

## **ANNEX 8 - EXTRACT FROM PROJECT TERMS OF REFERENCE**

Related to a contract to carry out an evaluation of the European Community's trade defence practice

### **1. INTRODUCTION:**

The objective of the European Community's Trade Defence Instruments (TDI) is to either remedy market distortions created from unfair trade practices by third countries, such as dumping or subsidies, or to address the serious deterioration of the situation of European Community producers arising from unforeseen sharp and sudden import surges (through safeguard action). The legal basis for these instruments is provided by the relevant WTO agreements, which have been transposed into Community legislation by Council Regulation (EC) No 384/96 (the basic anti-dumping Regulation), Council Regulation (EC) No 2026/97 (the basic anti-subsidy Regulation) and Council Regulations (EC) No 517/94/ 519/94 and 3285/94 (the basic safeguard Regulations).

Anti-dumping measures were created to counter dumping practices, the most frequently encountered trade-distorting practices. Dumping occurs when manufacturers from a non-EU country sell goods in the EU below the sales price in their domestic market, or below the cost of production.

Anti-subsidy measures were designed to combat certain types of subsidies, which are made available to manufacturers by public authorities and which can also distort trade when they help to reduce production costs or cut the prices of exports to the EU unfairly. Safeguard measures may be used by WTO members to restrict imports of a product temporarily if its domestic industry is seriously injured or threatened with injury caused by a surge in imports.

### **2. OBJECTIVES**

The objectives of the current project, which is tendered by DG Trade, are:

- a) to provide a broad description of the European Community's trade defence practice in terms of institutional arrangements, substantial provisions, administrative procedures and investigation practices, while also giving an account of the United States' practice in this area or the purpose of providing an element of comparison;
- b) to identify and evaluate differences between the European Community and the United States, highlighting their strong and weak points;
- c) to identify possible areas for improvement of the European Community's trade defence laws and practice, with a view to increase their efficiency (e.g. in terms of transparency, enforceability of measures and streamlining of procedures).

### **3. THE PROJECT FOCUS OR CONTEXT OF THE PROJECT**

The European Commission's Directorate-Generals and Services carry out regular ex post evaluations of their activities and policies. In the case of the European Community's trade defence it was considered useful to have such an evaluation carried out by an external body.

The beneficiaries of this project are: 1) European Community operators and third country exporters involved in trade defence investigations as well as consumers; 2) the EU citizens

exercising the right to scrutinise the policymaking process; 3) other EU institutions involved in the work of the Commission; 4) management and staff of the Commission's Trade Defence services and other Commission services;

#### **4. WORK TO BE CARRIED OUT / SERVICES TO BE RENDERED**

The work to be carried out consists in an extensive and detailed report which addresses the objectives set out in point 2 above.

i) The description of the European Community's trade defence practice should be the result of an analysis carried out both at the theoretical and empirical level. The former will assess the Community's legislative framework in terms of the institutional arrangements, substantial provisions and administrative procedures set out therein. The latter will evaluate the implementation of this framework in terms of the way the actual investigations are carried out, including investigative practices, and the results of trade defence actions. In this respect, the evaluation study is expected to feature a significant amount of fieldwork, compiling the views of a number of important actors and stakeholders in trade defence matters, such as representatives of the domestic industry and of European Community Member States' administrations, through direct interviews and questionnaires. A similar account is expected regarding the United States: as this is for purposes of comparison, this account can be more concise than the one concerning the European Community's practice;

ii) The differences between the European Community's and the United States's systems should be highlighted in terms of their respective legislations (and how they have been developed in different directions albeit within the common WTO framework), including the decision-making process, and of the concrete results of their respective trade defence actions. The strong and weak points of each approach should be identified;

iii) The evaluation study must provide concrete recommendations, as set out in point 2c above, whose implementation is arguably feasible. These recommendations should be made both regarding the legislative framework (including the decision-making process) and current investigative practice.