



How the European Commission investigates subsidised imports

What are the procedures?

At the start of the process is the reception of an official complaint handed in by the European industry. In anti-subsidy (also known as countervailing duty or "CVD") investigations, the European Commission is under EU law required to decide whether to initiate an investigation **within 45 days of the receipt of a properly documented complaint**. The decision to initiate is based on whether the complaint contains sufficient prima facie evidence of subsidies which benefit imports of the product in question and cause injury to the EU industry.

As prescribed by World Trade Organisation (WTO) rules, prior to initiation, the European Commission is required to offer consultations to the government of the exporting country.

Once the case is initiated, the European Commission will send questionnaires to all interested parties, including **the government of the exporting country**, the exporters of the product in question and the EU producers. In cases with a large number of interested parties, sampling may be used. Users and consumers may also participate in the investigation, in order to determine whether imposing measures would be in the public interest.

If the European Commission finds preliminary evidence of subsidisation which causes injury, it may, at the latest after 9 months after initiation, impose **provisional duties which have a maximum duration of 4 months**.

Definitive countervailing duties, if warranted, **must be in place within 13 months of the initiation**. Any duties may be replaced by so-called undertakings if the government or exporters give appropriate and verifiable guarantees that the injurious effects of the subsidies will be removed (e.g. that a subsidy scheme has been eliminated).

What kind of subsidies is covered?

In broad terms, subsidies take the form of any governmental financial contribution (e.g. grant, loan, tax incentive, provision of goods) which is given on terms more favourable than those available on the market and thus confers a "benefit" to the recipient firm. To be subject to countervailing measures, subsidies must be "specific" i.e. limited in access to e.g. a particular firm or industry, and the imports which benefit from the subsidies must cause injury to the EU industry producing the product under investigation.

What kind of duties can be imposed?

As in anti-dumping, most commonly these are ad valorem duties (i.e. a percentage of the value of the imported good), but can also be "specific"(i.e. a fixed amount per unit of imported product) or "variable" (i.e. a minimum import price).

How do we avoid double counting when there is also an AD proceeding?

In cases where there is a parallel anti-dumping proceeding (which is often the case) concerning the same imports, the European Commission (as the investigating authority) will take all necessary steps to ensure that there is no "double remedy".

It should be noted that in most cases, the simultaneous imposition of anti-dumping and countervailing duties does not result in a double remedy, as each type of duty removes a different type of unfair trade practice. The obvious exception is export subsidies which operate to reduce export prices and by definition create an equivalent amount of dumping, which cannot be remedied a second time. What if a company does not reply to the questionnaire?

What is the difference between an anti-subsidy case and a WTO dispute?

An anti-subsidy investigation is not a government-to-government dispute in the same way as a WTO panel.

In anti-subsidy cases, an EU industry has complained about subsidised imports into the EU and has asked the European Commission to investigate this. If for example an investigation is started against subsidised imports from China, the Government of China would be an **interested party**, in the same way as Chinese exporters and EU producers are. Any **consultations** with the Government of China would be **purely bilateral** and thus different from dispute settlement consultations in the WTO (e.g. in the rare earths case where the consultations are under the "umbrella" of the WTO and other WTO members may be invited to take part).

The remedy available under an anti-subsidy case is a duty at the EU frontier, hence in an anti-subsidy case the Government of China could not be required to withdraw the subsidy, as can be the case in a WTO dispute.

How many anti-subsidy investigations has the European Commission started?

Anti-subsidy investigations, while less common than anti-dumping cases, are still undertaken quite frequently. The EU currently has **11 anti-subsidy measures in force against third countries**.

The EU has so far initiated 9 anti-subsidy proceedings against China and currently has measures in force against 4 products (coated fine paper, organic coated steel products (certain), solar glass and solar panels). In comparison, the US, which is traditionally a more prolific user of anti-subsidy investigations, has imposed more than 25 anti-subsidy measures against China).