

ONLINE COURSE

ON TRADE DEFENCE INSTRUMENTS FOR SMEs

The European Commission has prepared this online course consisting of seven short papers that taken together describe the essential aspects of trade defence instruments (TDIs) that SMEs should know for their daily business. These papers should help SMEs to navigate through the various aspects of trade defence proceedings.

TRADE DEFENCE INVESTIGATIONS CARRIED OUT BY THE EUROPEAN COMMISSION

a. SMEs may be exposed to EU trade defence investigations in the following ways.

First, SMEs may be facing unfair competition from imports. In such cases, they are invited to read Paper n°1 explaining the main elements of TDIs and which measures can be taken to protect EU business against dumped or subsidised imports from outside the EU. To see what that entails, you should in particular read Paper n°4, explaining what the Commission will ask from a producer lodging a complaint against a certain product.

Second, SMEs may import or use products subject to a trade defence investigation. In such circumstances, they are invited to read in particular Paper n°5 on how importers/users of a product can present their arguments and views in the investigation as interested parties.

b. Overview of the six papers concerning TDI investigations carried out by the European Commission

Paper n°1 provides an overview of the three existing trade defence instruments and of the type of measures that the Commission can impose.

Paper n°2 gives you an understanding of a typical TDI investigation. You will learn about what could trigger the investigation, its duration, the key steps during the investigation and the possible involvement of your company in these steps.

Paper n°3 deepens the essential aspects set out in the first paper. You learn more on what is dumping, a subsidy, what is injury to the Union industry and when it is caused. Last but not least, the paper also informs you about how a trade defence investigation deals with a country whose government significantly distorts the market (currently typically the case in the People's Republic of China).

If you are a manufacturer in the EU and you suffer from dumped or subsidized imports from outside the EU, the normal way forward is that your industry association submits a complaint with the European Commission. Paper n°4 explains the necessary content of such a complaint and the process.

Paper n°5 is of particular interest to you if you are an importer or a user of the product that is subject to an anti-dumping or anti-subsidy investigation. It explains your rights during the investigation and what you can do once the Commission has imposed an anti-dumping or an anti-subsidy duty.

Last, the Paper n°6 on review of existing measures explains how such measures can be adjusted (increase or reduce the duty levels, remove the duty altogether) to new market circumstances. It also explains under what circumstances the duty can be renewed for another 5 year term.

TRADE DEFENCE INVESTIGATIONS CARRIED OUT BY THIRD COUNTRIES

SMEs' exports to non-EU countries could be subject to trade defence investigations carried out by third country governments. Paper n°7 gives guidance on what you could expect and the options open to your company if a TDI investigation is launched against your exports to a non-EU country.

Any questions or need for further information?

Each of the seven papers contains references to further sources of information if you want to deepen your understanding. For any questions and guidance on trade defence matters, you can contact the SME Helpdesk in any of the EU official languages: Email: trade-defence-sme-helpdesk@ec.europa.eu | Phone: +32 22955353

INTRODUCTION TO TRADE DEFENCE INSTRUMENTS FOR SMEs

HOW CAN THEY HELP THE PRODUCERS

The purpose of trade defence instruments (TDIs) is to **protect** EU producers from **unfair competition** or a **sudden increase in imports** when it comes to products imported from third countries. There are three different kinds of TDIs: **anti-dumping** measures, **anti-subsidy** measures, and **safeguards**. These investigations are carried out by the European Commission. The Commission initiates an anti-dumping or an anti-subsidy investigation pursuant to a complaint from the EU industry that contains sufficient evidence or on its own initiative.

DUMPING	SUBSIDY
<p>OCCURS when non-EU producers sell goods in the EU market below their normal value (i.e. below (a) sales prices in their domestic markets or (b) the cost of production).</p> <p>CAN BE REMEDIED by an anti-dumping measure – usually a duty</p> <ul style="list-style-type: none"> on imports of the product from the country concerned; in the amount that will offset the injury being caused by dumped products; applied for up to 5 years (possibility to extend for 5 more). 	<p>IT IS a financial assistance that a non-EU government provides to domestic companies to produce or export goods.</p> <p>CAN BE REMEDIED by an anti-subsidy (i.e. countervailing) measure – usually a duty</p> <ul style="list-style-type: none"> on imports of the product from the country concerned; in the amount that will “correct” the subsidised export price and raise it to the level of non-subsidised export price; applied for up to 5 years (possibility to extend for 5 more).

SAFEGUARDS are not concerned with unfair practices, but instead come into play when imports of a certain product **increase so suddenly and sharply** that EU producer cannot reasonably be expected to timely adapt to the changed trade situation. Such situation can be remedied by **safeguard measures** – usually in the form of a **tariff rate quota** applied to all the imports of the product concerned.

- Any imports from all non-EU countries above the quota will be subject to a duty;
- measures are applied for up to 8 years; and
- are contingent on the obligation of the EU industry to restructure.

NOTE - a safeguard investigation can be initiated **only** following a request by an EU Member State or by the Commission's own motion, **not** by an EU industry.

CONDITIONS TO BE MET

Anti-dumping and anti-subsidy investigations are broadly similar (and most commonly used TDIs), so we will examine them together. For an anti-dumping or an anti-subsidy investigation to result in imposition of measures, **sufficient evidence** has to be presented to establish that:

- imports are being **dumped/subsidised**;
- there is **injury** to the EU industry;
- there is a **causal relationship** between dumping/subsidy and the injury;
- The imposition of measures is not against **the Union's interest**.

If there is sufficient evidence to all of the above, the Commission will take appropriate action to protect the EU industry from damage resulting from the dumped or subsidised imports. This will usually be done by **definitive measures**, at the conclusion of the investigation, but provisional measures and registration of imports can already be done in the course of the investigation.

DEFINITIVE MEASURES

When the investigation shows that products are being dumped or subsidised, the Commission will impose **definitive duties** on those products. These can usually take the form of:

- ▶ an **ad valorem duty** (duty expressed as part of the value of the invoice, e.g. 15%), or
- ▶ a **specific duty** (based on parameters other than value, e.g. EUR 15 per tonne).

Under certain circumstances, instead of imposing duties, the Commission can accept a **price undertaking** offered by the exporter. In that case, the exporter agrees to export the product concerned above a certain price limit (i.e., at non-dumped or non-subsidised prices). To ensure the exporter's compliance, such undertakings will subject to conditions, such as strict monitoring by the importing countries' authorities, regular reporting of export prices, etc. This is, however, a rare occurrence.

PROVISIONAL MEASURES

During the investigation (usually at around 7 to 8 months after the start of the investigation), the Commission can take provisional measures to ensure that the effectiveness of definitive measures, which can only be imposed at the end of the investigation, is not undermined.

Provisional measures can take form of **provisional duties**, which can be kept in place until the investigation is completed.

The Commission can also instruct EU customs authorities to **register imports** of the product under investigation. This can offset risks of, e.g., stockpiling the imported product during the investigation period, by allowing for definitive duties to be collected retroactively on such stockpiled products.

FURTHER RESOURCES:

What to expect in an anti-dumping/anti-subsidy investigation? See the brief overview of the investigation process: [link to the "OVERVIEW OF TDI INVESTIGATION PROCESS" document]

Wonder how you can initiate an investigation? See the brief overview on how to submit a complaint to the Commission and its main elements: [link to the "PRODUCERS IN TDI INVESTIGATIONS" document]

How can the measures be extended beyond their initial term? See the types of review investigations and their main features: [link to the "REVIEWS" document]

For more details on any of the above, please consult a guide on TDIs that the Commission prepared specifically for SMEs: <https://op.europa.eu/en/publication-detail/-/publication/da5a48ae-1234-11e9-81b4-01aa75ed71a1>

Comprehensive information on TDIs can be found on the dedicated Commission website: <https://ec.europa.eu/trade/policy/accessing-markets/trade-defence/>

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OVERVIEW OF THE TDI INVESTIGATION PROCESS

This document will provide you with a general overview of the steps and the duration of a TDI investigation. It serves to give you an idea on how long the investigation usually lasts, what steps you can expect in the process, and when the main elements of an investigation take place. **Anti-dumping (AD) investigation** has to be completed within **14 months**, while **anti-subsidy (AS) investigation** has to be completed within **13 months**.

The Commission normally **initiates an AD/AS investigation on the basis of a COMPLAINT** from an EU industry – only exceptionally does it start one on its own initiative.

LOGGING A COMPLAINT

The Commission will acknowledge the receipt of the complaint and proceed to analyse it.

If the complaint meets all the requirements, the Commission will initiate an investigation by **publishing the Notice of Initiation** in the Official Journal of the EU and on its website **within 45 days** after the lodging of complaint.

PUBLISHING THE NOTICE OF INITIATION

This is where the investigation formally begins. The notice is published in the Official Journal and on the website of DG Trade. Over the next several months, Commission will be hard at work investigating all the elements relevant for an AS/AD case and communicating with all the interested parties. The main steps include:

Sampling - when investigations involve many EU producers, making it unfeasible to analyse each of them, the companies will be asked to provide basic data on production, sales, employees, etc., so that the Commission could select a representative sample to base the investigation on.

- Sampled companies will receive an **injury questionnaire**.

The Commission will send questionnaires to (i) exporters in the country concerned, (ii) known EU producers of the product concerned (including yourself) and (iii) all other interested parties (e.g. EU importers and users of the product that is allegedly dumped or subsidized).

- The deadlines to complete the questionnaires will be indicated in the notice of initiation (**at least 30 days**).
- In the questionnaires, the Commission will ask for information about sales prices and costs of production. To reply to the questionnaire is a demanding job and can take several weeks for a full time equivalent.
- The Commission will analyse the questionnaires and may request additional information.

On-site verification visits – usually during the third or fourth month of the investigation, the Commission conducts verification **visits at the premises of the producers**, (both EU producers and exporting producers) to verify the data provided in the questionnaires and clarify any outstanding items.

“Pre-disclosure” – **4 weeks before the disclosure of provisional findings**, the Commission will inform all interested parties whether it **plans to impose provisional measures or not**. If it does, it will also provide parties with the draft calculations and parties will have **3 days** to comment on the accuracy of these draft calculations.

14 MONTHS (AD) / 13 MONTHS (AS)



DISCLOSURE OF PROVISIONAL FINDINGS AND PUBLICATION OF PROVISIONAL MEASURES

Provisional disclosure provides the parties with the details of all the facts established in the investigation so far, the details on calculations for the company concerned, and the reasons for imposing provisional measures (if imposed).

- Interested parties have **15 days** to provide comments.
- Provisional measures are imposed at the latest **8 months** after initiation of an AD investigation, and **9 months** in AS investigations.

DISCLOSURE OF DEFINITIVE FINDINGS

Takes place in the **12th month** of the investigation. Definitive disclosure contains all the essential facts that form the basis for final determinations and detailed calculations for the company concerned.

- All comments received after the provisional disclosure are taken into account before definitive disclosure as appropriate.
- Interested parties have **10 days** to comment on definitive findings.
- The company under investigation can **offer price undertakings** up to **5 days** before the deadline for comments.

IMPOSITION OF DEFINITIVE MEASURES

At the latest **14 months** after the initiation of the investigation in AD cases, **13 months** in AS cases. Definitive measures remain in force for **5 years** unless they are changed, removed or prolonged through a review investigation. They also remain in force during the review investigation.

14 MONTHS (AD) / 13 MONTHS (AS)

FURTHER RESOURCES:

Wonder how you can initiate an investigation? See the brief overview on how to submit a complaint to the Commission and its main requirements: [link to the “PRODUCERS IN TDI INVESTIGATIONS” document]

For a comprehensive overview of deadlines and timelines in the investigation process, please visit:
https://trade.ec.europa.eu/doclib/docs/2018/june/tradoc_156922.pdf

For more details on any of the above, you can consult a guide on TDIs that the Commission prepared specifically for SMEs: <https://op.europa.eu/en/publication-detail/-/publication/da5a48ae-1234-11e9-81b4-01aa75ed71a1>

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REQUIREMENTS FOR IMPOSING TDI MEASURES

REQUIREMENTS

For anti-dumping and anti-subsidy duties to be levied against imports of a certain product from a non-EU country, four main elements need to be proven in the respective investigation. Namely, available evidence must demonstrate that: (a) imports are being **dumped/subsidised**; (b) there is **injury** to the EU industry; (c) there is a **causal relationship** between dumping/subsidy and the injury; and (d) the imposition of measures is in **the overall Union's interest**. Let us examine a bit more closely what each of those mean.

DUMPING	SUBSIDY
<p>Dumping occurs when non-EU producers sell goods in the EU market below their normal value. Normal value of the product is usually the price at which it is sold in the exporter's domestic market.</p> <p>However, if domestic prices are unavailable, unreliable or loss-making, normal value can be constructed on the basis of costs of production, increased by a reasonable profit.*</p>	<p>Subsidy is financial assistance that a non-EU government provides to domestic companies to produce or export goods. To be considered a subsidy, a financial contribution from the government must be:</p> <ul style="list-style-type: none"> a. specific – meaning that the government supports only certain sectors of the industry instead of the whole economy, and b. given below market value, thus conferring a benefit on the particular sector.
INJURY	
<p>Injury exists when there is a deterioration in the economic situation of an EU industry. Deterioration is determined by examining all relevant factors: production rate, sales, profits, productivity, capacity utilization etc. Bear in mind that the whole industry must suffer injury – it is not sufficient that the deterioration of economic situation is limited to a single company.</p>	
CAUSAL RELATIONSHIP	
<p>Typically shown when increase in imports at decreased prices occurs simultaneously with the deterioration in the economic situation of the EU industry. However, it must also be considered if other factors are contributing to the deterioration (e.g. decrease in consumption, imports from other non-EU countries, developments in technology, etc.).</p>	
UNION INTEREST	
<p>Even if all the previous elements are established, measures will not be imposed if this would be against the overall interest of the EU, e.g., if the benefit of measures for the Union industry would by far be outweighed by the negative effects on importers and downstream users in the EU of imported products.</p>	

* There is a specific situation concerning unreliable domestic prices that often occurs in practice, particularly with exports originating in China. Namely, normal value will be calculated differently when domestic prices are unreliable because of significant distortions in the country's economy, which we examine below.

SIGNIFICANT DISTORTIONS

Significant distortions occur when reported **prices or costs** (including raw materials and energy) are **not the result of free market forces** because they are affected by **substantial government intervention**. Any allegations on distorted inputs presented in a complaint must be structured and supported by evidence.

Different sources can be used to establish the existence of significant distortions:

- **European Commission reports on distortions.** As mentioned above, reports can be referred to in the complaint and will be considered as evidence to the claims contained in the complaint. This is relevant in particular in investigations concerning China.
- Evidence based on **market knowledge and/or publicly available reports** (concerning other distortions or countries for which no Commission report exists).

When significant distortions are established, the normal value of the product concerned shall be constructed using **undistorted prices or benchmarks**. Such benchmarks are sourced from an appropriate representative country or from undistorted international prices, costs or benchmarks.

During an investigation, the European Commission will meticulously examine all relevant factors and evidence to determine if all of the conditions described in this paper have been met. The investigation can thus take up to 14 months in anti-dumping and 13 months in anti-subsidy cases. At the end of an investigation, provided that there is sufficient evidence to demonstrate that all the above requirements have been met, the European Commission will impose appropriate anti-dumping/anti-subsidy measures.

FURTHER RESOURCES:

What to expect in an anti-dumping/anti-subsidy investigation? See the brief overview of the investigation process: [link to the "OVERVIEW OF TDI INVESTIGATION PROCESS" document]

Wonder how you can initiate an investigation? See the brief overview on how to submit a complaint to the Commission and its main elements: [link to the "PRODUCERS IN TDI INVESTIGATIONS" document]

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SME PRODUCERS

STEPS TO TAKE IN TDI INVESTIGATIONS

If you find yourself facing dumped/subsidised imports which are adversely affecting your business, you may **lodge a trade defence complaint** with the European Commission, with the purpose of it launching an anti-dumping or anti-subsidy investigation (TDI investigations) and imposing appropriate duties on imports, to be collected by customs authorities. In this document, we briefly explore what is expected of you as a complainant in a TDI investigation and what steps you can take to contribute to the successful outcome of a TDI investigation.

LODGING A COMPLAINT

Complaint is a written document, which must be sent to the European Commission, Office of Complaints in DG Trade: trade-defence-complaints@ec.europa.eu, phone: +32 22998451

- **EU industry can authorize a representative** to lodge a complaint on its behalf. Any natural or legal person, an association without a legal personality, or a temporary association set up for this specific purpose can act as a representative.

Since lodging a complaint is a challenging exercise, although not necessary, hiring a legal counsel can be useful. In Commission experience, an **EU business association** of producers concerned is usually the best placed to carry out a TDI case. You can contact the Office of Complaints at any time for advice on your particular case.

REQUIREMENTS

A couple of things are needed to lodge a successful complaint: the complaint itself must contain all the required **ESSENTIAL ELEMENTS**, and the complainants must have **STANDING** to lodge the complaint.

ESSENTIAL ELEMENTS OF THE COMPLAINT

Any TDI complaint must contain four main elements:

- 1 **Clearly identify the imported product** ('the product concerned') which is to be the subject of the investigation (describe product characteristics, tariff codes, etc.).
- 2 **Identify the country or countries** from which the dumped or subsidized **product originates**.
- 3 **Include a list of** all known EU producers, producers/exporters in the country of origin of the product, EU importers, suppliers, user industries and their professional associations, as well as consumer associations, where such associations are known.
4. Finally, the complaint must contain **sufficient evidence** to show that:
 - a. the products are being **dumped/subsidized**,
 - a. your industry suffers **injury**,
 - a. there is a **causal link** between dumping/subsidization and the injury.

STANDING

An individual company cannot normally lodge a complaint on its own. Since TDIs are concerned with protecting EU industries, the TDI complainants must have **standing**, that is, they must **act on behalf of a major proportion of the EU industry**. Therefore, you should contact the relevant industry association/other producers to make sure they support the complaint.

In practice, SME producers representing at least **25% of the total EU production** of the product concerned must support the complaint. The Commission will send a [sampling form](#) to the EU producers to examine the complainants' standing before deciding on whether to open an investigation.

CONFIDENTIALITY

Often times you will have to rely on business confidential information to demonstrate that imports are dumped or subsidized and are causing injury. If that is the case, you must submit two versions of the complaint to the Commission – a **confidential** version and a **non-confidential** one. The confidential version will be available only to the Commission staff involved with the case, while the non-confidential one will be shared with all interested parties once the investigation is opened. The non-confidential version still needs to allow the interested parties a **reasonable understanding of the substance** of the confidential data (for instance, data can be expressed in indexed format or as ranges, instead of real figures, but those levels still must demonstrate conclusions on dumping/subsidy, injury and causality).

NEXT STEPS

If the Commission decides to open a TDI investigation, its successful completion will require full cooperation from the EU industry, including your company. This may include, but is not limited to:

SAMPLING QUESTIONNAIRES – when an investigation involve many EU producers, making it unfeasible to examine them all, the companies will be asked to provide basic data on production, sales, employees, etc., so that the Commission could select a representative sample.

INJURY QUESTIONNAIRES – The Commission will send out comprehensive questionnaires to collect the information needed to reach its determinations. After examining the replies, the Commission may ask for additional information. If sampling is applied for the EU industry (see preceding step), only the sampled companies need to reply to the injury questionnaires. If no sampling is applied, all companies belonging to the EU industry need reply to an injury questionnaire.

ON-SITE VERIFICATION VISITS – usually within 3-4 months of initiating the investigation, Commission officials conduct visits at the premises of the producers to verify data provided by questionnaires. The visit is announced sufficiently in advance. It is important to thoroughly prepare for the visit, gather the relevant documentation and evidence supporting your claims, since it is the opportunity to provide clarifications and correct possible errors in the questionnaire replies. On-site verifications take place only for those companies that replied to an injury questionnaire.

FURTHER RESOURCES:

For more details on any of the above, please consult a guide on TDIs that the Commission prepared specifically for SMEs: <https://op.europa.eu/en/publication-detail/-/publication/da5a48ae-1234-11e9-81b4-01aa75ed71a1>

More information on TDIs can be found on the dedicated Commission website: <https://ec.europa.eu/trade/policy/accessing-markets/trade-defence/>

A comprehensive **guide on how to make an anti-dumping complaint** can be found here: https://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_112295.pdf

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TDIs FROM IMPORTERS' AND USERS' PERSPECTIVE

In trade defence investigations, one of the requirements for adopting anti-dumping ('AD') or anti-subsidy ('AS') measures is that such measures are not against the **overall interest of the EU**. Therefore, the Commission will consider not only the interests of the EU producers, but also the interests of EU importers and users of the product under investigation to determine if such measures would have disproportionate negative effects on the latter.

HOW TO PARTICIPATE IN A TDI INVESTIGATION

If you identify an investigation into a product of your concern (that is a product you trade or you use as an input for your own production), it is important to make yourself known to the Commission by **registering as an interested party**. This essentially makes you a party to the proceedings, allowing you to be directly informed on the developments in the investigation and to express your views and defend your rights in the investigation. Information on deadlines and where to register is always contained in the **notice of initiation** published at the beginning of the investigation both in the Official Journal of the EU and on the [DG Trade Website](#).

Once you have registered as an interested party, you will be able to fully express your views and provide comments throughout the investigation. To facilitate this, the Commission will send you a **questionnaire** specifically designed for SME importers. You will also be able to provide comments at your own initiative during later stages of the investigation.

The list of ongoing investigations and measures in force can be found on DG Trade Website (<https://trade.ec.europa.eu/tdi/>). To make sure that you are timely informed about the new cases, you can also **subscribe** to be alerted as soon as the initiation of a new investigation is published.

PAYMENT OF ANTI-DUMPING OR ANTI-SUBSIDY DUTIES

If the anti-dumping and/or anti-subsidy duties end up being levied after all, it is important to know that the **importer who clears the product through customs** pays the duties just like regular customs duties, including the duties which might be imposed retroactively.

WHEN DO THE DUTIES HAVE TO BE PAID

Duties are applied only when **goods are released into free circulation**. Goods placed under other customs procedures (e.g. 'processing') are not subject to duties.

PROVISIONAL DUTIES - If the Commission decides to impose **provisional duties** during an investigation, they usually apply from the day following the date of publication of the decision to impose such measures in the Official Journal of the European Union. It is usually sufficient to provide security for the provisional duties until definitive measures are taken (security does not necessarily have to be provided in cash; customs authorities may also accept a bank guarantee).

DEFINITIVE DUTIES - If the Commission imposes definitive duties, these are collected in cash and applicable from the date of their entry into force. The Commission will decide at the same time whether to definitively collect any provisional duties (which is most often the case.)

If definitive duties are lower than the provisional duties, excess amount paid in cash will be refunded, and bank guarantees will be released to the same extent. However, if definitive duties are higher than provisional ones, that difference will not be applied to products cleared by the customs before definitive duties enter into force (i.e., only the lower, provisional, duties will be collected).

REGISTRATION OF IMPORTS - Similarly, if the Commission decided to register imports of the product concerned during the investigation, it will also decide in the definitive stage whether to retroactively collect duties on those products.

REFUNDS

Importers of products subject to anti-dumping or anti-subsidy duties can ask for a **refund of duties** paid in cases where the level of duties has been reduced or eliminated.

The request for refund is made to the national customs authority that collected the duties, which will forward the request to the Commission for examination. Refund request must be submitted within six months of the date on which the new duties were notified by the customs authority. The Commission will only examine your request for a refund if your exporter is prepared to cooperate with the Commission. This means that the exporter will have to provide data to the Commission demonstrating that all his exports during the period in which your imports fall are not dumped or dumped at a level lower than the duty in force

REMEDIES AGAINST A REGULATION IMPOSING AD OR AS DUTIES

The main legal remedy against a regulation imposing AD or AS duties is the **action for annulment**. This action can be brought before the General Court in Luxembourg in case there were breaches of the provisions of the basic anti-dumping regulation or the basic anti-subsidy regulation (main legal texts regulating the investigations).

Requirements for bringing the action for annulment:

- The company must demonstrate that it is directly and individually concerned with the regulation imposing the AD/AS measures:
- The action must be brought within 60 days from the publication of the regulation

Unlike refunds on duties which have been reduced or eliminated (explained above), **requests for reimbursement** of duties for any other reason (for instance, if an importer believes that the goods should not have been subject to the particular duties at all) are within exclusive competence of customs authorities in the EU Member State where goods were released for circulation. Appeals against such decisions are made to that Member State's courts. The way to exercise the right to appeal is specified by the customs authority concerned.

Under certain conditions, definitive duties can also be re-evaluated through a **review investigation**.

FURTHER RESOURCES:

Wondering how to seek a review of the measures after they have been imposed? See the types of review investigations and their main features: [link to the "REVIEWS" document]

You can learn more about TDI investigations and your potential role in it through the guide that the Commission prepared specifically for SMEs: <https://op.europa.eu/en/publication-detail/-/publication/da5a48ae-1234-11e9-81b4-01aa75ed71a1>

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REVIEWS

Review investigations allow for the anti-dumping (AD) or anti-subsidy (AS) measures to be **modified, removed, or prolonged** after they have been imposed. There are three types of review investigations: expiry review, interim review, and newcomer review. Note that the measures under review will remain in force for the duration of the review, even if their initial period of application has expired.

EXPIRY REVIEW

AD and AS measures normally expire after 5 years. No later than 3 months before the end of that period, EU producers may request an expiry review to keep the measures in place.

REQUIREMENTS:

The request must include **sufficient evidence** that **dumping/subsidisation and injury are likely to continue** if the measures expire (for instance, demonstrate that dumping and injury are continuing). Alternatively, the request must include sufficient evidence that **dumping/subsidisation and injury are likely to recur** if the measures expire (for instance, that the removal of injury is due to the measures in force, etc.).



OUTCOMES:

- ▶ Measures can be kept in force for another **5 years**.
- ▶ Level and form of measures remain the same (they can only be changed through an interim review).
- ▶ There is no limitation in the number of expiry reviews for an anti-dumping or anti-subsidy measure.

INTERIM REVIEW

Interested parties (EU producers, importers, users) can ask for the AD/AS measures to be changed or removed after they have been in force for one year. Depending on the scope of the review, this can be either a full or a partial review.

- ▶ **“Full” review** – covers all the elements of an investigation (dumping/subsidy, injury and EU interest).
- ▶ **“Partial” review** – covers only one aspect of the case (e.g. dumping by one exporter).

REQUIREMENTS:

the applicant must provide sufficient evidence to show that:

- ▶ **circumstances have significantly changed** since the imposition of measures, and
- ▶ that such change is of **lasting nature**.



OUTCOMES:

- ▶ **Full review** – measures can be modified (increased, decreased, changed in form) and reintroduced for another 5 year period, or removed.
- ▶ **Partial review** – measures can be modified or removed with regard to some exporters. The conclusion of a partial review will not trigger a new 5 year period.

NEWCOMER REVIEW (AD)/ACCELERATED REVIEW (AS)

AD/AS duties are company-specific. However, a country-wide 'residual duty rate' will also be applied to exports of all other companies which did not cooperate with the AD/AS investigation.

New exporters of product into the EU can request a newcomer/accelerated review, to obtain an individual duty rate applicable to their exports (usually lower than the residual duty rate)

REQUIREMENTS:

A company must meet **three criteria** to qualify as a 'new exporter':

- ▶ it did not export the product into the EU during the original investigation period,
- ▶ The company is not related to any exporter or producer subject to the measures,
- ▶ It has made actual exports or is contractually obliged to make significant exports into EU after the investigation period.



OUTCOMES:

If these criteria are met, the Commission will establish an **individual margin** of AD/AS duties for the exporter.

Newcomer/accelerated review must be concluded within 9 months. During the review, imports from a newcomer will be registered. If the newcomer review concludes that the newcomer engages in dumped/subsidized exports, the importer will have to pay retroactively the anti-dumping or anti-subsidy duty.

FURTHER RESOURCES:

For more details on the above, you can consult a guide on TDIs that the Commission prepared specifically for SMEs: <https://op.europa.eu/en/publication-detail/-/publication/da5a48ae-1234-11e9-81b4-01aa75ed71a1>

Comprehensive information on TDIs can be found on the dedicated Commission website: <https://ec.europa.eu/trade/policy/accessing-markets/trade-defence/>

You can also **contact the SME Helpdesk** in any official European Union language:

- Email: trade-defence-sme-helpdesk@ec.europa.eu
- Phone: +32 22955353

TDI INVESTIGATIONS AGAINST EU EXPORTS TO THIRD COUNTRIES

Just as the EU uses trade defence instruments (TDIs) to protect our industries from unfair competition, so can non-EU countries do the same concerning products coming into their market from the EU. This is so because TDIs are envisioned under the WTO rules and all WTO countries have the right to apply them. Even though the WTO rules provide a common framework, making anti-dumping ('AD') and anti-subsidy ('AS') investigations in non-EU countries broadly similar to those of the EU, the interpretation and implementation of those rules varies across countries.

WHAT TO DO IF THE PRODUCT YOU EXPORT COMES UNDER INVESTIGATION

As a general rule, to obtain the **best outcome** in an investigation, you should **register as an interested party** and **cooperate with the investigating authorities**. This allows you to argue your position in an investigation which can result in:

- ▶ authorities dismissing an AD/AS complaint in their country altogether if your industry makes a successful case;
- ▶ no duties levied on your products if you prove that your company does not engage in dumping practices;
- ▶ even if AD/AS duties end up being imposed on the EU products, cooperating companies normally obtain a lower individual duty rate on their products.

When registered as an interested party, you can expect various forms of engagement from the investigating authorities: they will send questionnaires or other inquiries, invite your comments during the investigation, possibly require verification visits to your premises, etc.

COMMISSION ASSISTANCE

In addition, the European Commission is here to help! Trade monitoring unit in Commission's DG Trade can provide information and guidance on AD/AS investigations and help develop a defence strategy.

To seek assistance, you may contact:

The SME helpdesk in any EU language:
trade-defence-sme-helpdesk@ec.europa.eu
 Phone: +32 22955353

Support office:
trade.defence.third.countries@ec.europa.eu
 Phone: +32 22991953

Please note that, due to sheer logistics of the TDI investigation, and since the interpretation and application of WTO rules on TDIs varies across countries, the Commission services cannot replace an on-the-ground legal representative in the non-EU country concerned. Hiring a local legal counsel with experience in TDIs is advisable.

The reality is that active and effective cooperation in an AD/AS investigation is both time-consuming and resource-intensive (answering all the questionnaires, staying on top of different stages in the investigation and providing comments in each step of the case, hiring a legal counsel in the country conducting an investigation, etc.). It is up to the SME concerned to decide if the export market is important enough to justify the necessary effort.

FURTHER RESOURCES:

The guide to third country investigations has detailed information on what you can expect and how to proceed:
https://trade.ec.europa.eu/doclib/docs/2010/october/tradoc_146701.pdf

For more details on the above, you can consult a guide on TDIs that the Commission prepared specifically for SMEs: <https://op.europa.eu/en/publication-detail/-/publication/da5a48ae-1234-11e9-81b4-01aa75ed71a1>

Comprehensive information on TDIs can be found on the dedicated Commission website:
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