is also of special relevance, as this instrument does not tackle unfair practices, but prevents exports of all origins from entering domestic markets.

The European Union, the world's largest exporter, has been adversely affected by these measures. EU companies are finding it more difficult to access third country markets, sometimes de facto closed due to the implementation of these measures.

Improving market access to European firms in third countries has been one of the main priorities of the Spanish Presidency in the commercial policy area. Many EU companies, especially SMEs, are not aware of the existence of Trade Defence Instruments and what they can do to preserve their right to compete in third country markets.

The Spanish Presidency has decided to promote the publication of this Guide to assist EU exporting companies facing trade defence actions by third countries. I am confident that it will be a useful and valuable tool for EU firms involved in such proceedings.

I want to thank the Commission services for the thorough work done in the elaboration of this Guide, and also EU Member States and stakeholders who have actively participated in this initiative by sharing their experience and providing the necessary inputs.



**KAREL  
DE GUCHT**

*EU Trade  
Commissioner  
for Trade*

In a globalised economy, EU companies have to compete on their domestic markets as well as on markets abroad. This is why so much of the Commission's current efforts are focused on creating new opportunities for EU exporters and ensuring that they can compete and do business in foreign markets on fair terms. This is even more important in the current economic crisis. It has reinforced the importance of international rules within the global trading system. Unlike others, the EU has stood firm against the temptation to introduce protectionist measures or use trade defence instruments to close markets, particularly in the fastest growing emerging economies.

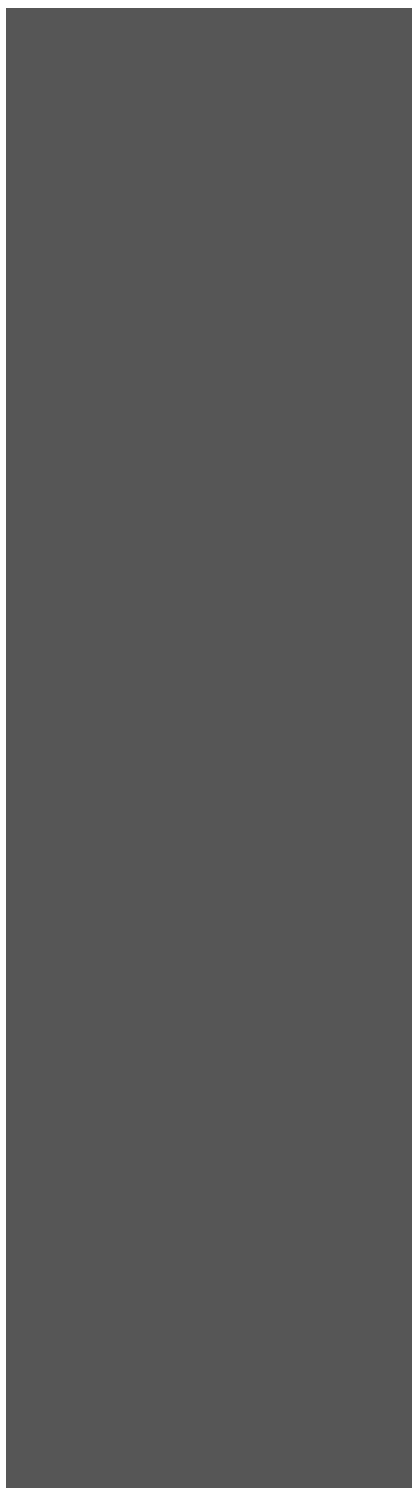
However, trade defence instruments are part of WTO rules. They are part of a wider understanding with our citizens that open markets generally bring opportunities, provided they are backed up by rules to ensure that trade takes place on a level playing field. When properly applied, trade rules ensure that all trading partners can compete on the basis of their comparative advantages and ensure that citizens and society come out as winners. This means that all countries should be able to act against unfair trade. But this must be done within a clear and transparent legal framework;

one which offers guarantees that rules are not open to protectionist pressures or political influence. This is the way the EU approaches trade defence. It is what we expect also from our trading partners around the world.

Of course, much of the burden of such investigations falls on business itself – whether the investigation is launched by the EU or by a third country. You are asked to cooperate on what are often quite technical and detailed enquiries and where you sometimes lack the necessary technical and legal expertise and experience. This is a particular challenge for SMEs. The European Commission is conscious of this burden when pursuing its own investigations. It is also conscious that third countries' use of trade defence instruments place a similar burden on your companies.

This guide therefore provides a useful tool to help you find your way in the trade defence world.

It complements the advice and expertise that is already available from different sources and can help EU businesses in the event that they find themselves subject to a trade defence investigation launched by one of our trading partners.



# Table of Contents

## Introduction

### Chapter 1: Dumping, subsidy, safeguards: the basic principles

- What is dumping?
- What is a subsidy?
- What is a safeguard?
- What are the requirements to impose measures?
- What is the legal framework?
- What kind of measures can be imposed?

### Chapter 2: The investigation

- On what grounds is an investigation initiated?
- Why an investigation?
- How am I informed of an investigation?
- Should I participate in the investigation?
- Who should I contact?
- What are the main steps of an investigation?

### Chapter 3: The rights and obligations of exporters

- What are my rights?
  1. Right to submit information
  2. Right to access information and to comment thereon
  3. Right to be heard
- What are my obligations?
  1. Register
  2. Meet the deadlines
  3. Adequately co-operate

### Chapter 4: Am I concerned by a procedure and if so to what extent?

### Chapter 5: How do I decide to co-operate?

- What are the benefits of co-operation?
- What are the costs of co-operation?
- What are the consequences of non cooperation?
- How do I decide to co-operate?
- Do I need to co-operate in a safeguard case?

### Chapter 6: What is the role of the other various parties?

- What is the role of the European Commission?
- What is the role of the administration of the Member States?
- What is the role of embassies and the EU delegations in the investigating country?
- What is the role of the EU association of which I am a member?
- What is the role of my customers in the investigating country?
- What is the role of my related companies?

### Chapter 7: Measures have been imposed, what is still possible?

- Review of measures
- Legal challenge of measures

4

6

6

6

7

7

8

8

9

9

9

9

9

10

10

12

12

12

14

15

16

16

16

16

18

19

19

19

19

20

20

21

21

22

23

23

23

23

23

24

24

25

# Introduction

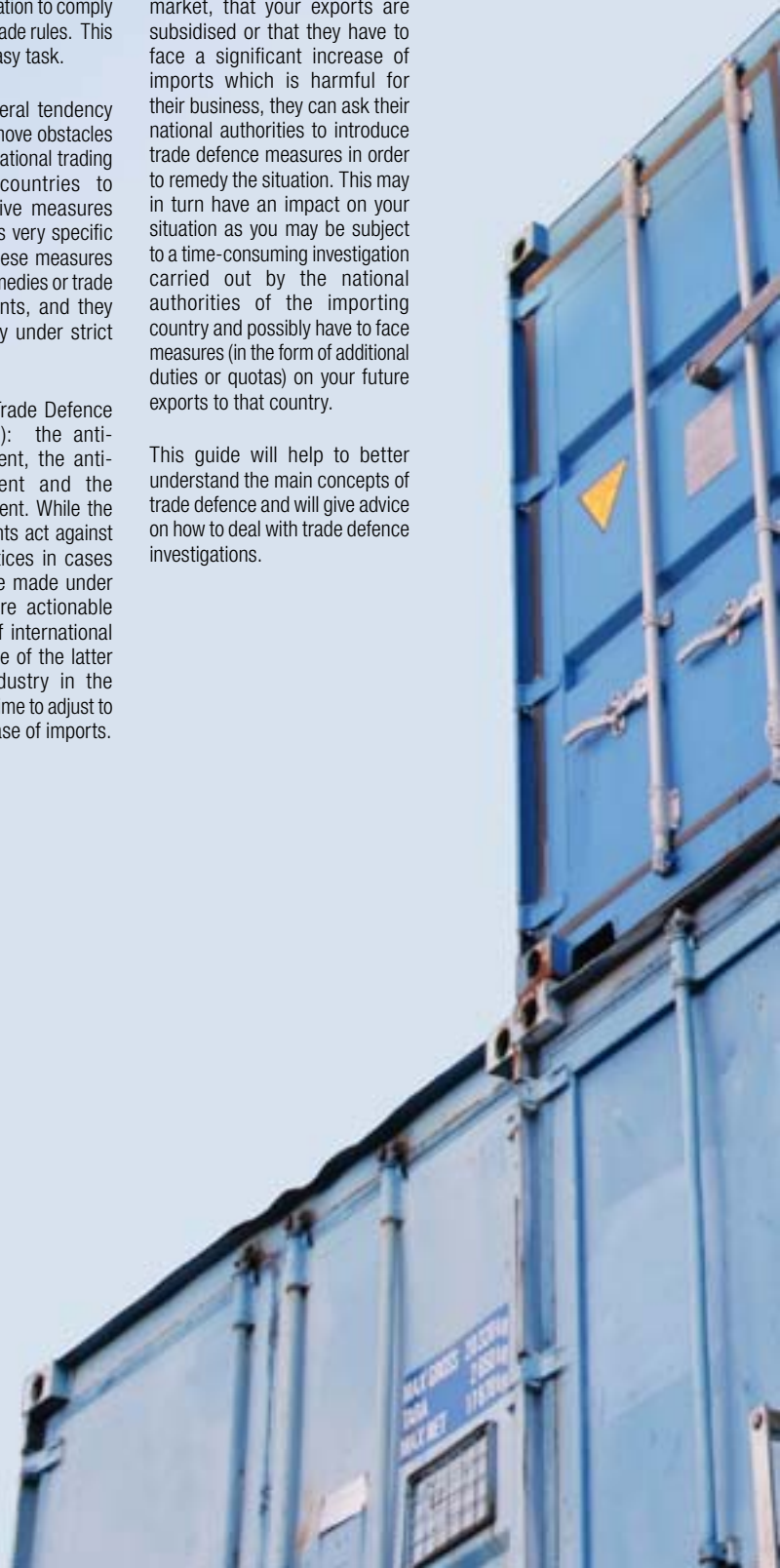
With the increasing globalization of trade, companies doing business abroad, need to take into account their obligation to comply with international trade rules. This is not always an easy task.

Although the general tendency nowadays is to remove obstacles to trade, the international trading system allows countries to introduce restrictive measures in order to address very specific circumstances. These measures are called trade remedies or trade defence instruments, and they are permitted only under strict conditions.

There are three Trade Defence Instruments (TDI): the anti-dumping instrument, the anti-subsidy instrument and the safeguard instrument. While the first two instruments act against unfair trade practices in cases where imports are made under conditions that are actionable under the rules of international trade, the objective of the latter is to give an industry in the importing country time to adjust to a significant increase of imports.

If your competitors in foreign markets claim that you are either dumping your exports on their market, that your exports are subsidised or that they have to face a significant increase of imports which is harmful for their business, they can ask their national authorities to introduce trade defence measures in order to remedy the situation. This may in turn have an impact on your situation as you may be subject to a time-consuming investigation carried out by the national authorities of the importing country and possibly have to face measures (in the form of additional duties or quotas) on your future exports to that country.

This guide will help to better understand the main concepts of trade defence and will give advice on how to deal with trade defence investigations.







# Chapter 1

Dumping, subsidy, safeguards: the basic principles

## WHAT IS DUMPING?

A company is dumping if it is exporting a product at a price lower than its "normal value". The normal value of a product is considered to be the price of the product when sold in the domestic market or its cost of production.

An **anti-dumping measure** – usually in the form of a duty – is applied to counteract the injurious effects of dumped imports and restore fair competition. The measure is based on the dumping margin, which consists of a comparison between the export price and the normal value. This comparison is made for identical or comparable product types. It may be adjusted for differences affecting price comparability such as differences in the conditions and terms of sale, levels of trade, physical characteristics, etc. in order to ensure such fair comparison.

What do I do if I am not dumping?

Antidumping measures are country-wide, i.e. they affect all exports of the product under investigation from one or several countries. Therefore, even if your company is not exporting at dumped prices, it needs to cooperate in the proceeding in order to demonstrate that this is indeed the case. It would then be exonerated.

### What is dumping?

Domestic price = **120**



Export price = **100**

Dumping margin = **20**

## WHAT IS A SUBSIDY?

A subsidy is a financial contribution by a government or a public body which confers a benefit to a recipient. A financial contribution may take various forms such as grants, loans, tax credits, or government-provided goods or services.

A benefit is conferred if any of these contributions are provided on more favourable terms than available on the market. For example, if a government provides electricity at below market price or buys a product at above its market value.

Subsidies that can be acted against, so called countervailable subsidies, are subsidies that are specific to one company or one sector.

An **anti-subsidy measure** (also called countervailing measure) – usually in the form of a duty – is applied to counteract the injurious effects of subsidised imports and restore fair competition. It should thus correspond to the difference between a subsidised export price and a non-subsidised export price.

A subsidy is a financial contribution by a government or a public body which confers a benefit to a recipient.



## WHAT IS A SAFEGUARD?

Safeguard measures may be introduced when an industry is negatively affected by an unforeseen, sharp and sudden increase of imports. The objective of safeguard measures is to give the industry a temporary breathing space to reduce the pressure of imports, in order to make necessary changes. Safeguards always come with an obligation to restructure.

While anti-dumping and anti-subsidy measures are taken against specific countries (and

exporters are attributed an individual duty depending on their own situation, to the extent they co-operate), safeguards apply to imports from all countries. In other words they are applied to all imports regardless of their source, and the same measure is applied to each exporter.

Therefore, the safeguard procedure differs from the anti-dumping and anti-subsidy proceedings in several aspects (see **chapter II**).

Unlike the anti-dumping and anti-subsidy instruments, safeguards do not focus on whether trade is fair or not. Therefore, the legal conditions for imposing measures are more stringent e.g. the standard of injury.

## What is injury?

An industry suffers injury when there is deterioration in its economic situation.

Injury is determined through an objective examination of all the relevant economic factors, such as production, sales, market share, profits, productivity, capacity, capacity utilisation, etc. This list is not exhaustive.

Note that in safeguards, **serious** injury needs to be determined. This is a higher level of injury than **material** injury required in anti-dumping and anti-subsidy proceedings.

## WHAT ARE THE REQUIREMENTS TO IMPOSE MEASURES?

The very first condition to impose measures is to determine that **imports are either dumped** (anti-dumping), **subsidised** (anti-subsidy), **or that there was a sharp increase of imports** (safeguards). There are however additional requirements: it also has to be established that these imports had a negative impact on the economic situation of the domestic industry, i.e. that there is injury. In other words, the investigating authorities need to demonstrate that there is a **causal relationship** between the imports and **the injury**.

**Public interest test:** countries may decide to apply measures only if it is demonstrated that it would not be against their overall public interest, i.e. that the measures would not cause more harm to the overall economy than they bring relief to the domestic industry suffering from the imports. Therefore, the interests of industrial users of the imports, importers and consumers have to be taken into account.

## What is causality?

It should be demonstrated that the imports in question have caused the injury to a domestic industry. This would typically be the case when events occur simultaneously, e.g. increased imports and decreased sales/production of the domestic industry.

Very often factors other than imports also cause injury to the domestic industry. It should be demonstrated that those are not the main causes of the injury. Those factors could be prices and volume of non dumped/subsidised imports, contraction in demand, changes in the pattern of trade, or developments in technology.

To summarise, measures may only be imposed if three requirements are fulfilled: (i) the existence of dumping/subsidisation/surge of imports, (ii) a domestic industry suffering injury and (iii) the existence of a causal link, proving that the injury is caused by the imports and not by other factors.

## WHAT IS THE LEGAL FRAMEWORK?

Each country using trade defence instruments has a specific law setting out the details and conditions to apply measures in its domestic legislation.

For WTO members, these laws should as a minimum comply with WTO requirements. National legislation may however go beyond WTO provisions, i.e. set a bar higher for applying measures than that foreseen at WTO level. WTO members have the obligation to notify their domestic laws (and

any modification made to them) to the relevant WTO authorities. These laws can be obtained through the on-line WTO web site search engine (see annex).

The relevant WTO legislation is the Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the WTO Anti-dumping agreement), the Agreement on subsidies and countervailing measures, and the Agreement on safeguards.

Non-WTO members are not obliged to comply with WTO standards. However, normally their national law is inspired by WTO principles and often there are no major differences.

In addition, specific provisions on the use of Trade Defence Instruments may be included in bilateral agreements signed between the EU and the country taking or envisaging to take action. These bilateral obligations should also be fulfilled.

*A summary of the main characteristics of the domestic legislation of the more frequent user-countries can be found on the internet site of the European Commission (see annex). The full text of the domestic legislation of each WTO member can be found on the WTO internet site (see annex).*

## WHAT KIND OF MEASURES CAN BE IMPOSED?

**ANTI-DUMPING AND ANTI-SUBSIDY** measures are normally imposed for five years with the possibility to extend them on the basis of a review investigation for further five year period(s). Provisional anti-dumping and anti-subsidy measures may be imposed not earlier than 60 days after initiation of an investigation. Such provisional measures can be imposed for a maximum period of 4 months for anti-subsidy and 6 months for anti-dumping.

The measures usually take the form of an *ad valorem duty*, i.e. a duty calculated on the value of the invoice, e.g. 15%, but could also be a *specific duty*, i.e. a duty

calculated on another parameter than the value, such as weight, e.g. 15\$/ ton. Price undertakings are also possible (see below). The duties are paid by the importer in the country having imposed the measures and collected by the national customs authorities.

Exporters that have duly cooperated with the investigating authority should be attributed a duty rate that reflects their own situation. Non-cooperating exporters will be subject to a residual duty that is normally higher than that attributed to cooperating parties. It is therefore in the interest of exporters to cooperate.

Duties may be equivalent to the level of the dumping margin calculated, or the amount of the subsidy found. Certain countries also provide for the possibility to limit the level of the duty to the minimum level necessary to offset injury. This methodology is called **the lesser duty rule**. The level of a measure may however never exceed the dumping margin or the total amount of the subsidy.

**SAFEGUARD** measures can be imposed for a period of 4 years with the possibility to extend them to up to a maximum of 8 years in total (see **Chapter VII**). In the vast majority of the cases measures

are however imposed for a period of three years. These measures may be imposed as a result of a significant increase of imports and can take the form of duties or a volume limitation. Volume restrictions can be either a quota or a tariff quota. With a quota, imports beyond a specific volume of imports are not possible, while with a tariff quota imports beyond this limit are still possible but they are subject to an additional duty. Provisional safeguard measures may be imposed at the same time as the initiation of the investigation. These provisional measures can only take the form of a duty.

## Price undertakings: an alternative solution?

In anti-dumping and anti-subsidy proceedings, an exporter can offer a price undertaking, instead of being subject to an anti-dumping or anti-subsidy duty.

With a price undertaking, an exporter agrees to export the product under investigation above a certain price limit, i.e. at non-dumped or non-subsidised prices. When the export prices are above this threshold, the company's products are exempt from duties that would otherwise be charged when they are imported. This is of course subject to certain conditions, usually including strict monitoring by the authorities of the importing country and sometimes regular reporting of export prices and verification procedures.

A company willing to offer a price undertaking should contact the investigating authorities.

# Chapter 2

## The investigation

### ON WHAT GROUNDS IS AN INVESTIGATION INITIATED?

Trade defence investigations are initiated either following a complaint by an industry or on the initiative of an investigating authority. Depending on the instrument, an investigation can be initiated when there is evidence of (i) dumping, subsidisation or a significant increase of imports, (ii) injury to a domestic industry and (iii) a causal link between the injury and the imports concerned. In the vast majority of cases the investigation is based on a complaint lodged by one or more domestic producers. Please note that, by law, the complainants must represent a major proportion of the domestic production. Each interested party has the right to obtain a 'public version' of this complaint (i.e. a version from which all confidential data has been removed). See also **Chapter III.2**.

### WHY AN INVESTIGATION?

Once the authorities have analysed the complaint and are satisfied that there is sufficient evidence, they will decide to initiate an investigation. The purpose of the investigation is to gather information, to verify whether the legal conditions to impose measures are fulfilled and to establish the level of the measures. Not all investigations necessarily result in measures. The investigation may indeed show that measures are not justified.

### HOW AM I INFORMED OF AN INVESTIGATION?

A country initiating an investigation has to publish a notice, the so-called notice of initiation, in its national official journal. It also has to inform the authorities of the countries concerned by the investigation. Normally all exporting producers known to the investigating authorities are also informed directly.

Each time the European Commission is made aware of the initiation of an investigation, it immediately informs the representatives of the Member States, asking them to forward the information to the parties concerned. The European Commission also tries to contact the EU associations representing the industry producing the product under investigation in order to alert them, give them the relevant information and ask them to contact their members. The European Commission also advertises the ongoing investigations via its website.

Exporting producers are thus either directly informed by the investigating authorities or are made aware of an investigation by their Member State or the relevant EU association. In many cases producers will also have heard about an initiation through their usual professional contacts, e.g. their customers, as such information is normally spread quickly.

#### What should I do when I am informed of an investigation?

If you want to preserve your rights in the investigation you should immediately register as an interested party by contacting the investigating authorities.

### SHOULD I PARTICIPATE IN THE INVESTIGATION?

In order to achieve the best possible outcome it is recommended to cooperate with the investigating authorities and submit the requested information. **In an anti-dumping or anti-subsidy investigation the companies that fully co-operate will be attributed an individual duty reflecting their situation which will normally be lower than the duty for those companies that did not cooperate.** Please refer to **Chapter V** for more details.

## WHO SHOULD I CONTACT?

Should your company be concerned by an investigation or have specific questions, **you are advised to contact your national and/or European Association** who is usually informed and is familiar with such proceedings. You can also contact your National Administration to get appropriate advice and assessment of the proceedings.

In order to receive all the relevant information (such as the notice of initiation, questionnaires) and not to miss any deadlines, please contact directly the investigating authorities concerned. It is important to "make yourself known" to these authorities and register as an interested party within the framework of the investigation. This is often a prerequisite to be able to exercise your rights of defence.

Furthermore, the European Commission actively monitors trade defence actions taken by non-EU countries. Even though the European Commission cannot legally represent the EU producers in such investigations, it has accumulated technical knowledge and a lot of experience regarding the use of trade defence instruments by third countries. A team of experienced case handlers is available to provide your company with technical assistance and advice. The contact details of the European Commission are given at the annex.

## WHAT ARE THE MAIN STEPS OF AN INVESTIGATION?

### 1. Anti-dumping and anti-subsidy investigations

The following gives a general idea of the main steps of a typical investigation. There may be differences depending on the countries – please refer to the annex for the websites of the most important user-countries.

#### INITIATION OF AN INVESTIGATION

The authorities of a non-EU country initiate an investigation via a publication in the national official journal. **That publication typically also specifies all relevant deadlines.** In parallel, the authorities inform the exporters concerned directly, and/or the relevant embassies, commercial offices and the EU Delegations.

#### REGISTRATION OF AFFECTED PRODUCERS

Exporting producers affected by the investigation need to register with the investigating authority and ask for a questionnaire. Short deadlines need to be respected: normally between 15 to 21 days for registration as an interested party and between 30 and 45 days to return the completed questionnaire.

#### IMPOSITION OF PROVISIONAL MEASURES

Provisional measures **may** be imposed as from 60 days from the date of initiation of the investigation. Usually however it takes more time. Provisional measures are not imposed in all cases.

#### ADDITIONAL INFORMATION/VISIT

During the course of the investigation, the authorities may ask for additional information and/or schedule a verification visit at the exporters' premises. **Note that the verification visit may take place before or after imposition of provisional measures.**

#### IMPOSITION OF DEFINITIVE MEASURES

An investigation **may** be concluded with the imposition of definitive measures. Investigating authorities are obliged to disclose the final findings and, according to WTO rules, provide the possibility for interested parties to comment before the imposition of definitive measures. **Investigations shall, except in special circumstances, be concluded within one year, and may in no case take longer than 18 months.**

## 2. What are the particularities concerning safeguard investigations?

The main steps identified above also apply to safeguard investigations: initiation through a publication in the domestic official journal, need to register as an interested party, questionnaires, publication of the results in order to allow parties to make comments and imposition of measures.

Certain aspects of safeguard proceedings however differ from anti-dumping and anti-subsidy proceedings, because safeguards are an emergency action and the same duty is imposed on all imports irrespective of their country of origin. The main differences are the following:

- 1) **Provisional measures may be imposed simultaneously with the initiation of the investigation. Therefore, exporters may suddenly, without warning, be confronted with a safeguard duty.**
- 2) Although cooperation of individual companies is also important in safeguard proceedings, it does not have the same impact as in anti-dumping and anti-subsidy investigations, since no individual duties are calculated. The same duty applies to imports from all sources equally. Investigating authorities may however choose a form of duty which addresses more specifically the cause of the problems while not unduly penalising imports that are not injuring the domestic industry. For instance a measure could be imposed only below a

certain minimum import price. Exporters may thus have a clear interest to cooperate in order to ensure that their views and comments are taken into consideration. In the absence of cooperation, parties may indeed lose the right to defend their interests (e.g. to make submissions and to participate in hearings).

Companies subject to a safeguard investigation should therefore immediately contact the European Commission and/or the administration of their Member State to develop a defense strategy, in order not to be unduly punished. In many cases, European exporters are not the cause of any injury because their exports are typically made in higher price segments.

# Chapter 3

## The rights and obligations of exporters

Trade defence investigations are quasi-judicial procedures during which all interested parties have specific rights (rights of defence) but also obligations. Interested parties consist of all economic operators which are directly or indirectly potentially affected by any measures. This mainly concerns exporter(s) in the country(ies) targeted by the investigation as well as the domestic producer(s) in the country having initiated the investigation. In practice, in order to make sure that

these parties are able to exercise their rights, they have to fulfil certain obligations.

These rights and obligations are conferred by the legislation of the country having initiated the investigation. This should be in compliance with WTO legislation (if that country is a WTO member) and the provisions of any existing bilateral agreement between that country and the EU.

## WHAT ARE MY RIGHTS?

### 1. Right to submit information

Exporters have the right to submit relevant information in writing. This information must be taken into account by the investigating authorities to the extent it is relevant and provided in accordance with the procedures, including deadlines, required by the authorities.

Parties have the possibility to submit two types of information: (i) information that will be used in order to calculate **the level of the duty for your company** (for anti-dumping and anti-subsidy), i.e. normally in the form of a questionnaire reply, and/or (ii) general comments of a legal or factual nature, i.e. in the form of a written submission.

## ATTENTION: Register!

In order to be considered as an interested party – and to ensure the above rights of defence – a company should make itself known to the investigating authorities and register in accordance with the

procedures and within the deadlines described in the notice of initiation. Usually a simple letter is sufficient, but certain jurisdictions also request more substantial information already at this stage.



## What is the purpose of a questionnaire?

The main purpose of a questionnaire reply is to obtain a duty rate corresponding to the situation of your company. For example, in an anti-dumping proceeding, detailed information on export prices as well as prices on the domestic market and the corresponding cost of production is requested. To the extent that the reply is considered adequate – and the information has been verified by the investigating authorities – this information will be used to calculate the dumping margin.

While individual duty rates are possible in anti-dumping and anti-subsidy proceedings, in **SAFEGUARDS** only one measure is determined and applied to all exports, irrespective of their country of origin and whether or not a questionnaire reply was submitted. Questionnaire replies in safeguard cases may nevertheless be important in order to pave the way for a type of measure that impacts less on your exporting interests, e.g. in the form of a minimum price.

## Why should I reply to a questionnaire?

Replying to the questionnaire is not an obligation. However in the absence of a reply, no individual duty rate will normally be calculated, and measures would normally be higher than the duties obtained by the co-operating parties (there can be no reward for non-cooperation).

Replying to a questionnaire also entails important obligations (see box on the top of the page), and it is often advisable to hire legal counsel in order to ensure that co-operation is adequate. Even with full co-operation in an investigation, a specific outcome, corresponding to your expectations is not guaranteed.

Even though it is advisable to co-operate, this remains an economic decision and should be based on a cost benefit analysis.

## How do I have to reply to a questionnaire?

Should you decide to reply to the questionnaire, you need to make sure to fully cooperate (all questions need to be answered) and to fulfil all the requirements imposed by the investigating authorities. Partial cooperation (i.e. only replying to certain parts of the questionnaire) may be considered as non-cooperation. In this case the calculation of the duties will not be based on your own data but on best facts available. Consequently, the level of the duty may be higher than expected. For more information on obligations relating to cooperation, please refer to **Chapter V**.

## How can I ensure that my confidential data is protected?

Replying to a questionnaire means that you will have to submit sensitive company specific information, such as detailed data on prices (for each export transaction), costs, or names of customers.

Even though you may consider that this information is highly sensitive as it may concern business secrets, it is key information to the investigation and should thus nevertheless be submitted to the investigating authorities. The authorities have however the legal obligation to ensure protection of confidential data, and cannot share these data with any other parties.

Therefore, **any sensitive data can be submitted on a confidential basis**, and should then be clearly marked as confidential. In this

### How do I decide to cooperate?

In order to decide whether or not to cooperate, exporters have to compare the costs/benefits of cooperation with the consequences of non-cooperation. Non-cooperation may entail the need to abandon the exporting market in question.

Please refer to **Chapter V**

case, you will have to also provide a non-confidential summary of this information. This non-confidential summary will be available for examination by all interested party, in order to ensure transparency and allow those interested parties to adequately exercise their rights of defence. A summary could for example consist of an indexation of figures. Note that if certain information cannot be subject to a summarisation or indexation, e.g. customer names, this should nevertheless be given to the investigating authority (marked confidential), but will not be accessible to other parties.

Note that the USA, Canada and Mexico grant the legal representatives of interested parties' access to all confidential information submitted. However, the legal representatives are not entitled to share this information with their clients.

## What information other than a questionnaire reply can I submit?

In addition to the questionnaires, interested parties may wish to submit comments of a more general nature, or raise specific issues other than those related to the determination of the duty. This might for example concern legal arguments (i.e. showing that legal requirements are not met), specific information concerning the product definition, the situation of the domestic industry, the domestic market and/or any other information relevant in the context of the investigation.

Such comments can be submitted in writing, in the format and within the deadlines specified in the notice of initiation, and in coordination with EU industry associations, the National Administration and the European Commission, in order to ensure coherence.

The investigating authorities have the obligation to analyse all the information they receive, including these written submissions and, provided that it is relevant and duly substantiated, they have to take this into account for the establishment of the findings.

**For specific questions on these issues we advise you to get legal assistance or contact the European Commission services and the administration of your Member State who can give you some guidance (see contact details at the end of the guide).**

## 2. Right to access information and to comment thereon

Investigating authorities are obliged to provide information to interested parties **a)** when an **investigation is initiated** and **b)** when **findings are established**. In addition, **c)** access to the non-confidential **information submitted** by other interested parties must also be granted.

### a) Information at initiation stage

The initiation of an investigation is almost always based on a complaint (request) made by the domestic industry of a third country. As soon as an investigation has been initiated, the investigating authorities of that country are obliged to make this complaint available to interested parties. This document should contain evidence on (i) dumping/subsidisation or increased imports, (ii) information on the situation of the domestic industry and (iii) evidence showing that imports have had a negative impact on the domestic industry.

If you are concerned by an investigation, you have the right to obtain a "public version" of the complaint. This version is a non-confidential version of the request made by the domestic industry, i.e. all data of confidential nature have been removed and replaced by a non-confidential summary. This summary must provide sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.

### b) Information when findings are established

The findings of an investigation should be communicated to the interested parties. If you are an interested party, you should also request and receive the following information: essential findings regarding dumping/subsidy or increased imports (for safeguards), the situation of the domestic industry (injury) and how the domestic industry was affected by imports (causality). In addition, all cooperating exporters should receive a detailed explanation on how their duty was calculated (only for anti-dumping/anti-subsidy proceedings since no individual duty is established in safeguards).

### When do I receive information concerning the essential findings?

The results of an investigation have to be disclosed before the final determination, and allow for sufficient time to comment. Provisional findings may be disclosed at the same time as the imposition of the provisional measures or directly thereafter.

### What should I do if I did not receive any information?

If no information or only partial information is disclosed, interested parties should contact the investigating authorities as soon as possible, because usually the time to react is rather short (see below). The European Commission can assist you if you consider that you did not receive sufficient information.

### How can I use the information I have received?

The results of an investigation are disclosed in order to allow interested parties to comment on the findings. You should be aware of the fact that comments can be made only during a limited period (specified either in the notice of initiation or in the "disclosure" document itself). You should thus ensure that you react within the deadlines specified by the investigators.

You have the right to make any comment regarding the findings, including on the calculation of the duty that has been attributed to your company (if any) as well as on the establishment of injury and causality. All other issues, such as product definition, can also be raised at that stage. You may indeed have an interest to ask for exclusion of (some of) the products you export. This is however subject to legal considerations.

Some countries also carry out a so-called public interest test, i.e. they examine whether imposing measures would be against the interest of the domestic economy overall. This can also be commented on.

Here again the European Commission and your National Administration can assist you as this is a crucial stage of the investigation.

## c) Access to information submitted

All interested parties have the right to access the information that other parties have submitted within the framework of the investigation. Depending on the practice of the country having initiated the investigation, this can take different forms:

### Access to non-confidential files (the most frequent case)

All interested parties are entitled to have access to the "non-confidential" version of all information submitted by every other party during the course of an investigation. All confidential data has been removed and replaced by a meaningful summary. Parties may request to consult these files at the premises of the investigating authorities. Normally, there is a possibility to make copies.

Note that in some countries access to files is reserved to local lawyers and therefore it may be necessary to hire a legal counsel.

Some countries provide online access for registered interested parties, e.g. Australia and Canada.

### Access to confidential files

Some countries (currently USA, Canada, Mexico) give access to ALL documents (including confidential information) submitted by interested parties. This right is however only conferred to lawyers, with the strict obligation not to disclose any confidential data to their clients.

### Automatic receipt of information

A minority of countries requires that each time a party submits information, it automatically sends a non-confidential version to all other interested parties (based on a so-called service list). This is for example the case in Ukraine.

### How can I use this information?

The information contained in the files may be interesting in order to see the arguments raised by other parties. These arguments can be rebutted by filing a submission or requesting a hearing to make your views known. Exporters will typically concentrate on the submissions made by the domestic industry, i.e. their competitors, in the importing country.

## 3. Right to be heard

Parties also have the opportunity to make their views known orally during a hearing. Hearings can either be requested by the parties or will take place upon invitation of the investigating authorities. In the latter case, the hearing will take the form of a public hearing, i.e. all interested parties are invited to attend the same hearing and exchange views or debate positions. Hearings take place in the country having initiated the investigation.

Details concerning hearings are normally specified in the notice of initiation. Should you be interested in presenting your views orally, you should follow the procedures explained in the notice of initiation of the investigation. It is advisable to also submit a written submission of the comments made orally during the hearing in the form of a so-called post hearing submission. Similarly to written submission, interventions during hearings should ideally also be co-ordinated with the EU industry association, the European Commission and the National Administrations.

## WHAT ARE MY OBLIGATIONS?

In order to participate in an investigation and to keep adequate rights of defence, parties should comply with a number of obligations. These obligations are normally clearly explained in the notice of initiation and consist mainly of meeting deadlines and cooperating adequately.

### 1. Register

The first step in order to cooperate in an investigation is to register as an interested party, according to the procedure and within the deadlines specified in the notice of initiation.

### 2. Meet the deadlines

Investigations are limited in time and therefore subject to very strict deadlines. **Failure to meet these deadlines may be considered as a failure to cooperate**, which can have important negative consequences. It is thus important to be aware of these deadlines and to respect them. Deadlines are normally clearly set out in the notice of initiation and/or officially communicated by the relevant investigating authorities to all registered interested parties.

Extensions can be requested directly from the investigating authorities. To the extent that the request is reasonable and duly justified, extensions are often granted. There is however no guarantee. Documents should therefore ideally be submitted within the deadlines.

The main deadlines are for:

- **registration as an interested party,**
- **replying to the questionnaire (and deficiency letters),**
- **submitting comments (after initiation or imposition of provisional measures),**
- **requesting participation in a public hearing.**

### 3. Adequately cooperate

In order to adequately cooperate, you must fill in a questionnaire. Your reply to the questionnaire will constitute the body of information on the basis of which findings will be made with regard to your company (for anti-dumping and anti-subsidy proceedings). Replying to a questionnaire is not always an easy task, as it requires providing detailed information, in a specific format that is not always standard for companies. The information requested will normally include a full record of domestic and export transactions for a twelve months period and complete information on costs of production for each type of the product concerned.

You should also be aware that the **non-submission** of all relevant information **or the submission of incomplete, false or misleading information, within the specified time limits can have unfavourable consequences for your company**. For example, in anti-dumping cases, supplying evidence on domestic prices without the corresponding cost of production has little chance to be accepted, because the said prices can only be used if proven to be profitable, i.e. above their cost

## Language of the proceedings

Comments and the questionnaire replies must normally be submitted in the official language of the investigating country. Therefore, the time necessary to have all the documents translated before sending them out needs to be taken into account. **Watch the deadlines!**

## What can I do after deadlines have passed?

Investigating authorities may disregard any information submitted beyond the deadlines. Should you have difficulties in meeting deadlines, you are advised to immediately ask for an extension. Should you not receive any extension or not be in a position to submit the information on time, it is advised to nevertheless submit information, even late, accompanied by a justification for the late submission. This goes however without any guarantee that it will be accepted by the authorities.

In the worst case scenario, your comments of a general nature on the substance of the case could still be communicated to the European Commission, your national authorities or the national/EU industry association, to be used in their submissions, provided they are registered as an interested party.

of production. In circumstances where partial data is submitted, the investigating authorities may decide to (at least partly) disregard the reply to a questionnaire and establish findings on the basis of any other facts available.

**It is crucial to take the time to carefully read the instructions before starting to fill in the questionnaire. You should not hesitate to contact the investigating authorities with any questions you may have regarding your responses to the questions or any difficulties in completing the questionnaire.**

Companies may receive so-called deficiency letters following the submission of their questionnaire response. A reply to this letter should also be given within the specified deadlines, otherwise it may be considered that you did not cooperate. **Investigating authorities may carry out on-the-spot visits to examine the records of your company and to verify the information provided in the questionnaire.**

## Should my related companies also reply to the questionnaire?

Investigating authorities may require that related companies involved in the production and sales of the product concerned also reply to the questionnaire and/or that a consolidated reply is provided by the group. In particular, related importers in the third country will be requested to reply. Note that the notion of relationship is not necessarily limited to a controlling interest. In case of doubt whether a related party should also reply, immediately contact the authorities in order to clarify this aspect.

## An exception: Sampling

If the number of exporters is very large, the investigating authorities may decide to limit their findings to a reasonable (reduced) number of companies. In order to do so, a sample of companies will be chosen and only the exporters selected in the sample will have to reply to the questionnaire. It is however crucial that your company accepts to be part of the investigation and fills in a so-called sampling questionnaire (a much shorter questionnaire than the questionnaire used for the actual investigation), on which basis the investigating authorities will make their sample selection. The average findings for companies included in the

sample will then be applied to companies willing to cooperate, but were not part of the sample.

## Should I reply to a questionnaire in a safeguard case?

Although no individual duties are established in a safeguard case, it may nevertheless be important to reply to a questionnaire in order to submit pertinent data or information to the investigating authorities. In the absence of any questionnaire reply, the investigating authorities may also draw the (wrong) conclusion that exporters have no interest in the case.

Because no detailed calculation is made, questionnaires in safeguard investigations tend to be easier to fill in than anti-dumping or anti-subsidy questionnaires.

Therefore, it is also strongly recommended to reply to a questionnaire in a safeguard investigation. Some countries do however not request exporters to reply to a questionnaire in safeguard investigations. In such cases you may nevertheless submit a document outlining your views and comments.

# VERIFICATION VISITS: SHOULD I ACCEPT THEM? WHAT IS EXPECTED FROM ME?

Any questionnaire reply is susceptible to be verified by the investigating authorities. The objective of the visit is to verify the completeness and correctness of information and data submitted in the questionnaire reply.

Verification visits usually last around 2 to 3 days, or more depending on the investigating country, e.g. more than a week for US cases. Depending on the country, verification visits may take place either before or after the imposition of provisional measures. Not all countries carry out verification visits. Note that in safeguard cases verification visits are rather exceptional.

## Should I accept them?

It is recommended to accept the on-spot visits because otherwise a company may be treated as a non-co-operator despite the fact that it has fully filled-in the requested information in the questionnaire.

## What information should I submit?

The verification of the figures reported in the questionnaire reply will largely be based on the company's accounts, ledgers and accounting documents (invoices, shipping documents). Therefore, no new information should normally be submitted during a verification visit, but only supporting evidence.

## Confidentiality

Any confidential information collected during the verification visit should also be considered as such by the investigating authorities. It should be clearly marked confidential. Should you have any doubt, please do not hesitate to contact the European Commission for further advice.

A thorough preparation is necessary for an on-spot visit and it should normally be organised by the exporter's legal representative, if any. The relevant personnel (in particular staff who has prepared the questionnaire reply) should be available and should be prepared to answer

questions from the investigators. Sales and accounting personnel (both domestic and export) should also be involved.

Essentially, all documents and computer records which served as the basis for the reply to the questionnaire should be prepared in advance and be available for inspection. A photocopying machine should also be available, as investigators invariably require copies of most back-up documents.

In important or controversial cases, the European Commission and the Member States administrations are prepared to assist exporters during these on-spot verifications though strictly in the role of an observer. Moreover, exporters concerned, are welcome to come to Brussels and receive advice and technical assistance from the European Commission.

# Chapter 4

Am I concerned by a procedure and if so to what extent?

An exporter is theoretically concerned by a trade defence procedure if he exports the product covered by the investigation to the investigating country. This product should be clearly defined in the notice of initiation published by the investigating authorities in the local official journal and/or on their website.

You may nevertheless have doubts as to whether you are really concerned.

## AM I NEVERTHELESS INVOLVED IF ...

### I am not exporting at dumped prices and/or did not receive any subsidy?

It is important to demonstrate to the investigating authorities that your exports are neither dumped nor subsidized. For this purpose you must cooperate with the investigating authorities and reply to the questionnaire. Please be aware that unsubstantiated allegations (like 'I am not dumping' or 'my products are not subsidized') are not enough.

### I don't export the product concerned?

If you do not export the product concerned then you do not need to worry. If however, you have doubts about the product definition and you find that the terms used in the official notifications are unclear or contradictory, then you should immediately contact

the investigating authorities and ask for clarification in writing. The European Commission can also provide advice on the interpretation and on the steps to take.

### I did not get any notification?

This does not mean that you are not concerned by the procedure. Indeed, only exporters known to the investigating authorities are notified directly. If you are not sure about what is happening and you have heard rumours, you can check the list of on-going investigations on the website of the European Commission and of the third country. You can also contact your association of reference at Member State or European level and ask if they are already involved in the procedure. Please be aware that deadlines must be respected (see Chapter II).

### I also produce in the investigating country?

The fact that an EU producer has production in the third country that has opened the procedure is not relevant. What matters is if the industry exports from the EU to that country.

### I export from a third country?

The determining factor in trade defence investigations, and in particular in anti-dumping and anti-subsidy proceedings, is the country of origin of the goods. Therefore, if your company also produces in another non EU-country, these exports would not be targeted by any measures, if the case only concerns the EU (and not this third country). Obviously the situation is different in a safeguard case because any measures would be imposed against all countries of origin.



# Chapter 5

## How do I decide to cooperate?

Deciding to cooperate in an anti-dumping or an anti-subsidy investigation is an economic choice for which each exporter should make a cost-benefit analysis.

### WHAT ARE THE 'BENEFITS' OF COOPERATION?

When fully cooperating in an investigation, the outcome should normally reflect the company's own situation. If the legal conditions are met and measures are imposed, an individual duty for each cooperating exporter corresponding to the information provided will be calculated. This could mean either no duty (e.g. if your export price is non-dumped or non-subsidized) or at least a lower duty than that attributed to non co-operators. Therefore, the company should be in a position to maintain a reasonable access to the export market, and perhaps be even better off than certain competitors (if targeted by the same proceeding and being attributed a higher duty rate).

**Cooperation does however not always mean that you will get the duty you had expected as the investigating authorities may not accept all your claims.**

### WHAT ARE THE 'COSTS' OF COOPERATION?

Cooperating in an investigation represents a significant investment in terms of time, financial and human resources. Replying to the questionnaire is indeed a complex and time consuming exercise for which detailed company specific data are requested, such as data on domestic and export sales prices (usually for all transactions during a period of one year), cost of production, name of customers or employment. The questionnaire reply may also be subject to a verification visit by the investigating authorities. Companies usually confer these tasks to the competent staff members or to an external

accountant who is coordinating the compilation of the reply. In addition, the possible need for translation is an important element to be taken into account, since many authorities require the documents to be filed in their own language (e.g. Chinese, etc.). Moreover, because investigations are complex, quasi-judicial procedures, it is recommended to hire a legal representative. Moreover, be aware that in some countries it is compulsory to be represented by a legal adviser during the whole investigation.

### WHAT ARE THE CONSEQUENCES OF NON COOPERATION?

In case of non-cooperation, the investigating authorities will base their findings on 'best facts available' on the record. This normally results in a higher duty rate than in case of cooperation. Depending on the level of the duty, this can mean that the export market is no longer attractive. Furthermore, by not completing the questionnaire reply an interested party partly renounces its rights of defence.

### Do I have to take a lawyer?

The obligation to hire a local legal adviser only applies to certain countries (e.g. China or certain Latin American countries). However, given the complexity of the proceedings, and also the specificities of the domestic legislation and culture, it is recommended to take a local lawyer in any event. He/she would speak the language of the proceeding and can have direct contacts with the investigating authority and the other interested parties involved. In many cases, local legal representation is however not an obligation and companies can defend themselves without any legal assistance.

## HOW DO I DECIDE TO COOPERATE?

**Cooperating in a trade defence investigation has certain clear advantages because it increases the chances of a more positive outcome.** It is however time-consuming, can be expensive and does not

always lead to the expected results. The decision to cooperate pertains solely to the company targeted, and the main considerations are the economic and/or strategic interests in the market concerned.

### How much is at stake?

(How much do I export, is it important for my business?)

### What would normally be my own duty rate?

(Am I dumping – or do I receive a financial contribution – and to what extent?)

### What are likely consequences of co-operation / non-cooperation?

If I cooperate: reduced duty, legal fees, time and resources

If I do not cooperate: higher duties, market access?

## DO I NEED TO COOPERATE IN A SAFEGUARD CASE?

Even if no individual duties are established in a safeguard case, **co-operating signals your interest in the proceeding and allows you to exercise your rights of defence** such as access to information or the possibility to comment). Questionnaires are also less complex

than in anti-dumping and anti-subsidy proceedings and less often subject to verification visits. Cooperation is thus less burdensome, so it is recommended to reply to questionnaires and to participate in the investigation.

# Chapter 6

What is the role of the other various parties?

## How can the European Commission help?

The European Commission is in charge of monitoring TDI proceedings, measures, and legislation adopted by third countries. Specifically, the European Commission monitors that third countries' TDI authorities fully comply with the WTO rules when they make use of trade defence instruments.

## WHAT IS THE ROLE OF THE EUROPEAN COMMISSION?

Generally speaking, the European Commission monitors investigations carried out by third country authorities in order to ensure that the relevant WTO rules as well as bilateral obligations in TDI proceedings are respected. In particular, the European Commission's role is to provide general information and assistance to exporters, but also to intervene at appropriate levels.

The role and the involvement of the European Commission also depend on the type of investigation and the level of cooperation by the industry concerned:

- With regard to **anti-dumping** proceedings, a distinction has to be made between the dumping calculations and the other aspects of the case. Dumping calculations are based on company-specific data that can only be submitted by the company concerned. Therefore, the European Commission's interventions in this respect are relatively limited. The European Commission however supports exporters to the extent that dumping issues are clearly in violation of the WTO anti-dumping agreement. In any event, issues such as product scope, injury and causality are subject to the European Commission's scrutiny and interventions.
- With regard to **anti-subsidy** proceedings, the European Commission's interventions depend on whether the subsidy programmes are implemented by individual Member States or also involve EU expenditure. In the former case, the European

Commission may assist the Member States' authorities in rebutting the subsidy allegations. In the latter case, the European Commission becomes itself a party in the proceeding since it is the authority in charge of the administration of the relevant EU programmes and/or disbursements. In addition, and similarly to anti-dumping proceedings, the European Commission intervenes as appropriate regarding injury and causality issues.

- In **safeguard** proceedings, given that any measure would equally affect all exporters, the European Commission has a natural role of co-ordination. It ensures that the interests of all parties are properly represented, without any contradictions. In addition, also in safeguard cases the European Commission checks the WTO compliance of the application and intervenes as appropriate concerning issues such as injury and the causal link between imports and the economic situation of the domestic industry.

The successful defence in third country TDI actions depends very much on the input given by the exporters concerned. Indeed, only exporters have the data necessary to establish whether their export prices are dumped and/or whether they receive subsidies. Therefore, **the assistance by the European Commission depends a lot on the level of interest and efforts shown by the exporters in an investigation.** If they themselves do not cooperate by replying to the questionnaire, the efforts by the European Commission are much less effective.

As part of its broader competence in the application of the TDI rules, the European Commission can help defend the interests of EU exporters. It has a deep knowledge of trade defence instruments and has gained a solid experience concerning the use of the instruments by third countries. A team of highly specialised case handlers is working on these issues on a daily basis and they are available to assist your business.

In practice, the European Commission undertakes the following actions:

- When an investigation is initiated, the European

Commission informs Member States and known relevant EU associations. At that stage, the European Commission usually also registers as an interested party in order to obtain a copy of the complaint having led to the initiation of the investigation and to ensure adequate follow-up and interventions;

- Meetings are organised with EU industries in order to exchange views, identify problems and define a common strategy;
- Throughout the investigation the European Commission monitors results (provisional and definitive), intervenes within the framework of the investigations

and reacts in co-ordination with industries concerned (and possibly Member States). This is normally done through written submissions and/or participation in hearings in order to highlight weaknesses that have been identified;

- Throughout the proceedings, the European Commission is ready to give further advice and assistance to companies and Member States;
- The European Commission also keeps Member States regularly informed about the development of cases and makes general statistics on TDI publicly available.

# What is the role of the other various parties?

**The European Commission does not replace lawyers:** the main task of the European Commission is to explain the various options and to provide assistance to the EU exporters. It can help to defend the industry's interests and intervenes within the framework of the investigation, but it can in no way act as a legal representative in trade defence proceedings. Due to the technical nature of these investigations and also because of the many company specific issues that arise in an investigation, it is advisable that exporters hire a lawyer to assist them.

## What other assistance can I expect from the European Commission ?

The European Commission provides exporters with advice and assistance during all the phases of TDI proceedings. However, it cannot provide all of the services an exporter may need during a TDI proceeding. In particular, it cannot replace a lawyer and the significant effort to fill in a questionnaire reply remains with the exporters. Exporters will also have to arrange for translation of official documents and questionnaires replies at their own expense. With regard to the verification visits carried out by the investigating authority at the exporters' premises, the European Commission provides assistance and advice to exporters on all the legal and practical aspects. If exporters so request, a representative of the Commission may participate in a verification visit as an observer to check that WTO rules are respected. This would of course depend on the resources available and the specificities of the case.

## How can I help the European Commission?

The best way to help the European Commission is to get in contact with the competent department at the earliest possible stage in the investigation, and to exchange relevant information throughout the proceeding. Therefore, please contact the European Commission case handler in charge of monitoring the case or send an e-mail to the address mentioned in the annex. To better defend the exporters' interests, the European Commission needs to know all the important elements concerning not only the possible existence of dumping/subsidy, but also the product targeted and the market situation in both the EU and in the third country. Any other useful information that serves to clarify the main issues in the proceeding and in particular the possible existence of injury to the local industry and the causal link with dumping/subsidization is also needed to complete the picture. For this purpose, the European Commission will typically offer to organize a meeting in Brussels with the industry association and the exporters concerned.

## How can I approach the European Commission?

EU exporters and/or their legal counsel can contact the European Commission directly by e-mail. When third country authorities initiate a TDI proceeding, the European Commission immediately informs all the Member States and the known industry associations concerned about the new proceeding. It also communicates the name of the person in charge of the monitoring of that proceeding as well as their contact information. If for certain reasons the exporters concerned do not receive this information from their Member States' authorities or from the European Commission, they can contact the relevant section of DG Trade in charge of monitoring third country cases directly (see contact information in the annex).

## WHAT IS THE ROLE OF THE ADMINISTRATION OF THE MEMBER STATES?

Member State's administrations have an important role to play in these proceedings, as they are usually the first point of contact for exporters when a TDI proceeding is initiated.

After, the Member State administration has been alerted it will inform the national industry of the decision to initiate an investigation, normally through the national associations, and it may also give them advice on the proceeding. Whenever a TDI procedure affects relevant national interests, the Member State administration may also actively participate in the investigation as an interested party, sending its own submissions and replying, if necessary, to the questionnaires provided by the investigating authorities.

This is especially the case for anti-subsidy investigations, where the Member States' administrations are directly involved throughout the investigation and they are a party to the proceeding as the authority implementing the relevant subsidy programme(s). In such investigations, the third country investigating authority will typically also make an on-spot investigation at the Member State's administration premises.

Member States, via their embassies, also directly intervene within the framework of the investigation (see below), namely in order to show their interest and support to their industry. This is done in full co-ordination with the European Commission.

## WHAT IS THE ROLE OF EMBASSIES AND THE EU DELEGATIONS IN THE INVESTIGATING COUNTRY?

The delegations of the European Union and the embassies of the Member States play a key role in these investigations since they represent the formal communication channel between, the European Commission and the Member States on the one hand, and the local authorities on the other hand. They also have the 'local knowledge' and can give further valuable guidance on how to best intervene and at what level.

The embassies of the Member States and the delegations of the European Union in the investigating country receive the notification of the initiation of a TDI proceeding from the local investigating authorities. The EU delegations then inform the European Commission case handler (in Brussels) in charge of monitoring the investigation.

Embassies and delegations act respectively on behalf of their governments and the European Commission by filing submissions and contacting the relevant local authorities. They also help in collecting and updating information regarding the local political and market situation, to provide the relevant background and support for the European Commission in the defence of the EU exporters' interests.

It should go without saying that contacts with Member States' embassies and EU delegations cannot substitute for close coordination with the European Commission headquarters in Brussels and the National Administrations who have the technical expertise and know the overall picture of the proceedings. It must also be ensured that information obtained from local embassies is also shared with Brussels headquarters. Finally, the embassies of the Member States concerned by a trade defence investigation will coordinate with the EU delegation in order to pool information relevant for the defence of the case and to avoid any contradictions in the communication with third country investigation authorities.

## WHAT IS THE ROLE OF THE EU ASSOCIATION OF WHICH I AM A MEMBER?

EU associations often play a crucial role in third country TDI proceedings as they coordinate the defence of the exporters' interests who are their members. Their role is all the more important when there are several exporters from different Member States affected by a new TDI proceeding. Most of the EU (and national) associations already have experience in TDI proceedings and have had previous contacts with the European Commission. In cases where associations are involved, **it is best for the exporters to liaise directly with their association. The association will deal with the European Commission, will represent them and choose the best strategy to protect the exporters' interests.** The exporters are in any event free to contact the European Commission directly even when their associations are involved, for instance where there are particular interests and/or issues that cannot be addressed in general by their associations.

## WHAT IS THE ROLE OF MY CUSTOMERS IN THE INVESTIGATING COUNTRY?

The initiation of a new TDI proceeding in a third country often immediately affects the supply of the product under investigation to the local customers. The affected customers tend to ask EU exporters for an immediate renegotiation of the sales price to reflect the possible imposition of a duty or they cancel the orders and buy from other sources which will not be hit by the duties. Exporters should not hesitate to explain to their customers that TDI proceedings take a long time to be completed and possible duties are only collected a few months later upon imposition of provisional measures. At the same time exporters can ask for their customers' support vis-à-vis the local investigating authority. Customers can show how the imposition of measures may have negative repercussions in terms of increased costs of their input product, and will eventually lead to a loss of competitiveness, possible job losses and higher prices for final consumers. Note that WTO law provides for the participation of importers, industrial users and representative consumer organisations in these proceedings.

These considerations bear even wider legal relevance in countries that carry out the 'public interest' test in their TDI investigations, which could eventually prevent the imposition of final measures. Please refer to **Chapter I** for more information on the public interest test.

## WHAT IS THE ROLE OF MY RELATED COMPANIES?

A special situation occurs when a third country TDI investigation does not directly target EU exports, but non-EU production facilities of companies with headquarters in the EU. In these situations, the European Commission cannot be part of the proceeding as the EU is not directly targeted. Therefore the EU-based company should seek redress with the local authorities of the non-EU country targeted by the TDI proceeding. In these cases the European Commission can still provide assistance even though at a different level than if the EU was directly targeted.

As explained in **Chapter III** - rights and obligations - related companies need to cooperate in a proceeding. Investigating authorities may require either an individual reply for each related company, or a consolidated questionnaire reply covering the exporter and all its related companies.

# Chapter 7

Measures have been imposed, what are my options?

Once measures have been imposed, they may still be modified or even removed either through a **review investigation** or a **legal challenge** (court proceeding).

## REVIEW OF MEASURES

I am no longer selling at dumped prices or do no longer receive any subsidy. What should I do?

Interested parties may ask for a **review of the measures** during their period of imposition. Exporters who can demonstrate that circumstances have changed significantly since the imposition of the original measure may request the initiation of a review investigation in order to decrease or remove the duty. The changes have to be of a lasting nature and include changes regarding dumping or subsidisation, but also changes in the situation on the domestic market (e.g. injury, production) or the scope or the form of measures.

Such reviews are normally not possible for **SAFEGUARDS**, because contrary to anti-dumping and anti-subsidy, the same measure is applied to each exporter in all countries and is thus not company specific.

Can measures be prolonged beyond their initial period of imposition?

Anti-dumping and anti-subsidy measures normally expire automatically after five years, unless it is determined in an "expiry review" that measures should remain in force.

This "expiry review" (or "sunset review") is usually requested by producers in the domestic market and must include evidence that the expiry of measures would be likely to result in a continuation or recurrence of dumping/ subsidization and injury. It is not excluded, that even if exports have ceased as a result of measures, it is determined that they could resume at dumped/subsidised prices and cause injury, if measures were to lapse.

It should be noted that, even if beyond their initial period of application, **measures will remain in place during review investigations**. The rights and obligations regarding cooperation, verification visits or rights of defense of the parties, are similar to those in initial investigations, and also apply in review investigations.

Depending on the domestic law, an expiry review can result in either the repeal or continuation of the duties in force at the same level (i.e. similarly to the EU practice), or can result in a change in the level of the duties. If measures are maintained, they will normally remain in force for another five years.

**SAFEGUARD** measures may also be extended beyond their initial period of imposition if an investigation demonstrates that the measures continue to be necessary to remedy the injury suffered by the domestic industry, provided that the industry is adjusting to the situation.

I did not export during the investigation period but want to do so now, what should I do to avoid measures?

Imports from companies that cooperated with the investigation are usually liable to their own individual duty, but there is also a "country-wide" duty for imports from all other companies producing and exporting the product concerned. This so-called "residual duty" is applicable to the exporters that failed to cooperate in the investigation, and is normally higher than the individual duty applicable to cooperating exporters. If a company starts exporting the product after the investigation period, its goods will be subject to the "residual" duty.

However, companies that either did not exist, or did not export to the third country in question during the original investigation period, can request a **new exporter review** to have their own individual duty rate established. If the investigating authorities determine that the exporter appears to meet the relevant criteria, a review will be opened. The review will examine whether the criteria are met and, if so, establish an individual margin of dumping or subsidy for the company concerned.

This possibility does not apply to **SAFEGUARDS**, since the same measure applies to all exporters.



## LEGAL CHALLENGE OF MEASURES

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### Can I challenge measures in the domestic court?

Exporters affected by definitive measures have the possibility to challenge them in the **domestic court** of the country having imposed the measures if it is considered that the national legislation has not been correctly applied. The procedural aspects may vary from one country to the other and it is thus strongly recommended - if not even compulsory - to get assistance from a specialised legal adviser. Importers located in the country having imposed measures also have the possibility to challenge the measures.

Because a Court procedure is company specific and involves independent tribunals, the role of the European Commission in these proceedings is very limited. The European Commission cannot appear in front of the domestic court of an importing country but it can offer advice to exporters concerned.

### Can measures be challenged in international fora?

Measures can also be challenged in a **WTO dispute settlement** procedure if it is considered that the WTO legislation has not been correctly applied. This procedure cannot be launched by individual companies but only by WTO Members. In the case of the European Union, the European Commission is the right body to ask for a WTO panel procedure. It is therefore necessary that exporters get in touch with the relevant services of DG Trade in order to exchange views on the possibility to challenge measures at that level. Exporters may also contact their National Administration first for appropriate advice and information of the procedure.

WTO procedures are quite heavy and time consuming as it can take several years before having a final ruling (including appeal of the decision), and an additional number of months for the implementation of the conclusions of the panel. Therefore, the burden and length of a panel proceeding need to be put in perspective with the actual duration and impact of the measures challenged.

## 1. CONTACT DETAILS

### European Commission

#### By post:

DG TRADE  
Trade Defence Unit H5  
200, rue de la Loi-Wetstraat  
B-1049 Brussels, Belgium

#### By e-mail:

Trade.defence.third.countries@ec.europa.eu

## 2. USEFUL LINKS

### (a) European Commission

DG Trade web site:  
<http://ec.europa.eu/trade>

DG Trade web site on trade defence instruments:  
<http://ec.europa.eu/trade/tackling-unfair-trade/trade-defence/>

On this web site you can find the following information

- Trade defence instruments used against EU exports
- Statistics on measures in force/on-going investigations against EU exports
- Summary of domestic legislation of main users against EU exports

### (b) Member States

MEMBER STATE	EMAIL	WEBSITE
Austria	gerhard.erdpresser@bmwfj.gv.at	
Belgium	trade.defence@economie.fgov.be	<a href="http://economie.fgov.be">http://economie.fgov.be</a>
Bulgaria	e-docs@mee.government.bg	
Cyprus	cphotiades@mcit.gov.cy ckarageorgis@mcit.gov.cy mpavliou@mcit.gov.cy	
Czech Republic	sustrova@mpo.cz	
Denmark	ebst@ebst.dk	<a href="http://www.ebst.dk/antidumping">www.ebst.dk/antidumping</a>
Estonia	info@mkm.ee	<a href="http://www.mkm.ee">www.mkm.ee</a>
Finland	ritva.haukijarvi@formin.fi sara.ohls@formin.fi	
France	suzanne.blenski@dgtrésor.gouv.fr florian.riou@finances.gouv.fr	
Germany	rudolf.stuemper@bmwi.bund.de	
Greece	elb@mneec.gr	
Hungary	kbihari@kum.hu	
Ireland	alfie.smith@deti.ie	
Italy	patrizia.iorio@sviluppoeconomico.gov.it paolo.passerini@sviluppoeconomico.gov.it	
Latvia	jolanta.zlemeta@em.gov.lv	<a href="http://www.em.gov.lv">www.em.gov.lv</a>
Lithuania	dempingas@urm.lt	
Luxembourg	info@luxembourgforbusiness.lu carole.tompers@luxembourgforbusiness.lu	<a href="http://www.luxembourgforbusiness.lu">www.luxembourgforbusiness.lu</a>
Malta	epd@gov.mt	
Netherlands	antidumping@minez.nl	
Poland	SekretariatDPH@mg.gov.pl	<a href="http://www.mg.gov.pl">www.mg.gov.pl</a>
Portugal	armando.coutinho@dgae.pt joao.guerra@dgae.pt	<a href="http://www.dgae.min-economia.pt">www.dgae.min-economia.pt</a>
Romania	diac@dce.gov.ro	<a href="http://www.dce.gov.ro">www.dce.gov.ro</a>
Slovakia	ochranaobchodu@mhv.sk	<a href="http://www.mhv.sk">www.mhv.sk</a>
Slovenia	trade.mg@gov.si	<a href="http://www.mg.gov.si">http://www.mg.gov.si</a>
Spain	sgpar.sccc@comercio.mityc.es	<a href="http://www.comercio.mityc.es">www.comercio.mityc.es</a>
Sweden	registrator@kommers.se	<a href="http://www.kommers.se">www.kommers.se</a>
United Kingdom	tradedefencepolicyenquiries@bis.gsi.gov.uk	

### (c) World Trade Organisation (WTO)

General

<http://www.wto.org>

Search engine for Trade defence legislation of main WTO members

<http://docsonline.wto.org>

(Go to the simple search menu, select the appropriate document symbol by clicking on "?" and then choose between: Anti-dumping Art 18.5, Subsidies and countervailing measures Article 32.6, Safeguards Article 12.6)

### (d) Main TDI users against EU exports

Country	Internet site address
Argentina	<a href="http://www.cnce.gov.ar/">http://www.cnce.gov.ar/</a>
Australia	For dumping/subsidies: <a href="http://www.customs.gov.au/site/page4227.asp">http://www.customs.gov.au/site/page4227.asp</a> For safeguards: <a href="http://www.pc.gov.au">http://www.pc.gov.au</a>
Brazil	<a href="http://infosecex.desenvolvimento.gov.br">http://infosecex.desenvolvimento.gov.br</a>
Canada	<a href="http://www.citt.gc.ca">http://www.citt.gc.ca</a>
China	For dumping/subsidies: <a href="http://gpj.mofcom.gov.cn">http://gpj.mofcom.gov.cn</a> For injury: <a href="http://www.cacs.gov.cn">http://www.cacs.gov.cn</a>
India	For dumping/subsidies: <a href="http://commerce.nic.in/index.asp">http://commerce.nic.in/index.asp</a> For safeguards: <a href="http://dgsafeguards.gov.in">http://dgsafeguards.gov.in</a>
Israel	<a href="http://www.moital.gov.il">http://www.moital.gov.il</a>
Mexico	<a href="http://www.economia.gob.mx">http://www.economia.gob.mx</a>
Russia	<a href="http://www.minprom.gov.ru">http://www.minprom.gov.ru</a> (only in Russian)
South Africa	<a href="http://www.dti.gov.za">http://www.dti.gov.za</a>
Turkey	<a href="http://www.dtm.gov.tr">http://www.dtm.gov.tr</a> (Go to Foreign trade / imports)
Ukraine	<a href="http://www.me.gov.ua">http://www.me.gov.ua</a> (only in Ukrainian)
USA	USDOC: <a href="http://www.trade.gov/ia">http://www.trade.gov/ia</a> USITC: <a href="http://www.usitc.gov">http://www.usitc.gov</a>

### 3. INDEX

Access to information	15, 20	Interested party	9, 10, 11, 12, 14, 16, 19, 21
Anti-dumping measure	6	Investigating authority	8, 9, 10, 13, 18, 19, 22, 23
Causality	7, 14, 21	Investigation	4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24
Confidentiality	17	Legal assistance	13, 19
Cooperation	11, 13, 19, 20, 21, 24	Lesser duty rule	8
Cost of production	6, 13, 16, 19	Member States	9, 21, 22, 23
Countervailable	6	Non-confidential summary	13, 14
Countervailing measure	6, 7	Normal value	6
Customer	9, 13, 19, 23	Obligations	7, 12, 13, 16, 21, 23, 24
Deadlines	10, 12, 13, 14, 16, 18	Price comparability	6
Dispute settlement	25	Price undertaking	8
Domestic market	6, 13, 24	Public interest test	7, 14, 23
Dumping	4, 6, 7, 8, 9, 13, 14, 18, 20, 21, 22, 24	Questionnaire	10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 23
Dumping margin	6, 8, 13	Related company	23
Duty	6, 8, 9, 11, 13, 14, 19, 20, 23, 23, 24	Rights of defence	10, 12, 13, 16, 19, 20
Embassies	10, 22, 23	Safeguards	6, 7, 8, 11, 13, 14, 24
EU association	9, 21, 23	Safeguard measure	6, 8, 24
EU Delegation	10, 23	Sampling	17
European Commission	7, 9, 10, 11, 13, 14, 15, 16, 17, 18, 21, 22, 23, 25	Subsidy	4, 6, 7, 8, 9, 10, 11, 13, 14, 16, 17, 18, 19, 20, 21, 22, 24
Expiry review	24	Translation	19, 22
Export price	6, 8, 13, 19, 21	Verification visit	10, 17, 19, 20, 22, 24
Findings	10, 13, 14, 16, 17, 19		
Hearing	11, 15, 16, 22		
Injury	6, 7, 8, 9, 11, 14, 21, 22, 24		



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