Enlargement: Impact on Trade Defence
Questions and Answers on the Possibilities for Enlargement-Related Interim Reviews of AD and AS Measures

1. Existing trade defence measures in the EU-27 will automatically apply in the enlarged EU-28. Will all of these measures be automatically reviewed by the Commission?

No. As in previous EU enlargements, the Commission will not automatically review all the existing EU trade defence measures following enlargement.

Indeed, it is expected that the measures resulting from an EU-27 analysis of dumping, injury, etc. would in most cases not be different than those based on an EU-28 analysis. In the vast majority of cases, imports of the product concerned into Croatia are small compared to those into the EU-27. In addition, the overall output of Croatia represents less than 0.5% of the output of the EU-27. All of this suggests that the results reached in EU-27 investigations normally would be representative for the EU-28 as well. In this context it should be recalled that in EU-27 investigations normally, not all producers or exporters can be investigated and therefore the results are based on a representative group of them. Accordingly, *a priori* there are no legal grounds to open automatically such reviews for all measures.

In addition automatic reviews of all measures would create a significant burden for all operators involved given the volume of information required by the Commission in such circumstances for possibly little or no change of measures. Therefore, the Commission considers it more appropriate to leave it to interested parties to ask for reviews of individual measures.

The Commission understands that there may be a number of cases where evidence suggests that measures would have been significantly different if they were based on information including Croatia. The Commission is committed to fully respecting the anti-dumping and anti-subsidy provisions that
measures shall remain in force only as long as, and to the extent that, it is necessary to counteract the dumping or countervailable subsidies which are causing injury. Consequently, the Commission encourages all interested parties to come forward with requests for reviews on the basis of any evidence as mentioned above, so that the continued appropriateness of any given EU trade defence measure can be assessed in the framework of a proper investigation.

2. What is the legal basis for requests for such enlargement-related reviews?

For measures where enlargement significantly changes the parameters underlying these measures, interested parties may request interim reviews pursuant to Article 11 (3) of the Anti-dumping Regulation (EC) No 1225/2009 as amended by subsequent Regulations and Article 19 of the Anti-subsidy Regulation (EC) No 597/2009.

The provisions of the above-mentioned articles allow for reviews of measures when circumstances with regard to dumping/subsidisation or injury have changed significantly. In addition, they underline that the initiation of such reviews as well as final determination have to be based on relevant and duly documented evidence. Both issues - the change of circumstances and necessary evidence - are explained in a greater detail in the subsequent answers.

3. Who can lodge a request for an enlargement-related review?

Any interested party may lodge a request for an enlargement-related review. According to the EU anti-dumping and anti-subsidy basic Regulations, in the framework of an investigation, the following economic operators are considered to be "interested parties":

- the EU producers.
- importers and their representative associations;
- exporters and their representative associations;
users and consumer organisations;
authorities of the exporting country.

In addition, the Commission has the right to initiate reviews on its own initiative (for more information on this issue, please, see question 11 below).

4. How can an interested party lodge a request for an enlargement-related review? What is the procedure for an initiation? What is the procedure for an investigation?

The lodging of a request must be sent in writing to the Office of Complaints of the Trade Defence Services. You can find all the contact information at the bottom of this page.

Once the review request is lodged, the Commission examines whether sufficient evidence exists to initiate. The Commission may seek additional information or clarifications concerning the review request. In such cases, the Commission will contact the complainant requesting the necessary information.

When the review request is sufficiently complete, i.e., when it meets the admissibility requirements, the Commission is obliged by law to propose the initiation of an investigation. The internal initiation procedure involves consultations with the Member States. Unlike for new investigations, there are no legal time limits for the initiation procedure, but the Commission strives to open review investigations swiftly.

After a decision to initiate a review has been made, a Notice of initiation of a review proceeding is published in the Official Journal. The Notice provides basic information about the review (product description, countries concerned, existing measures, grounds for the review, etc.), sets up time frame for the proceeding and invites trade operators to inform the Trade Defence Services about their intention to participate in the proceeding as interested parties. As a result all potential interested parties are encouraged to check the Official Journal (e.g., through Eur-Lex or Celex electronic databases) regularly.
As the review investigation proceeds, the Trade Defence Services collect and assess information and evidence obtained from interested parties through questionnaires, letters, hearings and on-spot verification visits.

The conclusions of the review investigations are discussed within the Commission's Directorate-General for Trade and the Member States are consulted in an advisory committee. The Council of Ministers adopts the final decision on the imposition of trade defence measures. As a result of an enlargement-related interim review, anti-dumping/anti-subsidy duties may be modified (either increased or decreased), abolished or they may remain unchanged.

5. How long will such an enlargement-related review take?

When conducting review investigations, the Commission has to follow certain procedures to ensure that the legitimate procedural rights of interested parties are respected. These include the right to be properly informed, right to submit information, right to be heard, etc. Notwithstanding these time limits, that are observed for the benefit of an objective and fair investigation, the Commission shall endeavour to complete the enlargement-related review investigations as swiftly as possible. The aim would be to complete such investigations within eight months from the initiation of the investigation. However the time necessary to complete such investigations will largely depend on the particular circumstances of each case including the extent of the review (full/partial), number of parties involved, complexity, etc.

6. What kind of enlargement-related interim reviews are possible?

The impact of enlargement may vary among different measures. In some cases the inclusion of information relating to Croatia may change most of the parameters underlying the measures, whereas for others it may affect only some of those parameters. Accordingly, interested parties can choose either to request a full review, i.e., a review covering all substantive aspects of the investigation or a partial review
covering only one or a combination of such aspects (e.g., dumping, injury, Union interest, form of the measures, product scope, etc.) for which enlargement has led to a structural change.

Given the special circumstances of enlargement and the complexities which may arise in particular cases, the Commission will adopt a flexible approach in the examination of each individual request according to its own merits. However, the following general rule has to be followed in all cases: the structural change referred to in the review request has to have a significant impact on the level or form of the measures.

All kinds of partial reviews are possible depending on which aspects or combinations of aspects of investigations are chosen to be reviewed. The most typical enlargement-related partial interim reviews could cover the following aspects:

- **Dumping / Subsidisation:** particularly relevant if an exporter has significant exports to Croatia and pricing structures of these exports are different to those used for the investigation underlying the measures. For anti-subsidy investigations, the subsidy margin is not impacted by the enlargement as it is calculated independently from the size of the EU. However, other changes in the relevant subsidy schemes may have occurred.

- **Scope:** relevant if products exported to Croatia differ in some ways to those exported to the EU-27, e.g., an extension of measures to cover other product types could be requested;

- **The state of the Union Industry:** particularly relevant if there is a significant production of the product concerned in Croatia - the inclusion of information on Croatia may suggest that:
  
  o a measure no longer has the support of a major proportion of the Union industry (the so-called "standing" requirement, which is explained in a greater detail in the downloadable "Guide on
How to Draft an Anti-Dumping Complaint" (pp.5-6));

- the level of the measures necessary to remove the injury for the EU-28 Union industry (including the industry of Croatia) may be higher or lower than the level determined in the EU-27 based investigation.

- **Union interest**: relevant if information on economic operators in Croatia suggests that measures at their current level and/or form could lead to an excessively negative effect on interested parties, including shortage of supplies, significant distortion of competition, etc. in the EU as a whole.

Where the Commission opens a review limited to some of the above parameters, it can expand the review to include other parameters. It may happen in a situation where there is evidence that enlargement has substantially changed also other parameters, not just those mentioned in the original request. For example, an interested party could request a review of the state of the Union industry. The investigation might subsequently reveal evidence that dumping margins would have also been significantly different, if information concerning Croatia was included in the investigation. In such a situation, the Commission may decide to review the dumping margins as well.

7. **What evidence should a request for an enlargement-related review contain?** Requests for either a full or a partial interim review must contain **sufficient evidence**, i.e., they have to be documented. Mere allegations made by applicants will not be considered as sufficient evidence, if they are not supported by adequate documentary proof. Such documentary proof may vary according to what is reasonably available to the applicant.

For a request for an enlargement-related interim review, it is mandatory that it contains sufficient evidence that the **measures would have been significantly different, if they were based on information including Croatia (EU-28)**. It has to show that, because of enlargement, the
measure is no longer appropriate to offset the effects of injurious dumping or countervailable subsidisation. It should be noted that enlargement as such, in the absence of evidence concerning its impact on the parameters underlying the specific measure, is not a sufficient basis for a review to be initiated.

The **period for which evidence is presented** has to be sufficiently long to show a structural change in the relevant parameters. In the case of dumping this period should normally cover one year, whereas in the case of injury it should normally cover at least three years. The period should be as close as possible to the date at which the request is lodged. However, given the exceptional circumstances of enlargement, the evidence may also cover other periods, if justified.

In case of a request for a **full review**, the evidence should cover all the substantive aspects of the investigation. In case of a **partial review**, only specific aspects have to be documented.

As explained in the previous question, many kinds of partial reviews are possible depending on which aspects (or combinations thereof) of investigations are chosen for review. The requests for the most typical enlargement-related partial interim reviews should include the following evidence:

- **Dumping:**
  - Existence of significant exports of the product concerned to Croatia as compared to exports to the EU-27 (invoices, international sales ledgers, audited accounts);
  - Evidence that pricing structures of these exports are different to those used for the investigation underlying the measures: export sales prices (invoices, price lists, contracts);
  - Normal value: domestic prices (invoices) and cost of production (audited accounts);
o Full dumping calculation: difference between normal value and export price expressed as a percentage of CIF export price (all calculations and all sources for the data used must be shown explicitly, noting the period to which the data refers);

o Adjustments: in order to achieve an appropriate price comparison, the export price and the normal value should be comparable, for example as regards the physical characteristics of the product and the terms and conditions of sale. When the export price and normal value are not on a comparable basis, any differences must be adjusted and documented.

• Scope:

  o Some products exported to Croatia might share the same characteristics as those exported to the EU-27 but might not be included in the scope of the product under measure (evidence depends on the product type: market surveys and/or product catalogues showing the substantial difference in physical characteristics; chemical analysis, if appropriate; official import statistics of the product/s into the new Member State).

• The state of the Union Industry:

  Standing:

  o A review request regarding the standing requirement has to provide evidence that the standing test performed on the EU-27 basis might no longer be valid. In practice that means that there is significant production of the product concerned in Croatia and that the "standing" analysis at EU-28 stage would not show that a major proportion of these producers would support the measures (the "standing test" is explained in a greater detail in the downloadable "Guide on How
to Draft an Anti-Dumping Complaint" (pp.5-6). In this respect, evidence of significant production of the product concerned in Croatia can be provided via many sources (official statistics, market knowledge, documentary evidence on the production in Croatia provided by the producers or their associations in the Croatia).

Injury level:

- Evidence that the level of the measures necessary to remove the injury for the EU-28 Union industry (including the industry of Croatia) is higher or lower than the level determined in the EU-27 based investigation. This includes an analysis of import volumes and prices, and their subsequent impact on the EU-28 industry (documentary information, e.g., on the change in the costs of production, the impact of the dumped imports on the EU-28 industry, including the impact on its profits, sales, market share, price evolution, price undercutting, employment, investment, stock variation as relevant). The data supplied should demonstrate a trend over 3 years, except for price undercutting, where evidence should relate to a recent period of time.

- Union interest:

  - Evidence that, due to enlargement, measures could lead to an excessively negative effect on interested parties in the EU as a whole (documentary evidence on economic operators in Croatia, analysis on potential shortage of supply, etc.).

The necessary evidence may vary depending on the particular request and the particular measure. Therefore, the Commission will examine the merits of each request individually.

8. I am an exporter in a country that is not a member of the enlarged EU-28. I have never had any exports to
the EU-27, but I have had exports to Croatia before it joined the EU. Can I request a "new exporter review" after the enlargement?

Yes, after enlargement, the so-called "new exporter review" with respect to anti-dumping measures and "accelerated review" in respect to anti-subsidy measures may be initiated.

The EU anti-dumping legislation does not aim at preventing imports from third countries. Individual anti-dumping duty rates reflect individual cases for different exporters. "New exporter reviews", defined and described in Article 11.4 of the anti-dumping Basic Regulation, address the problem of those exporters that did not have a chance to be granted individual anti-dumping duty rates because they did not export to the EU during the investigation period, on which the measures are based.

The same applies to requests from exporters for accelerated reviews of anti-subsidy duties, defined and described in Article 20 of the anti-subsidy Basic Regulation, which are reviews closely resembling "new exporter review" in anti-dumping cases. Exporters whose exports are subject to definitive anti-subsidy duties, but who were not individually investigated during the original investigation period for reasons other than a refusal to co-operate with the Commission, are entitled to request an accelerated review.

9. My exports to the EU are under EU anti-dumping measures, which are so high that I have stopped exporting to the EU. In addition, I have no exports to Croatia. In this situation, how can I show that I am not dumping any longer?

Exporters that are subject to the EU anti-dumping measures and are, for whatever reason, not exporting to the EU any longer or are exporting in very small quantities, have the possibility to request a review of the measures also on the grounds that they have stopped dumping. Such a request must prove a substantial change in circumstances with respect to dumping by providing supporting evidence that the company's exports to markets other than the EU have not been dumped over a reasonable period of time (usually
one year). However, the conditions in the relevant third
countries' markets should be comparable to the EU market
and the sales to those markets should be representative of
the company's overall sales.

If, after the EU imposed measures, an exporter continued to
export to Croatia and these exports suggest a lower dumping
margin than the one established in the investigation
underlying the EU measures, there are good reasons for such
an exporter to ask for a partial interim review concerning the
determination of the dumping margin. This would be the
most typical case.

10. What about definitive measures that have been
    imposed less than a year ago - are there any
    possibilities for interested parties to request
    enlargement-related reviews of these measures?

Both articles, mentioned above as the legal basis for
requests for enlargement-related reviews, underline that
measures may not be reviewed upon request by interested
parties unless a reasonable period of at least one year has
elapsed since the imposition of the definitive measures. The
Commission is convinced that, in the exceptional
circumstances of enlargement, reviews should be possible for
all measures where interested parties may provide evidence
that the EU trade defence measures would have been
significantly different if they were based on information
including Croatia. Accordingly, for measures where this one-
year standstill clause applies, the Commission may use its
rights to initiate reviews on its own initiative, provided that
the requests for such reviews, submitted by interested
parties, meet all the other criteria of admissibility.

For further information:

If you intend to lodge a request for an enlargement-related
review and have any queries on your particular case, you are
invited to contact the Office of Complaints:

**European Commission**
**Office of Complaints, TDI Service (Office: 8/21)**
**Avenue des Nerviens 105**
B-1049 Brussels, Belgium

Phone: 32-2-298 78 73 Fax: 32-2-295 6505

E-mail: TRADE-Defence-Complaints@ec.europa.eu

If you have questions regarding general aspects of the impact of enlargement on the EU trade defence instruments, you are welcome to address them to the enlargement Help Desk:

E-mail: TDI.Enlargement.Info@ec.europa.eu