EVALUATION OF THE EUROPEAN UNION’S TRADE DEFENCE INSTRUMENTS (TDI)
Contract No. Si2.581682

Summary report

Subject and scope of the evaluation: The evaluation concerned the European Union’s (EU’s) trade defence activities, specifically the anti-dumping (AD) and anti-subsidy (AS) instruments. The evaluation period was 2005 to 2010; a previous evaluation had covered practice until 2004.

The objectives of the evaluation were to provide:
1) A concise description of the EU’s TDI and of the current practice in this area;
2) A balanced economic analysis of the fundamental arguments in favour of and against the use of TDI and their application in the context of the current international legal framework and economic realities;
3) An evaluation of the performance, methods, utilisation and effectiveness of the present TDI scheme in achieving its trade policy objectives;
4) An evaluation of the effectiveness of the existing and potential policy decisions of the European Union in comparison with selected peer countries: Australia, Canada, China, India, New Zealand, South Africa, United States;
5) An examination of the basic AD and AS Regulations in light of the administrative practice of the EU institutions, the judgments of European courts and the recommendations of the WTO Dispute Settlement Body (DSB).

The evaluation applied a three-dimensional methodology:
1) Economic analysis of causes and effects of TDI (static and dynamic welfare analysis, distributional effects of TDI);
2) Comparative evaluation of policies and processes;
3) Legal review of the two basic Regulations.

The sources of evidence and evidence gathering methods for the evaluation were:
1) Review of documents: official EU documents (notices of initiation, regulations), reports and guidelines; secondary literature;
2) Interviews and written contributions of 65 stakeholders, including the European Commission (primarily staff of the Trade Defence Directorate of DG Trade); other EU institutions and Member States; Union industry representatives; exporters/importers/users; other stakeholders (consumers, trade unions, trade lawyers, etc.);
3) Online survey among EU firms (245 respondents);
4) Country papers prepared on peer country TDI systems.

Main findings and recommendations
The study’s main conclusions are: First, the economic analysis confirmed that the stated rationale for EU TDI – countering unfair trading practices and market-distorting subsidies – could not be supported based on the actual pattern of use. Nonetheless, the analysis identified a number of considerations that greatly mitigate the perceived negative economic effects of TDI. In fact, given the main de facto purpose that TDI serves, the study argues that its use has been welfare improving for the EU. At the same time, the study makes clear that the actual (international) construction of trade defence law is inappropriate for its de facto role, resulting in lack of clarity for trading firms and opening the system up to the possibility of protectionist abuse. Further, the economic analysis confirmed that the construction of trade defence law was increasingly out of step with the modern trading environment and recommended use of the flexibility within the system to apply it so as to minimise the risks of adverse outcomes for the EU, while working in the context of the WTO towards a system of trade remedies constructed in a way better suited to the actual tasks they perform.
Second, the analysis of EU court cases and WTO disputes showed that the number of litigations related to the EU’s implementation of TDI was low. It also confirmed a high degree of compliance, as evidenced by a high share of claims against the EU institutions rejected by the EU courts. EU TDI were also rarely challenged before the WTO DSB. However, the EU’s success rate at the WTO DSB was lower, with about half of the claims being granted. Nevertheless, the number of amendments to the two basic Regulations required in response to either EU court or WTO DSB decisions is limited.

The international comparison highlighted that EU TD practice stands out in a number of ways. Notably, the regular application of the public interest test and the frequent reduction of duties through application of the lesser duty rule distinguish EU practice from that in most other countries. This leaves the EU better placed than the other countries reviewed in dealing with the evolution of globalised production systems and the heterogeneity of firms in international trade. The study analyses the options for improving accessibility to AD/AS instruments by amending initiation policies – such as the right for workers to file complaints or greater use of ex officio initiation of investigations – and ensuring cooperation. Furthermore, it highlights two areas where EU TD practice may benefit from drawing on peer countries’ experience, namely the transparency and duration of investigations. Finally, the international comparison showed that the EU TDI system is not more prone to politicisation than most other countries’ systems.

The evaluation of EU trade defence practice validated most of the methodologies and procedures. The overall finding therefore is that EU trade defence policies and practice are sound. A number of specific issues were identified. With regard to substantive issues, these relate to certain aspects in the dumping and subsidy analysis, injury and causation analysis, the Union interest test and the calculation of the non-injurious price. Concerning procedural issues, it was found that, in general, the Commission’s practice with regard to the participation of interested parties in proceedings is more inclusive than required by the two basic Regulations. Transparency of proceedings has improved, but could still be improved further. Also, the relatively long period required from injury to measures was noted. Last but not least, the Hearing Officer’s role was positively evaluated.

The evaluation team developed recommendations in respect of the following aspects of EU TDI policy: Mission statement and intervention logic; initiation of investigations and treatment of non-cooperation; shortening the process for provisional determinations; changes in the Union interest test; duration of measures and dynamic impacts of TDI; consolidated statement of administrative practice; access to confidential information. In addition, the evaluation team recommended a number of changes to the two basic Regulations, as well as suggested changes to a number of specific issues related to the EU’s implementation of TDI.

Limitations in the design or the execution of the evaluation in meeting the study aims and objectives
The lack of an officially adopted intervention logic for TDI posed a challenge for the formulation of the evaluation questions. Furthermore, confidentiality issues prevented an in-depth analysis of many methodologies and tools which the Commission applies in AD and AS investigations. Also, for two of the peer countries, China and India, only limited primary information could be obtained. Therefore, for these two countries secondary sources have been used extensively. Finally, due to time and resource constraints, a firm level analysis of the effects of TDI could not be undertaken.

Suggestions of issues or aspects for further investigation
The evaluation showed that most of the strategic issues of TDI are a consequence of weaknesses of the WTO rules on trade remedies. Therefore, further investigation of the weaknesses of the three WTO agreements for trade remedies (Anti-Dumping, Subsidies and Countervailing Measures, and Safeguards Agreement) is recommended. Furthermore, a firm-level analysis of TDI effects is suggested.