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Global Agricultural Information Network

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Stronger Trade Defense Rules Enter into Force in the EU

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Report Highlights:

New legislation on trade defense entered into force in the EU on June 8, 2018. More specifically, the EU Regulation introduces tougher rules to respond to dumped and subsidized imports.

General Information:

The EU's trade defense instruments (TDIs)

The EU's trade defense instruments (TDIs) include measures to respond to dumping and unfair subsidies. Additionally, TDIs address the application of safeguards in cases where EU industry is unable to adapt to imports of a certain product that increase suddenly and sharply.

The European Commission initially proposed a reform of the EU's TDIs in 2013, conscious of the need to ensure that the EU's TDIs remain effective in dealing with significant market distortions in certain countries that can lead to industrial overcapacity and possible dumping on the EU market. The European Council reached a compromise on the proposal in December 2016. The Council and the European Parliament reached a political agreement in December 2017, which the Council formally endorsed in April 2018. Following the Parliament's endorsement of the new rules, the new legislation entered into force on June 8, 2018. All new investigations began on or after that date are subject to the modernized anti-dumping and anti-subsidy rules.

Most significant amendments to previous rules

- Formerly, the European Commission applied the “lesser duty rule” which limits the level of anti-dumping and anti-subsidy duties to the level of the injury margin, even if the dumping margin is higher. The new Regulation permits the Commission to disregard that rule in the case of distortions to the raw material price of the investigated product when a single raw material accounts for at least 17 percent of the product concerned.
- The Commission calculates an “injury margin” in order to apply the lesser duty rule. A “target selling price” for the EU industry determines the injury margin. Costs of production, administrative expenses and a target profit margin form the basis of the target selling price. The new Regulation prescribes that the target profit margin is equal to or higher than 6 percent and that it takes into account research, development and innovation costs.
- The new Regulation requires the Commission to consider social and environmental factors when calculating the target selling price for the EU industry. More specifically, the cost of production will reflect the costs of complying with multilateral environmental agreements and the International Labor Organization Conventions. Additionally, the Commission will consider principles and obligations resulting from environmental and labor rules when it assesses the acceptability of a price undertaking offer from the exporters under investigation.
- The new Regulation allows EU trade unions to lodge complaints jointly with the EU industry.
- Small and medium-sized enterprises (SMEs) will receive dedicated assistance from the “SME helpdesk” to allow them to participate in anti-dumping or anti-subsidy investigations.
- The new rules shorten the 9 month investigation period to 7 months to impose provisional measures.
- Where there are threats that foreign governments, for example, are preventing EU industry from using TDIs, the Commission may launch investigations on its own initiative without a complaint

lodged by the industry.

Commission statements on the new rules

European Commission President Jean-Claude Juncker said: *“The EU believes in open and fair trade but we are not naïve free traders...And now we have new and improved trade defense rules in our arsenal to face down some of today’s challenges in global trade. Make no mistake – we will do whatever it takes to defend European producers and workers when others distort the market or don’t play by the rules.”*

EU Trade Commissioner Cecilia Malmstrom said: *“I am very confident that this provides us with the necessary tools to efficiently defend our industries from unfair trade practices. We believe in open, rules-based trade. Now, we are better equipped to stand up for our companies if other countries don’t stick to the rules.”*

Investigations

The European Commission notes four investigations to date in the agricultural sector that have been initiated in 2018 (Biodiesel – Argentina, Indonesia; Indica rice – Cambodia, Myanmar; Bioethanol – United States of America; Biodiesel – Argentina), with two investigations having been initiated in that sector in 2016 (Citric acid – Cambodia, People’s Republic of China; Tartaric acid – People’s Republic of China).