



Ca' Foscari
University
of Venice

Master's Degree programme in
Global Development
and
Entrepreneurship

Final Thesis

**The Anti-Dumping Duty in the European
Legislation**

Supervisor

Ch. Prof. Loris Tosi

Graduand

Caterina Franceschi

Matriculation Number 859226

Academic Year

2021/2022

TABLE OF CONTENTS

Abstract.....	page 5
Acknowledgements.....	page 7
List of tables.....	page 8
List of figures.....	page 9
Abbreviations.....	page 10
Introduction to the thesis.....	page 12
1. CHAPTER I: Introduction to the European Trade Defense Instruments.....	page 20
1.1. The EU in global trade.....	page 20
1.2. European trade policy.....	page 33
1.3. European trade defense instruments.....	page 43
1.4. Types and duration of trade defense instruments.....	page 49
1.5. Historical application of TDIs.....	page 51
1.6. The legal framework page.....	page 57
1.7. The institutional framework.....	page 60
2. CHAPTER II: Anti-dumping measures.....	page 69
2.1. What is dumping? How is it applied?.....	page 69
2.2. Anti-dumping legal framework.....	page 79
2.3. Determinants of dumping.....	page 81
2.3.1. Normal value and export price.....	page 83
2.3.2. Fair comparison of export price and normal value.....	page 94

2.3.3. Calculation of dumping margin.....	page 95
2.4. Requirements for anti-dumping measures.....	page 98
2.4.1. Determination of material injury and causality.....	page 99
2.4.2. Definition of Union industry.....	page 103
2.4.3. The Union interest test.....	page 105
2.5. European SMEs and trade defense.....	page 107
2.5.1. SMEs producers.....	page 110
2.5.2. SMEs importers and users.....	page 112
3. CHAPTER III: EU Anti-dumping procedure.....	page 114
3.1. Lodging a complaint.....	page 114
3.2. Investigation.....	page 117
3.3. Imposition of anti-dumping measures.....	page 122
3.3.1. Provisional measures.....	page 123
3.3.2. Definitive measures.....	page 125
3.4. Price undertakings.....	page 126
3.5. Circumvention.....	page 128
3.6. Absorption.....	page 130
3.7. Revision of anti-dumping measures.....	page 131
3.7.1. Reviews.....	page 131
3.7.2. Refunds.....	page 134
3.7.3. Judicial reviews.....	page 135
3.8. Are EU anti-dumping measures efficient?.....	page 140
4. CHAPTER IV: EU-Russia anti-dumping case study	
on birch plywood products.....	page 148
4.1. EU-Russia trade relations.....	page 148
4.2. Case study: concerned product and characteristic.....	page 158

4.3. Regulation 2021/940 on provisional measures.....	page 160
4.4. Regulation 2021/1930 on definitive measures.....	page 164
4.4.1. Calculation of dumping margin.....	page 165
4.4.2. Material injury and causality.....	page 166
4.4.3. Union interest and final definitive duties.....	page 167
4.5. Conclusion of the case.....	page 169
Conclusions.....	page 173
Bibliography.....	page 176
Sitography.....	page 184

“The EU believes in open and fair trade but we are not naïve free traders. We have shown our teeth when we had to by adopting anti-dumping and anti-subsidy measures. And now we have new and improved trade defence 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.”

Jean-Claude Juncker, President of the European Commission, (June 7th, 2018)

ABSTRACT

Throughout the recent decades, globalization affected in large scale world trade, investments and technology and contributed to an increase of international competition making businesses more and more committed to sell their merchandise in foreign markets at lower product prices.

“*Dumping*” is the insidious, aggressive, and unfair commercial practice used in international trade enabling an enterprise to sell its products to a foreign market at a price lower than the price applied in its domestic market to penetrate sharply in a new economy by virtue of competitiveness of its prices.

With the growing and continuous internationalization of markets, foreign exporters started to apply dumping to their merchandise when exporting to the European Union with the aim of gaining a competitive advantage in the importing country¹, increasing market share and maximizing their trade balances.

Since the European Union’s trade policy takes inspiration from the economic principle of liberalism, free market, and fair competition for businesses, when dumping meets certain criteria is considered an unfair practice that, if pursued in the long run by a significant number of actors, can threaten economic growth and result in a disintegration of both social cohesion and market equilibrium.

To counterbalance and reduce the detrimental effects of dumping, the EU market economy enforces a specific trade defense instrument aimed at ensuring respect of the rules on fair competition.

This legal mechanism, designed to permit a concrete and prompt defensive action, is the so called “*anti-dumping duty*” which takes the form of an import duty based on the dumping margin, consisting in the difference between the “*normal value*” of the concerned product and its export price applied in the EU.

¹ Investopedia.com, “*Dumping*”, (2021), (Access 01/06/2022), <https://www.investopedia.com/terms/d/dumping.asp>

This thesis will provide the reader with a clear, detailed, and deep insight of the EU's anti-dumping duty set out by the European Commission and compliant with the international rules of the World Trade Organization (WTO), for safeguarding the European industry and avoiding distortions of the normal internal market equilibrium among enterprises.

In particular, the thesis will serve as a guide to help readers gain a wide and general overview of the overall anti-dumping mechanism, starting with the explication of its substantive elements and its procedural issues, to the imposition of the duty itself, and concluding with a real-life anti-dumping case on birch plywood products between the European Union and the Russian Federation to show how this duty is applied in practice.

ACKNOWLEDGEMENTS

I would like to thank Professor Loris Tosi for having given me the chance to bring up this topic into my thesis.

A particular mention goes to Dr Lucrezia Mazzonetto for her brilliant and kind support and for having provided me with great advice too.

Finally, I'd love to say that I'm forever grateful for all those people who have crossed my path, always believing in me, loving, and supporting me throughout these long and tough years, with the deepest of their tender words or just with a caring and memorable gaze...

To my my mum, my greatest love, and to my thoughtful dad.

To my best friends Alberto, Benedetta, and Mirko who have always looked out for me.

To my sweet and beloved Brother who fills my heart with joy and appreciation. It's all for you.

LIST OF TABLES

Table 1.1: EU imports from main trading partner from 2019-2021.....	page 25
Table 1.2: Extra-EU trade in goods from 2002 to 2020.....	page 27
Table 1.3: EU imports of goods by quarter - main product per main partner.....	page 29
Table 1.4: Share of main CPA groups in extra-EU imports in 2021 in %.....	page 31
Table 1.5: Extra and intra EU trade in goods in 2020 as % share of total trade.....	page 32
Table 2.1: Calculation of normal value using domestic sales prices methodology.....	page 87
Table 2.2: An example of constructed normal value.....	page 89
Table 2.3: An example of calculation of export price on the basis of construction methodology.....	page 93
Table 2.5: An example of a calculation of a dumping margin.....	page 96
Table 3.1: Average changes in import volume by consumers after duty application...	page 142
Table 3.2: Average impacts on imports from targeted countries (extra-EU trade) on both quantity and import price.....	page 145
Table 3.3: Table 3.3: Average impact on intra-EU trade on quantity and price in targeted products.....	page 146
Table 3.4: Table 3.4: Average impact on imports from non-targeted countries (extra-EU trade) on quantity and import price.....	page 147
Table 4.2: Provisional anti-dumping duties for each concerned exporting producer...	page 163
Table 4.3: Dumping margin and injury margin rates for each concerned exporting producer.....	page 163
Table 4.4: Definitive dumping margins for each concerned exporting producer.....	page 165
Table 4.5: Definitive injury margin for each concerned exporting producer.....	page 166
Table 4.6: Definitive anti-dumping duties for each concerned exporting company.....	page 168

LIST OF FIGURES

Figure 2.4: Basic formula for the calculation of the dumping margin.....	page 95
Figure 2.6: Main stages of the anti-dumping investigation proceeding.....	page 118
Figure 4.1: NATO's Eastern Flank.....	page 156

ABBREVIATIONS

AD	Anti-Dumping
ADA	Anti-Dumping Agreement
AS	Anti-Subsidy
BRIC	Brazil, Russia, India, China
CIF	Cost, Insurance and Freight
CN	Combined nomenclature
COREPER	Permanent Representatives Committee
DG	Directorate-General
DG TRADE	Directorate-General for Trade
DSB	Dispute Settlement Body
EC	European Commission
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
EDC	European Defense Community
ENP	European Neighborhood Policy
EP	European Parliament
EU	European Union
EXW	Ex-Works
FSC	Forest Stewardship Company
GATT	General Agreement on tariffs and trade
HR	High Representative
IP	investigation period
MS	Member States
MX	Mexico
NATO	North Atlantic Treaty Organization

OECD	Organization for Economic Cooperation and Development
PCA	Partnership and Cooperation Agreement
PEFC	Program for Endorsement of Forest Certification
QMV	qualified majority voting
SFG	Safeguard
SME	Small and Medium-sized enterprise
SCM	Synthetic Control Method
TARIC	Tariffa Doganale Comunitaria
TEC	Treaty on the functioning of the European Community
TFEU	Treaty on the functioning of the European Union
UI	Union interest
US	United States
USSR	The Union of Soviet Socialist Republics
WTO	World Trade Organization

INTRODUCTION TO THE THESIS

“Globalization refers to the increasing flows of trade, finance, culture, ideas, and people, brought about by the sophisticated technology of communications and travel, and by the worldwide spread of neoliberal capitalism.”²

American anthropologist Ted Lewellen described through these words the definition of the widely used term “*globalization*”, identifying it as an economic process that touches many different dimensions: economic, social, cultural, and commercial.

As stated, the dynamic process of globalization refers also to liberalization of markets and freedom of trade, which brought to political economy’s modifications and to the creation of new economic scenarios³.

In today’s world, the internationalization of markets, bound by interconnectedness and interdependence, is the most perceptible aspect, and it is an expression indicating the openness and fluidity of production, distribution, trade, and consumption, at a global scale⁴.

This phenomena arose from a progressive strengthening of international economic interaction and integration⁵, considered as a process of cooperation among sovereign nation states and of unification of resources to pursue a common objective.

² Ted C. Lewellen, *“The anthropology of Globalization-Cultural anthropology enters the 21st century”*, Praeger, (2002), preface.

³ G. Ottobre, *“Le nuove frontiere europee a seguito dell’approvazione delle norme “anti-dumping”: come si evolvono gli scenari economici”*, (2019), (Access 05/02/2022), <https://www.diritto.it/le-nuove-frontiere-europee-a-seguito-dellapprovazione-delle-norme-anti-dumping-come-si-evolvono-gli-scenari-economici/>

⁴ B. De Matteis, *“Il rischio della globalizzazione: mondializzazione dei mercati, megalopoli, multiculturalismo, identità e consumi”*, (Access 01/03/2022), <https://www.studenti.it/rischio-globalizzazione-mercati-megalopoli-multiculturalismo-identita-e-consumi.html>

⁵ S. Nenci, *“Dottorato di ricerca in barriere tariffarie e crescita del commercio”*, (2004), (Accesso 05/02/2022), <https://iris.uniroma1.it/retrieve/handle/11573/917406/326707/NenciSilvia141.pdf>

Together with economic integration, another crucial aspect that has contributed to render the market more international and to move towards a harmonization of production and consumption of models, is the intense use of technology.

By the end of the 20th century until nowadays, the diffusion of information and innovation technologies to all layers of society has strongly intensified, contributing significantly to the development of free trade and foreign direct investments (FDI).⁶

Moreover, the reduction of communication and transport costs induced by the technological progress, allowed the reduction (or elimination) of tariff restrictions, which contributed to realize an interdependent world trade system and permitted the penetration and the involvement of new developing economies such as China, India, Brazil, or Pakistan that used to adopt more restrictive economic policies in the past.

The entrance of the new emerging economies contributed to systematically redesign world trade balances and forced several states to redefine national legislations to protect their domestic markets from possible harmful interferences.⁷

The new market access opportunities led to an increase of international competition thanks to the barrier reductions to trade and to the progressive extinction of potential state monopoly formations.⁸

With the completion of the European single market, economists started to realize that only under conditions of fair competition and with low tariff restrictions permitting free circulation of factors of production, the benefits of market liberalization would have been fully exploited by both consumers and producers⁹.

⁶ Treccani, “Globalizzazione”, enciclopedia online, (Access 05/02/2022), <https://www.treccani.it/enciclopedia/globalizzazione/>

⁷ G. Ottobre, “Le nuove frontiere europee a seguito dell’approvazione delle norme “anti dumping”: come si evolvono gli scenari economici”, (2019), (Access 05/02/2022), <https://www.diritto.it/le-nuove-frontiere-europee-a-seguito-dellapprovazione-delle-norme-anti-dumping-come-si-evolvono-gli-scenari-economici/>

⁸ I. Tinagli, “La liberalizzazione del mercato”, (Access 05/02/2022), www.economia.rai.it.

⁹ G. Vitali, “La liberalizzazione dei mercati: introduzione”, Istituto di Ricerca sull’Impresa e lo Sviluppo, (2011), (Access: 03/03/2022), http://www2.ceris.cnr.it/homedipendenti/vitali/dispense2010_11_PE/introduzione%20liberalizzazioni%2026%2011%202010.pdf

Generally, the benefits of free trade are enormous: increase of competition, employment and growth, more buying options for consumers at lower prices and so on.

However, in recent times free trade has been considered the cause of many economic distortions such as unemployment, stagnation or loss of earnings, poor working conditions, unbearable surges of competition for national enterprises, negative economic turndowns for newborn businesses¹⁰ and even degradation of the environment.

Latest debates on the liberalization of markets under specific international trade agreements, have affected the North Atlantic Free Trade Agreement (NAFTA), officially renamed with the name of “*United States-Mexico-Canada Agreement*” (USMCA) in 2018, following the desire of the Trump administration to bring back employment and production in the manufacturing sector following a significant loss of high-wage position jobs.

In particular, the American labor unions demonstrated that under such free trade agreement the automobile and transport sectors had been hit by higher unemployment levels due to social and environmental dumping practices put in place by Mexican fierce competitors that would have let their less strict law state regulations, characterized by minor labor conditions and lower wages, prevail over the American ones.¹¹

To encourage global trade development, the negative effects generated by free trade needed to be offset and for this reason it was necessary to impose appropriate regulations at the international and at the European levels, so that every economic operator in the world may enjoy the benefits of fair competition and limit the undesirable aspects being borne from the phenomenon of liberalization.

Given the global dimension of today’s trade, at the center of the international regulatory system we find the World Trade Organization (WTO)¹² (primarily under the name

¹⁰ Adewole o Mayowa, “*Il sistema di libero scambio oggi e il dibattito in America – “A che punto siamo e qual è la via da seguire?”*”, Rome Business School, (2020), (Access 05/02/2022), <https://romebusinessschool.com/it/blog/sistema-libero-scambio-oggi-dibattito-america-punto-qual-la-via-seguire/>

¹¹ M. Zupi, “*Dall’accordo NAFTA allo USMCA: implicazioni per l’UE e per l’Italia*”, Osservatorio di politica internazionale, (2021), pp.8, (Access 09/02/2022), <https://www.parlamento.it/application/xmanager/projects/parlamento/file/repository/affariinternazionali/osservatorio/note/PI0091Not.pdf>

¹² S. Nenci, “*Dottorato di ricerca in barriere tariffarie e crescita del commerci*”o, (2004), (Access 09/02/2022), <https://iris.uniroma1.it/retrieve/handle/11573/917406/326707/NenciSilvia141.pdf>

of the General Agreement on Tariffs and Trade (GATT) until 1995), which provided for the use of Trade Defense Instruments (TDI) to offset the three most typical unfair practices: dumping, subsidization and sudden/sharp increases of imports.

Instead, at the European level, the institutions decided to respond to globalization by elaborating a common trade policy, the common commercial policy (CCP), with the aim of reducing internal trade barriers, restoring fair competition when doing business with third countries and increase growth opportunities.

Indeed, as stated under Article 3 of the Treaty on the Functioning of the European Union (TFEU), the EU retains exclusive competence on the common commercial policy¹³ that shall be conducted in the context of the EU's external action¹⁴ and, according to paragraph 2 of the same Article, on the negotiation and the conclusion of international agreements.¹⁵

So that all potential benefits of the common commercial policy and the international trade agreements shall be at everyone's disposal, the EU adopted a strong position of contrast against dumping, subsidy, and surges of imports, upholding its commitment to open markets and realize free trade¹⁶.

As a permanent member and signatory of the WTO, the European Union incorporated and implemented the WTO's regulations on international trade defense into its own legislation and applied furthermore a number of additional conditions making sure¹⁷ to fully protect the European internal market.

Over the years, the Union's economy had been significantly affected by these unfair practices which altered the normal equilibrium of the market and guaranteed competitive advantages only upon third countries.

¹³ Article 3, paragraph 1, Treaty on the Functioning of the European Union (TFEU) (consolidated version), C326/47, (2012)

¹⁴ Article 207, paragraph 1, Treaty on the Functioning of the European Union (TFEU) (consolidated version), C 326/47, (2012)

¹⁵ Article 3, paragraph 2, Treaty on the Functioning of the European Union (TFEU) (consolidated version), C326/47, (2012)

¹⁶ EU Commission, « *Trade defence* », (2021), (Access 01/06/2022), https://policy.trade.ec.europa.eu/enforcement-and-protection/trade-defence_en

¹⁷ EU Commission, « *Trade defence* », (2020), (Access 09/02/2022), <https://ec.europa.eu/trade/policy/accessing-markets/trade-defence/>

Dumping and subsidy are applied by foreign producers through the illicit lowering of product prices within the European Union as a direct consequence of a lack of competition in their own domestic market or because of government's interferences in their production processes.¹⁸

The intensification of foreign dumping applied in the EU's territory augmented delocalization (also referred to as relocation or offshoring¹⁹) and so deindustrialization²⁰ of many European manufacturing companies who were forced to displace their production activities to third countries, mainly developing countries, to take profits of lower legal labor and environmental protection laws and make more from it.²¹

This fact brought to an increase of the phenomenon of unemployment, having consequences on the progressive fall of citizens' wages and, as direct effect, making them more eager to acquire low-cost products, mainly affected by dumping, imported by foreign producers.²²

¹⁸EU Parliament, "*Guerre commerciali: quali sono gli strumenti di difesa dell'UE?*", (2018), (Accesso 02/03/2022), <https://www.europarl.europa.eu/news/it/headlines/economy/20180308STO99328/guerre-commerciali-quali-sono-gli-strumenti-di-difesa-dell-ue>

¹⁹ Outsourcing/offshoring is the economic and financial process, usually operated by business firms in industrialized countries, of relocating total business activities or partial operational processes from one country to another in order to enjoy higher profitability and to take profits of lower labor and equipment costs, lower environmental state regulations and fiscal conditions, higher and closer availability of raw materials.

From the 20th century offshoring has significantly increased worldwide switching companies' efforts from unskilled jobs towards more skilled jobs especially related to information and communication technologies.

The process of offshoring concerns the production of both goods and services and the current most interested countries are India, China, Malaysia, Indonesia, Brazil and Vietnam. (Statista.com, 2021).

²⁰ De-industrialization is a process of reduction and declination of economic and manufacturing industry's capacity in terms of output or factor endowments (capital and labor), due to major socio-economic changes in a given economy. An example of a deindustrialization process is what the Rust Belt region in the United States experienced in the early 20th century, turning from a full employed and developed booming industry to an area of abandoned industrial factories. (David Wood, 2022, Study.com).

²¹ Avv. E.M Di Maggio, "*Il processo di delocalizzazione produttiva*", (2016), (Access 10/02/2022) <https://www.nuovefrontierediritto.it/il-processo-di-delocalizzazione-produttiva/>

²² G. Di Gaspare, *Diritto dell'economia e dinamiche istituzionali*, Cedam Editore, Vicenza, (2015), pp. 281 ss.

This contributed to maintain vital an impoverishment vortex in the Union, forcing the European institutions to resort to the so called “*trade defense instruments*” (TDIs) to remedy the situation: anti-dumping (AD), anti-subsidy (AS) and safeguard (SFG) measures, respectively disposed under Regulation 1036/2016²³, Regulation 2016/1037²⁴ and Regulations 2015/478²⁵ and 2015/755²⁶.

This thesis will be focused on the first type of TDIs of the European Union, namely the anti-dumping, to counterbalance predatory dumping applied by foreign enterprises before exporting to the EU.

Anti-dumping may for some be considered just a form of protectionism²⁷ put in place by nation states “*in contrast with liberal ideology*”²⁸ (Paolo D. Farah, 2013, pp.868) but despite this deliberation, if activated in a vigorous and effective manner, it shall be considered as a legitimate form of “*administrative protection*”²⁹ and as a defensive instrument, conformed with the international norms³⁰, capable of restoring the original selling prices of the dumped merchandise.³¹

²³ EU Commission delegate Regulation (EU) 2020/1173 of 4 June 2020 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union as regards the duration of the period of pre-disclosure, L 259/1, (2020).

²⁴ Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union, L 176/55, (2016).

²⁵ Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports (codification), L 83/16, (2015).

²⁶ Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (recast), L 123/33, (2015).

²⁷ P. D. Farah, *Le misure antidumping dell’Unione Europea alla luce del regolamento n. 182/2011*, Anno XXVII, Fascicolo 3, Giuffrè Editore, Milano, (2013), pp.868.

²⁸ Ibidem.

²⁹ F. Romeo, *La difesa del Made in Italy nel settore agroalimentare fra spinte protezionistiche e crisi pandemica*, (2021), Milano.

³⁰ Tesi di laurea di L. Labruzzo, “*La difesa del commercio dell’Unione Europea tramite misure anti-dumping e anti-sovvenzione*”, (2016), pp.12, https://tesi.luiss.it/17594/1/073392_LABBRUZZO_LUCA.pdf

³¹ F. De Angelis, “*Il Mercato Unico Europeo: successi conseguiti e nuove sfide*”, (2020), (Access 20/02/2022),

https://www.treccani.it/magazine/agenda/articoli/istituzioni/mercato_unico_successi_sfide.html

The thesis will be composed of four parts; starting with the explanation of the European trade policy and its defense instruments, it then shifts towards a deeper and more accurate explication of the anti-dumping duty which is going to be the central focus.

The first chapter will be based on an introductory part presenting the trade defense instruments extrapolated from the European trade defense policy, which had been continuously evolving over the past decades.

Instead, the second chapter will start with the definition of dumping and its application by foreign exporters, and it will pursue the analysis of different aspects of the anti-dumping duty: its legal framework, its application's requirements, and its impacts on small and medium-sized enterprises (SMEs).

The third chapter will focus on the anti-dumping legal procedure: from how to initiate a complaint and how to conduct an investigation proceeding, to how to impose the AD duty to the exporting merchandise.

The fourth and concluding chapter is the most practical one and it consists of a real-life AD application case, between the European Union and Russia, prompted by complaint Woodstock Consortium³² in August 2020, on the imposition of AD duties on Russian birch plywood products being sold in the EU at less than their fair value³³.

This last chapter will also highlight the EU-Russia trade relations in light of the recent political, diplomatic and economic happenings in the Russo-Ukrainian conflict, and it will be based on a fair analysis of the three regulations issued by the European Commission: Regulation 2021/940 of June 2021 imposing a provisional AD duty³⁴, Regulation 2021/193

³² Woodstock Consortium, “*Provisional anti-dumping duties on Russian birch plywood*”, (2020), <https://woodstockconsortium.com/provisional-anti-dumping-duties-on-russian-birch-plywood/>

³³ Ibidem.

³⁴ EU Commission implementing Regulation (EU) 2021/940 of 10 June 2021 imposing a provisional anti-dumping duty on imports of birch plywood originating in Russia, L 205/47, (2021).

of November 2021 imposing definitive duties³⁵ and Regulation 2021/2145 of December 2021 re-affirming the imposition of the definitive measures³⁶.

These regulations are set to preserve and restore the European free and fair competition and its rules-based trade system against proven dumping trade distortions³⁷ and help domestic producers “*return to sustainable profitability levels*”³⁸ as the Woodstock Consortium stressed in the press release held on November 11th.

³⁵ EU Commission implementing Regulation (EU) 2021/1930 of 8 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of birch plywood originating in Russia, L 394/7, (2021).

³⁶ EU Commission implementing Regulation (EU) 2021/2145 of 3 December 2021 not to suspend the definitive anti-dumping duties on imports of birch plywood originating in Russia imposed by Implementing Regulation (EU) 2021/1930, L 433/19, (2021).

³⁷ Woodstock Consortium, “*The Woodstock Consortium welcomes the imposition of anti-dumping duties on imports of birch plywood from Russia*”, Press release, (2021), <https://woodstockconsortium.com/wp-content/uploads/2021/11/211111-Woodstock-Consortium-press-release-welcomes-the-imposition-of-anti-dumping-duties.pdf>

³⁸ Ibidem.

CHAPTER I: INTRODUCTION TO THE EUROPEAN TRADE

DEFENSE INSTRUMENTS

1.1. THE EU IN GLOBAL TRADE

International trade and foreign direct investments represent significant drivers to boost economic growth and job creation in the European Union³⁹, indeed traditional classical and neo-classical trade theorists believe that free trade of goods, services and investments represent the most effective way to maximize social welfare in a given territory.

International trade has never been more important than in this *époque*, it suffices to say that when the economic recession broke out in the European market causing low internal demand, international trade channeled towards the EU the demand of goods and services coming from developing countries⁴⁰.

As a matter of fact, international trade represents a potentially powerful source of growth in hard times: it's believed that more than 90% of global economic growth will be generated outside the EU within the next fifteen years⁴¹.

The European Union is the world's largest single market area and the first trading power in the economic system: in 2020 it resulted to be the world's biggest importer and exporter of goods and services, registering a 16.8% share of total global trade⁴².

With only 7% of the world population, the EU represents more than a quarter of global wealth in terms of gross domestic product (GDP), the first destination of foreign direct

³⁹ Eurostat, “*Globalization patterns in EU trade and investment: international trade in goods for the EU-extra-EU trade in goods, 2002-2020*”, (2021), (Access 04/03/2022), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=International_trade_in_goods_for_the_EU_-_an_overview

⁴⁰ EU Commission, “*Commercio per tutti: verso una politica commerciale e di investimento più responsabile*”, Publications' Office of the European Union, (2011), pp.3.

⁴¹ Ibidem.

⁴² EU Commission, “*DG Trade Statistical Guide August 2021*”, (2021), pp.22, (Access 04/03/2022), https://trade.ec.europa.eu/doclib/docs/2013/may/tradoc_151348.pdf

investments (with 378.5 billion euros of inflows/outflows in 2019⁴³) and the leading investor thanks to its most secure investment framework⁴⁴.

It was only with the Treaty of Lisbon in 2007 that foreign direct investments (FDIs) fell under the exclusive competence of the EU (as part of the common commercial policy), transferring the mandate to negotiate international investment agreements (IIAs) to the Commission⁴⁵ (Article 218 of the TFEU⁴⁶), which ratified since then three contracts respectively with Singapore⁴⁷, Vietnam⁴⁸ and Canada⁴⁹.

Foreign direct investments have helped European enterprises employ 7,3 million people and for this reason, in March 2019 the European Parliament together with the Council established a legal framework for promoting transparency, sharing information and monitoring FDIs, between the Commission and the Member States, disciplined under Regulation 2019/452⁵⁰.

The openness to foreign direct investments supports trade of services with non-EU countries, indeed roughly 70% of the European GDP is represented by services, which are now integrated within the production processes of many European businesses for the sale of merchandise.

The Union's outstanding and competitive position in world trade was achieved thanks to its economic and monetary policies, that permitted to act as a unique single entity composed of twenty-seven Member States (MS)⁵¹, each of them sharing a single market, a

⁴³ Ibidem, pp. 28.

⁴⁴ EU Commission, "*EU position in world trade*", (2019), (Access 04/03/2022), <https://ec.europa.eu/trade/policy/eu-position-in-world-trade/>

⁴⁵ EU Parliament, "*EU international investment policy: looking ahead*", Briefing, (2022), (Access 03/04/2022), [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2022\)729276](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2022)729276)

⁴⁶ Article 218, paragraph 3, Part V: The Union's external action, Title V: International Agreements, Treaty on the Functioning of the European Union (TFEU), (2012).

⁴⁷ EU-Singapore Free Trade Agreement Investment Protection Agreement, (2018).

⁴⁸ EU-Vietnam Trade Agreement Investment Protection Agreement, (2019).

⁴⁹ Trade and investment Enhancement Agreement (TIEA), (2004).

⁵⁰ Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union, LI 79/1, (2019).

⁵¹ Until the 31st of January 2020, the European Union was composed of twenty-eight member states including the United Kingdom that officially signed the Withdrawal Agreement, in accordance with

single external border, and contributing economically and politically to a common commercial policy (CCP) conducted under the established rules of the World Trade Organization (WTO).

Before the WTO, Member States speak and negotiate together as a unique voice, represented by the Commission, for the enforcement of international trade norms and the negotiation of trade agreements in accordance with the organization's rules.

The normative roots of the European trade system shape the position and the interests of the Union, as well as its values and principles related to the single market, which depend partly on the solid internal consensus built for the scope of its trade policy.⁵²

According to Article 207 of the Treaty on the Functioning of the European Union (TFEU)⁵³, the common commercial policy (CCP), upon which the EU has exclusive competence⁵⁴, “*is based on uniform principles, in particular with regard to the conclusion of tariff and trade agreements which can be related to the exchange of goods, services, and the commercial aspects of intellectual property (IP), foreign direct investments (FDI), but also the realization of uniformity in measures concerning liberalization, export policy and protection of trade*”⁵⁵.

For this reason, the EU collaborates with foreign countries and economic regions to negotiate international trade agreements to benefit of favorable reciprocal access to other countries' markets and to obtain political concessions from its new partners.

Article 50 of the Treaty of the European Union and providing a transition period lasting until the 31st of December 2020 allowing the UK to remain in the single market to ensure temporary free trade.

⁵² Dr S. Woolcock, “*The role of the European Union in the International trade and investment order*”, Discussion Paper no. 2019-02, The University of Adelaide, (2019), (Access 08/03/2022), <https://iit.adelaide.edu.au/ua/media/259/Discussion%20Paper%202019-02%20S%20Woolcock.pdf>

⁵³ Article 207, paragraph 1, Part V: External Action by the Union, Title II: Common Commercial Policy, Treaty on the Functioning of the European Union (TFEU), (2012).

⁵⁴ Article 3, paragraph 1, Part I: principles, Title I: Categories and areas of Union competence, Treaty on the Functioning of the European Union (TFEU), (2012).

⁵⁵ Article 207, paragraph 1, Part V: External Action by the Union, Title II: Common Commercial Policy, Treaty on the Functioning of the European Union (TFEU), (2012).

Each agreement is unique, and it can include reductions of customs tariffs on imports or exports, norms on intellectual property rights, investments, sustainable development, labor standards, environmental or even human rights clauses⁵⁶.

Thanks to the international trade agreements, more than 70% of the imported goods enter every year in the EU at zero or highly reduced tariff duties and, according to the Commission's calculations, the finalization of all free trade negotiations could increase the European GDP of at least 2%, entailing the creation of another two million jobs⁵⁷.

In the last four years, the Union concluded the negotiations of the Economic and Partnership Agreement with Japan (2018)⁵⁸, the EU-Mexico Trade Agreement (2018)⁵⁹, the EU-Singapore Free Trade Agreement (2019)⁶⁰ and the EU-Mercosur Free Trade Agreement (2019)⁶¹.

Serving more than five hundred million consumers⁶², the EU boasts of an open, rules-based and competitive internal market dismantled of all tariff barriers, with the purpose

⁵⁶ EU Commission, "*Verso un commercio equo e aperto a livello mondiale*", (2022), (Accesso: 06/03/2022), https://european-union.europa.eu/priorities-and-actions/actions-topic/trade_it

⁵⁷ EU Commission, Publications' Office of the European Union, "*Le politiche dell'Unione Europea: commercio*", Luxembourg, (2016), pp. 5.

⁵⁸ In July 2018, the European Union signed with Japan an Economic and Partnership Agreement (EPA) with the aim of removing tariff barriers to trade and boost cooperation between the two superpowers.

⁵⁹ In April 2018, the European Union and Mexico concluded the negotiations for the new EU-Mexico Association Agreement, aimed at eliminating Mexican import tariffs on European food and drink products, ensuring European firms to expand the exportation of services, and guarantee more labor and environmental protection rights for the citizens of both citizenships (EU and MX).

⁶⁰ In October 2019, the European Union signed with Singapore a Free Trade and Investment Protection Agreement to remove all customs duties, especially for electronics, food, and pharmaceutical products, protect environmental standards in trade deals and encourage businesses to invest more in both regions.

⁶¹ In June 2019, the European Union and the Mercosur States (Argentina, Brazil, Paraguay and Uruguay) signed a trade agreement to increase trade transactions and investment, eliminating 93% of European tariffs and ensuring an increased access to the relative markets covering also Sanitary and Phytosanitary Measures (SPS), rules of origin, trade remedies, technical barriers to trade, services and investment liberalization, competition policy, IPs, government procurement and sustainable development.

⁶² EU Commission, "*EU position in world trade*", (2019), (Access 04/03/2022), <https://ec.europa.eu/trade/policy/eu-position-in-world-trade/>

of allowing the free circulation of goods, services, capital and people, and capable of praising an assertive external action towards third countries.

Trade openness⁶³ represents the biggest strength point of the Union's policy, totally uniformed to a world in continuous evolution and modernization brought by the dual working interconnection of globalization and liberalization of the economies.

Over the years, the experimental literature has shown a positive relationship between international trade and growth; specifically, the potential enhancing factors are to be found in the degree of the state's competition, the size of the country's market, the economies of scale put in place by national firms and the rate of technological progress and innovation⁶⁴.

Recent trends by the Organization for Economic Cooperation and Development (OECD) have demonstrated also that trade openness of a country entails higher levels of gross domestic product per capita⁶⁵.

There are a lot of economists following different schools of thought who explain the correlation between international trade and economic growth. Some relate to the geographical distance among trading partners as a predictor of growth⁶⁶ and others relate to the quality of the government's public policies, the rule of law and the level of democracy⁶⁷.

As far as my point of view is concerned, the most convincing view is that trade policy reforms, which are able of reducing and/or eliminating tariff barriers to trade, have determined a significant positive impact on growth and job creation, creating though, different effects depending on the economic and monetary policies of the country in question, its democratization's level and its socio-economic development.

⁶³ Trade openness is measured as the ratio of the sum of the exports and imports of a country over the country's gross domestic product (GDP) in %.

⁶⁴ E. Ortiz-Ospina, "Does trade cause growth", (2019), (Access 01/04/2022), <https://ourworldindata.org/trade-and-econ-growth>

⁶⁵ Organization for Economic Cooperation and Development (OECD), "The importance of global value chains", Our world in data blog, (2018), (Access 01/04/2022), https://www.oecd-ilibrary.org/economics/oecd-compendium-of-productivity-indicators-2018_pdtvy-2018-en

⁶⁶ J. Frankel & D. Romer, "Does trade cause growth", American Economic Review, vol 89(3), (1999), pp. 379-399.

⁶⁷ D. Rodrik & A. Subramanian, "The primacy of institutions", Finance & Development, (2003).

Within the European Union where there persist a good level of trade openness, a beneficial geographical position, and a high quality of institutions, opportunities and prospects of growth do realize, especially thanks to the single market creation, which had increased European GDP by 1.7% in the period from 1990 to 2015⁶⁸.

Nevertheless, an important diversification needs to be made: European trade distinguishes between intra-EU trade, which refers to all economic transactions occurring among Member States, and extra-EU trade, which relates to all flows of transactions taking place between the EU and third countries.

Concerning extra-EU trade in goods, the EU is responsible of export operations with roughly eighty states⁶⁹ and its five main trading partners for both imports and exports in the last three years were the Republic of China, the United States of America, the United Kingdom, Switzerland and the Russian Federation. (see figure below)

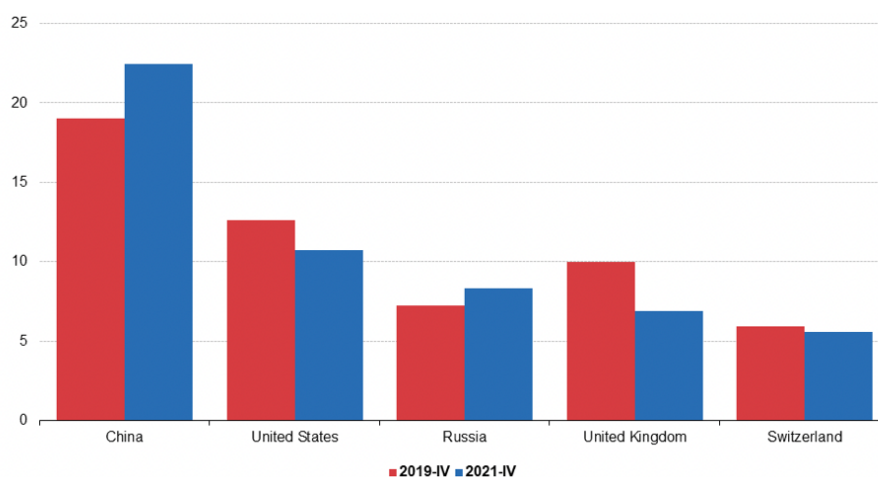


Table 1.1: EU imports from main trading partner from 2019-2021 (% of extra-EU imports, seasonally adjusted data)

Source: Eurostat, “EU imports from main trading partner, fourth quarter 2019 and 2021 (% of extra-EU imports, seasonally adjusted data).png”, (2022), [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:EU imports from main partners, fourth quarter 2019 and 2021 \(%25 of extra-EU imports, seasonally adjusted data\).png](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:EU_imports_from_main_partners_fourth_quarter_2019_and_2021_(%25_of_extra-EU_imports_seasonally_adjusted_data).png).

⁶⁸ EU Parliament, « EU Trade Policy », (2019), (Access 01/04/2022), pp.10, [https://www.europarl.europa.eu/RegData/etudes/IDAN/2019/642229/EPRS_IDA\(2019\)642229_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2019/642229/EPRS_IDA(2019)642229_EN.pdf)

⁶⁹ Ibidem.

From 1999 to 2010, the European Union's participation in global production sharing doubled and now trade with non-EU countries accounts for over 30% of the overall EU's gross domestic product (GDP).⁷⁰

Due to the impact of the global financial crisis, from 2006 onwards, the value of imported goods from third countries increased at a faster pace than the value of exported goods, resulting in dramatic mutations in the European trade balance of goods (difference between the value of goods exported and the value of goods imported), which suffered sharp trade deficits reaching the maximum peak of 134 billion euro in 2008.⁷¹

Due to the crisis, the trade liberalization trend operated by European nations started to shift towards more protectionist policies with third countries setting tariff and non-tariff barriers for sheltering from foreign competition, and alternatively, towards more deregulation and harmonization measures within the Union itself.

In response to the global crisis and in accordance with the price stability objective for the euro currency, the European Central Bank (ECB) conducted between 2008 and 2009 a “*non-standard*”⁷² active monetary policy aimed at lowering the EU's interest rate (by three hundred and twenty-five cumulative basic points), setting structural reforms for budget consolidation and supporting the smooth functioning of the European banking system intended to sustain the flow of credit to both people and enterprises⁷³.

As we can state from the table below, thanks to these prompt economic responses, the Union's money market and trade activity started to recover in 2012, and in the following

⁷⁰ EU Commission DG Communication, “*Towards open and fair world-wide trade*”, (2022), (Access 05/03/2022), https://european-union.europa.eu/priorities-and-actions/actions-topic/trade_en

⁷¹ Eurostat, “*International trade in goods for the EU-an overview*”, (2021), (Access 05/03/2022), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=International_trade_in_goods_for_the_EU_-_an_overview#Volume_of_goods

⁷² It is defined a “*non-standard*” monetary policy because it goes beyond the traditional changes in the interest rate used by central banks to drive monetary recoveries.

⁷³ European Central Bank (ECB), “*The European response to the financial crisis, Speech by Gertrude Tumpel-Gugerell Member of the Executive Board of the ECB Bank of New York Mellon Headquarter New York, 16 October 2009*”, (2009), (Access 01/06/2022), https://www.ecb.europa.eu/press/key/date/2009/html/sp091016_1.en.html

years the extra-EU exports in goods rose above the pre-crisis situation, whereas the value of imports experienced an economic downturn.

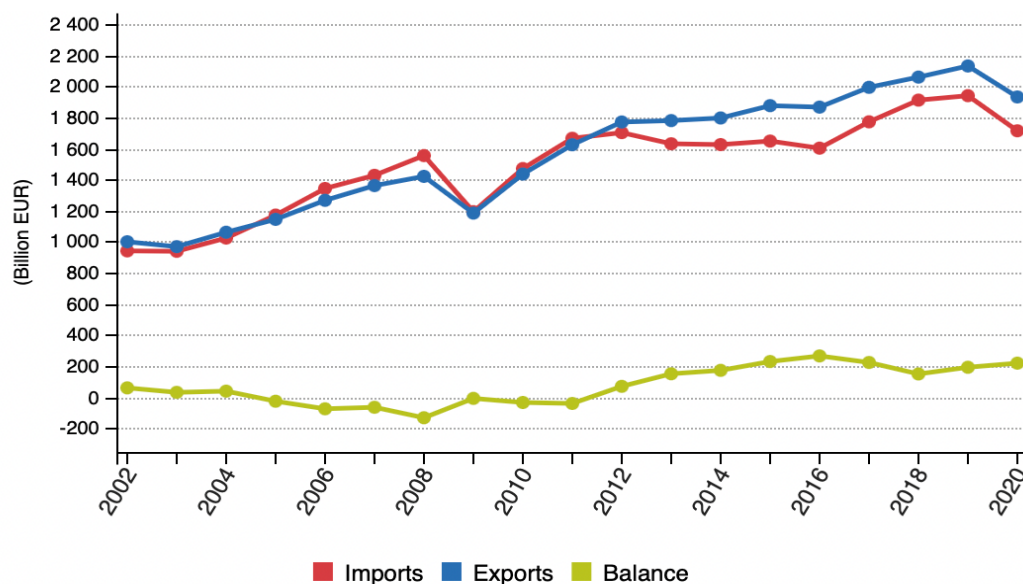


Table 1.2: Extra-EU trade in goods from 2002 to 2020

Source: Eurostat, “Globalization patterns in EU trade and investment: International trade in goods for the EU-Extra-EU trade in goods, 2002-2020”, (2022), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=International_trade_in_goods_for_the_EU_-_an_overview .

The main reason behind the falling behaviour of European imports from third countries is to be found in the low crude oil prices which increased the competitiveness of some non-EU oil-intensive countries, more than the EU’s own competitiveness⁷⁴.

Generally, the economic impact of low oil prices on a country depends on the import dependency and the intensity of oil products consumption of that country⁷⁵ which was extremely high for the EU in that period (around 94%⁷⁶).

⁷⁴ EU Commission JRC Technical Reports, Z. Vrontisi, A. Kitous, B. Saveyn, T. Vandyck, “Impact of low prices on the EU economy”, (2015), (Access 05/04/2022).

⁷⁵ Ibidem.

⁷⁶ Eurostat Statistics Explained, “Oil and petroleum products – a statistical overview, Oil imports dependency”, (2022), (Access 01/06/2022), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Oil_and_petroleum_products_-_a_statistical_overview&oldid=315177#Oil_imports_dependency

However, as depicted in the above line graph, the value of imported and exported merchandise constantly increased from 2010 to 2020 (2.3% of annual growth rate), registering though a considerable fall between 2019 and 2020⁷⁷.

Indeed, due to the COVID-19 pandemic crisis, the first and second quarters of year 2020 experienced high economic downturns compared to 2019, both for imports (-11.5%)⁷⁸ and for exports (-9.3%)⁷⁹, with an overall decrease of 6.1% of GDP.

The European Union responded to the coronavirus pandemic in a much quicker way than in the aftermath of the 2008 economic crisis, staggering a total sum of 750 billion euros on a package adopted by Regulation 2020/2094 establishing the European Recovery Instrument entitled to set specific measures for labour markets and healthcare systems under the form of loans and non-repayable grants to push towards a sustainable and consistent economic recovery⁸⁰. Alongside the recovery plan, the EU agreed also on a budget of 1 074.3 billion of euros for the period between 2021 and 2027 to support investment in the digital and in the green sectors, and another financial support of 540 billion, for workers, business and member states, accounting for a total 2 364.3 billion of recovery funds⁸¹.

Thanks to this huge recovery plan, both European imports and exports significantly restored in year 2021, with imports sharply increasing by 13% and exports rising even higher by 23%⁸².

⁷⁷ Eurostat Statistics explained, “*Extra-EU trade in goods*”, (2021), (Access 05/03/2022), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Extra-EU_trade_in_goods#Evolution_of_extra-EU_trade

⁷⁸ Eurostat, Statistics Explained, “*EU trade in 2021 strongly recovered from the COVID-19 pandemic*”, (2021), (Access 07/03/2022), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=International_trade_in_goods&stable=0&redirect=no#EU_trade_in_2021_strongly_recovered_from_the_COVID-19_pandemic

⁷⁹ Ibidem.

⁸⁰ Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis, (2020), LI 433/23.

⁸¹ European Council, Council of the EU, “*COVID-19: the EU’s response to the economic fallout*”, (2021), (Access 01/06/2022), <https://www.consilium.europa.eu/en/policies/coronavirus/covid-19-economy/>

⁸² Eurostat, EU Position in world trade, “*Latest Eurostat data on international trade*”, (2022), (Access 07/03/2022), pp.2, https://trade.ec.europa.eu/doclib/docs/2013/december/tradoc_151969.pdf

The main manufactured goods imported by non-EU countries were machinery, transport equipment and vehicles from China, the UK and the US, chemical products from Switzerland, and mineral fuels and energy from Russia.

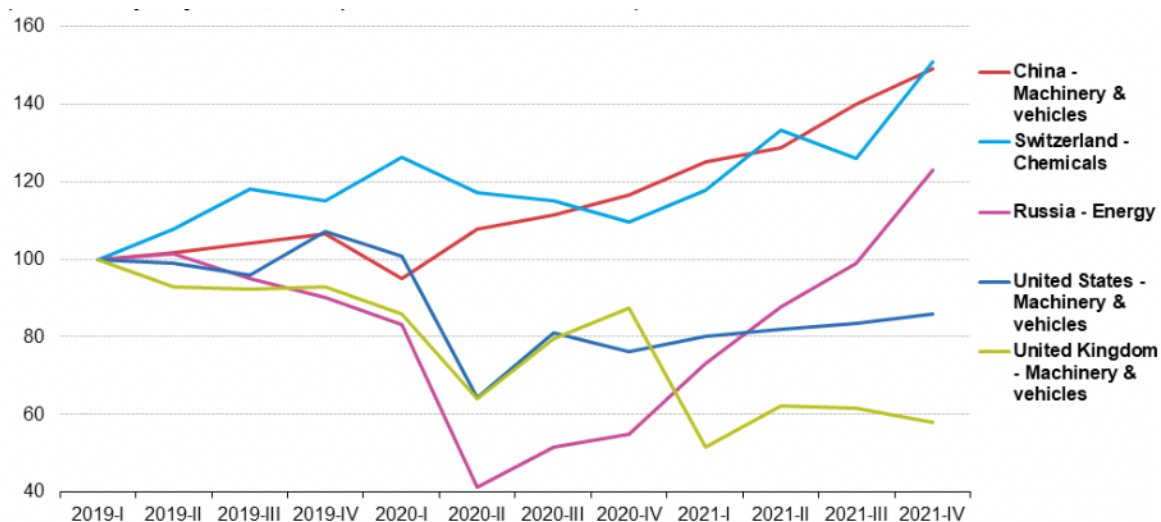


Table 1.3: EU imports of goods by quarter - main product per main partner (2019-2021)

Source: Eurostat, “EU imports of goods, main product per partner, 2019-I to 2021-IV (seasonally adjusted, first quarter of 2019 = 100%). png”, (2021), [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:EU_imports_of_goods_main_products_per_partner_2019-I_to_2021-IV_\(seasonally_adjusted_first_quarter_of_2019_%3D_100_%25\).png](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:EU_imports_of_goods_main_products_per_partner_2019-I_to_2021-IV_(seasonally_adjusted_first_quarter_of_2019_%3D_100_%25).png)

In 2020, Germany was the largest Member State importing chemicals (18.7%), machinery equipment (27.3%) and pharmaceuticals (21.2%) from third countries, whereas the Netherlands was the biggest importer of petroleum (16.9%), computers, electronic and optical products (34.9%).⁸³

As the statistics say, the EU is heavily dependent on crude oil, gas, and petroleum products, mainly imported from Asian countries such as Russia (108 billion dollars in 2021), Norway, Algeria, the US, and Qatar⁸⁴, and on raw materials and metals from Libya.

⁸³ Eurostat, “Main goods in extra-EU imports”, (2022), (Access 08/03/2022), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Main_goods_in_extra-EU_imports#Crude_petroleum_and_natural_gas

⁸⁴ EU Commission, “Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions REPowerEU: Joint European Action for more affordable, secure and sustainable energy”, (2022), (Access 01/06/2022), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A108%3AFIN>

However, the volume of crude oil importation considerably dropped from 77% to 62% in the past decade thanks to the change in consumption towards more natural gas and renewables promoted by the European Union's energy policy.

Following the Russia's invasion of Ukraine started in 2014, the unpredictable surges of energy prices and high volatility of the demand led the EU to considerably reduce its dependence on Russian energy imports.

In March 2022, following the recent developments in the energy market and the dramatic plunge of the European security brought by the war, the Commission published a communication through which it developed the "*REPowerEU plan*" asking for an acceleration of the green transition towards renewables and improving Europe's energy efficiency by cutting oil and coal dependence on Russia by 2030⁸⁵.

Specifically, this last purpose shall be reached through two important pillars:

1. *"Diversifying gas supplies, via higher LNG imports and pipeline imports from non-Russian suppliers, and higher levels of biomethane and hydrogen.*
2. *Reducing faster our dependence on fossil fuels at the level of homes, buildings and the industry, and at the level of the power system by boosting energy efficiency gains, increasing the share of renewable and addressing infrastructure bottlenecks"*⁸⁶.

The plan previews, from now on, to start restoring gas supplies, filling the European storage infrastructures "*up to at least 90% of their capacity*" to be well-prepared for the next winter⁸⁷.

Besides natural gas, the Union also engages in import operations from third countries for computer, electrical and optical equipment (14.0%), machinery equipment (6.4%), pharmaceutical products (5.2%), wearing apparels (3.5%) and in minor proportions,

⁸⁵ Ibidem.

⁸⁶ Ibidem, II. REPowerEU: eliminating our dependence on Russian Fossil FUELS.

⁸⁷ Ibidem, 1.2. Preparing for next winter by ensuring sufficient gas storage.

rubber and plastic products (2.5%), food products (3.6%), furniture (1.0%) and paper products (0.7%)⁸⁸.

The chart below shows the CPA classification⁸⁹ of forty typologies of products imported in the European Union from non-EU countries during the whole year 2021.

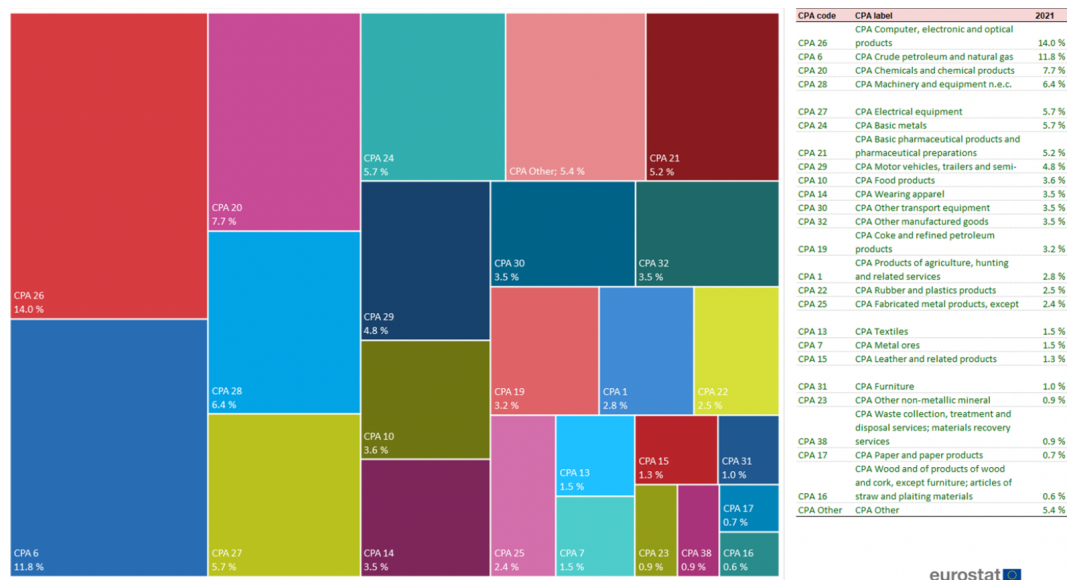


Table 1.4: Share of main CPA groups in extra-EU imports in 2021 in %

Source: Eurostat, « File : Share of main CPA groups in extra-EU imports, 2021.png », https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Share_of_main_CPA_groups_in_extra-EU_imports_2021.png.

In 2020, the Member States that engaged the most in extra-EU trade in goods were Ireland with the highest share of 60% of total trade, Cyprus with roughly 48% and Italy with 47%.

On the other side, Luxembourg, Slovakia, and Czechia, were those engaged the most in intra-EU trade in goods, racking up around 75% of total trade.

⁸⁸ Trading Economics, “European Union imports by category”, (Access 08/03/2022), <https://tradingeconomics.com/european-union/imports-by-category>

⁸⁹ The CPA classification stands for the statistical “Classification of Products by Activity”, and it consists of those products (goods and services), being categorized at the EU level for their common characteristics, to collect and calculate statistics on their production, distribution, consumption, domestic trade, international trade, and transport related activities. The CPA classification system is part of a statistical classification methodology developed by the United Nations Statistical Division, to easily compare statistical data across countries.

In general, its clearly visible from the column graph below that Member States have higher propensity to trade within the single market engaging in intra-EU trade operations, and the proportions of intra-EU and extra-EU exchanges of manufactured goods vary considerably depending on the nations’ historical, political, and economic ties and on their geographical position.

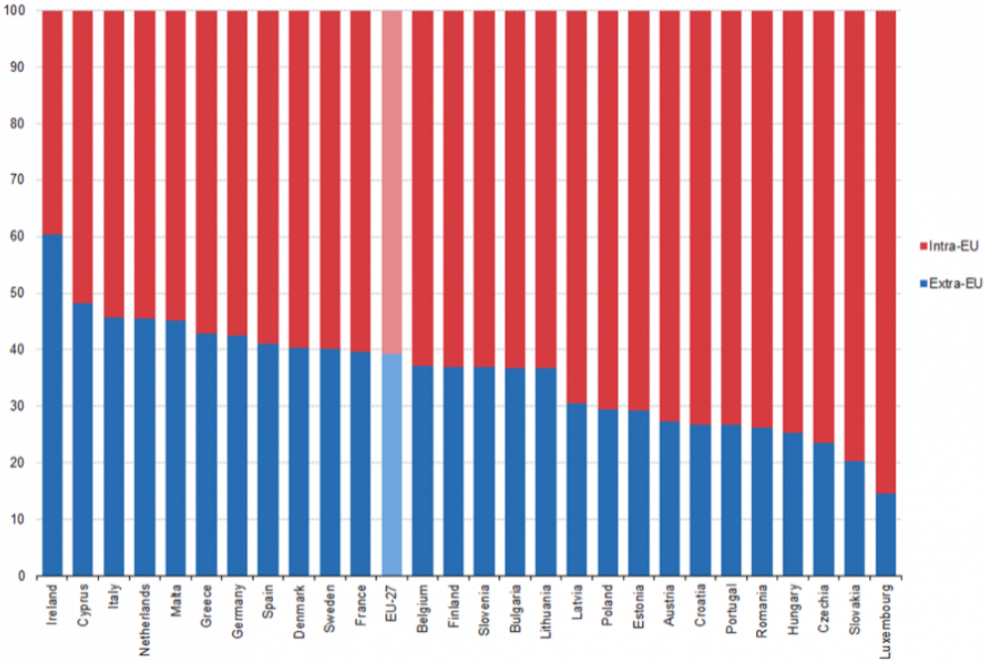


Table 1.5: Extra and intra EU trade in goods in 2020 as % share of total trade

Source: Eurostat, “International trade in goods for the EU-an overview”, (2022), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Extra_and_intra_EU_trade_in_goods_2020.png.

Being engaged in international trade with third countries brings a lot of benefits to European businesses: more economic growth and increase in GDP, boost of job creation, higher salaries and living standards, reduction of poverty, and a bigger variety of goods in circulation for the sake and the choices of consumers.

Moreover, trade with foreign countries had steadily declined the pressure on consumer prices, leading to a rise of citizens’ purchasing power.

With trade and investment flows, the spread and the exchange of new ideas and innovations throughout the EU permitted the development of new technologies and led to improvement in products' creation and in diffusion of services to people.

Trade facilitates domestic enterprises to do business with one another, encourages the achievement of new markets and rises competition and competitiveness by improving firms' access to inputs at lower prices. It also allows enterprises to compete with more realities and secures political stability thanks to contractual economic and political ties with other nations.⁹⁰

On the contrary, international trade had also increased the level of inequality, intended as the diminution of aggregation of income levels and wealth distribution, for some developing nations.

The main factors behind this are to be found in the offshoring techniques of modern production or in the dominance of some large multinational firms operating in the global context and capable of capturing all competitive advantages and win over small or medium enterprises (SMEs) that lack financing, information or underrepresentation in trade policy making.

1.2. EUROPEAN TRADE POLICY

Trade has always been the EU's primary "*raison d'être*"⁹¹ and since the very beginning with the Treaty of Rome in 1957, Member States decided to cede their trade powers to the supranational authorities of the European institutions to govern their interests through the most integrated policy, namely the Common Commercial Policy (CCP), known also as the European trade policy.

⁹⁰ EU Commission, "*10 Benefits of trade*", (2019), (Access 07/03/2022), https://trade.ec.europa.eu/doclib/docs/2010/november/tradoc_146935.pdf

⁹¹ S. Meunier & K. Nicolaidis, "*The European Union as a Trade Power*", Chapter 12, pp. 2-3, (publication's year unknown), (Access 10/03/2022), <https://www.princeton.edu/~amoravcs/wws556c/handover.pdf>

The EU detains fully exclusive competence in the common commercial policy⁹² towards third countries, meaning that only the Union has the faculty to legislate, adopt legally binding acts⁹³ and to make any sort of initiative or proposal in the ambit of regional and international trade, not allowing the single states to adopt their own legislation on that area, unless empowered by the Union⁹⁴.

The CCP lies within the fundamental policies carried out under the exercise of the Union's external action and thus shall be guided by the uniform principles stated in Article 21 of the TEU⁹⁵, and taken up in Article 205 of the TFEU⁹⁶, consisting on: *“democracy, rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity and respect for the principles of the United Nations Charter and international law”*⁹⁷.

The two treaties ruling the CCP are the Treaty on the European Union (TEU), providing the objectives and the general principles guiding the EU and, most of all, the Treaty on the Functioning of the European Union (TFEU), setting the organizational and functional details, and including the dedicated Part V on *“the Union's external action”*⁹⁸.

Under the legislature of Trade Commissioner Pascal Lamy (2005-2013), the European trade policy aimed at *“harnessing globalization”* and using market access and free trade to spread the European values, its principles, and its model of society through the negotiation of agreements with other countries⁹⁹.

⁹² Article 3, paragraph 1 (e), Part I: Principles, Title I: Categories and areas of union competence, Treaty on the Functioning of the European Union (TFEU), (2012).

⁹³ Article 2, Part I: Principles, Title I: Categories and areas of union competence, Treaty on the Functioning of the European Union (TFEU), (2012).

⁹⁴ University of Portsmouth, *“Competences in the EU: Who is responsible for what?”*, (2010), (Access 01/06/2022), <http://hum.port.ac.uk/europeanstudieshub/learning/module-2-understanding-eu-policy-making/a-question-of-competences/>

⁹⁵ Article 21, Part V: General Provisions on the Union's External Action and Specific Provisions on the Common Foreign and Security Policy, Treaty on the European Union (TEU), (2012).

⁹⁶ Article 205, Part V: The Union's External Action, Title II: Common Commercial Policy, Treaty on the Functioning of the European Union (TFEU), (2012).

⁹⁷ Ibidem.

⁹⁸ Ibidem.

⁹⁹ S. Meunier & K. Nicolaidis, Chapter 12: *« The European Union as a Trade Power »*, pp.40.

The objectives of the CCP are to contribute, in the common interest, to the harmonious development of international trade and foreign direct investments, facilitate the reduction of custom duties or any other type of tariff barrier to trade¹⁰⁰, but also increase growth opportunities for European businesses, ensuring them fair competitive conditions.¹⁰¹

As already cited in the previous paragraph, the CCP regards international tariff and trade agreements on trade of goods and services, the commercial aspects of intellectual property, foreign direct investments, public procurement, and all relative measures to protect the single internal market from harmful and unfair foreign trade practices.¹⁰²

Thanks to its legal personality and its status of “*subject of international law*”¹⁰³, the EU carries out the CCP through the conclusion of international trade agreements with third countries for accessing to new markets, the utilization of trade defense instruments (TDIs) to protect its economy, and the participation to the World Trade Organization (WTO) making use of its international regulations in the field of trade, its Dispute Settlement Body (DSB) and committing actively to its multilateral negotiations.¹⁰⁴

Concerning international agreements, it’s important to note that they are not part of the primary and secondary legislation (they are situated between primary law and legislative acts¹⁰⁵) and instead, they constitute a form of sui generis category that, at the moment of

¹⁰⁰ Article 206, Part V – The Union’s External Action, Title II: Common Commercial Policy, Treaty on the Functioning of the European Union (TFEU), consolidated version, (2012).

¹⁰¹ EU Parliament, “*La politica commerciale dell’UE: strumenti per affrontare al meglio la globalizzazione*”, (2019), (Access 15/03/2021), <https://www.europarl.europa.eu/news/it/headlines/economy/20190528STO53303/la-politica-commerciale-dell-ue-per-affrontare-al-meglio-la-globalizzazione>

¹⁰² Article 207, paragraph 1, Part V: The Union’s External Action, Title II: Common Commercial Policy, Treaty on the Functioning of the European Union (TFEU), (2012).

¹⁰³ EU Commission, “*International agreements and the EU’s external competences*”, (2020), (Access 01/06/2022), <https://eur-lex.europa.eu/EN/legal-content/summary/international-agreements-and-the-eu-s-external-competences.html>

¹⁰⁴ EU Parliament, “*La politica commerciale dell’UE: strumenti per affrontare al meglio la globalizzazione*”, (2019), (Access 15/03/2021), <https://www.europarl.europa.eu/news/it/headlines/economy/20190528STO53303/la-politica-commerciale-dell-ue-per-affrontare-al-meglio-la-globalizzazione>

¹⁰⁵ A. Rosas, “*The Status in EU Law of International Agreements concluded by EU Member States*”, Fordham International Law Journal, (2011), pp.1310.

coming into force, are directly applicable by Member States, upon which they generate rights and obligations.

Generally, the EU can set three different types of international trade agreements:

1. the custom union agreement cutting off customs barriers among signatory countries and establishing a joint external tariff with third countries;
2. the association/stabilization agreement, the free trade agreement (FTA), and the economic partnership agreement (EPA), for the elimination of customs tariffs in bilateral trade relations;
3. the partnership and cooperation agreement (PCA) that provides a general economic framework for the signatory countries and leaves customs tariffs unchanged.¹⁰⁶

Overall, the Union has negotiated roughly one hundred and thirty trade agreements, (seventy-seven in place, twenty-four pending, twenty-four being adopted and ratified, five being only negotiated), some with big and powerful west nations such as the Comprehensive and Economic Trade Agreement (CETA)¹⁰⁷ with Canada and some with developing nations such as the Bosnia and Herzegovina Stabilization and Association Agreement¹⁰⁸.

The EU is also part of the Agreement on the European Economic Area (EEA) together with Iceland, Liechtenstein, and Norway, extending to these countries the basic rules of the European internal market.

For the adoption of legal acts, the TFUE establishes under Article 207, paragraph 2, that the framework for the implementation of the common commercial policy previews the co-legislation procedure of the Council and the Parliament in accordance with the ordinary legislative procedure¹⁰⁹.

¹⁰⁶ EU Commission, “*Negotiations and agreements*”, (2021), (Access 06/03/2022), <https://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/>

¹⁰⁷ On October 28th, 2016, the EU Council adopted the decision on the signing on behalf of the European Union of the Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part.

¹⁰⁸ EU Council and Commission, Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, (2015), 215/998, L164/548.

¹⁰⁹ Article 207, paragraph 2, Part V: The Union’s External Action, Title II: Common Commercial Policy, Treaty on the Functioning of the European Union (TFEU), (2012).

Under the Article, in the matter of agreements with third countries or international organizations, the Commission is responsible for making recommendations to the Council which shall then authorize the start of the negotiation procedure. After that, the Commission is responsible to conduct the negotiations, in consultation with a special committee, appointed by the Council, before the final vote of the Council by qualified majority¹¹⁰.

As for the negotiation and conclusion of international agreements in the field of services, IP rights and FDIs, cultural and audiovisual services, social, education and health services, the Council is entitled to use the unanimity type of voting¹¹¹. Instead, for the transport-type international agreement, Article 218 of the same Treaty is in charge¹¹².

The creation of the common commercial policy is to be traced back to the very first years of the European integration process when the European Economic Community was still in existence.

After the failure of the creation of an integrated European Army under the name of the European Defense Community (EDC), the Foreign Ministers of six countries, Belgium, Luxembourg, the Netherlands, France, the Federal Republic of Germany, and Italy, in honor of the Messina Conference (1955), appointed a committee of experts, chaired by the Belgian Minister Henri Spaak, to study all the possible initiatives and means for carrying out the European integration process.

The composed committee elaborated a more ambitious project consisting of creating a common internal market among Member States and another project aimed at creating a community for the atomic energy.

Under the Treaty of Rome (1957) both projects received approbation, leading to the institutionalization of the European Economic Community (EEC) and the European Atomic Energy Community (EURATOM), the two with unlimited duration.

The European Economic Community had the purpose of creating a common internal market and a monetary union, through the progressive elimination of tariff restrictions and

¹¹⁰ Article 207, paragraph 3-4, Part V: The Union's External Action, Title II: Common Commercial Policy, Treaty on the Functioning of the European Union (TFEU), (2012).

¹¹¹ Ibidem.

¹¹² Article 207, paragraph 5, Part V: The Union's External Action, Title II: Common Commercial Policy, Treaty on the Functioning of the European Union (TFEU), (2012).

any other type of existing economic obstacle, “*in order to guarantee steady expansion, balanced trade and fair competition*” (Preamble of EEC Treaty, 1957)¹¹³.

As stated in Article 2 of the Treaty of the EEC, the Community’s activities had to be engaged in the elimination of all customs duties and quantitative restrictions related to imports and exports of merchandise inside the Union’s area for the realization of free circulation of goods, services, people, and capitals, but also for the establishment of a joint Common Commercial Policy with third countries¹¹⁴.

Conducted in the context of the EU’s external action¹¹⁵, the Common Commercial Policy officially came into existence twelve years later, in 1969, after the transitional period of alignment of all Member States’ economic policies¹¹⁶ participating in the project.

Even if until that year it was up to the Member States to coordinate trade relations with other countries, the Community had the chance to set bilateral trade agreements with other international subjects such as the trade agreement with the State of Israel in 1964 and the multilateral Dillon and Kennedy rounds, in the framework of the General Agreement on Tariffs and Trade (GATT), between 1963 and 1967.¹¹⁷

To act as a unique entity, Member States would have to give up their own trade policy sovereignty and delegate such competence to the authority of a Commission (the future European Commission) for its management and negotiation, and to a Council of Ministers and a Parliamentary Assembly (the future European Parliament), for the decision-making procedure.

When it was first applied, the common commercial policy was related only to the exchange of industrial goods and did not apply to the service or the investment sectors.

¹¹³ EU Commission, “*Treaty of Rome (EEC)*”, (2017), (Access 09/03/2022), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Axy0023>

¹¹⁴ Articles 110-116, Part III: Community policies, Title IX: Common Commercial Policy, Treaty establishing the European Economic Community (EEC Treaty), (1957).

¹¹⁵ Article 207 (ex-article 133 TEC), Part V: External Action by the Union, Title II: Common Commercial Policy, Treaty on the Functioning of the European Union, (2012).

¹¹⁶ Wikipedia The Free Encyclopedia, “*Common Commercial Policy (EU)*”, (2022), (Access 09/03/2022), [https://en.wikipedia.org/wiki/Common_Commercial_Policy_\(EU\)](https://en.wikipedia.org/wiki/Common_Commercial_Policy_(EU))

¹¹⁷ EU Commission, “*Common commercial policy*”, (Access 09/03/2022), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Aa20000>

Under the Treaty of Rome, the legislative centerpiece of the CCP was represented by Article 113 of the EEC Treaty¹¹⁸, which was highly criticized by some authors for the lack of restrictiveness and the drafting incompleteness in definition, scope, and boundaries of completion (Bourgeois 1995; Ehlermann 1984).

During nearly two decades following the Rome Treaty, the Commission negotiated two GATT rounds on trade as well as some bilateral trade agreements with other non-EU members.

However, by the 1990s, the development of information and communication technologies, the evolution of the international trade agenda and the creation of the World Trade Organization, forced the Community to initiate the extension of the scopes and the competences of trade upon the European authority.

The Commission started by asking the European Court of Justice to pronounce a judgment with an “*advisory opinion*” on the competences of the common commercial policy.¹¹⁹

In November 1994 with the famous “*1/94 Opinion*”, European judges ruled that, pursuant to Article 113 of the EEC Treaty, the Community had sole competence in the conclusion of international trade agreements in goods, including products coming from agriculture, and those related to the Treaties of the European Coal and Steel Community and the EURATOM¹²⁰.

Moreover, the Court concluded that the Community and its MS were jointly competent in the conclusion of international trade agreements related to services and IP rights¹²¹, of type of the General Agreement on Trade and Services (GATS) and the Trade-

¹¹⁸ Article 113, Part III: Community policies, Title IX: Common Commercial Policy, Treaty establishing the European Community, (1957).

¹¹⁹ S. Meunier & K. Nicolaidis, “*The European Union as a Trade Power*”, Chapter 12, pp. 2-3, (Access 10/03/2022), <https://www.princeton.edu/~amoravcs/wws556c/handover.pdf>

¹²⁰ Ibidem.

¹²¹ P. Marton, “*Reacting to Uncertainty: Institutional Responses to the Politicization of the EU Trade Policy*”, Central European University (CEU), (2020), pp.81.

Related Intellectual Property Rights (TRIPS), identifying as mode of service delivery only the “*cross-frontier supplies*”, which did not require the movement of persons¹²².

It was after the Court’s judgement and in light of the Amsterdam Treaty in October 1997, that the Commission proposed an amendment to Article 113¹²³ (renumbered Article 133), ordering an expansion of the exclusive competences of the Community.

Unfortunately, both the Amsterdam Treaty (1997) and the Nice Treaty (2002) signed later, were not particularly successful in the amplifications of trade policy; however, some minimal changes were put in place, but it was only with the Lisbon Treaty (2009) that those extensions were made possible.

The progressive EU’s enlargement requesting for the increase of the European Parliament’s role and the Laeken Declaration (2001) calling for “*more democracy, transparency and efficiency*”, led to rebalance all CCP’s responsibilities¹²⁴.

Until the Lisbon Treaty, only the Council was held accountable for CCP’s related issues and by that moment, the European Parliament obtained the authority to co-decide, together with the Council of Ministers, in the ordinary legislative procedure and to have the power to approve or reject all type of international trade and investment agreement¹²⁵.

Moreover, the Lisbon Treaty amended the voting system of the Council into qualified majority (QMV) (except for some limited exceptions¹²⁶), and brought FDIs, services and IP rights under the European external commercial competence.

The Lisbon Treaty was the only one responsible for revising the most of the CCP’s legal framework and it was renamed the Treaty on the Functioning of the European Union

¹²² S. Meunier and K. Nicolaidis, “*Who Speaks for Europe? The Delegation of Trade Authority in the EU*”, *Journal of Common Market Studies*, Vol.37, No.3, (1999), pp.488.

¹²³ A. Niemann, “*The Common Commercial Policy: From Nice to Lisbon*” in: Laursen, F. (ed.), *The EU’s Lisbon Treaty: Institutional Choices and Implementation*, Ashgate, (2012), (Access 10/03/2022), pp. 2-3 https://international.politics.uni-mainz.de/files/2018/11/Niemann_2012_Common_Commercial_Policy.pdf

¹²⁴ D. Kleimann, “*Taking Stock: EU Common Commercial Policy in the Lisbon Era*”, CEPS Working Document No. 346/April 2011, (2011), pp.1.

¹²⁵ *Ibidem*.

¹²⁶ Article 207, paragraph 4, Part V: The Union’s External Action, Treaty on the Functioning of the European Union (TFEU), (2012).

(TFEU), borne from the amendments to the EEC Treaty, with the European Union formally replacing the European Economic Community¹²⁷.

It was thanks to such Treaty that the common commercial policy related to goods, services, IP rights and FDIs, officially became an exclusive competence, part of the EU's external action, guided by the general provisions declared in part V of the Treaty on the Functioning of the European Union (TFEU).¹²⁸

From then until now, all measures regarding the CCP's implementation are adopted by the united collaboration of the Parliament and the Council; the conclusion of international agreements with one or more third countries or with international organizations (I.O) shall be operated by the Council, with previous recommendations presented by the Commission¹²⁹.

Indeed, all Commission's responsibilities for trade-related matters lie within the specialized Directorate-General for Trade (DG TRADE) which is entitled to draft legislative proposals and to present them before both the Council of Ministers and the Parliament, tasked with amending or agreeing on a common final text¹³⁰ on the basis of the qualified majority or on the unanimity type of voting¹³¹.

Today, the CCP harmonizes with the single internal market taking the form of a customs union and it comprises the use of the Common External Tariff (CET), uniformly applied by Member States to third countries¹³² and fixed each year by the Council on a proposal of the Commission¹³³.

¹²⁷ G. Sieglinde, *"The European Union's Trade Policy"*, Institute of International Relations and Area Studies, Ritsumeikan University, (2013), pp.6.

¹²⁸ Art. 205, Part V: The Union's External Action, Title I: General Provisions on the Union's External Action, Treaty on the Functioning of the European Union (TFEU), (2012).

¹²⁹ Article 207, paragraph 3, Part V: The Union's External Action, Treaty on the Functioning of the European Union (TFEU), (2012).

¹³⁰ Wikipedia, *"Common Commercial Policy (EU)"*, (2022), (Access 14/03/2022), [https://en.wikipedia.org/wiki/Common_Commercial_Policy_\(EU\)](https://en.wikipedia.org/wiki/Common_Commercial_Policy_(EU))

¹³¹ Article 218, paragraph 8, Title V: International Agreements, Treaty on the Functioning of the European Union (TFEU), (2012).

¹³² Article 28, Part III: Union policies and internal actions, Title II: Free Movement of Goods, Treaty on the European Union (TEU), consolidated version, (2012).

¹³³ Article 31, Part III: Union policies and internal actions, Title II: Free Movement of Goods, Treaty on the Functioning of the European Union (TFEU), (2012).

Being functional to the customs union and to the single market area, the TEC is applicable and governed by Regulation 952/2013 of the Parliament and the Council laying down the Union Customs Code, comprising as a principal element of the European classification system, the Combined Nomenclature (CN)¹³⁴, based on the Harmonized Commodity Description and Coding System (HS)¹³⁵.

Within the European common border, the single market rules are in force, ensuring the prohibition for Member States to establish import and export quantitative restrictions, or any other similar measure of equivalent effect on products coming from other Member States¹³⁶.

Nevertheless, in accordance with Article 36 of the TFEU (ex-article 30 TEC), Member States own the power of introducing prohibitions or restrictions on imports and exports of merchandised goods only “*in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property*”¹³⁷.

However, only when such prohibitions do not constitute a measure of arbitrary discrimination or a concealed restriction on trade among MS, they are considered legitimate¹³⁸.

¹³⁴ The Combined Nomenclature (CN) is an eight-digit coding tool used for the classification of goods when involved in commercial exchanges within and outside the EU. It is used for the EU's common customs tariff, and it is useful for statistical analysis of intra and extra EU trade.

¹³⁵ The Harmonized Commodity Description and Coding System (HS) is a nomenclature for product classification created by the World Customs Organization (WCO) and governed by the Convention on the Harmonized Commodity Description and Coding System. It is made up of 5,000 groups of commodities, composed of six digits (with 2 additional digits when addressing specific EU's needs) and arranged according to a specific legal and logical scheme. To date, 200 nation states make use of them and more than 98 per cent of traded merchandise are classified under the HS nomenclature.

¹³⁶ Article 34-35, Part III: Union policies and internal actions, Title III – Free Movement of Goods, Treaty on the Functioning of the European Union (TFEU), (2012).

¹³⁷ Article 36, Part III: Union policies and internal actions, Title III – Free Movement of Goods, Treaty on the Functioning of the European Union (TFEU), (2012).

¹³⁸ Ibidem.

1.3. EUROPEAN TRADE DEFENSE INSTRUMENTS

The significant increase of internationalization and liberalization of business activities and sectors brought to a new revolution in the way goods are manufactured.

Today goods can be produced not just in one country, but they can source from many different countries, each adding intermediate or semi-finished components or contributing to the production process for the finalization of a product¹³⁹.

Businesses of all types can enter mostly any market and non-market economy of the world thanks to liberalization of trade and to progress of transport and telecommunication technologies which brought to an increase of opportunities and challenges.

However, through the persistent exchange of goods across national borders, many businesses might encounter cutting threats and exposures to unfair trade practices.

The European Union protects its domestic industry from unfair trade practices such as dumping, subsidization or countervailing, and sudden surges of imports operated by non-EU member states and putting at risk the European internal market causing domestic injuries to the whole Community's interest.

In 1994, in honor of the Uruguay rounds on trade negotiations, the General Agreement on Tariffs and Trade (GATT) was replaced by the World Trade Organization (WTO), which set, for its signatory members, international rules on global trade comprising tariffs, non-tariff measures, trade related aspects of IP rights and investments, but also Trade Defense Instruments (TDIs) for restoring fair competition through the elimination of trade distortion applications¹⁴⁰.

As a permanent member of the World Trade Organization, since the Treaty of Rome in 1957, the EU incorporated the WTO Agreements adopted in honor of the Uruguay

¹³⁹ EU Commission, *"TDI Trade Defence Instruments: Anti-dumping & anti-subsidy, A guide for Small and Medium-Sized Businesses"*, (2018), pp.4.

¹⁴⁰ Ministry for Finance and Employment of Malta, *"Trade Defence Instruments"*, (Access 18/03/2022), <https://finance.gov.mt/en/epd/pages/internationaleconomicrelationsdirectorates/tradedefenceinstruments.aspx>

Rounds¹⁴¹ into its legislation: the Anti-dumping Agreement (Agreement on Implementation of article VI of GATT)¹⁴², the Agreement on Subsidies and Countervailing Measures and the Agreement on Safeguards¹⁴³.

Article 2 of the Anti-Dumping Agreement defines dumping as a situation of price discrimination in which a product is introduced into the commerce of another country¹⁴⁴ at a selling price lower than its normal value, considered to be either the actual price of the product when sold in the domestic market of the exporting country, or its production cost¹⁴⁵.

The Union's current legislation on anti-dumping is Regulation 2016/1036, which covers all merchandised goods imported from non-EU member states, regardless of their WTO's membership¹⁴⁶.

The basic conditions determined by the WTO for the imposition of the anti-dumping duty include the demonstration of dumping, the determination of material injury and the causal link, to which the EU also added another condition: the eligibility of not being against the "*Union interest*", considered as the overall public interest of the domestic industry¹⁴⁷.

An anti-dumping procedure can start by a complaint from the interested importing European enterprise, which shall represent at least half of the total output of the concerned product¹⁴⁸.

¹⁴¹ WTO, Anti-Dumping Agreement (ADA), (1994), https://www.wto.org/english/docs_e/legal_e/19-adp_01_e.htm

¹⁴² WTO, Agreement on Subsidies and Countervailing Measures (ASCM), (1994), (Access 18/03/2022), https://www.wto.org/english/docs_e/legal_e/24-scm_01_e.htm

¹⁴³ WTO, Agreement on Safeguards (AS), (1994), https://www.wto.org/english/docs_e/legal_e/25-safeg_e.htm

¹⁴⁴ WTO, Part I: Article 2.1, Anti-Dumping Agreement (ADA), (1994), (Access 18/03/2022), https://www.wto.org/english/docs_e/legal_e/19-adp_01_e.htm

¹⁴⁵ EU Commission, "*Anti-dumping*", (2021), (Access 18/03/2022), <https://ec.europa.eu/trade/policy/accessing-markets/trade-defence/actions-against-imports-into-the-eu/anti-dumping/>

¹⁴⁶ The Penguin Companion to European Union, "*Trade defence instruments (TDIs)*", (2012), (Access 18/03/2022), https://penguincompaniontoeu.com/additional_entries/trade-defence-instruments-tdis/

¹⁴⁷ Article 21.1, Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

¹⁴⁸ The Penguin Companion to European Union, "*Trade defence instruments (TDIs)*", (2012), (Access 18/03/2022), https://penguincompaniontoeu.com/additional_entries/trade-defence-instruments-tdis/

The Commission is responsible for opening in-depth investigations (usually lasting fifteen months) over the importing products originated from the third country in question and it shall either dismiss the complaint or apply provisional/definitive anti-dumping measures if meeting all criteria.

On-site verification visits during investigations, carried on by the Commission, may bring up some technical difficulties related to the calculation of the production costs and the normal value of the product, since the exporting country may have a closed market economy and/or if the producer under investigation owns a domestic monopoly protected by national regulations¹⁴⁹.

However, complex technicalities may also be found during the assessment of the Union's material injury (calculated in terms of domestic sales), profitability and European market share, resulting in internal disagreements leading to the presentation of legal cases before the Dispute Settlement Body (DSB)¹⁵⁰.

The anti-dumping measures are by far the most frequently used in trade defense and since their very first application in 1970, the Republic of China, Thailand, and the Russian Federation were the most responsible countries for their application.

Anti-dumping and anti-subsidy measures serve as neutralizers of unjust trade practices' effects, whereas safeguards help the European industry to get relief and to gain time for overcoming pressure of "*unforeseen, sharp and sudden increase of imports*"¹⁵¹ and eventually, adapt to the situation¹⁵².

¹⁴⁹ Ibidem.

¹⁵⁰ The Dispute Settlement Body (DSB) of the World Trade Organization (WTO), set under Article 2 of the Dispute Settlement Understanding (DSU), is a dispute settlement resolution organ dealing with trade disputes arising between governments of WTO's member states and composed of all members' representatives. The DSB has the authority to create "*Panels*" of experts, adopting Appellate Body reports analyzing and considering the cases under investigation and accepting or dismissing the Panel's findings. It also has powers on implementation and surveillance over rulings/recommendations and it exercises power against countries noncomplying with the organization's rulings.

¹⁵¹ EU Commission, "*Safeguards*", (2022), (Access 01/06/2022), https://policy.trade.ec.europa.eu/enforcement-and-protection/trade-defence/safeguards_en

¹⁵² EU Commission, "*TDI Trade Defence Instruments: Anti-dumping & anti-subsidy, A guide for Small and Medium-Sized Businesses*", (2018), pp.4.

Anti-subsidy measures operate in a very similar manner to anti-dumping but are far less applied by the European institutions.

The WTO defines a subsidy as a financial contribution by a state government or a public entity conferring a benefit taking the form of a grant, a preferential loan, a tax credit, a duty exemption or a government-provided good/service¹⁵³, towards a specific recipient, namely a company, an industry or a sector¹⁵⁴.

An example can be an export promotion from the government of the country of production of the specific product towards the European economy, allowing it to sell at lower prices in the EU (see also Articles 2 and 3 of Regulation 2016/1037¹⁵⁵ for further explication).

In the past, anti-dumping and anti-subsidy measures were based on the same legislative instruments, sharing lots of substantive and technical provisions¹⁵⁶.

However, with the signature of the WTO's agreements on trade measures signed at the Uruguay Rounds, the EU renewed its law by providing the first legal instrument treating subsidization apart from dumping: Regulation 3284/94¹⁵⁷.

The European legislation, transposing the WTO relative agreement on subsidies and countervailing measures, is Regulation 2016/1037, already being amended three times in 2017¹⁵⁸, 2018¹⁵⁹ and 2020¹⁶⁰.

As for the anti-dumpidy, the anti-subsidy investigation procedure is started through a complaint, presented by an European producer (or a trade union) of the product in question, and submitted to the Commission, in charge of taking the rein of the rest of the procedure.

¹⁵³ WTO, Article 1.1 (a)(1), Part I: General Provisions, Agreement on Subsidies and Countervailing Measures (ASCM), (1994).

¹⁵⁴ Ibidem.

¹⁵⁵ Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidized imports from countries not members of the European Union, (2016), L 176/55.

¹⁵⁶ I. Van Bael, J.F Bellis, EU Anti-Dumping and other trade defense instruments, Kluwer Law International, Brussels, Belgium, (2011), pp.1.

¹⁵⁷ Ibidem.

¹⁵⁸ Regulation (EU) 2017/2321.

¹⁵⁹ Regulation (EU) 2017/2321.

¹⁶⁰ Delegated Regulation (EU) 2020/1173.

When the Commission finds that foreign governments provided direct or indirect subsidization to foreign businesses operating in the EU's market, it applies against the imported goods an anti-subsidy measure, taking the form of a duty.

Nevertheless, the anti-subsidy policy is more complex than anti-dumping.

To confirm this, we can think about the Boeing anti-subsidy dispute case of 2019, in which the WTO confirmed through its final compliance report the presence of US's subsidization to the Boeing company causing material injury to the detriment of the European aircraft manufacturer Airbus¹⁶¹.

The last type of TDI is safeguard, which hits imports coming into the EU from third countries and, unlike anti-dumping and anti-subsidy, directly takes action against the product prices, allowing European institutions to restrict the volume of imports¹⁶².

So far safeguards have been used quite rarely by the EU and their peculiar characteristic is the fact that they apply to all such imports coming from all countries, in respect of the *erga omnes* concept of international law¹⁶³.

The current European legislation for safeguards - Regulation 2015/478¹⁶⁴ against WTO Member States and Regulation 625/2009¹⁶⁵ against non-WTO Member States - were first introduced in 1994 and then amended respectively in 2009 and 2015.

The decision for safeguard's application differs from the anti-dumping and anti-subsidy ones; however, it all starts with a complaint presented by the competent customs authorities in the concerned European countries, followed by the Commission's verification

¹⁶¹ EU Commission, "*WTO Boeing dispute: EU issues preliminary list of US products considered for countermeasures*", (2019), (Access 18/03/2022), https://ec.europa.eu/commission/presscorner/detail/fi/ip_19_2162

¹⁶² I. Van Bael, J.F Bellis, "*EU Anti-Dumping and other trade defense instruments*", Kluwer Law International, Brussels, Belgium, (2011), pp.2.

¹⁶³ EU Commission, "*Safeguards*", (2021), (Access 18/03/2022), <https://ec.europa.eu/trade/policy/accessing-markets/trade-defence/actions-against-imports-into-the-eu/safeguards/>

¹⁶⁴ Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports (codification), L 83/16.

¹⁶⁵ Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (recast), L 123/33.

aimed at examining the import trends, the conditions in which safeguards take place, and the possible serious harm caused to the Union's producers¹⁶⁶.

The Commission monitors import volumes and prices in collaboration with the customs authorities of the Member States, the Commission's department on tax and customs (DG TAXUD) and the European Anti-Fraud Office (OLAF)¹⁶⁷.

Safeguard measures can take the form of quantitative restrictions on imports (import or tariff quotas which shouldn't be lower than the average of the imports over the last three years) of the product in question, or they can be subject to the monitoring system¹⁶⁸ which consists of a system of automatic import licensing over a temporary period, without restricting imports¹⁶⁹.

Prior to the WTO's creation and relevant to trade defense policy, was the "*trade barriers regulation*" (TBR), introduced in September 1984 by the European institutions, empowering its members to take measures against "*illicit commercial practices*" operated by third countries under the Regulation 2641/84¹⁷⁰.

This mechanism was specifically developed to remove tariff barriers to trade with foreign countries and to combat unfair or threathful trade interferences in the EU's area and it can be used by any European company or association of companies.

¹⁶⁶ EU Commission, "*Investigations – What are safeguard investigations?*", (2020), (Access 18/03/2022), https://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151031.pdf

¹⁶⁷ EU Commission, "*What monitoring is there of safeguard measures?*", (2020), (Access 18/03/2022), https://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151033.pdf

¹⁶⁸ Until May 15th, 2020, the monitoring system was called under the name of "*surveillance regime*", which has been replaced by the Commission in the framework of Article 56(5) of the European Customs Code. It is now based on current data on imports transmitted by the Member States' customs authorities.

¹⁶⁹ EU Commission, "*Safeguards*", (2021), (Access 18/03/2022), <https://ec.europa.eu/trade/policy/accessing-markets/trade-defence/actions-against-imports-into-the-eu/safeguards/>

¹⁷⁰ I. Van Bael, J.F Bellis, "*EU Anti-Dumping and other trade defense instruments*", Kluwer Law International, Brussels, Belgium, (2011), pp.16.

This legislation was the first European legislation to protect the Union interests in third market economies and it was originally modelled after the 301 section of the US Trade Agreements Act¹⁷¹, for American producers.

Since its entry into force in 1995, the TBR has been used twenty-seven times with many different countries like the US to get access to internet gambling, Argentina for leather imports and Chile for trans-shipment of swordfish products¹⁷².

1.4. TYPES AND DURATION OF TRADE DEFENSE INSTRUMENTS

Normally, anti-dumping and anti-subsidy measures are imposed for a 5-year period with the possibility of implementing their extension for another five or more years, through a review investigation¹⁷³ if the European Commission finds the continuous persistence of the injurious distortions or their future recurrence if they are to be removed¹⁷⁴.

These measures can be either definitive or provisional, and both “*shall be imposed not earlier than 60 days from the initiation of the proceedings but no later than nine months from the initiation of the proceedings*”¹⁷⁵.

Provisional measures should be imposed for a maximum period of six months for anti-dumping, and four months for anti-subsidy¹⁷⁶.

¹⁷¹ Section 301 of the Trade Act of 1974 provided the Office of the United States Representative (USTR) with responsibilities and authorities to enforce US rights and respond to unfair trade defense practices.

¹⁷² Ibidem.

¹⁷³ As we will see in Chapter 2, paragraph 6, the European Commission can use a variety of reviews to extend or amend trade defense measures already in place such as: the expiry review, the interim review, the new exporter review, the anti-circumvention review, and the re-opening of the investigation.

¹⁷⁴ EU Commission, “*TDI-Trade Defense Instruments, Anti-Dumping & Anti-Subsidy, a guide for a Small and Medium-Sized Businesses*”, (2018), pp.8 e 24.

¹⁷⁵ Article 7, paragraph 1, Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

¹⁷⁶ Ibidem, pp.8.

AD and AS measures take the form of three basic types of duties: the first type, being the most widely used, is the “*ad valorem duty*” (or the “*value-based duty*”) which consists on a duty calculated on a percentage of the goods’ price (e.g 15% of the import price of tomatoes); the second type is the “*specific duty*”, consisting on a fixed amount of duty per unit of good (e.g 12 euros per tonne); the third type is the “*variable duty*” (“*minimum import price*”), which equals to the difference between a set minimum import price and the export price of the foreign exporter. The last type of measure is the “*price undertaking*” which consists on a constraint for the foreign exporter to sell its investigated good at an export price above a certain price limit, without having to be subject to an anti-dumping duty¹⁷⁷.

This typology is often subject to intense monitoring and investigation procedures by the domestic importing authorities and by the Commission, which verifies the effective elimination of the injury and the country’s attainment to the International Labor Organization’s (ILO) standards before accepting the price undertaking¹⁷⁸.

Some examples of definitive ad-valorem duties were the anti-dumping measures on solar glass imports from China (ranging between 17.5% and 75.4%), introduced in 2014 and re-applied in 2020, and the anti-subsidy measures (ranging from 3.2% to 17.1%) which were considered to be damaging the European PV industry¹⁷⁹.

As for SFG measures, the provisions are quite similar but still do display some differences.

Safeguards can be either provisional, enforced for a maximum period of two hundred days, or definitive, without exceeding four years of application and capable of being extended once, totalizing a maximum of eight years.

An example of safeguard measures were the definitive ad-valorem safeguard measures applied on imports of twenty-six typologies of steel products coming from the United States in 2019 (duty rate of 25%), replacing the previous provisional duties

¹⁷⁷ Ibidem, pp.9.

¹⁷⁸ Ibidem.

¹⁷⁹ E. Bellini, “EU maintains anti-subsidy and anti-dumping duties on solar glass from China”, (2020); (Access 12/06/2022), <https://www.pv-magazine.com/2020/07/27/eu-maintains-anti-subsidy-duties-on-solar-glass-from-china/>

applied in 2018 and to remain in place for a 3-year period and with the possibility of being reviewed¹⁸⁰.

In order for the trade defense instruments to be applied, a set of criteria has to be met including, apart from the evidence of the dumped/subsidized price, the realization of an injury to the European importers, the causal link between the imports and the injury and the evidence that the dumped/subsidized imports are against the Union's interest.

Generally, the duties are equivalent to the amount of dumping/subsidy margin found, or lesser if the duty is adequate to remove the material injury (pursuant to the lesser duty rule that we will see shortly), and they are to be paid by the operator who imposed the dumping/subsidy in the country of origin of the merchandise.

The lesser duty rule, disciplined under Article 9 of the WTO Anti-Dumping Agreement, is not binding, so its application is fully optional, and it establishes for the WTO member states a “*mandatory maximum (the full dumping margin) and a recommended minimum (the injury margin) for determining the level of anti-dumping duty*”¹⁸¹.

In most of the cases, the EU had applied the lesser duty rule thus, it imposed the AD or AS measures “*at a level lower than the full extent of dumping or subsidization*”¹⁸².

1.5. HISTORICAL APPLICATION OF TDIs

The first anti-dumping regulation was adopted by the European institutions in 1968, after the 12-year period of transition of the Member States' economic policies, with Regulation 459/68 which transposed into the EEC's legislation the 1967 Anti-dumping Code

¹⁸⁰ EU Commission, “*Commission imposes definitive safeguard measures on imports of steel products*”, (2019), (Access 12/06/2022), https://ec.europa.eu/commission/presscorner/detail/en/IP_19_821

¹⁸¹ E. Descotis, “*Application of lesser duty rule in anti-dumping investigations*”, Lakshmikumaran & Sridharan attorneys, (2016), (Access 12/06/2022), <https://www.lakshmisri.com/insights/articles/application-of-lesser-duty-rule-in-anti-dumping-investigations/#>

¹⁸² EU Commission, “*Europe's trade defence instruments now stronger and more effective*”, (2018), (Access 12/06/2022), https://trade.ec.europa.eu/doclib/docs/2018/june/tradoc_156921.pdf

of the GATT, allocating the Commission, the Council and the Member States to be in charge of the AD enforcement law¹⁸³.

Ever since their naissance, the anti-dumping proceedings were the most resorted trade defense instruments, however, during their primary years of enforcement from 1970 to 1976, only twenty-six investigations were started since that many terminated by undertakings or led to annulments¹⁸⁴.

However in the mid 1970s the situation rapidly changed with Regulation 3017/79¹⁸⁵ which incorporated the AS provisions belonging to the 1979 Subsidies and Countervailing Measures Code of the GATT¹⁸⁶, signed during the Tokyo round negotiations.

Since then, the AD proceedings significantly increased, registering more than a thousand investigations between 1977 and 2011, impacting mostly the People's Republic of China, Thailand and the Russian Federation.

From then on other regulations followed, such as Regulation 2423/88¹⁸⁷ introducing the "*anti-absorption duty*" consisting on the possibility of rising the duties when their absorption was proven¹⁸⁸.

This regulation was amended a couple of times, especially in the matter of the decision-making procedure substituting the simple majority vote instead of the QM for the Council of Ministers.

¹⁸³ I. Van Bael, J.F Bellis, "*EU Anti-Dumping and other trade defense instruments*", Kluwer Law International, Brussels, Belgium, (2011), pp.20.

¹⁸⁴ Ibidem, pp.15.

¹⁸⁵ Council Regulation (EEC) No 3017/79 of 20 December 1979 on protection against dumped or subsidized imports from countries not members of the European Economic Community, (1979), L 339/1.

¹⁸⁶ Currently the Agreement on Subsidies and Countervailing Measures (1994), WTO.

¹⁸⁷ Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community, (1988), L 209/1.

¹⁸⁸ Anti-dumping or anti-subsidy duties are absorbed when, after their application, the export selling price of the concerned product persists to decrease or the resale price in the importing country does not increase as expected. When this happens, within 2 years from the application of the original measure, the European Commission re-opens the trade defense investigation at the request of the parties hit by the dumping/subsidy, following the publication of a notice in the Official Journal of the EU.

Today the absorption clause is governed by Article 12 of Regulation 1036/2016 for anti-dumping and Article 19(3) of Regulation 2016/1037 for anti-subsidy.

The following regulation, Regulation 3284/94¹⁸⁹, incorporated the provisions decided at the Uruguay Round that created the WTO (previously under the GATT name), and was later on substituted by Regulation 384/96¹⁹⁰ in 1996, which re-introduced the “*anti-circumvention*” rule¹⁹¹.

From 1996 to 2009, no new regulation was introduced in the European legislation, until Regulation 1225/2009¹⁹² which codified all the Regulation 384/96’s amendments, like the possibility to use market economy methods for the calculation of dumping margins, the recognition of Russia and Ukraine as real market economy countries, the extensive provisions for parties to request anti-circumvention investigations, and so on¹⁹³.

In 2011 the Commission promulgated a proposal for a regulation of the European Parliament and the Council amending Regulation 1225/2009 and containing up-to-date provisions related to the time limit of expiry and interim reviews, the investigation proceeding (18-month in certain exceptional cases), as well as brand-new rules for the TDIs Committee and for the comments on the final anti-dumping measures¹⁹⁴.

The current legislation on AD duties is Regulation 1036/2016¹⁹⁵, which is still in force and hasn’t been substituted yet.

¹⁸⁹ Council Regulation (EC) No 3284/94 of 22 December 1994 on protection against subsidized imports from countries not members of the European Community, (1994), L 349/22.

¹⁹⁰ Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, (1995), L 56/1.

¹⁹¹ Circumvention is the practice of avoiding the payment of the duties imposed by the EU’s institutions on a product imported in the domestic market. When evidence of circumvention is found by the EU Commission or if the interested country makes a request and it finds it is warranted, the investigation is re-opened and the duties already in force will be applied retroactively from the date of the beginning of the investigation and extended to imports coming from the same country or company committing circumvention.

Now governed by Article 13 of Regulation 1036/2016 for anti-dumping and Article 23 of Regulation 2016/1037 for anti-subsidy.

¹⁹² Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community, (2009), L 343/51.

¹⁹³ I. Van Bael, J.F Bellis, “*EU Anti-Dumping and other trade defense instruments*”, Kluwer Law International, Brussels, Belgium, (2011), pp. 23-24.

¹⁹⁴ Ibidem, pp.24.

¹⁹⁵ Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

Safeguard measures had always been the least applied by the European institutions, indeed since 2002 only six SFG proceedings were started.

The TDIs are typically applied in few major sectors, ranging from the metal to the chemical sector and in 2020 seventeen new investigations were initiated (twelve anti-dumping, three anti-subsidy, two safeguards), mainly related to the iron and steel and metal sectors¹⁹⁶.

Out of them, the Commission imposed six provisional measures against China, Korea (AD measures) and Egypt (AS measure)¹⁹⁷ and eleven definitive measures mostly against China (AD and AS measures).

By the end of 2020, the EU adopted one hundred and fifty trade defense measures (ten more than 2019) towards non-EU countries responsible of unfair and harmful trade practices: ninety-nine were classified as anti-dumping measures (all of definitive type), eighteen as anti-subsidy measures and three as safeguard measures¹⁹⁸.

Despite the COVID-19 pandemic, the EU maintained over the last two years a significant high level of trade defense activity and besides the incapacity of holding in-loco investigation visits in the third countries because of travel and safety restriction policies, the Commission managed to adapt to the different work practices still working hard to ensure the legal procedures, the transparency requirements and the respect of the legal time visits¹⁹⁹.

Over all year 2020, one hundred and nine new verification visits were carried out: twenty-six on spot, while eighty-three were held using remote cross-checking systems as temporary solutions to the critical pandemic situation, which nevertheless ensured to

¹⁹⁶ EU Commission, “*Anti-dumping, anti-subsidy, safeguard statistics covering the full year 2020*”, Annex B, (2020), (Access 23/03/2022), pp.8, https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc_159452.pdf

¹⁹⁷ Ibidem, Annex C, pp. 10.

¹⁹⁸ EU Commission, “*Report from the Commission to the European Parliament and the Council on the EU’s Anti-Dumping, Anti-Subsidy and Safeguard activities and the Use of Trade Defense Instruments by Third Countries targeting the EU in 2020*”, (2021).

¹⁹⁹ EU Commission, Report from the Commission to the European Parliament and the Council, “*39th Annual Report from the Commission to the European Parliament and the Council on the EU’s Anti-Dumping, Anti-Subsidy and Safeguard activities and the Use of Trade Defence Instruments by Third Countries targeting the EU in 2020*”, 1.1.4 “Verifications in investigations”, (2021).

guarantee the respect of the requirements and the legal deadlines for the enforcement of TDIs²⁰⁰.

The European Court of Auditors (ECA) on its special report on trade defense instruments²⁰¹, examined over the three-year-period going from 2016 to 2019, the Commission's activities on trade defense policy, specifically in the matter of: procedures, deadlines of investigations, analyses and justifications of conclusions, monitoring activities over TDIs and the response to global trade's challenges²⁰².

The outcome of the report found that the Commission successfully and smoothly followed trade policy's legal procedures, treating all parties equally and making final sound decisions²⁰³.

The ECA confirmed the correct application of TDIs and awarded the Commission with the appellation of "*successful enforcer of trade defense policy*"²⁰⁴.

However, the Court found also some informal or limited outreach of the Commission in raising awareness of TDIs, in the assessment of the competition's aspects as part of the Union interest clause²⁰⁵, in the utilization of monitoring and follow-up tools, in the matter of launching investigations by its own initiative, and in prioritizing its actions to third countries' measures.

For this reason, with the aim of improving such incompleteness, the ECA provided for a number of useful recommendations that the Commission shall follow by the end of 2021²⁰⁶.

²⁰⁰ Ibidem.

²⁰¹ European Court of Auditors (ECA), "*Trade defence instruments: system for protecting EU businesses from dumped and subsidized imports function well*", Special Report no.17, (2020).

²⁰² Ibidem, "*Audit scope and approach*", pp.13.

²⁰³ Ibidem, Executive Summary, pp.4.

²⁰⁴ Ibidem.

²⁰⁵ The Union Interest test is one of the fourth formal condition to check upon before initiating a TDI's investigation to impose a trade defense measure and it is used to determine if the future measures will be against the interest of the EU as a whole (comprising individual companies, associations, users, producers, traders and exporters, suppliers of inputs for the product in question, consumer organizations).

²⁰⁶ EU Commission, Report from the Commission to the European Parliament and the Council, "*39th Annual Report from the Commission to the European Parliament and the Council on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities and the Use of Trade Defence Instruments by Third Countries targeting the EU in 2020*", 1.2.1 "*Effective application and enforcement of TDIs*", (2021).

The recommendations are six and they consist in:

1. the documentation of the assessment of the confidentiality status from the interested parties;
2. the improvement of the communication channels to raise awareness of TDIs among domestic businesses;
3. the need to improve the Commission's guidance on aspects related to competition;
4. the need to improve the monitoring and reporting activities on TDI's application;
5. the increase of investigations launched by the Commission's own initiative (*ex officio*²⁰⁷);
6. the definition of clearer criteria for prioritizing the response to the measures imposed by third countries (European Court of Auditors, July 2020)²⁰⁸.

The Commission answered affirmatively to all recommendations and started implementing them within the specific timeframes, except for the penultimate one related to its own initiative (*ex officio*) investigations which had been accepted only partially, since it considered to be attaining to the legislation at its fullest capacity²⁰⁹.

²⁰⁷ An "*Ex officio*" is an investigation proceeding opened and initiated by the European Commission on its own initiative, with no requirement of receiving prior formal complaint presented by an EU enterprise.

²⁰⁸ European Court of Auditors (ECA), "*Trade defence instruments: system for protecting EU businesses from dumped and subsidized imports function well*", Audit and scope approach, Special Report no.17, (2020), pp.13

²⁰⁹ EU Commission, 1.2.1 European Court of Auditors – Audit of the EU's TDI, Report from the Commission to the European Parliament and the Council "*39th Annual Report from the Commission to the European Parliament and the Council on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities and the Use of Trade Defence Instruments by Third Countries targeting the EU in 2020*", (2021).

1.6. THE LEGAL FRAMEWORK

As we have seen in the previous paragraphs, trade defense instruments are regulated both at the international level by the WTO's Agreements and at the European level by the European legislation.

The World Trade Organization promulgated three different types of Agreements on TDIs to permit its Member States to protect their domestic markets from unfair trade practices.

These agreements define the TDI's legal framework internationally, by setting comprehensive and sound rules about the initiation, the investigation, and the imposition of anti-dumping (AD), anti-subsidy (AS) and safeguard (SFG) measures.

The agreement on AD is the WTO Anti-Dumping Agreement (ADA)²¹⁰, or the Agreement on the implementation of Article VI of the GATT, and the agreement on AS is the WTO Agreement on Subsidies and Countervailing Measures (ASCM)²¹¹; both were signed at the Uruguay Round negotiations in 1994, the largest ever international trade negotiations which brought to significant developments in world trade liberalization and prosperity²¹².

As for safeguards, the WTO Agreement on Safeguard (SG Agreement)²¹³, setting the rules pursuant to Article XIX of the GATT, governs the application of safeguards through the designated Committee on Safeguards aimed at monitoring and supervising their compliance with the international procedural requirements.

²¹⁰ WTO, Anti-Dumping Agreement (ADA), (1994).

²¹¹ WTO, Agreement on Subsidies and Countervailing Measures (ASCM), (1994).

²¹² Department of trade and Industry, "*The Uruguay Round of Multilateral Trade Negotiations 1986-94*", Chapter 1, Introduction 1.2-1.3, (1994).

²¹³ WTO, Agreement on Safeguards (SG Agreement), (1994).

As a permanent member of the WTO, the EU transposed these agreements into its own trade defense legislation, introducing also additional requirements concerning the TDI's adoption procedure, such as the "*Union Interest test*"²¹⁴ and "*the lesser duty rule*"²¹⁵.

The main European legislation on trade defense measures is Regulation 2016/1036²¹⁶ for anti-dumping, Regulation 2016/1037²¹⁷ for anti-subsidy and Regulations 2015/478²¹⁸ and 2015/755²¹⁹ for safeguards.

In addition to the abovementioned safeguard regulations, the EU promulgated also other two regulations: Regulation 2015/936²²⁰ on common rules for textile imports from certain third countries not part of international agreements and Regulation 2019/478²²¹ implementing certain safeguard clauses.

The AD and AS regulations were amended three times in December 2017, May 2018, and June 2020.

In 2017, Regulation 2017/2321²²², through a "*methodology amendment*", introduced a new dumping methodology for the calculation of the dumping margin on

²¹⁴ EU Court of Auditors (ECA), "*Trade defence instruments: system for protecting EU businesses from dumped and subsidized imports functions well*", Special report 17, (2020), pp.11.

²¹⁵ The lesser duty rule is an optional rule applied by the European Commission in the AD and AS measures, and it consists of imposing duties at a level lower than the dumping margin if such level is enough to eliminate the injury suffered by the business or sector in question.

²¹⁶ Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

²¹⁷ Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidized imports from countries not members of the European Union, (2016), L 176/55.

²¹⁸ Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports (codification), (2015), L 83/16.

²¹⁹ Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (recast), (2015), L 123/33.

²²⁰ Regulation (EU) 2015/936 of the European Parliament and the Council of 9 June 2015 on common rules for imports of textile products from certain third countries not covered by bilateral agreements, protocols, or other arrangements, or by other specific Union import rules (recast), (2015), L 160/1.

²²¹ Regulation (EU) 2019/287 of the European Parliament and of the Council of 13 February 2019 implementing bilateral safeguard clauses and other mechanisms allowing for the temporary withdrawal of preferences in certain trade agreements concluded between the European Union and third countries, (2019), L 53/1.

²²² Regulation (EU) 2017/2321 of the European Parliament and of the Council of 12 December 2017 amending regulation (EU) 2016/1036 on protection against dumped imports from countries not

imports coming from WTO member states applying significant distortions to their market, following state interventions, and after the recognition of the market economy status to the Republic of China and the expiration of certain provisions of its Accession Protocol to the WTO²²³. As for anti-subsidy, the above regulation added a sub-paragraph permitting the European Commission to propose, for subsidies discoverable during the investigations, additional consultations in the country of origin²²⁴.

In 2018, Regulation 2018/825²²⁵ brought some changes through a “*modernization package*” covering several topics. Above all, it shortened the period of application of the provisional AD measures, shifting from nine months, after the initiation of the proceedings, to seven months and it facilitated the access of Small and Medium-sized Enterprises (SMEs) to participate in the investigations by creating a dedicated helpdesk and a webpage with its formal guide.

Moreover, such regulation amended also the “*lesser duty rule*” applied in AD and AS cases permitting to impose higher duty levels. It also introduced the pre-disclosure period of information on the imposition of provisional measures for the parties and amended the rules for the calculation of the “*non-injurious price*”, considered as the price assumed to have been charged by the Union’s industry under normal conditions²²⁶.

The successive and last amendment to the basic AD and AS regulations was announced in June 2020 with Regulation 2020/1173²²⁷, by which the Commission adopted a

members of the European union and Regulation (EU) 2016/1037 on protection against subsidized imports from countries not members of the European Union, (2017), L 338/1.

²²³ WTO, Article 15, sub-paragraph (d), Accession of the People’s Republic of China, (2001).

²²⁴ EU Commission, “*Anti-subsidy measures*”, (2020), (Access 28/03/2022), <https://eur-lex.europa.eu/legal-content/en/LSU/?uri=CELEX%3A32016R1037>

²²⁵ Regulation (EU) 2018/825 of the European Parliament and of the Council of 30 May 2018 amending regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European union and Regulation (EU) 2016/1037 on protection against subsidized imports from countries not members of the European Union, (2018), L 143/1.

²²⁶ EU Commission, “*Anti-dumping measures*”, (2020), (Access 28/03/2022), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legisum:r11005>

²²⁷ Commission Delegated Regulation (EU) 2020/1173 of 4 June 2020 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union as regards the duration of the period of pre-disclosure, (2020), L 259/1.

delegated act²²⁸ aimed at amending the period of pre-disclosure to the interested parties, (happening before the imposition of provisional measures) from three to four weeks²²⁹.

To sum up, the current legal framework of the European trade defense instruments, also referred to as the “*basic regulations*”, remain the anti-dumping Regulation 2016/1036, the anti-subsidy Regulation 2016/1037 and the safeguard Regulations 2015/478 and 2015/755, all of them incorporating the stated amendments.

1.7. THE INSTITUTIONAL FRAMEWORK

Besides the numerous changes generated by the amendments to the primary treaties, the institutional framework of the EU had been enriched with new institutions and new competences and now it appears to be more homogenous than ever.

The basic institutions, the Parliament, the Commission, the Council of the EU and the Court of Justice, operate with the aim of promoting the European values, towards pursuing its objectives²³⁰, with respect to the interests of its Member States (Council of the EU), of the EU as a whole (European Commission (EC)), of its citizens (European Parliament (EP)), and in compliance with its jurisdiction and its legality (European Court of Justice) in a mutual and reciprocal cooperative relationship.

The three fundamental principles that the European institutions shall follow are: the principle of the conferral (also referred to as “*attribution*”)²³¹, the principle of institutional balance and the principle of sincere (or loyal) cooperation²³².

²²⁸ The delegated acts are non-legislative but binding acts, adopted by the European Commission, and aimed at amending, updating, or supplementing specific acts, such as regulations and directives, without having to undergo a formal legislative procedure.

²²⁹ EU Commission, “*Anti-subsidy measures*”, (2020), (Access 28/03/2022), <https://eur-lex.europa.eu/legal-content/en/LSU/?uri=CELEX%3A32016R1037>

²³⁰ Article 13, paragraph 1, Title III: Provisions on the institutions, Treaty on the European Union (TEU), (2012).

²³¹ Article 5, Title I: Common Provisions, Treaty on the Functioning of the European Union (TEU), (2012).

²³² Article 4, paragraph 3, Title I: Common Provisions, Treaty on the Functioning of the European Union (TEU), (2012).

The first one is **the principle of conferral** which consists of being attained to the competences and powers expressly attributed by the Member States without falling outside the formal limits to bring about the determined objectives in respect of the principles of subsidiarity and proportionality²³³, which govern the use of the Union's competences.

The second principle is **the principle of institutional balance**, set since the 1958 Meroni judgement of the European Court of Justice²³⁴ at the time of the ECSC and reflected under Article 7, paragraph 1, of the EC Treaty²³⁵. It is in compliance with the “*non-delegation*” doctrine which provides for constitutional bodies the obligation of not to delegate their power to other bodies²³⁶.

The principle imposes to each European institution the duty of acting in accordance with the division of the competences conferred by the official treaties²³⁷ to prevent to extend their powers unilaterally to the detriments of another institution²³⁸.

Instead, **the principle of sincere (or loyal) cooperation** is another key concept, ensuring the constitutional and political stability and it includes a mutual obligation for both the EU and its MS to assist each other in performing common duties arising from the treaties²³⁹.

²³³ Article 5, paragraph 4-5, Title I: Common Provisions, Treaty on the Functioning of the European Union (TEU), (2012).

²³⁴ EU Court of Justice (CJEU), Judgment of the Court of 13 June 1958. Meroni & Co., Industrie Metallurgiche, SpA v High Authority of the European Coal and Steel Community, Case 9-56, (1958).

²³⁵ Article 7, paragraph 1, Treaty establishing the European Community (Consolidated version 2002).

²³⁶ Luiss Open, “*The erosion of a pillar doctrine of EU law*”, (2020), (Access 01/06/2022), <https://open.luiss.it/en/2020/02/06/the-erosion-of-a-pillar-doctrine-of-eu-law/>

²³⁷ EU Commission, “*Institutional balance*”, Glossary of summaries, (Access 29/03/2022), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:institutional_balance

²³⁸ J. P. Jacqué, “*The Principle of Institutional Balance*”, Common Market Law Review 41: 383-391, Kluwer Law International, (2004), pp. 384.

²³⁹ P. Van Elsuwege, “*The duty of sincere cooperation (Art. 4 (3) TEU and its implications for the national interest of the EU Member States in the field of external relations*”, (2011), pp.1.

Indeed, the EU has derivative and thus not original powers, relying on the voluntary transfer of the Member States' competences to the Union, in coherence with Article 1 of the TEU, with the purpose of attaining common objectives²⁴⁰.

The Treaty on the Functioning of the European Union provides Member States with the possibility to confer to the EU exclusive competences on some specific areas, enabling it to legislate and adopt legally binding acts, on its own account²⁴¹.

Formally recognized as an EU's exclusive competence under Article 3 of the TFEU²⁴², the common commercial policy and the use of its trade defense instruments (TDIs), are under the legal control of a number of actors and institutions including: the European Commission and its Directorate General for Trade (DG TRADE), the Committee on TDIs, the Council of Ministers, the Member State under investigation, the Court of Justice (CJEU), the Anti-Fraud Office (OLAF) and the World Trade Organization (WTO).

The Commission is the executive branch of the Union, composed of twenty-seven Commissioners (one from each state), the President, the High Representative for Foreign Affairs and Security Policy (HR), created under the Treaty of Lisbon, and forty-nine Directorate-Generals (DGs).

From the 1st of May 2004 with the Treaty of Nice, the number of Commissioners per country changed from two to one with the participation of ten new states into the European Union²⁴³.

The Commission is the sole holder of the legislative initiative within the Union, the "*Guardian of the Treaties*", and in doing so it monitors if the legislation of the EU had been correctly implemented by the MS, asking for intervention of the Court in case of non-compliance with the European law. The institution carries out monitoring control over the Union's enterprises, acts as representative of the EU before international organizations or

²⁴⁰ Article 1, Title I: Common Provisions, Treaty on the Functioning of the European Union (TEU), (2012).

²⁴¹ Article 2, paragraph 1, Title I: Categories and areas of Union competence, Treaty on the Functioning of the European Union (TFEU), (2012).

²⁴² Article 3, paragraph 1, Title I: Categories and areas of Union competence, Treaty on the Functioning of the European Union (TFEU), (2012).

²⁴³ I. Van Bael, J.F Bellis, "*EU Anti-Dumping and other trade defense instruments*", Kluwer Law International, Brussels, Belgium, (2011), pp. 4.

before third countries on world stage, and has the power of managing the budgeting proposals that shall be consequently submitted to the vote of the EP and the Council²⁴⁴.

Regarding the enforcement and the application of the European trade defense instruments, the Commission plays an important role; the appointed Directorate-General for TRADE (DG TRADE) is conferred the role of carrying out the investigation procedure, deciding on the imposition of provisional and definitive anti-dumping, anti-subsidy, or safeguard measures, and accepting undertakings offered by foreign exporters; specifically, Directorate H is entrusted to apply the TDIs, representing the unique department in charge of administering such provisions.

Within this organ, there are roughly one hundred and forty experts hired on a temporary contract, in charge of calculating the normal value, the dumping/subsidy margin, the injury level and carrying visits to verify the correctness of the parties' information²⁴⁵.

The DG TRADE encourages the development of international trade and cooperation, ensures the compliance of the EU to international trade agreements²⁴⁶ and handles all TDIs' complaints within its specialized Office of complaints²⁴⁷, in the pre-initiation stage, to decide whether to launch an investigation.

After the lodge of a complaint, the DG TRADE involves in Inter-Service consultations with the other Commission's departments (e.g. DG GROW, DG TAXUD, Secretariat-General, Legal Service, etc.) for cooperation and monitoring activities in the pre-initiation phase of the proceedings, with the aim of deciding if sufficient evidence exists to start an investigation.

²⁴⁴ Article 17, paragraph 1, Title III: Provisions on the institutions, Treaty on the European Union (TEU), (2012).

²⁴⁵ T. K. Giannakopoulos, *"A Concise Guide to the EU Anti-dumping/Anti-subsidies Procedures"*, Kluwer Law International, The Netherlands, (2006), pp.5

²⁴⁶ EU Monitor, Directorate General for Trade (TRADE), <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vg9ibapthoyq>

²⁴⁷ EU Court of Auditors, *"Trade defence instruments"*, Roles and responsibilities, (2019), pp.10, https://www.eca.europa.eu/lists/ecadocuments/ap19_10/ap_trade_defence_instruments_en.pdf

Since 2007, the intervention of a Hearing Officer (HO) shall be requested by voluntary decision of the parties to ease the dialogue among the involved parties and the departments²⁴⁸.

The Hearing Officer is an independent office that guarantees the Commission with good application of “*administrative practice when implementing EU legislation concerning international trade*”²⁴⁹ and ensures the interested parties in a legal trade proceeding (AD, AS, SFG measures, trade barriers, etc.) to exercise their procedural rights (right to be heard, right of equal treatment, right to access procedural files, right of confidentiality, etc.)²⁵⁰.

In February 2011, the European Parliament and the Council adopted Regulation 182/2011 setting the rules and general principles regarding mechanisms to control the Commission’s exercise of implementing powers by Member States which precluded that, before the adoption of definitive trade defense instruments (with the exception of definitive safeguards), the Commission should consult with a Committee called Trade Defense Instruments Committee (TDC), (also known as Advisory Committee), composed of representatives of each MS and chaired by a Commission’s delegate²⁵¹.

Alternatively, the imposition of provisional AD, AS and SFG measures remains under the scope of the Commission with previous consultation with MS.

The TDC is a type of “*comitology*”²⁵² committee set up by the legislator²⁵³, and its main function is to assist the Commission by adopting implementing acts or by delivering

²⁴⁸ Ibidem.

²⁴⁹ EU Commission, “*Hearing Officer*”, (2022), (Access 12/06/2022), https://policy.trade.ec.europa.eu/contacts/hearing-officer_en

²⁵⁰ Ibidem.

²⁵¹ Article 3, Regulation (EU) no 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers, (2011), L 55/13.

²⁵² The term “*comitology*” refers to the process used for implementing, amending, or adjusting EU text laws, taking place in the so called “*comitology committee*”, consisting of a non-permanent body composed of MS’s representatives and chaired by the EU Commission with the purpose of giving EU countries a chance of opinion and discussion during meetings. They receive the draft implementing acts from the Commission departments to produce an opinion depending on the operating procedure they have decided. In cases of negative opinion by the comitology committee, an appeal committee shall be set up for giving MS a second chance of public expression.

²⁵³ The legislator can be either the Council of the European Union alone, or the Council and the European Parliament together.

opinions on implementing acts, either via the advisory procedure²⁵⁴ (e.g. provisional measures, expiry reviews) by simple majority, or via the examination procedure²⁵⁵ (e.g. definitive measures, amendments or extensions of existing measures) by using the qualified majority voting²⁵⁶.

The examination procedure is used for implementing acts of general scope and measures with significant impacts on the society such as trade, taxation, common commercial policy, safety and security, fisheries, environment, agriculture, human, plant, and animal health²⁵⁷. Instead, all other implementing acts' issues are regulated by the advisory procedure²⁵⁸.

Under the advisory procedure, the Committee's opinion is non-binding for the Commission, but it is still considered significant to know the MS's views.

Alternatively, with the examination procedure, in case of a positive opinion, the Commission shall adopt the implementing act and in case of a negative opinion, the act shall not be adopted, and it might be presented a draft to the same Committee or to an Appeal Committee²⁵⁹ for giving MS a second chance of discussion²⁶⁰, before the main decision is taken by the Commission.

²⁵⁴ Article 4, Regulation (EU) no 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, (2011), L 55/13.

²⁵⁵ Article 5, Regulation (EU) no 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, (2011), L 55/13.

²⁵⁶ EU Commission, "*Trade Defence Instruments Committee*", (2020), (Access 29/03/2022), https://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151013.pdf

²⁵⁷ Article 3, paragraph 1, Regulation (EU) no 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, (2011), L 55/13.

²⁵⁸ Ibidem, Article 3, paragraph 2.

²⁵⁹ The appeal committee is a supplementary non-permanent committee composed of Member States' representatives, chaired by the Commission and it functions in a similar way of the Trade Defense Instruments Committee. It is made up when no opinion is delivered by the TDC's votes and it gives the MS the chance to have a second discussion. (Article 5, Regulation (EU) no 182/2011).

²⁶⁰ Article 5, paragraph 3, Regulation (EU) no 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, (2011), L 55/13

The regulations on trade defense fall also under the scope of the Council of Ministers of the EU which is responsible for the adoption of final TDI's measures upon the Commission's proposal.

The Council is composed of Government ministers of each European country of the policy matter under discussion, who are not fixed members and who meet in Brussels to discuss, decide, and adopt laws coordinating national policies towards the accomplishment of a common action.

Since the entry into force of the TFEU, the Council shares a particular rotating mechanism of 18-month presidency composed of three successive presidencies²⁶¹ (one every six months), cooperating altogether towards a common political program.

Its main functions are to adopt and amend legislation, coordinate policies, conclude agreements between the EU and other nations, develop the European foreign and security policy and adopt the annual budget together with the Parliament²⁶².

Indeed, the Council and the Parliament are jointly the main decision-making bodies, in charge of the ordinary legislative procedure under Article 294 of the TFEU²⁶³, formerly called the "*co-decision procedure*".

The Council receives the proposals elaborated by the Commission after the final consultation with the Committee and the Member States, and it decides by simple majority whether to confirm the provisional or the definitive measures.

As we have seen above, also MS take part in the TDIs' application process within the comitology or appeal committees in consultation with the Commission. In addition, their customs authorities are responsible for collecting AS, AD, SFG duties and for investigating potential infringements²⁶⁴.

²⁶¹ I. Van Bael, J.F Bellis, "*EU Anti-Dumping and other trade defense instruments*", Kluwer Law International, Brussels, Belgium, (2011), pp. 5.

²⁶² EU Commission, "*Council of the European Union*", (publication's year unknown), (Access 02/04/2022), https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/institutions-and-bodies-profiles/council-european-union_en

²⁶³ Article 294 (ex-article 251 TEC), Chapter II: Legal acts of the Union, adoption procedure and other provisions, Section II: procedures for the adoption of acts and other provisions, Treaty on the Functioning of the European Union (TFEU), (2012).

²⁶⁴ EU Court of Auditors (ECA), "*Trade defence instruments*", Audit preview, (2019), pp.11.

Another European actor involved in the process of trade defense measures' application is the Anti-Fraud Office (OLAF), which is responsible for investigating in fraud cases and for verifying the occurrence of circumvention cases of AD and AS measures²⁶⁵.

The last but not least important involved institution is the Court of Justice of the European Union (CJEU) which is made up of the Court of Justice itself and the General Court.

Its function is to ensure the correct interpretation and application of the EU's law by Member States and to also give rulings on lawsuits brought by natural or legal persons against European institutions in case of infringement²⁶⁶.

The Court of Justice, based in Luxembourg, is made up of twenty-seven Judges (one from each MS), appointed for a six-year period and eligible of being re-elected, and assisted by eight Advocates General (AG) and by one Registrar which is the Court's Secretary General.

This institution is responsible of preliminary rulings from the national Courts and for appeals against trade defense instruments' decisions, but also for actions for annulment, actions for damages, actions for failure to act.

The other body is the General Court which is made up of two Judges per member state (fifty-four Judges in total), a President and a Registrar.

The General Court's competences are to rule over actions presented by individuals, companies, or Governments against acts of the European institutions or against regulatory acts, or any action among the institutions themselves²⁶⁷.

The Court, since 1994, has jurisdiction over challenges brought by any natural or legal party related to the imposition of provisional or definitive anti-dumping or anti-subsidy measures²⁶⁸.

²⁶⁵ Ibidem.

²⁶⁶ EU Commission, "*Court of Justice of the European Union (CJEU)*", (Access 03/30/2022), https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/institutions-and-bodies-profiles/court-justice-european-union-cjeu_en

²⁶⁷ Court of Justice of the European Union, "*Jurisdiction*", (Access 30/03/2022), https://curia.europa.eu/jcms/jcms/Jo2_7033/

²⁶⁸ I. Van Bael, J.F Bellis, "*EU Anti-Dumping and other trade defense instruments*", Kluwer Law International, Brussels, Belgium, (2011), pp. 10.

Since the European TDIs must be consistent to the WTO international agreements and thus Member States must ensure that each instant of application is compliant with its rules, WTO is also another important institution involved in the trade defense instruments' application in the EU. Indeed, from 1995 to 2021, WTO adjudicated 307 out of 600 trade remedy disputes involving AS, AD and SFG claims²⁶⁹.

²⁶⁹ P. De Baere, Van Bael & Bellis, "*The international Trade Law Review: World Trade Organization*", *The Law Reviews*, (2021), (Access 30/03/2022), <https://thelawreviews.co.uk/title/the-international-trade-law-review/world-trade-organization>

CHAPTER II: ANTI-DUMPING MEASURES

2.1. WHAT IS DUMPING? HOW IS IT APPLIED?

Under the international definition provided by the WTO, dumping is evaluated as a situation whereby the selling price of a specific product, when sold in a foreign (importing) country, is lower than the price applied in that product in the domestic (exporting) country²⁷⁰.

Specifically, pursuant to Article 2 of the WTO Agreement on Anti-Dumping, a product is intended to be “*dumped*” when it is introduced into another country’s market at a price lower than its normal value²⁷¹(in case of market economies it’s the product price applied in the country producing the merchandise, whereas in case of non-market economies it is based on the value realized or the price for the exportation) and if its export price is lower than the comparable price of a similar product in the exporting country²⁷².

In most cases, the country in question is the country of origin of the merchandise; however, it can also represent an intermediate country with exceptions regarding situations in which goods are merely transshipped, or when they are not produced in that country or when there is no possibility of comparing prices²⁷³.

Usually, the exporting price applied in the foreign market is the “*free on board*” (FOB) price which, under the International Commercial Terms (Incoterms)²⁷⁴, consists in a

²⁷⁰ WTO, “*Technical information of anti-dumping*”, (Access 06/04/2022), https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm

²⁷¹ WTO, Part I: Article 2.1: Determination of Dumping, Agreement on Anti-Dumping (ADA), (1994).

²⁷² Article 1, paragraphs 2, Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union, (2016).

²⁷³ Ibidem, paragraph 3.

²⁷⁴ The International Contractual Terms, also known as “*Incoterms*”, are a series of eleven different three-letter commercial terms trademarked by the International Chamber of Commerce (ICC) of Paris, setting different obligations, costs and risks upon the seller and the buyer with the aim of facilitating trade, transport and deliver of goods from one place to another. They are divided into two main categories depending on whether the mode of transport is for sea and inland water transport or

clause for which the exporter (seller) delivers the merchandise to the importer (buyer), making it available at an agreed port onto a specified vessel and, if necessary, customs cleared for export, leaving upon the importer all transport and insurance costs.

Dumping is one of the most common forms of price discrimination, applicable under conditions of heterogeneous consumers' behaviors, and operated whenever a business, in the intent of maximizing its profits, practices different selling prices to individuals or different groups of people for the same good²⁷⁵.

Through this unfair commercial practice, the foreign exporter guarantees a certain penetration into the new market in virtue of the marked competitiveness of its own product prices²⁷⁶.

Two economic conditions must coexist for the application of dumping:

1. first, the importing country needs to operate in a situation of imperfect competition so that the foreign exporting enterprises can have market power and thus influence their domestic market prices;

2. second, markets must be segmented to impede domestic customers to easily acquire low-priced products in other foreign markets²⁷⁷.

Dumping is normally considered to be a form of unfair practice in international trade, however economists like Paul Krugman and Maurice Obstfeld, found that it can also represent a "*perfectly legitimate business strategy*"²⁷⁸ thanks to the positive aspects it brings related to revenues, innovation and prices²⁷⁹; however, it still constitutes a controversial issue (Krugman & Obstfeld, 2003).

We can distinguish four different and principal types of dumping: sporadic (or intermittent), predatory, persistent, and reverse.

for any other mode. First published in 1936, their latest version dates to 2020, been published in September 2019.

²⁷⁵ F. Pammoli, "*Modelli e strategie di marketing*" Franco Angeli Editor, (2005), pp.168.

²⁷⁶ M. Bonanno, "*Diritto dell'Unione Europea*", Key Editore (2019), pp.127.

²⁷⁷ P. R. Krugman & M. Obstfeld, "*Economia internazionale*", Volume 1, Pearson Italia S.p.a, (2007), pp.173.

²⁷⁸ A. Sapir, "*Some ideas for Reforming the Community Anti-Dumping Instrument*", Professor of Economics, ECARES, Université Libre de Bruxelles, (2006).

²⁷⁹ Study.com, N. Ackermann, "*How Does Dumping Work?*", (2022), (Access 01/06/2022), <https://study.com/learn/lesson/dumping-strategy-effects.html>

Sporadic dumping (known also as intermittent dumping) is the occasional sale of goods in a foreign country at a lower price than what the company asks for in its domestic market, with the aim of getting rid of an unexpected and temporary excess of unsold inventories, without having to reduce internal costs. So, all the excess stocks are liquidated by the producers.

It is carried out only in particular and exceptional cases when a national producer and/or exporter, because of forecasting or planning errors, finds to have parts of unsold production in stock, superior to the quantitative amount of goods that can be normally sold through the ordinary sales channels²⁸⁰.

An example of sporadic dumping was the enormous capacity of China to produce CD, DVD and MP3, in the early 21st century, that has been wiped out by the advent of storage-based media players that left Chinese producers with full unsold inventories²⁸¹. Therefore, to solve the problematic, the producers started to practice sporadic dumping abroad to get rid of the unsold stocks.

Generally, this type of dumping is allowed as a form of commercial practice, if and only if, it avoids grave prejudice for the national businesses of the importing country buying the merchandise²⁸². This type is the only one having a short-term and temporary form, but it is less commonly used worldwide.

Instead, **predatory dumping** is the most widespread typology, and it occurs whenever a product is sold underpriced to a foreign market with the purpose of rising the price immediately after having driven competitors out of the local business and having acquired a monopoly power.

It is more permanent than the sporadic dumping but remains a temporary form. Implemented for the only purpose of seizing a foreign market, the main long-term objectives are to completely destroy the local competition and exercise a future monopoly.

²⁸⁰ Glossariomarketing.it, “*Dumping*”, (Access 07/04/2022), <https://www.glossariomarketing.it/significato/dumping/>

²⁸¹ EFinanceManagement.com, “*Sporadic Dumping*”, (2022), (Access 24/05/2022), https://efinancemanagement.com/economics/sporadic-dumping#Example_of_Sporadic_Dumping

²⁸² F. di Fiore, “*La normativa europea antidumping*”, Melius Form Business School, (Access 07/04/2022), <https://www.meliusform.it/la-normativa-europea-antidumping.html>

Therefore, both sporadic and permanent dumping aim at destabilizing the internal market balance of the importing country, whereas persistent dumping has more the purpose of eliminating the internal supply.

An example of predatory dumping can be the Walmart acquisition of “a 51% stake in the local retail chain of Massmart in South Africa”²⁸³ with the intent of selling products at “rock-bottom prices”²⁸⁴ through the Massmart stores’ network. That merger became the only player in the country and reached a monopolistic power, by rising prices and driving competitors out of the South African market. Consequently, the Competition Tribunal adjudicated a restrictive measure, obliging the merger to purchase products from local suppliers to ensure employment and development in the area²⁸⁵.

The third typology is **persistent dumping**, which differs from the previous ones in terms of time duration and nature; indeed, this form is put in practice in a continuous and permanent manner from a producer and/or an exporter who already owns a certain monopolistic power and takes advantage of the discriminatory price he himself created with the purpose of maximizing revenues²⁸⁶ and locally destroying competition.

This dumping category consists in the same practice as the others, or rather, selling a product in a foreign market at a significantly lower cost than the cost applied in the exporting country but, systematically. It is often implemented by medium to big enterprises or interest groups when there is a constant demand for their merchandised goods and so a tendency to impose a higher price in their own domestic market (isolated by internal protective customs duties, transport costs and imperfect information), and a lower price abroad (with a higher price elasticity of the demand²⁸⁷), causing a greater demand from foreign customers.

²⁸³ EFinanceManagement.com, “*Predatory Dumping*”, (2022), (Access 24/05/2022), <https://efinancemanagement.com/economics/predatory-dumping>

²⁸⁴ Ibidem.

²⁸⁵ Ibidem.

²⁸⁶ C. Imbriani, R. Pittiglio & F. Reganati, “*Economia internazionale di base ed investimenti esteri: teorie e politiche*”, G. Giappichelli Editore, (2014), pp.135.

²⁸⁷ Price elasticity of the demand is the measurement used by economists to understand how demand and supply change in relation to the price. It is the measure of how sensitive the demand is at a price variation, and it gives the percentage change of the demand whenever there is a one percentage increase in the price.

An example of persistent dumping was when Japan sold consumer electronics in the United States at very low prices to conquer market shares, applying higher prices in its domestic market, devoid of foreign competitors²⁸⁸.

The last type of dumping is **reverse dumping**, which consists in dumping products in a reverse manner, or rather, by selling products at extremely low prices in the domestic market and at higher prices in the foreign one²⁸⁹(where there persists less elastic demands). Therefore, the producer will make losses in its own market and profits abroad. The purpose of reverse dumping is to eliminate all competitors in the national market for conquering the domestic market and then assuming the form of a monopoly (and even closing the business abroad to re-enter the domestic market and make more profits)²⁹⁰. This typology is “*non-conventional*”²⁹¹, and it shall be short-term or long-term, depending on the situation²⁹².

Eventually, price elasticity of the demand drives all foreign competitors out of the market (by lowering even more the prices if remaining players try to compete with the price reductions) and facilitates exporting companies to establish a monopoly²⁹³. When prices are so dumped, the competition will eventually leave the scene since it is incapable of catching up with the cut-prices in the long-term.

Dumping also includes an additional classification into three main typologies: fiscal, social, and environmental dumping.

Fiscal dumping is born from the existence of taxation policies which guarantee to some countries a more favorable fiscal treatment to its taxpayers, causing profound economic and socio-political disparities among states. It is intended as the downside of the aliquots, offering lower direct and indirect taxes, social security contributions and fiscal pressure, with the purpose of attracting more foreign taxpayers and investors.

²⁸⁸ Accountlearning.com, “*Different types of dumping with example*”, (Access 24/05/2022), <https://accountlearning.com/different-types-of-dumping-with-example/>

²⁸⁹ EFinanceManagement.com, “*Reverse Dumping*”, (2022), (Access 24/05/2022), <https://efinancemanagement.com/economics/reverse-dumping>

²⁹⁰ Ibidem.

²⁹¹ Ibidem.

²⁹² Ibidem.

²⁹³ EFinanceManagement.com, “*Predatory Dumping – Price elasticity of demand*”, (2022), (Access 20/04/2022), https://efinancemanagement.com/economics/predatory-dumping#Price_elasticity_of_demand

Usually, the selling price in the national markets is higher because national enterprises have a greater market share than abroad, where sales are more reactive to changes in prices.

Fiscal dumping is very well eradicated in the European Union, and it is very difficult to limit as taxation still falls within the MS's own sovereign powers.

In the field of taxation, the treaties confer only limited competences to the authority of the EU, in particular for the purpose of harmonizing legislation on indirect taxation to the extent that such harmonization is fundamental to ensure the correct functioning of the European single market, as well as avoiding unemployment and distortions of competition policies and rules (e.g. rules harmonizing the VAT)²⁹⁴.

In July 2020, the Commissioner for the Economy, Paolo Gentiloni, asked the European institutions for more equity and solidarity, intervening against fiscal dumping within and outside the EU, in particular against the “*black tax holes*”²⁹⁵, those jurisdictions with effectively lower rates of taxation such as Ireland, Luxembourg, Malta, Cyprus and the Netherlands. Due to these tax havens, in the last two decades Brussels viewed a financial downturn of between 35 to 50 billion euros of tax revenues, exacerbated by the COVID-19 pandemic.

For this reason, the Commission is now more than ever committed to intervene with more regulations against fiscal dumping, besides the already-in-force European Code of Conduct (Business taxation), elaborated by the Economic and financial Affairs Council (ECOFIN) in 1998, which identifies criteria for assessing potentially harmful tax measures or preferential characteristics of MS's tax regimes, with the purpose of providing more transparency and exchange of information.

Furthermore, a new normative framework for the taxation of European businesses called “*Business in Europe: Framework for Income Taxation*” (BEFIT) (in substitution to

²⁹⁴ European Parliament, “*Answer given by Mr Katainen on behalf of the Commission*”, question reference: E-006883/2014, (October 30th, 2014).

²⁹⁵ A citation of the Commissioner for Economic and Financial Affairs, Taxation and Customs, Pierre Moscovici, in July 2020, accusing some European states of not being complaint to EU's tax law and asking for exuding pressure on them.

the prior project “*Common Consolidated Corporate Tax Base*” (CCCTB))²⁹⁶, is to be launched within 2023. The project’s goal is to create a single code of taxation for the EU’s enterprises, allowing for a more equitable allocation of taxation rights among all participating Member States²⁹⁷.

Returning to the subject of fiscal dumping, for some people it is deemed beneficial because it benefits those businesses or taxpayers who are free to choose where to pay their taxes and who can benefit of lower tax burden, but also governments, which actuate fiscal dumping and increase tax revenue. Instead, for others, it can threaten competition and curb state-level income distribution.

This does create a disparity among countries, not only in tax systems, but also in contributory systems; indeed, a country with a greater wealth transfer collects more contributions compared to a country with occurring outflows, having significant impacts on workers’ legal protection and rights, in terms of salaries and pensions²⁹⁸.

Differently, **social dumping** does not have a legally recognized and universally shared definition, but it is widely debated in the European arena due to its negative connotation linked to the application of diverse salaries and social protection rules.

Social dumping is a phenomenon which constitutes in a set of activities that evades European and/or national laws, permitting the concrete development of an unfair competition, by illicitly reducing operation and labor costs, and thus leading to the consequent violation of workers’ rights and to their exploitation²⁹⁹. It is the practice of using

²⁹⁶ Common Consolidated Corporate Tax Base (CCCTB), which is a unique set of rules that companies operating in the EU could use for the calculation of taxable profits. significant simplification for the benefit of foreign investors and businesses and would create greater transparency on the actual tax situation of companies in the Member States, thereby promoting equal conditions of tax competition in the EU.

²⁹⁷ S. Latini, “*Verso un sistema fiscale comune per le società europee*”, (2021), (Access 07/04/2022), <https://www.ipsoa.it/documents/fisco/fiscalita-internazionale/quotidiano/2021/06/03/sistema-fiscale-comune-societa-europee>

²⁹⁸ Investire.biz, “*Dumping fiscale: cos’è e come funziona*”, (2021), (Access 07/04/2022), <https://investire.biz/articoli/analisi-previsioni-ricerche/economia-politica-diritto/dumping-fiscale-cosa-e-come-funziona-conseguenze-italia-europa-soluzioni>

²⁹⁹ EU Parliament, “*Relazione sul dumping sociale dell’Unione Europea*”, I. “*Rafforzare i controlli e il coordinamento tra e da parte degli Stati membri*”, (2018), (Access 07/04/2022), https://www.europarl.europa.eu/doceo/document/A-8-2016-0255_IT.html

and exploiting cheaper laborers in other countries (who are usually present in the domestic country) where there persist lower levels of social protection, tax, wage, and employment rules.

An example of social dumping were the actions of the sportswear company, Nike, or the apparel company GAP, of exploiting local workers from developing countries like Indonesia, China, Bangladesh, and Vietnam, and keep them under inhumane working conditions in terms of shifts, verbal abuses, low wages, and unsafe working places³⁰⁰.

This dumping typology does have harmful impacts on the economic system, allowing for the use of undeclared work and/or abusive behaviors, creating deep market distortions to the detriments of businesses. In addition, under the social aspect, it may create disparity and discriminatory working conditions for European laborers, depriving them from their social rights (e.g. salary, social security rights, etc.). Repercussions fall also in the financial and budget sectors, where the failed payment of social contributions and taxes represents a cutting threat for the financial sustainability of public state finances³⁰¹.

The last typology of dumping is **environmental dumping**, which intensified with the growth of economic activity and global trade, in this last period.

It usually occurs when a company from a developed (or developing) nation hazardously exports product waste (household, industrial/nuclear waste, etc.) and/or chemicals towards a developing nation with non-sufficient normative environmental protection and legal enforcement to apprehend such illegalities.

“The economic benefit of this practice is cheap disposal or recycling of waste without the economic regulations of the original country”³⁰².

³⁰⁰ N. Jinji, *“Social Dumping and International Trade”*, (2005), (Access 01/06/2022), <https://www.etsg.org/ETSG2005/papers/jinji.pdf>

³⁰¹ Ibidem, I. *“Rafforzare i controlli e il coordinamento tra e da parte degli Stati membri”*.

³⁰² Wikipedia, *“Environmental dumping”*, (2022), (Access 01/06/2022), https://en.wikipedia.org/wiki/Environmental_dumping

Some global agreements such as the Basel Convention³⁰³ and the Rotterdam Convention³⁰⁴, serve to offset the problem for most of the countries in the international arena.

Also, the United Nations (UN) Montreal Protocol³⁰⁵, ratified by all 198 worldwide nation states, governs the environmental system by regulating the production and the consumption of nearly 100 chemicals referred to as “*ozone depleting substances*” (ODS)³⁰⁶.

An example of environmental dumping was the story of the French aircraft carrier, the FS Clemenceau, which was sold to an Indian enterprise, the Gujarat India, in order to be demolished and “*recycled*” besides the high level of toxic waste and asbestos contained on the vessel³⁰⁷.

The main goal behind the application of dumping is, first, to increase a product’s demand and to gain market share in a foreign country through the reduction of a product price in comparison to the price applied by other competitors within the same market. Also, dumping is used with the purpose of occasionally selling excessive stocks, expanding an industry through the law of increasing returns, and developing trade relations with the importing country, before raising the costs once having earned a monopoly power.

But what are the advantages of dumping?

The primary advantage is to have the possibility of permeating a market with selling prices that are considered unfair but sustained by financial subsidies provided by the exporting governments with the purpose of counterbalancing the losses incurred when selling at below the production cost.

Another advantage regards foreign consumers, who temporarily benefit of a lower price for their desired product.

³⁰³ United Nations Environment Programme (UNEP), Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their disposal, (1989).

³⁰⁴ United Nations Environment Programme (UNEP), Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous Chemicals & Pesticides in International trade, (1998).

³⁰⁵ United Nations (UN), Montreal Protocol on Substances that Deplete the Ozone Layer, (1987).

³⁰⁶ UN, Environmental Programme, “*The Montreal Protocol*”, (publication’s year unknown), (Access 07/04/2022), <https://www.unep.org/ozonaction/who-we-are/about-montreal-protocol>

³⁰⁷ Wikipedia, “*Environmental dumping*”, (2022), (Access 01/06/2022), https://en.wikipedia.org/wiki/Environmental_dumping

On the contrary, disadvantages may be quite numerous. As a matter of fact, government's subsidies to make up losses are significantly expensive to support in the long-term, and additionally, importing countries may levy the exporters, rise export costs, and so restrict imports³⁰⁸.

Also, dumping leads to the disruption of local competition for the importing country³⁰⁹, where the local producers would be at some point (in the long-term) unable to catch up with the rock-bottom prices and would be "*forced to operate at nominal profits or even at a loss*"³¹⁰ and thus exit the market.

This would cause the employment and occupation level to drop and would put the supply chain at stake and create a total dependence of the importing country upon the exporting one, who would remain the only supplier of the product under consideration.

In addition, the remaining company would apply higher prices to the products and trigger inflationary trends in the importing market economy³¹¹.

Overall, fiscal, social, and environmental dumping are all against the Union's values and principles since they put at risk the protection rights of European citizens³¹².

Therefore, the EU considers dumping as an unfair and illegitimate trade practice, responsible of causing economic alterations to the dynamics of its free-market economy and, because of its anti-competitiveness nature, it is viewed as a barrier to international trade which ought to be blocked.

³⁰⁸ Investopedia.com, "Dumping", (Access 07/04/2022), <https://www.investopedia.com/terms/d/dumping.asp>

³⁰⁹ EFinanceManagement.com, "Advantages and Disadvantages of Dumping in International Trade", (2022), (Access 30/05/2022), https://efinancemanagement.com/economics/advantages-and-disadvantages-of-dumping-in-international-trade#Disadvantages_to_the_Importing_Country

³¹⁰ Ibidem.

³¹¹ Ibidem.

³¹² EU Parliament, "Relazione sul dumping sociale dell'Unione Europea", I. "Rafforzare i controlli e il coordinamento tra e da parte degli Stati membri" (2018), (Access 07/04/2022), https://www.europarl.europa.eu/doceo/document/A-8-2016-0255_IT.html

2.2. ANTI-DUMPING LEGAL FRAMEWORK

The anti-dumping duty is regulated both at the international level, by the World Trade Organization with the Anti-Dumping Agreement (ADA)³¹³, and at the European level, by the European Union with Regulation 2016/1036³¹⁴.

The World Trade Organization does not discipline on dumping itself, instead it condemns injurious dumping, allowing governments to counterbalance it through the anti-dumping duty, considered as a form of “*administered protection*”³¹⁵ to be used with foreign importation of goods whenever the price is below their fair market value.

The central international legislation on anti-dumping is the GATT 1994 Agreement (Article VI), later implemented by the Anti-Dumping Agreement (ADA) which provides further guidance, with more specifications and clarifications on AD economic terms and procedures.

The ADA was signed in April 1994 by one hundred and twenty-three states in honor of the Uruguay Round, the eight round of the GATT trade negotiations taking place in Marrakesh and discussing matters on international transactions and duties on agriculture, services, intellectual property rights and market access.

Moreover, its signature brought to the creation of the World Trade Organization (WTO), which substitutes the General Agreement in Tariffs and Trade (GATT), as international negotiating forum.

The ADA is composed of eighteen articles: the first four articles specify the substantive rules on the imposition of measures, from the 5th Article to the 15th there are contained procedural requirements for the conduct of the investigation proceeding, its

³¹³ WTO, Anti-Dumping Agreement or Agreement on the Implementation of Article VI of the GATT, (1994).

³¹⁴ Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

³¹⁵ “*Administered protection*” is a tariff or non-tariff barrier (NTB) resulting from the application of the WTO’s statutes on anti-dumping, anti-subsidy or safeguard measures, responding to specific market characteristics.

imposition and future maintenance³¹⁶, whereas from the 16th Article to the 18th there are explained the AD committee, the dispute settlement resolution system and all the final provisions³¹⁷.

According to the WTO's rules, dumping is considered illegitimate whenever the exporting producer is causing material injury, or threat of material injury, or material retardation of the establishment of the domestic industry in the importing country³¹⁸.

Under the basic principles contained in Article 1, member states can impose an AD measure if dumping is incurring in a product's price, if the domestic industry importing the dumped product is suffering material injury, and if there exists a causality between the two previous criteria³¹⁹.

All WTO's signatory members shall comply their national legislation with the international AD legislation, meeting all its requirements, but they may also set additional provisions and higher standards of application³²⁰.

In the European Union, anti-dumping is exclusively governed by Regulation 2016/1036³²¹, which transposes and incorporates all norms contained in the Anti-Dumping Agreement of the WTO ensuring a proper and transparent application, adding also two more higher standards related to the "*Union industry test*" and the "*lesser duty rule*", which offer more protection to its members³²².

The intervention of the European institutions is constant, whether at the regulatory or at the supervisory level, having regard to Article 207 of the Treaty on the Functioning of

³¹⁶ WTO, "*Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994*", (Access 09/04/2022), https://www.wto.org/english/tratop_e/adp_e/antidum2_e.htm

³¹⁷ WTO, "*Technical information of anti-dumping*", (Access 08/04/2022), https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm

³¹⁸ Ibidem.

³¹⁹ Article 1, WTO Anti-Dumping Agreement, (1994).

³²⁰ EU Commission, "*TDI Trade Defence Instruments, anti-dumping & anti-subsidy – A Guide for Small and Medium-Sized Businesses*", (2018).

³²¹ Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

³²² EU Commission, "*TDI Trade Defence Instruments, anti-dumping & anti-subsidy – A Guide for Small and Medium-Sized Businesses*", (2018).

the European Union (TFEU)³²³ which refers to dumping and subsidy as those measures to protect trade under the sovereignty of the common commercial policy (CCP).

*“Regulation 2016/1036 of June 2016 of the European Parliament and of the Council on protection against dumped imports from countries not members of the EU”*³²⁴, is composed of twenty-five Articles, laying down specific rules related to the main principles and conditions for dumping and injury determination, the initiation, conduction, and imposition of anti-dumping measures, as well as detailed provisions on duration, review, and on absorption or circumvention.

The European Union shall apply anti-dumping duties to all non-EU member states responsible of operating unfair dumping practices within the Union’s territory, in respect to the WTO’s normative rules, and bringing the price of the dumped good to the same level as when it was sold in the domestic market.

2.3. DETERMINANTS OF DUMPING

Under the basic anti-dumping legislation of the European Union, four substantive requirements are required for legitimating the imposition of an anti-dumping duty:

- The existence of *“dumping”*;
- The existence of an *“injury”*;
- The existence of a direct causal link between the dumped imports and the injury;
- The existence of a *“Union interest”*.

The determination of dumping is the primary step to execute in any legal proceeding under Regulation 2016/1036, indeed under Article 1 it is explicated that *“a product is*

³²³ Article 207, paragraph 1, Part V: External Action by the Union, Title II: Common Commercial Policy, Treaty on the Functioning of the European Union (TFEU), (2012).

³²⁴ Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

*considered dumped if its export price to the Union is less than a comparable price for a like product, in the ordinary course of trade, as established by the exporting country*³²⁵.

This means that the export price of the dumped merchandise shall be lower than the normal value of a “like product”. For the purposes of the Regulation 2016/1036 and the WTO Anti-Dumping Agreement, respectively according to Article 1, paragraph 4³²⁶ and Article 2, paragraph 6³²⁷, the “like product” or “*produit similaire*”, represents a product which is identical and/or alike to the dumped product or, whenever this product is absent, to another product having resembling characteristics.

The legal provisions concerning the determination of dumping are laid down in Article 2³²⁸ of the basic AD regulation and they involve the determination of the “normal value” and the “export price”, a fair price comparison between the “export price” of the product under consideration and the “normal value” of the “like product”, and the calculation of the dumping margin³²⁹.

As stated under the same Article, the period for the dumping investigation concerns practices normally occurring within one year and shall not, for any reason, be less than 6 months, immediately prior to the start of the investigation³³⁰.

The investigation period is set forth in the questionnaires given by the European Commission to the foreign exporters and all other interested parties in the EU (traders, importers, users) of the dumped products after having received the complaint and before the beginning of the investigation.

³²⁵ Article 1, paragraph 2, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

³²⁶ Article 1, paragraph 4, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

³²⁷ Article 2, paragraph 6, WTO Anti-Dumping Agreement (ADA), (1994).

³²⁸ Article 2, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

³²⁹ I. Van Bael & J.F Bellis, “*EU Anti-Dumping and other Trade Defence Instruments*”, Chapter 3 - Substantive elements: Dumping, Kluwer Law International, Brussels, Belgium, (2011), pp.31.

³³⁰ *Ibidem*.

The questionnaires are elaborated with the purposes of assessing whether there subsists sufficient evidence and proof in the complaint so as to allow the initiation of the proceedings.

2.3.1. NORMAL VALUE AND EXPORT PRICE

In order to state the occurrence of dumping, the first thing to examine is the concept of “*normal value*”.

Article 2³³¹ of the basic anti-dumping regulation provides specific guidance on the assessment of normal value, as one of the determinants of dumping.

Normal value is based “*on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country*”³³².

Normally, the notion of “*exporting country*” refers to the country of origin of the merchandise or to an intermediate country.

As a general rule, normal value is determined in relation to the country of origin, with special provisions regarding the definition of origin contained in Regulation 952/2013³³³, as highlighted under Article 14, paragraph 3, of the basic AD regulation³³⁴. However, Article 1, paragraph 3, points out that there may be some exceptions regarding the mere transshipment of the product through that country, or when the product is not produced there, or when there is no possibility of price comparability within that country³³⁵.

Generally, the determination of the normal value depends upon cooperation of the interested exporting producers in the investigation proceedings. Taken into consideration that

³³¹ Article 2, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

³³² Article 2, paragraph 1, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

³³³ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast), (2013).

³³⁴ Ibidem, Article 14, paragraph 3.

³³⁵ Ibidem, Article 1, paragraph.

they duly cooperate, and depending on the nature of the economy of the country in question (their recognition as market/non-market economies), there are four different methodologies for calculating the normal value:

1. on the basis of domestic sales prices of the exporting producer in the exporting country;
2. on the basis of prices of other exporters or producers within the same country, whenever the exporter does not produce or sell the like product;³³⁶
3. on the basis of export prices to an appropriate non-EU country, if and only if, those prices are deemed representative;
4. on the basis of the “*constructed normal value*”: the cost of production of the like product, plus an amount for covering selling and administrative or general costs³³⁷.

The first and fourth methodologies, respectively the domestic price and the constructed normal value methods, are the most widely used and preferred by European authorities, instead the third one is the rarest, and thus hardly ever used.

The primary basis for the calculation of the normal value is the first methodology, instead the other three are resorted only if:

1. domestic sales are absent (because the product in question is sold only in the export market or because the models sold in the importing and exporting markets are different), or because the quantity sold in the export market is insufficient (it does not represent at least 5% of the total product volume), or
2. domestic sales are absent in the ordinary course of trade (because of sales at low cost of production, or between associated or arranged parties), or

³³⁶ Article 2, paragraph 1, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

³³⁷ Ibidem, Article 2, paragraph 3.

3. such sales do not permit a proper price comparison, due to particular situations of the market³³⁸ such as, artificially low prices, barter trade or non-commercial processing arrangements³³⁹.

Based on Regulation 2016/1036 and on the Judgement of the European Court of Justice of February 1992³⁴⁰, the statement “*ordinary course of trade*” is a concept related to the nature of the sales themselves. The exceptions to this, are the cases in which either there are transactions between parties who are associated or have compensatory arrangements with each other³⁴¹, pursuant to Article 127 of Regulation 2015/2447³⁴², or when, according to Article 2.2.1 of the WTO Anti-Dumping Agreement³⁴³, sales of the like product are at prices below unit of their cost of production (fixed and variable), plus all selling, general and administrative (SGA) costs³⁴⁴.

If European authorities find that transactions do not appear to be under the ordinary course of trade, they shall not be considered for the calculation of the normal value.

As previously stated, when determining the basis for the normal value, the EU takes into account also the requirement of “*global representativeness*”, which determines that sales volume of the like product intended for domestic consumption shall constitute at least 5% of the total volume of the product under consideration exported to the Union³⁴⁵.

³³⁸ Ibidem.

³³⁹ Article 2, paragraph 3, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

³⁴⁰ European Court of Justice (ECJ), Judgment of the Court (Sixth Chamber) of 13 February 1992, Goldstar Co. Ltd v Council of the European Communities, Case C-105/90, (1992).

³⁴¹ Article 2, paragraph 1, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

³⁴² Article 127, Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, (2015).

³⁴³ Article 2.2.1, WTO Anti-Dumping Agreement (ADA), (1994) and Article 2, paragraph 4, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

³⁴⁴ I. Van Bael & J.F Bellis, “*EU Anti-Dumping and other Trade Defence Instruments*”, Chapter 3 - Substantive elements: Dumping, Kluwer Law International, Brussels, Belgium, (2011), pp.47.

³⁴⁵ Ibidem, Article 2, paragraph 2.

In principle, normal value is computed on an annual basis, “*comparing the domestic prices on a transaction-by-transaction basis, with the annual weighted average cost of production*”³⁴⁶.

Nevertheless, monthly, quarterly or six-month basis calculations might also be used.

As stated before, usually the normal value is calculated by using the first methodology, taking the product price of the merchandised good in the exporter’s domestic market, purchased through an economic transaction by an independent consumer.

Prices are relatable only under the net ex-factory (EXW)³⁴⁷ incoterm mode, which excludes all internal taxes and whenever this type of price is unavailable, the conversion towards EXW shall be executed³⁴⁸.

Every calculation and adjustment must be supported by appropriate documentation such as invoices, price lists, etc.

³⁴⁶ I. Van Bael & J.F Bellis, “*EU Anti-Dumping and other Trade Defence Instruments*”, Chapter 3 - Substantive elements: Dumping, Kluwer Law International, Brussels, Belgium, (2011), pp.37.

³⁴⁷ EXW, standing for Ex Works, is one of the 11 Incoterms 2020 where the buyer of a product pays for the goods at the moment when they are delivered to an arranged location (at the seller’s premises), thus, placing minimum responsibility to the seller.

³⁴⁸ EU Commission, “*How to make an anti-dumping complaint - A Guide*”, pp.13.

Figure 1. Normal value = Domestic sales price

Example:

The complainants obtained evidence of a retail price of the product in the domestic market of the exporting country (139.15 Units of the currency of the exporting country). From this retail price, an estimate of the net ex-factory price is obtained by deducting the relevant items, which may be, for example, as follows: VAT (10%), retailer's margin (10%), wholesaler's margin and transport and insurance (15%).

Product concerned, type

Retail price	<i>Currency Exporting Country</i>	139.15
minus Value Added Tax = 10%. (Calculation: 139.15/1.10)		
⇒Net sales price		126.5
minus Retailer's margin = 10%. (Calculation: 126.5/1.10)		
⇒Wholesale price		115
minus Wholesaler's margin and transport and insurance = 15% (Calculation: 115/1.15)		
⇒Ex-factory price		100
<i>Exchange rate: 2 Currency Units of Exporting Country = 1 EURO</i>		
Normal value		<u>EURO 50</u>

Retail price obtained from _____ shown in annex ____.

Margins, transport and insurance costs were obtained from the market survey by _____ (or were estimated based on ...). See annex ____ for a copy of the relevant pages.

Exchange rate is _____. See annex ____ for details.

Table 2.1: Calculation of normal value using domestic sales prices methodology

Source: EU Commission, "How to make an anti-dumping complaint – A Guide", pp.15.

If domestic sales by other producers are not representative or, because of particular market situations, those sales do not permit a proper price comparison, the EU will compute normal value in accordance with Article 2, paragraph 3, through the fourth methodology, namely the constructed normal value. This one is determined by adding the production costs in the country of origin, including costs of materials, direct labour costs and manufacturing overheads, with the selling, general and administrative expenses (SGA)³⁴⁹ and reasonable profits, with the exclusion of transport costs³⁵⁰.

The determination and the allocation of costs depend primarily on the records held by the parties under investigation, as long as they are in accordance with the general

³⁴⁹ Ibidem, Article 2, paragraph 6.

³⁵⁰ EU Commission, "How to make an anti-dumping complaint - A Guide", pp.14.

principles of accounting of the concerned country and that it is proven that the records reflect the costs associated to production and sale of the product in question³⁵¹.

If this is not corresponding, thanks to a further provision introduced in 2002 (right after having granted the market economy status to the Russia Federation for adjusting the cost of energy), the costs shall be adjusted or modified on the bases of costs of other producers, exporters in the same country or from other representative markets³⁵².

For the cost allocation and the start-up operations, Article 2, paragraph 5³⁵³, provides all relevant information, partly taken from the WTO Anti-Dumping Agreement³⁵⁴, giving first consideration to the cost allocations “*historically utilised*” by the business concerned and, in the absence of that, consideration shall be given to the allocations of costs “*on the basis of turnover*”, this last one the most preferred method by the European institutions³⁵⁵.

³⁵¹ Article 2, paragraph 5, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

³⁵² Ibidem.

³⁵³ Ibidem.

³⁵⁴ Article 2.2.1.1, WTO Anti-Dumping Agreement (ADA), (1994).

³⁵⁵ I. Van Bael & J.F Bellis, “*EU Anti-Dumping and other Trade Defence Instruments*”, Chapter 3 - Substantive elements: Dumping, Kluwer Law International, Brussels, Belgium, (2011), pp.63.

Figure 2. Constructed normal value

Constructed normal value in *Exporting Country*

Product concerned, type

Manufacturing costs		
Raw materials	EURO/tonne	395
- raw material A (300 EURO/tonne)		
- raw material B (25 EURO/tonne)		
- raw material C (70 EURO/tonne)		
Labour	EURO/tonne	50
- Skilled labour (30 EURO/tonne)		
- Unskilled labour (20 EURO/tonne)		
Energy 200 Kwh, EURO 0.05/Kwh		10
Other manufacturing costs	EURO/tonne	45
<i>(If possible, please specify: rent, lease, depreciation, maintenance and repair, etc.)</i>		
Subtotal Manufacturing Costs	EURO/tonne	500
Selling, General, Administrative Expenses	EURO/tonne	100
<i>(If possible, please specify: financing, insurance, packaging, administration, selling, advertising, research and development, patents/royalties, technical assistance, warranties, etc.)</i>		
TOTAL COST	EURO/tonne	600
Normal Profit	5%	30
NORMAL VALUE ex-factory	EURO/tonne	630

Import quantities, raw material and energy costs obtained from the international report on the industry by __ shown in annex __.

Manpower costs are based on International Labour Organization Statistics (see annex __).

Other manufacturing costs and SGA costs have been obtained from the market survey by __ or is an estimate based on _____. See annex __ for a copy of the relevant pages.

Normal profit is the minimum amount necessary to account for reinvestment in the industry. See annex __ for details.

Exchange rate used: ____ (average for year ____). See annex __ for details.

Table 2.2: An example of constructed normal value

Source: EU Commission, "How to make an anti-dumping complaint – A Guide", pp.15.

Another important clarification that needs to be made relates to the fact that “*non-market economy countries*” (including Albania, Armenia, Azerbaijan, Belarus, China, Georgia, Kazakhstan, North Korea, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Turkmenistan, Uzbekistan, Vietnam³⁵⁶) are treated separately with another calculation methodology and thus not with the methods discussed previously.

Indeed, their normal value shall be calculated on the basis of the prices or costs in another “*analogue*” market economy third country, or, the price from that country to another

³⁵⁶ H. Smith, “*A legal guide to EU Anti-Dumping*”, Second Edition, (2016), pp.4.

country (like Australia), or when these are not possible, the normal value shall be determined “on any other reasonable basis, including the price paid or payable in the Union for the like product”³⁵⁷.

The World Trade Organization does not precisely define what a non-market economy is, nevertheless Article VI of the GATT refers to it as “a country which has complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State”³⁵⁸.

European law allows exporters from any WTO’s non-market economy country, to demand for the “market economy treatment” or “MET”³⁵⁹.

If such status is recognized, their normal value shall not be determined compliant with the rules discussed above, instead it shall be calculated on their own domestic prices and not on those of third countries³⁶⁰.

Market economy treatment shall be granted if:

1. “Decisions of firms regarding prices, costs and inputs, including for instance raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand, and without significant State interference in that regard, and costs of major inputs substantially reflect market values,
2. firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes,
3. the production costs and financial situation of firms are not subject to significant distortions carried over from the former non-market-economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts,

³⁵⁷ Article 2, paragraph 7(a), Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

³⁵⁸ Article VI, paragraph 1, Anti-dumping and Countervailing Duties, GATT, (1994), https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art6_jur.pdf

³⁵⁹ H. Smith, “A legal guide to EU Anti-Dumping”, Second Edition, (2016), pp.4.

³⁶⁰ H. Smith, “A legal guide to EU Anti-Dumping”, Second Edition, (2016), pp.4.

4. *the firms concerned are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of firms,*
5. *exchange rate conversions are carried out at the market rate*³⁶¹.

Within seven months from the start of the investigation the country in question shall be granted with this particular status.

Countries with a MET status usually have a lower dumping margin than those who see themselves granted with a non-market economy status. Indeed, a market economy is considered a society where *“most resources are owned and controlled by individuals and are allocated through voluntary market transactions governed by the interaction of supply and demand”*³⁶² and where *“government involvement in regulating market transactions is limited”* to ensure that *“the rules of the market are enforced and applied fairly to all participants”*³⁶³.

Therefore, being a MET can entail significant competitive advantages for domestic firms in terms of more competition, efficiency, innovation, larger variety of goods and services available and increased freedom of choice for individuals³⁶⁴.

Going back to the topic of dumping, the second dumping determinant is the *“export price”*, regulated under Article 2, paragraph 8, of Regulation 2016/1036, and consisting of *“the price paid or payable for the product when sold for export from the exporting country to the Union”*³⁶⁵.

³⁶¹ Article 2, paragraph 7(c), Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

³⁶² Study.com, S. Grimsley, *“What is a Market Economy? – Definition, Advantages, Disadvantages & Examples”*, (2022), (Access 01/06/2022), <https://study.com/academy/lesson/what-is-a-market-economy-definition-advantages-disadvantages-examples.html>

³⁶³ Ibidem.

³⁶⁴ Ibidem.

³⁶⁵ Article 2, paragraph 8, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

Article 2, paragraphs 8³⁶⁶ and 9³⁶⁷, provide two methods for the calculation of the export price, either by using the actual export price or the constructed export price.

The export sales are examined by the Commission during the investigation period and whenever the transactions volume is too large, the basic AD regulation allows the EU to resort to sampling techniques and/or to limit the investigation to the most representative volume of transactions for export³⁶⁸.

By using the classic method of the actual export price, and so by using the price that the exporter use to charge the independent customer in the importing country, the EU computes the export price on an annual basis or on a quarterly basis, in certain peculiar cases³⁶⁹.

These exceptions to the actual sales methodology regard cases in which sales from the exporter are sold to an unrelated intermediary outside the EU (where the export price is computed on the basis of the price charged by the export to the intermediary), and sales to the EU made on the basis of an Original Equipment Manufacturer ³⁷⁰ (OEM) basis (where the export price is computed on the basis of the price paid by the OEM customer)³⁷¹.

In cases of non-export prices or when the export price appears unreliable due to association or compensatory arrangements between the parties (like a parent/subsidiary type of agreement), the export price shall be constructed “*on the basis of the price at which the products are first resold to an independent buyer*”³⁷² or on “*any reasonable basis*”, which shall be used in situations “*where the products are not resold to an independent buyer or where they were not resold in the same condition as they were imported*”³⁷³.

³⁶⁶ Ibidem.

³⁶⁷ Ibidem, Article 2, paragraph 9.

³⁶⁸ Article 17, paragraph 1, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

³⁶⁹ I. Van Bael & J.F Bellis, “*EU Anti-Dumping and other Trade Defence Instruments*”, Chapter 3 - Substantive elements: Dumping, Kluwer Law International, Brussels, Belgium, (2011), pp.90.

³⁷⁰ The Original Equipment Manufacturer (OEM) is a direct client that buys products from a company and resell them to its customers putting the merchandise under its own branding name.

³⁷¹ Ibidem, pp.91.

³⁷² Ibidem.

³⁷³ I. Van Bael & J.F Bellis, “*EU Anti-Dumping and other Trade Defence Instruments*”, Chapter 3 - Substantive elements: Dumping, Kluwer Law International, Brussels, Belgium, (2011), pp.94.

Figure 4. Constructed export price

The complainant has obtained evidence of a price paid by a retailer to a wholesaler/importer, which is related to an exporter (134.5 EURO). From this price, an estimate of the net ex-factory export price must be obtained by deducting the relevant items, which may be, for example, as follows: VAT (10%), wholesaler's SGA costs and profit margin (10%), transport and insurance in the EU (2%), customs duty (5%), transport and insurance from the EU border to the exporter's factory (4%)

<i>Product concerned, brand, type</i>	<u>EURO</u>
Gross wholesale price	134.5
minus Value Added Tax = 10%. (Calculation: 134.5/1.10) ⇒ Net wholesale price	122.3
minus Wholesaler's SGA (5%) and profit from unrelated importer (5%) = 10%; and Transport and insurance in the EU = 2%. (Calculation: 122.3/1.12) ⇒ Price to wholesaler, customs cleared	109.2
minus Customs duty = 5%. (Calculation: 109.2/1.05) ⇒ CIF ²² export price	104
minus Insurance, freight to factory = 4%. (Calculation: /1.04) ⇒ Ex-works export price	100
Retail price obtained from average of invoices (or from catalogue, price list, market survey etc.) Shown in annex ___ or import price from Eurostat figures ²³ (see annex ___). All margins, as well as insurance and freight, were obtained from the market survey by _____ or were estimated based on ____ See annex ___ for a copy of the relevant pages.	

Table 2.3: An example of calculation of export price on the basis of construction methodology

Source: EU Commission, "How to make an anti-dumping complaint – A Guide", pp.20.

Whatever methodology is used, the export price must be in the form of the ex-factory price (EXW) destined for export and, when this is not available, it must be converted by deducting SGA costs and profit margins, the VAT, transport, insurance, handling, loading and ancillary costs as well as customs duties³⁷⁴.

To show evidence of the export price, invoices, price lists of price offers or importation statistics related to the same period for the calculation of the normal value, shall be presented to the Commission.

Any adjustment to the costs shall be made with the purpose of creating a reliable export price at the Union frontier level, and must be supported by sufficient documentation³⁷⁵.

³⁷⁴ EU Commission, "How to Make an Anti-Dumping Complaint", (2018), pp.19.

³⁷⁵ Ibidem.

2.3.2. FAIR COMPARISON OF EXPORT PRICE AND NORMAL VALUE

Once normal value and export prices are determined, the following step for the determination of dumping is the fair comparison of the two, which “*shall be made at the same level of trade*” (such as wholesale or retail) “*and in respect of the sales made*”, at the same time³⁷⁶ and at the same level of trade, according to Article 2 of the basic AD regulation³⁷⁷.

The European authorities investigate and determine on whether the export price is less than the normal value to see if dumping has formally occurred and it is up to them to make fair price comparisons and not upon exporters.

The general and specific provisions are contained in Article 2, paragraph 10, of the basic anti-dumping regulation³⁷⁸, implementing the obligations set under Article 2.4 of the WTO Anti-Dumping Agreement³⁷⁹.

As determined under the ADA, the comparison shall be made at the ex-factory (EXW) level, excluding all indirect taxes on insurance and transport, or, alternatively, in situations outside the normality, the comparison might be done at the level of distributors³⁸⁰.

The European institutions start the comparison of the two prices at the outset of the proceedings, during the investigation period.

The basic conditions for price comparison, laid down by the general rule, include: the same time and the same level of trade for price comparison, a list of acceptable adjustments, avoidance of adjustment duplications (specifically in relation to discounts, rebates, quantities, level of trade³⁸¹) and a burden of proof to show that the adjustments affect prices and price comparability.

³⁷⁶ Article 2, paragraph 10, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

³⁷⁷ Article 2.4, WTO Anti-Dumping Agreement (ADA), (1994).

³⁷⁸ Ibidem.

³⁷⁹ WTO, Article 2.4, Anti-Dumping Agreement (ADA), (1994).

³⁸⁰ WTO, paragraph 7.716, Panel Report EC-Salmon (Norway).

³⁸¹ Article 2, paragraph 10, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

Permissible adjustments can be made, before comparison, on normal value, for differences in physical and chemical characteristics, import charges and indirect taxes.

In addition, adjustments on both the normal value and the export prices shall be accounted and computed for differences in discounts, rebates and quantities, transport, insurance, handling, loading and ancillary costs, packing, credit, after-sales costs, commissions, currency conversions levels of trade, and any other factors (like seasonal prices, sponsor fees, advertising costs, international sanctions, etc.) capable of affecting price comparability³⁸².

It is compulsory for the complainants to provide all the details regarding the differences together with supporting documentation for evidence and an estimation of the allowances to be made³⁸³.

2.3.3. CALCULATION OF DUMPING MARGIN

Once the normal value and the export prices are adjusted and compared, the fourth and last step for the determination of dumping is the calculation of the “*dumping margin*”, which consists of “*the amount by which the normal value exceeds the export price*”³⁸⁴ and it is disciplined under Article 2, paragraph 12, of the basic European anti-dumping regulation.

Generally, the EU calculates the dumping margin using a formula which divides the difference between the normal value and the export price (both at the net ex-factory levels), with the CIF export price and then it transforms the amounts in percentage terms, as follows:

$$\frac{\text{Normal value less export price}}{\text{CIF export price (duty unpaid) EU frontier}} \times 100 = \text{Dumping margin (\%)}$$

Figure 2.4: Basic formula for the calculation of the dumping margin

³⁸² Ibidem.

³⁸³ EU Commission, “*How to make an anti-dumping complaint - A Guide*”, pp.20.

³⁸⁴ Article 2, paragraph 12, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

The dumping margin shall be calculated taking normal value and export price over a specific period of time, which usually consists in a period from one semester to one year and ends before the date of the initiation of the investigations³⁸⁵.

a. Ex-factory normal value		100
b. Ex-factory export price		(80)
c. Dumping margin	$a-b$	20
d. CIF value		90
e. Dumping margin as % of CIF value	$\frac{c}{d} * 100$	$\frac{20}{90} = 22\%$

Table 2.5: An example of a calculation of a dumping margin

Source: EU Commission, "How to make an anti-dumping complaint – A Guide", pp.21.

However, there are three different calculation methodologies for dumping margin, based on a comparison of:

1. "the weighted average of normal value with the weighted average of prices of all export transactions to the Union"³⁸⁶ (first symmetrical method) or
2. the individual normal values with the individual export prices to the Union on a transaction-to-transaction basis"³⁸⁷ (second symmetrical method) or
3. the weighted average normal value "with prices of all the individual exports to the Union"³⁸⁸ (asymmetrical method).

The general principle states that the dumping margin shall be calculated using either the first or the second typology, however, the EU would generally use more the first

³⁸⁵ H. Smith, "A legal guide to EU Anti-Dumping", Second Edition, (2016), pp.5.

³⁸⁶ Article 2, paragraph 11, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

³⁸⁷ Ibidem.

³⁸⁸ Ibidem.

methodology of calculation, where the weighted average of normal value is compared with the weighted average of all export transactions to the EU, during the same period of time.

Indeed, the second methodology is rarely used by the Union, because it means determining a normal value for each individual export transaction and thus it is far more difficult to apply.

Instead, the third dumping calculation methodology reflects the exception provided by Article 2.4.2 of the WTO Anti-Dumping Agreement which allows, under specific conditions, for the use of a comparison price between the weighted average normal value and the prices of all individual exports to the Union³⁸⁹.

According to the 2016/1036 Regulation, the third asymmetrical method is used only for situations in which the symmetrical methods do not reflect the full dumping margin and when there is a pattern of export prices which differs “*among different purchasers, regions or time periods*”³⁹⁰.

In other meanings, it is not sufficient to show differences in export prices among customers, regions, or time periods, but it’s above all about the demonstration of a *clear pattern*.

The European Commission showed that through this asymmetrical method the dumping margin results to be higher than when using the symmetrical methods because, as shown in the EC-Bed Linen case³⁹¹, the asymmetrical methodology is capable of “*zeroing*”³⁹² all the negative amounts of dumping, and that the resort to the asymmetrical method has to be done only “*if the pattern of export prices differs significantly among the*

³⁸⁹ Article 2.4.2, WTO Anti-Dumping Agreement, (ADA), (1994).

³⁹⁰ Article 2, paragraph 11, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

³⁹¹ WTO, European Communities-Anti-Dumping duties on imports of cotton-type bed Linen from India, WT/DS141/19, (2003).

³⁹² “*Zeroing*” is a practice through which an investigating authority does numerous price comparisons between normal values and export prices of a dumped product in question and then makes an aggregation with all the results for the calculation of the dumping margin of the same product. This practice doesn’t take into consideration the negative results when the export prices exceed the normal values, pumping the overall value of the dumping margin.

different purchasers” and if “*the symmetrical methods do not reflect the full degree of dumping*”, as stated by the European Court of Justice in the Petrotub case³⁹³.

The calculation of the dumping margin can be made either for each individual company or more generally, for a group of companies, whenever exporting producers are not granted with market economy treatment or individual treatment³⁹⁴.

Concerning the relations between the dumping margin and the application of the anti-dumping duty, it's important to highlight that both the EU and the WTO rules state that the level of the AD duty shall never be higher than the dumping margin itself but always lower if a lower duty is deemed sufficient to eliminate the injury caused to the domestic industry under the so called “*lesser duty rule*” (*LDR*).

2.4. REQUIREMENTS FOR ANTI-DUMPING MEASURES

As previously stated, the four prerequisites for the adoption of an anti-dumping duty are: the happening of dumping on an importing product to the Union, the creation of an “*injury*” to the Union industry, a causal relationship between the dumped imports and the injury and the condition for the measures of not being against the Union interest test.

In this paragraph we are going to analyze the second and third conditions, namely the “*injury*” and the causality, which are essential before applying an anti-dumping duty to a product imported in the European Union.

Regulation 2016/1036 contains all relative rules for the determination of both injury and causal link, taken up from the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade.

³⁹³ European Court of Justice (ECJ), Petrotub SA and Republica SA v. Council and Commission, (2003), paragraph 49, Case C-76/00 P.

³⁹⁴ I. Van Bael & J.F Bellis, “*EU Anti-Dumping and other Trade Defence Instruments*”, Chapter 3 - Substantive elements: Dumping, Kluwer Law International, Brussels, Belgium, (2011), pp.139.

2.4.1. DETERMINATION OF MATERIAL INJURY AND CAUSALITY

Pursuant to Article 3, paragraph 1, of the basic anti-dumping regulation, the term “injury” refers to “*material injury to the Union industry, threat of material injury to the Union industry or material retardation of the establishment of such an industry*”³⁹⁵.

The majority of the investigations have brought to the light more cases of material injury and threat of material injury, instead material retardation has characterized only a few of cases³⁹⁶.

The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade specifies that all these determinations “*shall be based on facts and not merely on allegation, conjecture or remote possibility*”³⁹⁷ and “*on positive evidence*”³⁹⁸ involving an examination of:

1. the volume of the dumped imports and their effects on the prices of the like products in the country concerned;
2. their impacts on the domestic producers³⁹⁹.

To initiate an anti-dumping investigation proceeding, the European Commission shall be in possession of certain documents to prove positive evidence of the existence of injury which shall include: an examination of the volume of the product being dumped, its effects on the prices of the “*like product*” within the EU, and the impact of such dumped imports on the Union industry⁴⁰⁰.

Concerning the volume of the dumped products imported in the EU, it’s important to take into consideration “*whether there has been an important increase in dumped imports,*

³⁹⁵ Article 3, paragraph 1, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

³⁹⁶ H. Smith, “*A legal guide to EU Anti-Dumping*”, Second Edition, (2016), pp.6.

³⁹⁷ The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, Part I: Article 3 Determination of Injury, 3.7, (1994).

³⁹⁸ Ibidem.

³⁹⁹ Ibidem, 3.1.

⁴⁰⁰ Article 3, paragraph 1, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

either in absolute terms or relative to production or consumption in the Union”⁴⁰¹. Whereas, concerning the effect of the dumped imports on prices, it’s important to consider “*whether there has been significant price undercutting by the dumped imports as compared with the price of a like product of the Union industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases*”⁴⁰².

To better examine the consequences of the dumped imports on the Union industry, the European Union provides with a list of injury indicators for assessing the existence of injury and for evaluating the economic factors of the industry, like the fact of being in the process of recovering from past dumped imports.

All injury indicators are listed in Article 3, paragraph 5, and they include: “*the magnitude of the actual margin of dumping, actual and potential decline in sales, profits, output, market share, productivity, return on investments and utilization of capacity, factors affecting Union prices*”⁴⁰³, but also “*actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments*”⁴⁰⁴.

However, the list is not exhaustive, and it is not essential for the indicators to show negative trends to prove injury; indeed, it is necessary to outweigh the negative trends with the positive ones, to apply the AD measures⁴⁰⁵.

When seeking to determine an injury presence in the Union industry, the European authorities will demonstrate that the volume of dumped imports and/or their effects on price levels are responsible for an impact on the Union industry, classifiable as material. The EU ascertains the existence of a coincidence between the dumped imports and a deteriorating situation of the industry, to understand what the causation is.

For the material injury determination, the EU analyzes volumes and prices of the dumped imports over time, generally for four years, and investigates the economic situation

⁴⁰¹ Ibidem, paragraph 3.

⁴⁰² Ibidem, paragraph 3.

⁴⁰³ Ibidem, paragraph 5.

⁴⁰⁴ Ibidem, paragraph 5.

⁴⁰⁵ K. T. Giannakopoulos, “*A Concise Guide to the EU Anti-Dumping/Anti-Subsidies Procedure*”, Kluwer Law International, The Netherlands, (2006), pp.54.

in which the Union industry operates by studying the factors mentioned under Article 3, paragraph 5⁴⁰⁶.

Nevertheless, there are other additional factors causing or threatening to cause injury, including: price and volume imports not dumped, demand contractions or changes in the consumption modes, restrictions to trade between the EU and third countries, technological developments, export, and productivity performances of the Union industry⁴⁰⁷.

On the other hand, for the determination of a threat of material injury, the European authorities shall take into account one of the following factors:

1. *“whether there is a significant rate of increase of dumped imports into the EU market indicating the likelihood of substantially increased importation;*

2. *whether there is a sufficiently freely disposable, or an imminent, substantial increase in capacity of the exporting producers indicating the likelihood of substantially increased dumped exports to the EU market;*

3. *whether imports are entering at prices that will have a significant depressing or suppressing effect on Union industry prices and would likely increase demand for further imports;*

4. *whether inventories of the product under investigation suggest that imports might increase in the future”⁴⁰⁸.*

It’s important to note that no one of the listed factors, taken singularly, can give decisive guidance, but *“the totality of the factors considered shall be such as to lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury will occur”⁴⁰⁹.*

⁴⁰⁶ Article 3, paragraph 5, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁴⁰⁷ Article 3, paragraph 7, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁴⁰⁸ H. Smith, *“A legal guide to EU Anti-Dumping”*, Second Edition, (2016), pp.7.

⁴⁰⁹ Article 3, paragraph 9, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

All the relevant factors behind the causation of injury or of threat of injury shall be related only to the specific suffering geographical area, the product, or the groups of products in question, the tariff heading or the CN codes of the product, and all other relevant information. Moreover, the period to consider the injury shall normally be of twelve months, for the calculations on price undercutting and underselling, and four years for drawing statistical trends on the injury factors⁴¹⁰.

For the injury assessment, normally European authorities develop an injury margin for each exporter of the concerned product, making use of a formula which is created specifically for comparing a Union producer's selling price with those prices applied to the dumped imports in the EU⁴¹¹. The "*injury margin*", is expressed on the basis of a percentage of the CIF⁴¹² EU's frontier price. Before the comparison, many adjustments can be made, concerning differences in physical characteristics or levels of trade, as it happens with normal value and export price⁴¹³.

The calculation of the injury margin is considered important for the calculation of the anti-dumping duty to be applied on the product, even if in general they correspond to the dumping margin. Nevertheless, whenever the injury margin is lower than the dumped margin, the EU will decide the level of the AD duty at the level of the injury margin itself⁴¹⁴.

The last form of injury described under Article 3, paragraph 1⁴¹⁵, consists in the material retardation of the establishment of a Union industry and it refers to those dumped imports to the EU that have discouraged the interested European enterprises from producing the product concerned, causing material retardation in their development, as European producers.

⁴¹⁰ EU Commission, "*How to make an anti-dumping complaint - A Guide*", pp.26.

⁴¹¹ H. Smith, "*A legal guide to EU Anti-Dumping*", Second Edition, (2016), pp.7.

⁴¹² The Cost, Insurance and Freight (CIF) is one of the eleven Incoterms 2020, and it indicates the price of a merchandise delivered to the port of destination of the importing country, where the seller pays for the carriage and the insurance policy, bearing the cost of loss or damage of the product until the freight loads onto the vessel and the buyer is responsible.

⁴¹³ H. Smith, "*A legal guide to EU Anti-Dumping*", Second Edition, (2016), pp.7.

⁴¹⁴ H. Smith, "*A legal guide to EU Anti-Dumping*", Second Edition, (2016), pp.7.

⁴¹⁵ Article 3, paragraph 1, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

The basic European anti-dumping regulation does not provide a concise clarification for a proper finding of material retardation because the topic has been rarely referred in the past; indeed, it does not contain specific provisions. However, whenever complaints relate to such situations, supporting documents and allegations shall be handed over to the Commission. Normally, such allegations integrate those related to the injury⁴¹⁶.

Apart from the evidence of dumping and injury, it's necessary to demonstrate that the imports in question have a causal link with the injury⁴¹⁷, providing that the latter is caused by the dumped imports of the concerned product and no other factors.

Causality can be shown when a situation of increasing importation from non-EU countries at decreasing prices coincides with a complaint denouncing a deterioration of sales and production activities of the Union industry.

This does not implicate that the dumped imports must be the only reason behind the causation of an injury, indeed there can be considered also other factors, including volumes and prices of non-dumped products from other countries, strong competition from producers in the Union, contractions in consumption or demand, restrictive trade patterns, low productivity of the Union industry, technology developments, and so on⁴¹⁸.

2.4.2. DEFINITION OF UNION INDUSTRY

The injury originated by the imports hit by dumping shall be caused to the Union industry, ruled under Article 4 of the basic anti-dumping regulation⁴¹⁹.

⁴¹⁶ K. T. Giannakopoulos, *"A Concise Guide to the EU Anti-Dumping/Anti-Subsidies Procedure"*, Kluwer Law International, The Netherlands, (2006), pp.63.

⁴¹⁷ Article 5, paragraph 2, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁴¹⁸ EU Commission, *"How to make an anti-dumping complaint - A Guide"*, pp.34.

⁴¹⁹ Article 4, paragraph 1, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

The Union industry, also referred to as “*Community industry*”, pertains to “*the Union producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total Union production of those products*”⁴²⁰.

The European Union brought diverse legal proceedings before the GATT against the United States for the extension of the definition of “*producers*”, with the purpose of including, for example, suppliers of intermediate products.

To this date, in order to be recognized under the term “*Union industry*”, a producer in the EU doesn’t have to maintain all its production and manufacturing activities within the Union, but it has to show that the majority of its total production lies within the EU and that it is committed to act as a Union producer. However, it’s necessary for a producer to set the product’s origin in the EU, even if outward processing of EU’s products might be acceptable.

All those manufacturers ceasing their activities to other locations, during or after the initiation of the investigation proceedings, won’t be considered as part of the Union industry.

Therefore, the prerequisite of the “*major proportion*”, cited in the definition of the Union industry in the AD regulation, refers to the level of necessary support for the start of a complaint, which must be filed by those European producers whose collective output represents (according to Article 5, paragraph 4, of the basic AD regulation), more than 50% of the total production of the like product produced⁴²¹.

However, when the representation is less than 25% of the total production, the complaint shall not be taken into consideration. This link is not cited in the WTO regulations; however, its consistency has not yet been tested by the authorities⁴²².

Those who are treated as exceptions are the importers of the dumped products or those producers related to the exporters and/or the importers⁴²³.

⁴²⁰ Ibidem.

⁴²¹ Ibidem, Article 5, paragraph 4.

⁴²² McGovern, “*European Community anti-dumping and trade defence law and practice*”, Injury - Industry, (2008), pp.431.

⁴²³ Article 4, paragraph 1(a), Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

Exceptional cases are also those producers operating in two different markets of the Union and who are considered as separate industries if: “*the producers within such a market sell all or almost all of their production of the product in question in the market; and the demand in that market is not to any substantial degree met by producers of the product in question located elsewhere in the Union*”⁴²⁴.

2.4.3. THE UNION INTEREST TEST

Since 1995, the Union interest test, once called Community interest test, has constituted one of the major prerequisites for the imposition of anti-dumping/anti-subsidy duties.

Introduced as a public interest clause, the Union interest test created a lot of debate and raised opposition among the “*more protectionist*” member states, like France, Italy, Spain, Portugal, and Greece, while the “*more market free oriented*” like Denmark, UK and the Netherlands insisted for its integration in the European AD legislation⁴²⁵.

The Union interest is regulated under Article 21 of the basic anti-dumping regulation, and it is one of the two higher standards (together with the lesser duty rule), introduced by the European law and improving the WTO Anti-Dumping Agreement, ensuring higher proportionality on the application of measures. Thus, it is an obligation only under the European law and not under the WTO’s regulation.

The Union Interest test is one of the fourth formal conditions to check upon before initiating an anti-dumping investigation and it is used by the European authorities to determine if the future measure will be against the interest of the EU as a whole⁴²⁶, taking

⁴²⁴ Ibidem, Article 4, paragraph 1(b).

⁴²⁵ S. L. Jiwon, Europa-Kolleg Hamburg Institute for European Integration, “*A Critical Analysis of Antidumping Policy at the Multilateral and Regional Levels: The Potential Influence of Europe’s Trade Power for Possible Reform*”, Study Paper No 3/13, pp.26.

⁴²⁶ Ibidem, Article 21, paragraph 1.

into consideration the economic interests of the “*Community industry, user industries, importers, retailers and consumers*”⁴²⁷.

It represents the overall interest of the European Union and, it provides the authorities with compelling reasons for the rejection of an anti-dumping measure, even if all other requirements have been met⁴²⁸.

In an interpretative note of the European Commission to the members of the Advisory Committee, it was stated that: “*The main purpose of the Community interest test is to decide whether there are particular reasons not to impose measures in a given proceeding, despite a finding that the dumped or subsidised imports caused material injury to the Community industry. [...] When measures are not likely to bring any benefits to the Community industry, any increase in costs for users, importers, or consumers – even a very tiny one – would be disproportionate. However, when measures are likely to improve the situation of the Community industry, a certain increase in costs for other parties will generally be considered to be tolerable*”⁴²⁹.

Moreover, the note explained that, under the scope of the Union interest clause, “*the focus is only on the economic effects on the interested parties*”⁴³⁰ and all other relevant topics related to “*foreign policy, environment policy, labor standards, regional policy, macro-economic effects of measures*”⁴³¹ shall be left out because they could create conflict with “*the precision and technical nature of the investigation and the instrument*”⁴³².

Over the past years, several investigations have been terminated because of finding that the imposition of anti-dumping duties would have been against the Union interest, either

⁴²⁷ Davis, “*Anti-dumping Investigation in the EU: How Does it Work?*”, (2009), p.5.

⁴²⁸ L. Davis, “*Anti-dumping investigation in the EU: how does it work?*”, Section two: the Community interest test, European Centre for International Political Economy (ECIPE) Working Paper no. 04/2009, (2009), pp.5.

⁴²⁹ EU Commission, “*The Community interest test in anti-dumping and anti-subsidy proceedings*”, (2006) Trade.B.1/AS D(2005)D/568), <https://file.wikileaks.org/file/ec-dumping-community-interest-2006.pdf>

⁴³⁰ Ibidem.

⁴³¹ Ibidem.

⁴³² Ibidem.

by excessively increasing prices for European consumers or by causing shortages of supply⁴³³.

2.5. EUROPEAN SMEs AND TRADE DEFENSE

European enterprises qualify as micro enterprises, small and medium-sized enterprises (SMEs) and large enterprises, depending on whether they fulfill the criteria on staff headcount and either turnover or balance sheet ceiling⁴³⁴.

Small and medium-sized enterprises represent the backbone of the European Union's economy⁴³⁵, deeply interlaced into its fabric. Accounting for roughly 99% of all businesses (twenty-five million in the EU) and for more than half of the EU's GDP, they are responsible of spreading economic growth, competitiveness and prosperity, innovation, employment, industrial ecosystems, social cohesion, and economic integration, adding values and principles in every sector of the EU.

Small and medium enterprises qualify in the recommendation of the European Commission of the 6th of May 2003⁴³⁶, containing all the relevant definitions, characteristics, and provisions for determining the classification of enterprises.

Under Article 2, paragraph 1, of the basic anti-dumping regulation, the category of SMEs is composed of enterprises employing fewer than two hundred and fifty persons (and more than ten) and sharing an annual turnover lower than fifty million euro, and/or a balance sheet total of maximum forty-three million euro⁴³⁷.

⁴³³ H. Smith, *"A legal guide to EU Anti-Dumping"*, Second Edition, (2016), pp.8.

⁴³⁴ EU Commission, *"SME definition"*, (Access 145/04/2022), https://ec.europa.eu/growth/smes/sme-definition_it

⁴³⁵ EU Commission, *"Entrepreneurship and small and medium-sized enterprises (SMEs)"*, (Access 15/04/2022), https://ec.europa.eu/growth/smes_it

⁴³⁶ Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (Text with EEA relevance) (notified under document number C(2003) 1422), (2003).

⁴³⁷ Article 2, paragraph 1, Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (Text with EEA relevance) (notified under document number C(2003) 1422), (2003).

Moreover, within the SME category, a small enterprise is made of a maximum of fifty employees, with an annual turnover and/or balance sheet total not exceeding ten million euro, whereas a microenterprise has no more than ten employees, an annual turnover and/or a balance sheet total of maximum two million euro⁴³⁸.

However, SMEs are often hit by market imperfections, facing difficulties in obtaining venture capital funds or credit, especially in the early phase of creation, because of incapacity of giving guarantees to traditional lenders, reducing access to technology or innovation.

With the new strategy called “*SMEs Strategy for a sustainable and digital Europe*”, the European Commission aims at supporting and empowering enterprises in all sectors, giving jobs to two out of three people within the EU.

The European Union is finalizing a project of sustainability in three areas: the sustainable and digital transitions area; the Single Market area, helping them improving their access to all the markets, reducing trade barriers and facilitating access to finance their ecological and green transitional investments; and in the finance area, creating a SME Initial Public Offering Fund (IPO) under the control of the InvestEU Program⁴³⁹ which stimulates gender-smart finance towards more female integration projects⁴⁴⁰.

Generally, small and medium-sized enterprises have greater turnovers in the trade and distribution sectors rather than in the manufacturing one.

To engage in international trade, SMEs need to have a fair and transparent access to market economy conditions and to information, knowledge and means to defend themselves from unfair trading practices such as, for example, dumping.

⁴³⁸ Article 2, paragraphs 2-3, Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (Text with EEA relevance) (notified under document number C(2003) 1422), (2003).

⁴³⁹ The InvestEU Program is the new program of the EU budget (2021-2027), which provides funding and economic supports to investment access for small and medium-sized enterprises operating valuable projects in line with European policies, and favors the investments on research, innovation and sustainability.

⁴⁴⁰ EU Commission, Factsheet, “*Unleashing the full potential of European SMEs*”, (Access 15/04/2022), (2020).

For this reason, the European Commission through its specialized Directorate-General for Trade (DG TRADE) has taken various steps towards a better inclusion and improvement of SMEs in the area of trade defense.

The Commission has set a dedicated website, namely the “*SME Trade Defence Helpdesk*”, containing documents, standard forms, and questionnaires, in all official languages of the EU, to facilitate them with taking part into the anti-dumping/anti-subsidy or safeguard investigations and help them gaining a better understanding of the TDIs legal proceedings⁴⁴¹.

Moreover, the Commission organizes, in coordination with Member States and the representative organizations, seminars and conferences specifically tailored for SMEs with the purpose of increasing their awareness and explaining all necessary requirements before the initiation of an AD investigation, depending on whether they are producers, importers or users of the dumped products. The European institutions, together with MS encourage trade associations or chambers of commerce to support SMEs.

Specific adaptation to the financial calendar year of the European enterprises shall also be done, whenever possible, during and after the investigation period and they will also be pushed to set up temporary associations with other European or national associations for better organizing the limitation of costs and gathering resources.

Every year, the Hearing Officer of DG TRADE drafts and prepares an annual report with a section on small and medium-sized enterprises, offering its support and disposal at any stage of the AD investigation proceeding, especially whenever it’s found out that their rights of defense are not duly respected⁴⁴².

As previously stated, depending on whether a SME is a producer, importer, or user of the dumped product, it will be affected by different types of deteriorating effects touching employment, technological innovation, business and so on.

If an SME is a producer of a like product, it can lodge a complaint about any type of product being dumped, except for services.

⁴⁴¹ EU Commission, Publications Office of the European union, “*TDI Trade Defence Instruments, Anti-Dumping & Anti-Subsidy – A Guide for Small and Medium-Sized Businesses*”, (2018), pp.10.

⁴⁴² Ibidem, pp.11.

Right after the reception of the complaint, once the date of the Notice of Initiation of the investigation is published on the EU's Official Journal, the European Commission will send detailed questionnaires to the concerned producers, importers and users in the EU (and also to the foreign exporters), which will be asked to provide the country's name, the product under investigation, the overall organizational structure of the company (including the shareholder and the additional corporate information), and the rights and the obligations of the interested parties, within the specific deadline for replication (usually thirty working days).

Cooperation is strongly recommended, indeed whenever a party decides not to cooperate in the compilation of a questionnaire, the imposition of measures might be higher than for those parties who have instead cooperated⁴⁴³.

2.5.1. SME PRODUCERS

When European producers are hit by dumped importation of foreign products, their economic situation always deteriorates, either in terms of sales and market shares, or they are obliged to decrease their selling prices, thus causing reductions on profits and revenues.

For this reason, European producers can file a complaint to the Commission asking for an anti-dumping investigation to start.

A complaint is a written document with evidence that the dumped product, being imported into the European market economy, has been causing injury to the Union industry producing a like product.

The representative will gather all the necessary information, present it to the Commission and act on behalf of the individuals by proving a formal authorization⁴⁴⁴.

⁴⁴³ EU Commission, "*Anti-dumping measures - Investigations*", (Access 26/04/2022), https://policy.trade.ec.europa.eu/enforcement-and-protection/trade-defence/anti-dumping-measures/anti-dumping-investigations_en

⁴⁴⁴ Ibidem.

Moreover, the complainants (SMEs producers) will provide details on the production volume of the product, per individual complainant (if there is more than one), for the last and most recent financial or calendar year or any other 12-month period, if and only if, the period is not ending later than six months before the filing of the complaint.⁴⁴⁵

In addition, if the complainants are related to other businesses manufacturing the same product, relevant information shall be indicated.

The European producers taking part in the compilation of the complaint must respect the “*standing*” prerequisite, that is, the fact of representing a major proportion (25%) of the total European production of the product concerned and provide all personal and/or corporate information in a Microsoft Excel spreadsheet.

To receive help during the first step of the proceeding, enterprises can refer to the Office of Complaints of the DG TRADE of the Commission, to a lawyer with a strong experience and background knowledge in trade defense, or to national or European business associations for advice in particular situations.

For presenting the necessary documentation and information to the European authorities, the Union industry shall find a representative, acting on behalf of it, who can be a natural or legal person, an association without a legal personality or a temporary association set with the aim of representing individual firms⁴⁴⁶.

During the whole years 2019 and 2020, the Commission focused on helping small and medium-sized enterprises through the provision of special assistance and guidance during and after TDI’s investigations.

Specifically, it limited the bureaucratic requirements for the compilation of questionnaires and aligned even more the investigation timetables with the financial schedules of SMEs⁴⁴⁷.

⁴⁴⁵ Ibidem.

⁴⁴⁶ EU Commission, Publications Office of the European Union, “*TDI Trade Defence Instruments, anti-dumping & anti-subsidy – A Guide for Small and Medium-Sized Businesses*”, (2018), pp.12.

⁴⁴⁷ Report from the Commission to the European Parliament and the Council, 39th Annual Report from the Commission to the European Parliament and the Council on the EU’s Anti-Dumping, Anti-Subsidy and Safeguard activities and the Use of Trade Defence Instruments by Third Countries targeting the EU in 2020, (2020), pp.6.

In 2019, the Commission adopted definitive safeguard measures on many steel products imported in the EU with the purpose of avoiding unpredictable sharp surges of imports that would have threatened the already fragile conditions of the European producers of steel.

2.5.2. SME IMPORTERS AND USERS

Importers and users are usually the worst affected during trade defense proceedings and they also have different interests than producers.

The dedicated website named “*Access2Markets*”⁴⁴⁸ contain all necessary information regarding tariffs, rules of origin, taxes, and duties, import procedures and formalities, product requirements and trade flow statistics, related to some specific products that a SME might want for importation into the EU.

It’s important for importers and users of particular product categories such as clothing, steel or wood products coming from non-EU countries, to consult the dedicated portal “*Système Intégré de Gestion de Licenses*” (SIGL)⁴⁴⁹, containing relevant information on surveillance measures and quota levels.

The European Commission manages the issuance of import licenses for steel and aluminum, wood, and textile products subject to quantitative restrictions, tariff quotas and surveillance measures.

Concerning wood, tariff-rate quotas are all applied in accordance with the EU-Russia Wood Agreement⁴⁵⁰, instead concerning textile, currently there are no active measures in force⁴⁵¹.

⁴⁴⁸ EU Commission, “*About Access2Markets* », (Access 26/04/2022), <https://trade.ec.europa.eu/access-to-markets/en/content/about-access2markets>

⁴⁴⁹ EU Commission, *Système Intégré de Gestion de Licenses (SIGL)*, (Access 19/04/2022), <https://webgate.ec.europa.eu/siglbo/public/reports>

⁴⁵⁰ Commission Implementing Regulation (EU) No 498/2012 of 12 June 2012 on the allocation of tariff-rate quotas applying to exports of wood from the Russian Federation to the European Union, (2012), L 152/28.

⁴⁵¹ Ibidem.

For an anti-dumping duty to be imposed, the analysis of the Union interest test must consider the interests of producers, importers, users, and consumers, so it is extremely important for all these players to become known at the European Commission and express their views objectively in the questionnaires.

For an importer to see if the product for importation is subject to an anti-dumping investigation, it's sufficient to compare its Combined Nomenclature (CN) code with the products under present investigation in the official website and, if there persist some doubts on the correct classification, the importer shall ask for help to the competent customs authorities of its own country.

CHAPTER III: EU ANTI-DUMPING PROCEDURE

3.1. LODGING A COMPLAINT

The legal basis of the right to file a complaint is contained under Article 5, paragraphs 1 and 2, of the basic anti-dumping regulation, which states that “*an investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written complaint by any natural or legal person, or any association not having legal personality, acting on behalf of the Union industry*”⁴⁵².

The complaint shall be submitted to the European Commission or to a Member State (entitled to forward it later to the former institution) and it is considered as duly lodged “*on the first working day following its delivery to the Commission by registered e-mail or the issuing of an acknowledgement of receipt by the Commission*”⁴⁵³.

However, in the absence of a complaint, Article 5 includes the possibility for a Member State that, in case of possession of sufficient evidence of dumping and injury, it shall instantly transfer it to the Commission for the initiation of the investigation⁴⁵⁴. A complaint is not a *conditio sine qua non*⁴⁵⁵, so it does not represent an indispensable condition for the official start of an investigation proceeding.

According to the regulation, a complaint “*must demonstrate the prima facie case*”⁴⁵⁶, meaning that it must contain the existence of dumping realized by non-EU exporters, the presence of material injury produced to the Union industry and lastly, the causal link between the alleged dumped imports and the injury incurred.

⁴⁵² Article 5, paragraph 1, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁴⁵³ Ibidem.

⁴⁵⁴ Ibidem.

⁴⁵⁵ T. K. Giannakopoulos, “*A Concise Guide to the EU Anti-dumping/Anti-subsidies Procedures*”, Kluwer Law International, (2006), pp.75.

⁴⁵⁶ Crowell & Moring, “*Guide to EU anti-dumping law*”, (2006), (Access 01/05/2022), pp.10, https://www.crowell.com/pdf/Guide_EUAnti-Dumping2006_English.pdf

Under the European law, the sole specific requirement for the form and the content of an anti-dumping complaint is its composition in written form.

The complaint shall contain:

1. the identity of the complainant⁴⁵⁷;
2. the identification of the Union industry “*on behalf of which the complaint is made, by a list of all known Union producers of the like product (or associations of Union producers of the like product) and, to the extent possible, a description of the volume and value of Union production of the like product accounted for by such producers*”⁴⁵⁸;
3. an exhaustive description of the dumped merchandise, the countries’ names or the countries of origin/export under consideration, the identification of all the exporters and foreign producers, together with a complete list with the names of all the importers of the allegedly dumped product⁴⁵⁹;
4. information on prices at which the product is sold “*when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, the prices at which the product is sold from the country or countries of origin or export to a third country or countries or on the constructed value of the product)*”⁴⁶⁰, together with relative information on export prices “*or, where appropriate, the prices at which the product is first resold to an independent buyer in the Union*”⁴⁶¹;
5. information on relevant volume’s changes of the product under consideration, its effects on like products’ prices in the EU and “*the consequent impact of the imports on the Union industry, as demonstrated by relevant factors and indices having a bearing on the state of the Union industry, such as those listed in Article 3(3)*”⁴⁶² and (5)⁴⁶³”⁴⁶⁴.

⁴⁵⁷ Article 5, paragraph 2(a), Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁴⁵⁸ Ibidem.

⁴⁵⁹ Ibidem, paragraph 2(b).

⁴⁶⁰ Ibidem.

⁴⁶¹ Ibidem, paragraph 2(c).

⁴⁶² Ibidem, Article 3, paragraph 3.

⁴⁶³ Ibidem, paragraph 5.

⁴⁶⁴ Ibidem, paragraph 2(d).

All this information is necessary for the Commission to be able to start right away the investigation, immediately after having received and checked the proper documentation⁴⁶⁵.

The complaint can regard products being dumped from any country outside the European Union, except for Iceland, Liechtenstein, and Norway, which are excluded from the basic AD legislation for most products, because of their membership to the European Economic Area⁴⁶⁶.

All the information contained in the complaint must be protected and not divulged, in respect of the confidentiality of the parties. Moreover, the Commission is reluctant about disclosing details on the complaint until it has formally decided to initiate an investigation proceeding, seen that foreign exporters might change their pricing policies and/or the calculation of the dumping margin⁴⁶⁷.

As explained in the previous chapter, in the majority of cases, to gather sufficient support, the complaints can be filed by European trade associations of the producers of the product in question, by individual national producers or by associations/groups of national producers, as long as they respect the criterion of major proportion⁴⁶⁸.

Indeed, pursuant to Article 5, paragraph 4, the complaint shall be made on behalf of the Union industry and shall be “*supported by those Union producers whose collective output constitutes more than 50 % of the total production of the like product*” and in case of achievement of “*less than 25 % of total production of the like product produced by the Union industry*”⁴⁶⁹, no investigation shall be initiated.

The European Court of Justice recognized to the European complainants the right to receive care for handling the complaint, the right to receive all necessary information

⁴⁶⁵ Ibidem, paragraph 3.

⁴⁶⁶ EU Commission, “*Complaints*”, (Access 30/04/2022), https://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151018.pdf

⁴⁶⁷ T.K Giannakopoulos, “*A Concise Guide to the EU Anti-dumping/Anti-subsidies Procedures*”, Kluwer Law International BV, The Netherlands, (2006), pp.75.

⁴⁶⁸ Ibidem, pp.74.

⁴⁶⁹ Article 5, paragraph 4, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

within the specified limits of time and the right to get all the explanations whenever the Commission decides not to proceed with the legal proceeding⁴⁷⁰.

All the parties involved in the case must be notified in advance of the initiation of the investigation, including the foreign exporters, responsible of realizing dumping.

3.2. INVESTIGATION

In the decision process on whether to launch an investigation, the evidence of dumping and injury “*shall be considered simultaneously*” and whenever such evidence is deemed insufficient by the European authorities, the complaint “*shall be rejected*”⁴⁷¹.

Moreover, if the countries responsible of making dumping to the exporting merchandise to the EU have a market share of below 1%, “*proceedings shall not be initiated*”⁴⁷².

According to Article 5, paragraph 8, if the complaint is retreated prior to the initiation of the proceedings, it “*shall be considered not to have been lodged*”⁴⁷³.

It’s important to understand that investigations are conducted against countries and not individuals, like any other legal action taken by the EU.

Indeed, as it happens with the traditional infringement procedure, according to the founding treaties, the Commission has the right to launch an investigation only against countries, which are the primary addressees, that failed or refused to implement the European

⁴⁷⁰ T.K Giannakopoulos, “*A Concise Guide to the EU Anti-dumping/Anti-subsidies Procedures*”, Kluwer Law International BV, The Netherlands, (2006), pp.75.

⁴⁷¹ Article 5, paragraph 7, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁴⁷² Ibidem.

⁴⁷³ Ibidem, paragraph 8.

law⁴⁷⁴, whether it can be a regulation or a decision, that are automatically binding in a MS on the date of entry into force, or a directive that must be instead incorporated⁴⁷⁵.

The Commission has power “to take up complaint if it is about a breach of Union law by authorities in an EU country”⁴⁷⁶, instead “if it is about the action of a private individual or body (unless you can show that national authorities are involved)” the situation has to be solved at national level since that the EU “cannot only follow up matters that only involve private individuals or bodies, and that do not involve public authorities”.

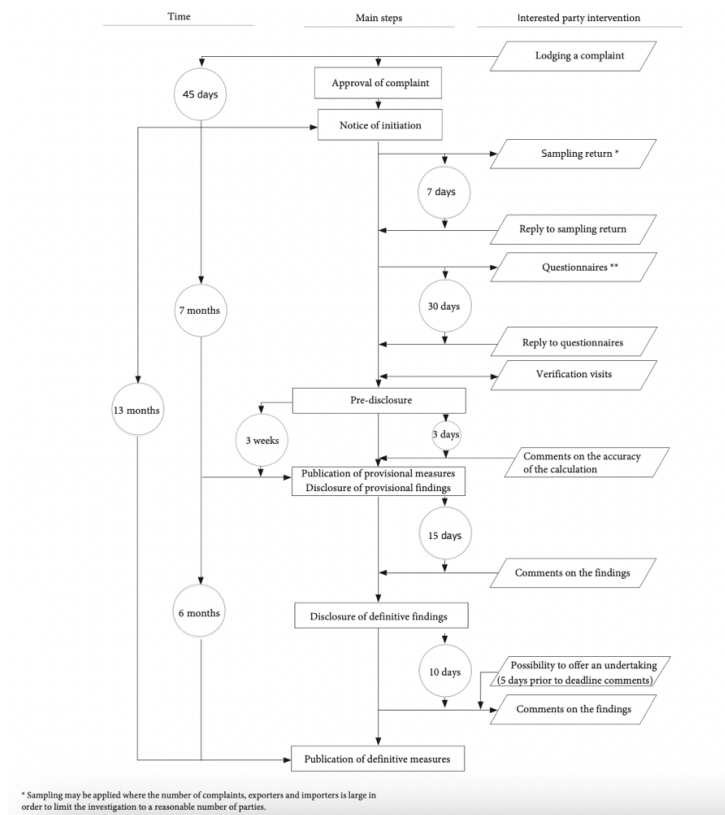


Figure 2.6: Main stages of the anti-dumping investigation proceeding

Source: EU Commission, “Flowchart of a typical anti-dumping investigation”- “Anti-dumping Article 5 Investigation”, https://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151020.pdf

⁴⁷⁴ EU Commission, « Infringement procedure », (2022), (Access 01/06/2022), https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure_en

⁴⁷⁵ EU Commission, « Applying EU law », (2022), (Access 01/06/2022), https://ec.europa.eu/info/law/law-making-process/applying-eu-law_en

⁴⁷⁶ Privacyinternational.org, “What to do if Union law has been breached?”, (Access 01/06/2022), <https://privacyinternational.org/sites/default/files/2018-06/%20complaint-form%20PI%20Liberty%20and%20ORG.pdf>

After having received the complaint, the European Commission consults with the Trade Defense Instruments Committee, with which it checks the existence of sufficient evidence to justify the initiation of the legal proceeding, within forty-five days from the date “*on which the complaint has been lodged*” and concluding the process with the publication of the notice in the Official Journal of the European Union⁴⁷⁷.

All the relevant analysis, carried out by the Commission, must be notified to the Member States within twenty-one days from the day on which the complaint has been presented⁴⁷⁸.

When the evidence has been checked and found relevant and the complaint has been approved, the governments of the countries in question will be contacted and informed on the initiation of the proceedings and will be provided with the complete text of the complaint and ensuring respect of the shared confidential information⁴⁷⁹.

The notice of initiation “*shall announce the initiation of an investigation, indicate the product and countries concerned, give a summary of the information received, and provide that all relevant information is to be communicated to the Commission*”⁴⁸⁰.

The subsequent article of the basic AD regulation, Article 6, contains information and details related to the investigation stage.

When the investigation starts, the Commission sends out detailed questionnaires to all complaining and non-complaining parties, such as European producers, importers, and foreign exporters, who are suggested to reply within thirty days from the date of reception (exceptional extensions might be granted)⁴⁸¹.

The questionnaire is normally composed of fourteen sections, from the part dedicated to the general information of the parties, to the product description and the

⁴⁷⁷ Ibidem, paragraph 9.

⁴⁷⁸ Ibidem, paragraph 9.

⁴⁷⁹ Ibidem, paragraph 11.

⁴⁸⁰ Ibidem, paragraph 10.

⁴⁸¹ Ibidem, Article 6, paragraph 2.

domestic sales of the like product⁴⁸². Moreover, it must be completed twice, “*once has as a limited version and once as a version open for consultation by the interested parties*”⁴⁸³.

Whether it is a producer, user or exporter, the questionnaires proposed by the Commission are slightly different.

It is not mandatory for parties to provide replies to questionnaires and engage in the bound collection of information, however, it is very well recommended by the European authorities.

If by chance any inaccurate or incomplete replies are given, the Commission will resort to the so-called “*facts available*” which means the information provided by the complainant and this might translate into the application of the highest duty rate⁴⁸⁴.

The investigation must regard both the dumping and the injury occurring in the European territory and “*shall normally cover a period of no less than six months immediately prior to the initiation of proceedings*”⁴⁸⁵.

According to Article 16, paragraph 1, all information contained in the replies does form the basis for the on-the-spot verification visits carried out by the DG TRADE of the Commission at the premises of the complainants, whenever it is considered appropriate to examine the records⁴⁸⁶ to ascertain the dumping aspects, the material injury⁴⁸⁷, the causation and the Union interest⁴⁸⁸.

The Commission is entitled to ask Member States to perform checks and inspections “*particularly amongst importers, traders and Union producers, and to carry out investigations in third countries, provided that the firms concerned give their consent and*

⁴⁸² EU Commission, « *Anti-Dumping Questionnaire* », (Access 01/06/2022), https://trade.ec.europa.eu/doclib/docs/2013/december/tradoc_151932.pdf

⁴⁸³ Ibidem.

⁴⁸⁴ Trade and Industry Department – the Government of the Hong Kong Special Administrative Region, “*Anti-dumping*”, (2022), (Access 01/06/2022), https://www.tid.gov.hk/english/trade_relations/ad/ad_action_eu_pro.html#fact

⁴⁸⁵ Ibidem, paragraph 1.

⁴⁸⁶ Ibidem, Article 16, paragraph 1.

⁴⁸⁷ Ibidem, Article 16, paragraph 1.

⁴⁸⁸ Crowell & Moring, “*Guide to EU anti-dumping law*”, (2006), (Access 01/05/2022), pp.25.

that the government of the country in question has been officially notified and raises no objection”⁴⁸⁹.

During the verification visits, the investigators request to the complainants the official documents related to sales and production costs such as the balance sheets, the invoices, the profit and loss statements, the company books, and any other useful correspondence⁴⁹⁰. In the absence of sufficient documentation and/or in cases of unavailability, the Commission is authorized to ignore the received information⁴⁹¹.

The documents must be translated into English language, which is the main working language of the EU and shall be even double-checked by European qualified translators⁴⁹².

If the European authorities consider that the number of parties is too large, “*the investigation may be limited to a reasonable number of parties, products or transactions*”⁴⁹³ by requesting sampling information, which shall be submitted within fifteen days from the notice. Normally, the parties chosen by the sampling are the ones with “*the largest representative volume of production, sales or export*”⁴⁹⁴.

In the *Ball bearings* case, it was developed a fundamental principle of European law concerning the rights of the parties to schedule *ex parte* court hearings (oral or confrontation hearings) for presenting their views in front of the Commission.

Indeed, in 1979, Mr Advocate General Warner delivered an opinion⁴⁹⁵, in which he stated that “*before any individual measure or decision is taken*”⁴⁹⁶ the persons concerned in

⁴⁸⁹ Article 16, paragraph 4, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁴⁹⁰ Crowell & Moring, “*Guide to EU anti-dumping law*”, (2006), (Access 01/05/2022), pp.26.

⁴⁹¹ Ibidem.

⁴⁹² Ibidem.

⁴⁹³ Article 17, paragraph 1, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁴⁹⁴ Ibidem.

⁴⁹⁵ Joined opinion of Mr Advocate General Warner delivered on 14 February 1979. NTN Toyo Bearing Company Ltd and others v Council of the European Communities. Ball bearings, Case 113/77, (1979).

⁴⁹⁶ Joined opinion of Mr Advocate General Warner delivered on 14 February 1979. NTN Toyo Bearing Company Ltd and others v Council of the European Communities. Ball bearings, Case 113/77, “5. Points about the right to be heard on whether there was dumping”.

the case have “*the right to be heard by the responsible authority*”⁴⁹⁷ and to be informed of the facts and the considerations made by the authority in charge.

This opinion was inspired by Article 41 of the Charter of Fundamental Rights of the EU, related to “*the right to good administration*”, allowing every person to see its “*affairs handled impartially, fairly and within a reasonable time*”⁴⁹⁸.

However, for what concerns the right of the parties to meet opponents, “*confrontation meetings*” might be requested by any importer, exporter, and government’s representative⁴⁹⁹, serving as pure forums of frank discussion, even if they have become quite rare due to their rising adversarial character⁵⁰⁰.

According to Article 6, paragraph 7, all the parties involved in the anti-dumping investigation have the right, upon written specific request, to get access to the information (non-confidential files), make inspections and comments⁵⁰¹ on the Union interests whenever they deem it appropriate, and within thirty-seven days from the publication of the notice⁵⁰².

3.3. IMPOSITION OF ANTI-DUMPING MEASURES

Following the verification visits carried out by the Commission confirming the allegations in the complaint, provisional or definitive measures might be imposed on products entering free circulation into the EU⁵⁰³.

Definitive anti-dumping duties shall be imposed when all the information is verified, however, pending to the decision for their application, primary provisional duties might be applied.

⁴⁹⁷ Ibidem.

⁴⁹⁸ Article 41, EU Charter of Fundamental Rights, (2007).

⁴⁹⁹ H. S Freehills, “*EU Anti-Dumping*”, Legal Guide, Second Edition, (2016), pp.10.

⁵⁰⁰ T.K Giannakopoulos, “*A Concise Guide to the EU Anti-dumping/Anti-subsidies Procedures*”, Kluwer Law International BV, The Netherlands, (2006), pp.118.

⁵⁰¹ Article 6, paragraph 7, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁵⁰² H. S. Freehills, “*EU Anti-Dumping*”, Legal Guide, Second Edition, (2016), pp.10.

⁵⁰³ Crowell & Moring, “*Guide to EU anti-dumping law*”, (2006), (Access 01/05/2022), pp.32.

An example for this can be the most recent application of provisional ad-valorem anti-dumping duties (ranging from 33.2% to 77.9%) of May, 2022, pending the decision for the application of definitive duties expected for this November, on electrolytic chromium coated steel originating from People’s Republic of China and Brazil, following the acceptance of the complaint presented by the European Steel Association, Eurofer⁵⁰⁴.

3.3.1. PROVISIONAL DUTIES

The discipline of the provisional anti-dumping measures is contained under Article 7 of the basic anti-dumping regulation, which establishes the general requirements for their imposition⁵⁰⁵:

1. the initiation of the AD proceedings, must be formally started through the official publication of the Notice of Initiation (Article 5),
2. the interested parties must have had the chance to submit information and make relevant comments (Article 5, paragraph 10),
3. the effective existence of dumping and injury must have been provisionally ascertained by the European authorities,
4. the Union interest summons for intervention to forestall injury to the EU.

Provisional measures shall be applied not earlier than 60 days from the date of the initiation of the proceedings and not later than 9 months⁵⁰⁶.

⁵⁰⁴ Fastmarkets.com, E. Virchenko, “*Europe imposes provisional anti-dumping duties on electrolytic chromium coated steel from China, Brazil*”, (2022), (Access 01/06/2022), <https://www.fastmarkets.com/insights/europe-imposes-provisional-anti-dumping-duties-on-electrolytic-chromium-coated-steel-from-china-brazil>

⁵⁰⁵ Article 7, paragraph 1, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁵⁰⁶ Ibidem.

Moreover, pursuant to Article 7, paragraph 2, the amount of duty shall not exceed the dumping margin and, in accordance with the “*lesser duty rule*”, it shall be less than the dumping margin if and only if the “*lesser duty*” is enough to counterbalance the injury⁵⁰⁷.

Usually, provisional measures are applicable for a six-month period and can be extended for another three-month (nine months total), if “*exporters representing a significant percentage of the trade involved so request or do not object upon notification by the Commission*”⁵⁰⁸.

Regulation 182/2011 contains under Article 8 all relevant provisions for the adoption of the provisional anti-dumping or countervailing duties, specifying that for its adoption the Commission shall consult (or inform, in certain extraordinary cases) with the Member States in question⁵⁰⁹.

As stated in the article, the Commission shall adopt and immediately apply the act “*without its prior submission to a committee and shall remain in force for a period not exceeding 6 months unless the basic act provides otherwise*”⁵¹⁰. Furthermore, “*at the latest 14 days after its adoption, the chair shall submit the act referred to in paragraph 2 to the relevant committee in order to obtain its opinion*”⁵¹¹ and, in case of a negative opinion from the TDI’s committee under the examination procedure, “*the Commission shall immediately repeal the implementing act adopted*”⁵¹².

⁵⁰⁷ Ibidem, paragraph 2.

⁵⁰⁸ Ibidem, paragraph 6.

⁵⁰⁹ Article 8, paragraph 5, Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers, L 55/14.

⁵¹⁰ Article 8, paragraph 2, Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers, L 55/14.

⁵¹¹ Ibidem, paragraph 3.

⁵¹² Ibidem, paragraph 4.

3.3.2. DEFINITIVE ANTI-DUMPING DUTIES

If dumping and injury are effectively found present during the investigation period and if it is in the Union interest to call for intervention, the Council, upon the advice of the Commission⁵¹³ and the consultation with the Trade Defense Instruments Committee, shall impose definitive anti-dumping measures.

Article 9, paragraph 4, of the basic anti-dumping regulation states that the European Commission is obliged to ask for the imposition of the definitive measures not later than one month from the expiry of the provisional duties⁵¹⁴.

As for provisional measures, the lesser duty rule shall be respected in accordance with the foresaid Article, stating that the duty level shall be at the rate of the dumping margin, unless a lower duty is sufficient to remove the material injury.

Such rule was transposed from the WTO's international regulations thanks to its high level of utility and the main reason behind its strong use lies in the purpose of not *“to punish the exporters for the non-injurious parts of their practices, to assure the public interest in general and/or to create fewer distortions in the current market competition”*⁵¹⁵.

An example of its application can be given by the 2013-regulation imposing a definitive anti-dumping duty on imports of crystalline silicon photovoltaic products originating from China⁵¹⁶.

⁵¹³ Crowell & Moring, *“Guide to EU anti-dumping law”*, (2006), (Access 01/05/2022), pp.32.

⁵¹⁴ Article 9, paragraph 4, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁵¹⁵ Mondaq.com, *“Turkey: Is “Lesser Duty Rule” A Tightrope Walker’s Pole in International Trade Remedies Law of Turkey? – The “Lesser Duty Rule” at the International Level”*, (2017), (Access 01/06/2022), <https://www.mondaq.com/turkey/international-trade-investment/626154/is-lesser-duty-rule-a-tightrope-walker39s-pole-in-international-trade-remedies-law-of-turkey>

⁵¹⁶ Council Implementing Regulation (EU) No 1238/2013 of 2 December 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People’s Republic of China, (2013), L 325/1.

The duties will be regulated by a specific regulation published in the Official Journal of the EU, which specifies the duties for each exporter or, more generally, for the exporting country, setting a residual duty rate for the non-cooperating exporters⁵¹⁷.

As clarified under Article 9, paragraph 5, the duties will be imposed, with respect to the non-discriminatory principle, on all imports of the dumped merchandise coming from all sources, except for those whose source have decided to accept undertakings⁵¹⁸ (defined in the next paragraph of the thesis).

Definitive duties are applied for a five-year period, automatically expiring if the interested parties do not call for an expiry review upon due date.

According to Article 10, paragraph 4, definitive anti-dumping duties shall be levied on all products *“no more than 90 days prior to the date of application of the provisional measures and not prior to the initiation of the investigation”*⁵¹⁹.

It's important to note that if the amount of definitive duty is lower than the amount of provisional duty, the Commission shall provide for a prompt recalculation, instead in the opposite case, the duties shall be collected by the Member States⁵²⁰.

In accordance with Article 10, paragraph 1, shall be respected the retroactivity principle, which determines for both provisional and definitive measures to be applied only to those products being imported after the entry into force of the 2016/1036 Regulation⁵²¹.

3.4. PRICE UNDERTAKINGS

Price undertakings are ruled under Article 8 of the basic anti-dumping regulation, containing ten specific paragraphs⁵²².

⁵¹⁷ Crowell & Moring, *“Guide to EU anti-dumping law”*, (2006), (Access 01/05/2022), pp.33.

⁵¹⁸ Article 9, paragraph 5, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁵¹⁹ Ibidem, Article 10, paragraph 4.

⁵²⁰ Ibidem, paragraph 3.

⁵²¹ Ibidem, Article 10, paragraph 1.

⁵²² Ibidem, Article 8.

Specifically, paragraph 1 states that “*on the condition that a provisional affirmative determination of dumping and injury has been made, the Commission may, in accordance with the advisory procedure [...], accept satisfactory voluntary undertaking offers submitted by any exporter to revise its prices or to cease exports at dumped prices, if it is satisfied that the injurious effect of the dumping is thereby eliminated*”⁵²³.

The Commission is empowered with terminating the investigation proceeding without imposing any provisional or definitive duty if it receives from any exporter a satisfactory offer of price undertaking for revising prices and removing injury⁵²⁴.

Increases of prices brought by undertakings shall never be less than the dumping margin if they are sufficient to remove the injury to the Union industry⁵²⁵.

Undertakings are decided *ad hoc* on the basis of discussions between the European authorities and the interested exporters, who shall provide a non-confidential version to be available for any other party who wants to take vision⁵²⁶.

There are no obligations upon exporters to offer price undertakings, nor for the Commission to make acceptances, however in cases of impracticability, namely when the number of exporters is too large, the Commission shall decide to reject the offer⁵²⁷.

In cases of acceptance, the exporters will be asked by the Commission to provide periodic proof and evidence “*relevant to the fulfilment of that undertaking and to permit verification of pertinent data*”⁵²⁸.

Price undertakings are quite advantageous for foreign exporters since they can “*keep the additional income resulting from the price increase, whereas anti-dumping duties are paid to the EU*”⁵²⁹.

⁵²³ Ibidem, paragraph 1.

⁵²⁴ Crowell & Moring, “*Guide to EU anti-dumping law*”, (2006), (Access 01/05/2022), pp.33.

⁵²⁵ Article 8, paragraph 1, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁵²⁶ Ibidem, paragraph 4.

⁵²⁷ Ibidem, paragraph 3.

⁵²⁸ Ibidem, paragraph 7.

⁵²⁹ H. S. Freehills, “*EU Anti-Dumping*”, Legal Guide, Second Edition, (2016), pp.12.

According to Article 8, paragraph 9, of the same Article, “*in cases of breach or withdrawal of undertakings by any party of the undertaking, or in case of withdrawal of acceptance of the undertaking by the Commission*”⁵³⁰, a regulation or decision by the Commission shall be released and the final provisional (Article 7⁵³¹) or definitive (Article 9, paragraph 4⁵³²) duties would be automatically applied (based on the original findings), if and only if the exporter hasn’t withdrawn the undertaking and if it has been given the opportunity to make comments⁵³³.

However, the recurrence to price undertaking has dramatically fallen from the early 2000s to now because of a “*restrictive practice regarding price undertakings by the EU Commission*”⁵³⁴.

3.5. CIRCUMVENTION

Sometimes foreign businesses located inside or outside the EU can engage in circumvention practices with the purpose of avoiding the payment of anti-dumping measures.

Circumvention is a mechanism used by enterprises to elude the payment of anti-dumping duties on goods they wish to sell⁵³⁵.

⁵³⁰ Article 8, paragraph 9, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁵³¹ Article 8, paragraph 7, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁵³² Ibidem, Article 9, paragraph 4.

⁵³³ Ibidem, Article 8, paragraph 9.

⁵³⁴ Journal of Economic Integration (JEI), A. Steinbach, “*Price Undertakings in EU Anti-Dumping Proceedings – an Instrument of the Past?*”, (2013), pp.169.

⁵³⁵ D. W. Leebron, “*An Overview of the Uruguay Round Results*”, 34 COLUM. J. TRANSAT’L L. 11, 20 (1995).

This phenomenon started to become famous in the second half of the 1980s, upon the successful results of such practices committed by the Japanese multinational enterprises in the assembly sector⁵³⁶.

Under the basic AD regulation, circumvention is disciplined under Article 13, which defines it as “*a change in the pattern of trade between third countries and the Union or between individual companies in the country subject to measures and the Union, which stems from a practice, process or work*”⁵³⁷ including, *inter alia*:

1. a small modification of the concerned product, without altering its basic characteristics, with the aim of making it fall under another European customs code not subject to duties⁵³⁸,
2. the transshipment/rechanneling sale of the product to a third country “*for onward consignment to the customers*”⁵³⁹,
3. the organization of foreign exporters or producers to export their products to the EU through those European producers benefiting of slightly lower individual AD duties⁵⁴⁰,
4. the imported parts constituting the product are assembled within the EU or in a third country⁵⁴¹.

This practice is defined as a “*change in the pattern of trade between a third country and/or an exporting producer and the EU*”, realized with the only aim of evading or circumventing the measures⁵⁴².

⁵³⁶ E. Vermulst, Article “*Circumvention of Anti-Dumping Measures: Law and Practice of the European Union*”, Global Trade and Customs Journal Volume 11, Issue 11/12, (2016), pp.499.

⁵³⁷ Article 13, paragraph 1, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁵³⁸ Ibidem.

⁵³⁹ Crowell & Moring, “*Guide to EU anti-dumping law*”, (2006), (Access 01/05/2022), pp.33.

⁵⁴⁰ Article 13, paragraph 1(c), Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁵⁴¹ Ibidem, paragraph 1(d).

⁵⁴² H. S. Freehills, “*EU Anti-Dumping*”, Legal Guide, Second Edition, (2016), pp.13.

When suspicion arises over a possible circumvention practice, the Commission, at the prior request of a Member States or of another interested party, may initiate an investigation through a regulation, giving instructions to national customs authorities on how to register the imports or on how to ask guarantees by the exporters⁵⁴³. The majority of the investigations were applied against the People's Republic of China, responsible of transshipment forms of circumvention.

As usual, investigation proceedings are carried out throughout the whole 9-month period by the European Commission, which may decide to be assisted by state customs authorities⁵⁴⁴.

Exemptions, to be granted before and after the investigation proceeding and supported by sufficient evidence, shall be decided by a Commission's regulation, and Member States shall respect the rules and the deadlines that the institution provides⁵⁴⁵.

However, circumventions constitute customs fraud that need to be immediately addressed to the relevant customs authorities of the country in question or to the European Anti-Fraud Office (OLAF).

3.6. ABSORPTION

Generally, within two years from the imposition of the measures, the Union industry or the Member State (or even at the initiative of the EC) may ask the Commission to reopen the investigation if, by submitting sufficient information, it shows that, after the original investigation and before or after the original imposition of the duties, foreign exporters did not respect the anti-dumping measures originally imposed, and instead decreased even more

⁵⁴³ Article 13, paragraph 3, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁵⁴⁴ Ibidem.

⁵⁴⁵ Ibidem, paragraph 4.

the export prices or made “*insufficient movement in the resale prices or subsequent selling prices of the imported product in the Union*”⁵⁴⁶.

Therefore, the Commission shall reopen the investigation, in accordance with Article 12 of the basic anti-dumping regulation, where the concerned importers, exporters or producers will be asked to clarify the situation “*with regard to resale prices and subsequent selling prices*”⁵⁴⁷.

If an absorption of an AD duty is verified as real and there is a positive determination of persistence of the injury, the reassessment of the export prices shall be conducted by the Commission, together with the recalculation of the dumping margins⁵⁴⁸.

In the majority of cases, the reinvestigation shall be terminated within 9 months from its initiation⁵⁴⁹.

3.7. REVISION OF ANTI-DUMPING MEASURES

3.7.1. REVIEWS

Reviews are ruled under Article 11 of the basic anti-dumping regulation⁵⁵⁰.

All definitive anti-dumping measures, after the five-year validity period, from the date of their first application or from the date of the last review, expire or shall be extended if it is determined that the expiration “*would be likely to lead to a continuation or recurrence of dumping and injury*”⁵⁵¹.

⁵⁴⁶ Article 12, paragraph 1, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁵⁴⁷ Ibidem, paragraph 2.

⁵⁴⁸ Ibidem, paragraph 2.

⁵⁴⁹ Ibidem, paragraph 4.

⁵⁵⁰ Article 11, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁵⁵¹ Ibidem, Article 11, paragraph 2.

The basic types of reviews are expiry reviews, interim reviews and newcomer or new exporter reviews, but also anti-absorption and anti-circumvention practices might be considered as additional review typologies.

The **expiry review**, started by the Commission's initiative or by a request of the interested producers in the EU, shall be initiated if there is sufficient evidence that the expiry of the AD duty would continue to cause dumping and injury in the European territory⁵⁵².

Examples of evidence might be: the demonstration of recurrent dumping and injury upon the removal of the measures; the demonstration that the elimination of the injury is solely or partly owed to the existence of the duties in force; the foreign exporters and the market conditions would continue to harm the Union industry with further price dumping⁵⁵³.

It's important to note that the request of an expiry review shall be presented no later than 3 months before the date of expiry of the 5-year period of application of the original AD duties⁵⁵⁴.

During the new investigations, all the concerned parties, whether they can be exporters, importers or producers have the right to "*amplify, rebut or comment on the matters set out in the review request*"⁵⁵⁵ and the conclusions must take into consideration all the relative documentation of the case, before publishing the notice in the Official Journal of the EU "*at an appropriate time in the final year of the period of application of the measures as defined in Article 11(2)*"⁵⁵⁶⁵⁵⁷.

Normally, the expiry review shall be closed within a 12-month period, resulting in either removing the measures or maintaining them for another equal 5-year period.

The second type is the **interim review**, that is "*primarily initiated to determine whether dumping and injury had increased or decreased*"⁵⁵⁸, or to "*re-examine the Union*

⁵⁵² Ibidem, paragraph 2.

⁵⁵³ Ibidem.

⁵⁵⁴ Ibidem.

⁵⁵⁵ Ibidem.

⁵⁵⁶ Ibidem, Article 11, paragraph 2.

⁵⁵⁷ Ibidem.

⁵⁵⁸ H. S. Freehills, "*EU Anti-Dumping*", Legal Guide, Second Edition, (2016), pp.12.

interest assessment, product scope and other matters concerning the need for the continued imposition of AD measures”⁵⁵⁹.

Like the expiry reviews, also the interim reviews are initiated “*at the initiative of the Commission, or at the request of a Member State*”⁵⁶⁰, or, assuming that at least one year has passed since the imposition of the original definitive duties, “*upon a request by any exporter or importer or by the Union producers which contains sufficient evidence substantiating the need for such an interim review*”⁵⁶¹.

Again, as with the expiry review, it is necessary to support the request of the interim review with sufficient documentation proving evidence that the original anti-dumping duties were no longer adequate to counteract dumping and remove injury⁵⁶².

Twelve months of investigations are necessary before deciding whether to maintain the same measures, or to remove, or to amend them.

The last type of review is the **newcomer or new exporter review**, disciplined under Article 11, paragraph 4, and taking place whenever a new exporter, from the same exporting country in question, did not manage to export the product to the EU during the original investigation proceedings in which the duties were based⁵⁶³.

The review shall be initiated if the new exporter shows no direct links or relationships to the compatriot exporters subject to the original AD duties, or if it demonstrates that the new exportation to the Union has started right after the investigation period, or if it shows that it entered an “*irrevocable contractual obligation to export a significant quantity to the Union*”⁵⁶⁴.

As the previous typologies, the new exporter review is carried out in a 12-month period⁵⁶⁵, in an accelerated basis, and “*if the new exporter is successful, it will be given an*

⁵⁵⁹ Ibidem.

⁵⁶⁰ Article 11, paragraph 3, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁵⁶¹ Ibidem.

⁵⁶² Ibidem.

⁵⁶³ Ibidem, paragraph 4.

⁵⁶⁴ Ibidem.

⁵⁶⁵ Crowell & Moring, “*Guide to EU anti-dumping law*”, (2006), (Access 01/05/2022), pp.34.

individual dumping margin by way of an amendment to the original regulation imposing definitive duties”⁵⁶⁶

3.7.2. REFUNDS

Like reviews, refunds are disciplined under Article 11 of the basic anti-dumping regulation⁵⁶⁷.

Importers in the EU may ask for a reimbursement of the duties collected if it is proven that the margin of dumping, on the basis of which the anti-dumping measures were paid, has been reduced or even eliminated⁵⁶⁸. Thus, if the duties are deemed to be excessive compared to the situation which would have been restored to normality with less duty levels, refunds shall be demanded.

A request for refunds can be submitted by an interested importer to the Commission, via the Member State on the territory of which the product had first been introduced, within 6 months either from the official date of imposition of the definitive duties or from “*the date on which a decision was made definitively to collect the amounts secured by way of provisional duty*”⁵⁶⁹.

All refund requests must be supported by evidence on the normal value and export price of the product concerned to the EU, customs documentation and documentation related to the amount of refund claimed by the party⁵⁷⁰.

In certain cases, it is difficult for the importers to be in possession of all the necessary documentation for a refund request from the exporters (the exporter-importer cooperation is necessary) and, in such an event, it’s up to the Commission to directly ask the

⁵⁶⁶ Ibidem.

⁵⁶⁷ Article 11, paragraph 8, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁵⁶⁸ Ibidem.

⁵⁶⁹ Ibidem.

⁵⁷⁰ Ibidem.

exporters for the evidence, that shall, however, be submitted within a reasonable period of time to the competent authority, or else, it would be rejected⁵⁷¹.

Normally, refunds last roughly twelve months and no more than eighteen months from the date of the request submission⁵⁷².

The payment of refunds which have been authorized by the Commission, starts within ninety days from the institution's official decision⁵⁷³.

The guidelines for the correct application, the outcome and the basic principles for a refund request, are contained in the Commission Notice concerning the reimbursement of anti-dumping duties⁵⁷⁴, published on April 7th, 2021.

3.7.3. JUDICIAL REVIEWS

In the 2016/1036 Regulation there are no specific provisions related to the anti-dumping judicial review, instead it is the Treaty on the Functioning of the European Union (TFEU), also known as the Lisbon Treaty, that shall apply⁵⁷⁵.

All the decisions taken by the European Commission, the Council of Ministers, the European Council, the Parliament, the European Central Bank and all other bodies, agencies and offices of the Union, are subject to a judicial control exercised by the Court of Justice of the EU, hereinafter "*the Court*", which has jurisdiction over all actions⁵⁷⁶ brought against the institutions' legal acts (legislative acts, recommendations, conclusions, opinions, etc.) producing effects vis-à-vis third parties, pursuant to Article 263 of the TFEU⁵⁷⁷.

⁵⁷¹ Ibidem.

⁵⁷² Ibidem.

⁵⁷³ Ibidem.

⁵⁷⁴ Commission Notice concerning the reimbursement of anti-dumping duties 2021/C 118/06, C 118/59, (2021).

⁵⁷⁵ E. Vermulst & D. Rovetta, "*Judicial Review of Anti-dumping determinations in the EU*", Introduction, Wolters Kluwer, pp.240.

⁵⁷⁶ Crowell & Moring, "*Guide to EU anti-dumping law*", (2006), (Access 01/05/2022), pp.35.

⁵⁷⁷ Article 263 (Ex-article 230 TEC), Part VI: Institutional and financial provisions, Title I: Institutional provisions, Section V the Court of Justice of the European Union, Treaty on the Functioning of the European Union (TFEU), (2012).

The Court of Justice of the EU is responsible of all direct actions in anti-dumping cases, like actions for annulment, actions for failure to act or actions for damages in the first instance mainly brought by individuals.

The anti-dumping determinations can be appealed either directly before the Court or indirectly over actions brought in any national court of a MS and referring it back to the Court via the preliminary ruling procedure⁵⁷⁸, ruled under Article 267 of the TFEU.

The Court takes its decisions acting collegially by extended composition as a full Chamber, but not using all its fifty-four judges; instead, the Chamber is composed of five or three judges, depending on the number of member states participating in the case, or in some cases of fifteen judges (Grand Chamber) if “*justified by the legal complexity and importance of the case*”⁵⁷⁹. One Registrar, carrying out the function of administrator, and one President chosen by the judges and elected for a three-year period, also take part in the decision process⁵⁸⁰.

An example can be the Case T-30/19 seeking the partial annulment of Regulation 2018/1579, imposing a definitive AD duty on pneumatic tires originating from China, where the Court’s composition was made up of five judges, the President, and the Registrar⁵⁸¹.

According to the Article 263 of the TFEU, any legal or natural person, being either an exporter or an importer, may institute a court proceeding against “*an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures*”⁵⁸².

⁵⁷⁸ E. Vermulst & D. Rovetta, “*Judicial Review of Anti-dumping determinations in the EU*”, Introduction, Wolters Kluwer, pp.240.

⁵⁷⁹ Court of Justice of the European Union, “*Presentation – Composition*”, (2012), (Access 01/06/2022), https://curia.europa.eu/jcms/jcms/Jo2_7033/en/

⁵⁸⁰ Ibidem.

⁵⁸¹ Case T-30/19, based on Article 263 TFEU, seeking the partial annulment of Commission Implementing Regulation (EU) 2018/1579 of 18 October 2018 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People’s Republic of China and repealing Implementing Regulation (EU) 2018/163 (OJ 2018 L 263, p. 3).

⁵⁸² Article 263 (Ex-article 230 TEC), Part VI: Institutional and financial provisions, Title I: Institutional provisions, Section V the Court of Justice of the European Union, Treaty on the Functioning of the European Union (TFEU), (2012).

For engaging in such a legal proceeding, the deadline is two months from the publication of the measure in the Official Journal of the EU, or of its announcement to the legal person starting the case or, if this is absent, the day on which it acknowledged the latter⁵⁸³.

The typical reasons behind a direct action are lack of competence, infringement of procedural requirements, of the treaties and of any rule of law concerning the treaties' application⁵⁸⁴.

Pursuant to Article 264 of the TFEU, if the action is well founded, the Court can declare the act void (effect of annulment) and if it considers it appropriate, it “*shall state which of the effects of the act [...] shall be considered definitive*”⁵⁸⁵.

The effect of the annulment can be *ex tunc*, being effective from the date of the adoption of the act concerned (retroactive power), or *ex nunc*, from the date of the Court's judgment⁵⁸⁶.

However, an annulment might also be partial, indeed, in Case *C-378/00 Commission v European Parliament and Council*⁵⁸⁷, the Court declared void only an Article of an act and decided to maintain effective all the other remaining dispositions.

The void left by the annulment shall be replaced in accordance with the Court's ruling.

⁵⁸³ Ibidem.

⁵⁸⁴ EU Commission, “*Annulment of legal acts by the Court of Justice*”, (2022), (Access 01/06/2022), <https://eur-lex.europa.eu/EN/legal-content/summary/annulment-of-legal-acts-by-the-court-of-justice.html>

⁵⁸⁵ Article 264 (ex-article 231 TEC), Treaty on the Functioning of the European Union (TFEU), (2012).

⁵⁸⁶ EU Commission, “*Annulment of legal acts by the Court of Justice*”, (2022), (Access 01/06/2022), <https://eur-lex.europa.eu/EN/legal-content/summary/annulment-of-legal-acts-by-the-court-of-justice.html>

⁵⁸⁷ Judgment of the Court of 21 January 2003. *Commission of the European Communities v European Parliament and the Council of the European Union. Comitology – Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission – Criteria for choosing between the different procedures for adopting implementing measures – Effects – Obligation to state reasons – Annulment in part of Regulation (EC) No 1655/2000 of the European Parliament and of the Council concerning the Financial Instrument for the Environment (LIFE). Case C-378/00.*

Nonetheless, in situations of anti-dumping cases, it is quite complicated to challenge an anti-dumping regulation and to obtain its annulment because complainants are often different groups of persons who have been affected differently, “*with some determinations being made in the form of regulations and others in the form of decisions*”⁵⁸⁸.

Consequently, the possibility for an applicant to have *locus standi* would depend both on its own nature and on the nature of the challenged act⁵⁸⁹.

Concerning the actions for failure to act, ruled under Article 265 of the TFEU, the potential for making use of it are quite limited because of the strict time limits for the European authorities and the obligation to use up-to-date information during each stage of the legal proceeding⁵⁹⁰. What’s more, the bureaucratic slowness on the delivery of the judgements by the Court of Justice, makes this type of judicial review even more impossible to perform⁵⁹¹.

Actions for failure to act refer to situations in which the European institutions, “*in infringement of the Treaties, fail to act*”⁵⁹², giving the legal right for Member States or any other institution of the EU, not practicing such illicit, to “*bring an action before the Court of Justice of the European Union to have the infringement established*”⁵⁹³.

The last type of judicial review, previously mentioned, is the action for damages, ruled under Article 268 of the TFEU (but codified also in paragraphs 2 and 3 of Article 340⁵⁹⁴), which refers to European citizens to seek damages in the event of non-contractual liability of the European public administration in cases of “*public torts*”.

⁵⁸⁸ T. K. Giannakopoulos, “A Concise Guide to the EU Anti-dumping/Anti-subsidies Procedures”, Kluwer Law International, The Netherlands, (2006), pp.182.

⁵⁸⁹ Ibidem.

⁵⁹⁰ Article 265 (Ex-article 232 TEC), Part VI: Institutional and financial provisions, Title I: Institutional provisions, Section V the Court of Justice of the European Union, Treaty on the Functioning of the European Union (TFEU), (2012).

⁵⁹¹ T. K. Giannakopoulos, “A Concise Guide to the EU Anti-dumping/Anti-subsidies Procedures”, Kluwer Law International, The Netherlands, (2006), pp.183.

⁵⁹² Article 265 (Ex-article 232 TEC), Part VI: Institutional and financial provisions, Title I: Institutional provisions, Section V the Court of Justice of the European Union, Treaty on the Functioning of the European Union (TFEU), (2012).

⁵⁹³ Ibidem.

⁵⁹⁴ Article 340, paragraphs 2-3, Treaty on the Functioning of the European Union (TFEU), (2012).

Public tort law is considered a key element in the rule of law but also an important guarantee of fundamental rights⁵⁹⁵, which had been previously assured by the Paris Treaty (Articles 34-40⁵⁹⁶), the Rome Treaty (Article 215⁵⁹⁷), and the Euratom Treaty (Article 188⁵⁹⁸).

Within the provisions laid down in Article 340, the individuals having the right to bring an action for damages are not specified, nevertheless, there is a consensus that any natural or legal person established in the EU is entitled to do so⁵⁹⁹.

Such case sees on one side the European Central Bank, or the European Union as a whole, as the defendants, indeed Article 340, paragraph 2⁶⁰⁰, refers to “*institutions*”, intending all the public official institutions of the EU, even the European Council⁶⁰¹.

However, even if no such cases have ever happened, a concurrent liability of the EU with a Member State might occur if the damage is caused by both entities, jointly⁶⁰².

It is compulsory for the complainants, in case of discretionary or non-discretionary acts, to show a “*sufficiently flagrant violation of superior rule of law for the protection of the individual*”⁶⁰³ or a breach of law, but also to prove a causal link between the committed damages and the illegal act of the institutions⁶⁰⁴.

Instead, concerning the deadlines for application, an action for damages must be filed within five years from the occurrence of the illicit, bringing to the light the liability of the EU.

⁵⁹⁵ EU Parliament, R. Manko, “Action for damages against the EU”, Briefing, Court of Justice at work, European Parliamentary Research Service (EPRS), (2018), pp.2.

⁵⁹⁶ Text expired in 2002 and no longer available.

⁵⁹⁷ Article 215 (Ex-article 301 TEC), Treaty on the Functioning of the European Union (TFEU), (2012).

⁵⁹⁸ Article 188, Consolidated version of the Treaty establishing the European Atomic Energy Community (EURATOM), 2012/C 327/01.

⁵⁹⁹ M. Kotzur, op.cit., p. 1026.

⁶⁰⁰ Article 340, paragraph 2, Treaty on the Functioning of the European Union (TFEU), (2012).

⁶⁰¹ EU Parliament, R. Manko, “Action for damages against the EU”, Briefing, Court of Justice at work, European Parliamentary Research Service (EPRS), (2018), pp.4.

⁶⁰² EU Parliament, R. Manko, “Action for damages against the EU”, Briefing, Court of Justice at work, European Parliamentary Research Service (EPRS), (2018), pp.4.

⁶⁰³ European Court of Justice (ECJ), Judgement of the Court of 2 December 1971, *Aktien-Zuckerfabrik Schöppenstedt v Council of the European Communities*, Case 5-71.

⁶⁰⁴ EU Parliament, R. Manko, “Action for damages against the EU”, Briefing, Court of Justice at work, European Parliamentary Research Service (EPRS), (2018), pp.5.

3.8. ARE THE EU ANTI-DUMPING MEASURES EFFICIENT?

Currently, there are roughly a hundred and ten anti-dumping measures in force in the European Union⁶⁰⁵, each of them aiming at protecting European industries with “*greater transparency, efficiency, predictability and workability*”⁶⁰⁶, from those allegedly dumped products, imported from third countries, that undermine the economic prosperity of the EU.

However, based on two recent reports on the effectiveness and efficiency of the anti-dumping duty (the former of 2014⁶⁰⁷ and the latter of 2021⁶⁰⁸), published by the Kommerskollegium National Board of Trade, it turned out that, in real life, such measures did not bring about all the benefits previewed by the European authorities.

The first 2014-report was based on a three-year before and after period of examinations, taking into consideration the data going from 2000 to 2008, with the purpose of bringing to the light as more feedbacks as possible.

The results of the study suggested that, generally, the anti-dumping measures did bring only moderate and slightly visible levels of protection to European producers, increasing their total market share by just 1%⁶⁰⁹ after two years. Therefore, the objective of helping European producers regain market share after the imposition of the measures is supported by a very little and marginal evidence.

On the other hand, three years after the initiation of the investigation proceeding, the market shares belonging to the exporting countries targeted by the duty (“*targeted*

⁶⁰⁵ EU Commission, “*Anti-Dumping, Anti-Subsidy, Safeguard – Statistics Covering the first eight months of 2021*”, (2021), pp.1.

⁶⁰⁶ EU Commission, “*Anti-Dumping: EU acts to increase transparency, efficiency and predictability in the use of trade defence*”, (2003), https://ec.europa.eu/commission/presscorner/detail/pt/IP_04_310

⁶⁰⁷ Kommerskollegium National Board of Trade, Report “*Do EU Producers and the EU Economy Really Benefit from Anti-Dumping Policy?*”, (2014).

⁶⁰⁸ Kommerskollegium National Board of Trade, “*EU Trade Defence – The unintended effects of the anti-dumping measures*”, (2021).

⁶⁰⁹ Kommerskollegium National Board of Trade, Report “*Do EU Producers and the EU Economy Really Benefit from Anti-Dumping Policy?*”, (2014), pp.2.

countries”), did decrease of roughly 9%, and those of the “*non-targeted countries*” increased by 8%, resulting in a plain, but still effective, positive result⁶¹⁰.

Concerning the survey of “*efficiency*”, the study compared in detail the gains of European producers with the losses of users and consumers⁶¹¹.

By comparing the *ex-ante* and the *ex-post* levels of volumes and prices, the National Board of Trade came up with three relevant conclusions:

1. the product prices for intra-EU imports rose after the initiation of the AD investigation, bringing economic gains and greater revenues to the concerned European producers who saw their products revalued of 12%⁶¹², demonstrating thereby the correct workability and efficiency of AD in the field of internal product revaluation.

2. On the other hand, European consumers and users suffered an economic loss which amounted to a significant 20%, after the initiation of the AD investigation proceeding⁶¹³. As stated by the Kommerskollegium research study, “*for every euro the producers gain, the EU consumers lose, on average, 4.5 euro*”⁶¹⁴. Indeed, on their perspective, product prices for imports coming from the targeted countries rose by 74%, far greater than the 13% increase of product prices resulted after trade with non-targeted countries⁶¹⁵.

3. However, as it is shown in Table 3.1 below, the cost for consumers is rather restrained thanks to their tendency of substituting products (high elasticity of substitution), letting them switch more towards the acquisition of lower-priced merchandised goods coming from non-targeted countries, not been hit by the measures.

⁶¹⁰ Ibidem.

⁶¹¹ Ibidem, pp.8.

⁶¹² Ibidem.

⁶¹³ Ibidem.

⁶¹⁴ Ibidem, pp.3.

⁶¹⁵ Ibidem.

Figure 3. Average changes of import volume (Index 100 = Year 0)

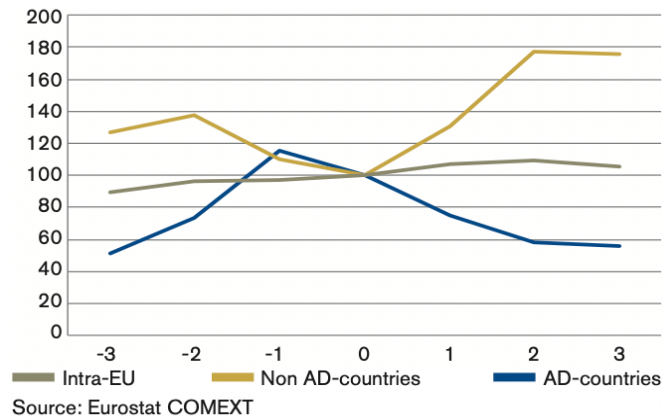


Table 3.1: Average changes in import volume by consumers after duty application

Source: Kommerskollegium National Board of Trade, Report “Do EU Producers and the EU Economy Really Benefit from Anti-Dumping Policy?”, (2014), pp.6.

3. Overall, the increase of the European import prices would bring to a net economic cost for the whole EU.

As explained by the 2014-report, the cost for consumers, arising after the imposition of the duty upon engagement in extra-EU trade, is considered a “*terms-of-trade effect*”, related to the sudden increase of unit value prices of those nations targeted by the duty⁶¹⁶. This creates a deep trade-off between the interests of both consumers and producers.

The reason behind these two reports, that aimed at understanding more in-depth the effects and the impacts of the anti-dumping instrument, was triggered by many recent accusations that labelled it as a form of protectionist measure aimed at avoiding foreigners acquire European market shares.

Moreover, a growing bias has developed, mostly against the imposition and the maintenance of the measures already in force.

⁶¹⁶ Ibidem, pp.9.

Concerning the first aspect, some criticism has developed against the Union interest (UI) test, viewed by analysts as ineffective and insufficient, due to the relatively small positive spin that it brought to the anti-dumping decision-making process⁶¹⁷.

According to the Global AD Database report, the UI test has been attributed a “*minor role*”, since that only six out of thirty-two cases over the period 2005-2008, viewed a rejection of the duties on the base of the foretold⁶¹⁸. Plus, the Union Interest test is considered “*accessory*” to the basic anti-dumping requirements since that in most of the cases ever initiated by the Commission, “*it is presumed almost automatically that these measures are within the “Community interest”*”⁶¹⁹.

In addition, author Lucy Davis in her 2009 Working Paper⁶²⁰ demonstrated that the test is “*an un-economic and often arbitrary test that presents no significant barrier to the imposition of the measures*”⁶²¹.

The other topic that has heightened suspicions among recent critics is the expiry review, viewed as a protectionist instrument used by Union industries to ensure profitability and higher revenues, exploiting “*the wall of political support to keep measures in place*”⁶²².

In the Working Paper 04/2009⁶²³, Author Lucy Davis examined the legal challenges of anti-dumping regulations brought before the Court of the EU and the Dispute Settlement Body of the WTO, to see if proper errors could formally be detected⁶²⁴.

From 1998 to 2008, around forty-three disputes have been presented and many “*assessment errors*” have been reported, typically related to the determination of the material

⁶¹⁷ L. Davis, “*Anti-dumping investigation in the EU: how does it work?*”, Ecipe Working Paper No 04/2009, (2009), pp.2.

⁶¹⁸ J. S. Lee, “*A Critical Analysis of Antidumping Policy at the Multilateral and regional Levels: The Potential Influence of Europe’s Trade Power for Possible Reform*”, Europa-Kolleg Hamburg Institute for European Integration, Study Paper No 3/13, pp.27.

⁶¹⁹ De Bievre/Eckhardt (fn.99), (2010), pp.2.

⁶²⁰ L. Davis, “*Anti-dumping investigation in the EU: how does it work?*”, Ecipe Working Paper No 04/2009, (2009).

⁶²¹ Ibidem, pp.5.

⁶²² Ibidem, pp.3.

⁶²³ L. Davis, “*Anti-dumping investigation in the EU: how does it work?*”, Ecipe Working Paper No 04/2009, (2009).

⁶²⁴ Ibidem, pp.15.

injury, the dumping margin, the constructed normal value, the fair price comparison, and the erroneous “*interchangeability*” of the like products in question⁶²⁵.

Specifically, some critics came up with the bias that such errors might have been committed in sectors where producers of the European Union were losing comparative advantages (they were not able to produce at a lower opportunity cost than other trade partners), so as to legitimate foreign exporters to conquer such sectors at lower costs, and then use the ground as a justification for the imposition of anti-dumping duties⁶²⁶.

Also, “*procedural errors*”, mainly related to never-sent documentation, have been detected by the calculations of the author⁶²⁷, based on the cases brought before the ECJ and the DSB, in the same 10-year period.

The other recent report on AD duties was made in 2021 by the same institution, the Kommerskollegium National Board of Trade⁶²⁸, with the aim of analyzing the impacts of the anti-dumping measures applied by the EU to twenty-three countries in the period between 2008 and 2015 (forty-four measures, of which 83% ad valorem duties and 17% specific duties), on trade volumes and import product prices⁶²⁹. The measures covered around 1.3% of the total European importation of merchandised goods from third countries⁶³⁰.

The report proved that anti-dumping duties might have created externalities on trade with other types of goods, apart from those targeted by the measures. Indeed, according to Vandebussche and Zanardi (2010) and Prusa (2020), the effects of AD duties might be felt on average on 25% of total global trade⁶³¹.

⁶²⁵ L. Davis, “*Anti-dumping investigation in the EU: how does it work?*”, Ecipe Working Paper No 04/2009, (2009), pp.15.

⁶²⁶ Ibidem, pp.19.

⁶²⁷ L. Davis, “*Anti-dumping investigation in the EU: how does it work?*”, Ecipe Working Paper No 04/2009, (2009).

⁶²⁸ Kommerskollegium National Board of Trade, Report “*EU Trade Defence – The unintended effects of the anti-dumping measures*”, (2021).

⁶²⁹ Ibidem, pp.1 and pp.12.

⁶³⁰ Ibidem, pp.12.

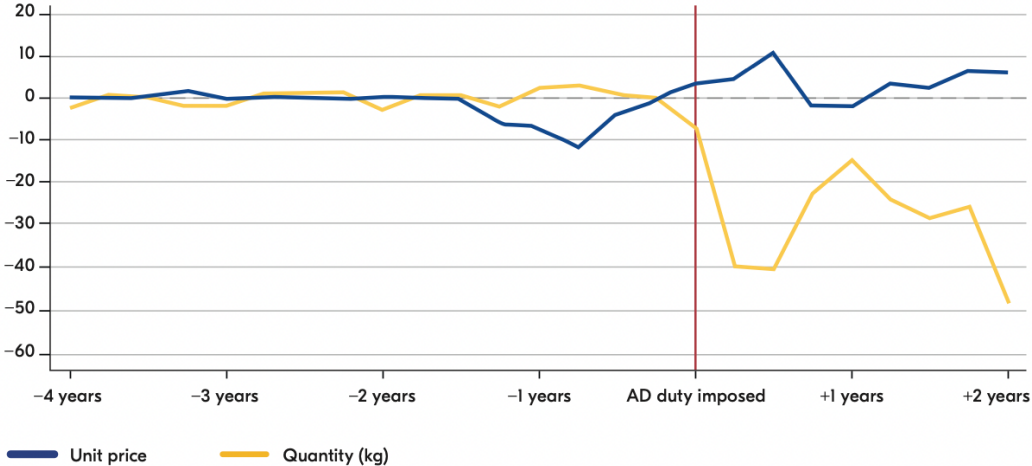
⁶³¹ Ibidem, pp.10.

On the contrary, the use of such duties has brought to some positive changes in the behavior of exporters, who tended to increase their export prices to avoid receiving future allegations of price dumping⁶³².

During this last study carried by the National Board of Trade in 2021, researchers used a statistical method called synthetic control group approach (SCM), to “*identify the effect of an intervention by constructing a (synthetic) untreated scenario*”⁶³³.

As the 2014 research study, this one focused on the analysis of the quantity of importation and of the import price, in the form of Cost, Insurance and Freight price (CIF)⁶³⁴.

Generally, as depicted in Table 3.3 below, the effects of the duties on the importing quantities from targeted countries (extra-EU trade) varied over time but tended to decrease on average by 28% within the following two years⁶³⁵ due to the moderate, but still positive, 4%-unit price increase⁶³⁶.



Source: Eurostat, EU Commission and own calculations.
 Note: SCM estimations based on cases listed in Table 1.

Table 3.2: Average impacts on imports from targeted countries (extra-EU trade) on both quantity and import price

Source: Kommerskollegium National Board of Trade, Report “*EU Trade Defence – The unintended effects of the anti-dumping measures*”, (2021), pp.18.

⁶³² Ibidem.
⁶³³ Ibidem, pp.14.
⁶³⁴ Ibidem, pp.16.
⁶³⁵ Ibidem, pp.31.
⁶³⁶ Ibidem, pp.2.

Therefore, if the purpose of the anti-dumping duty is to decrease the quantity of dumped imports, the EU managed to achieve this goal, however, as for the purpose of facilitating European producers to gain more market share in the long-term, we have previously seen that the duties did not manage to have outstanding positive results (only 1% increase).

As for intra-EU trade, the effects are depicted in the Table 3.4 below, where for both quantities and prices there is an ambiguous trend, switching from negative to positive values for quantities, and tending towards an overall decrease for prices⁶³⁷.

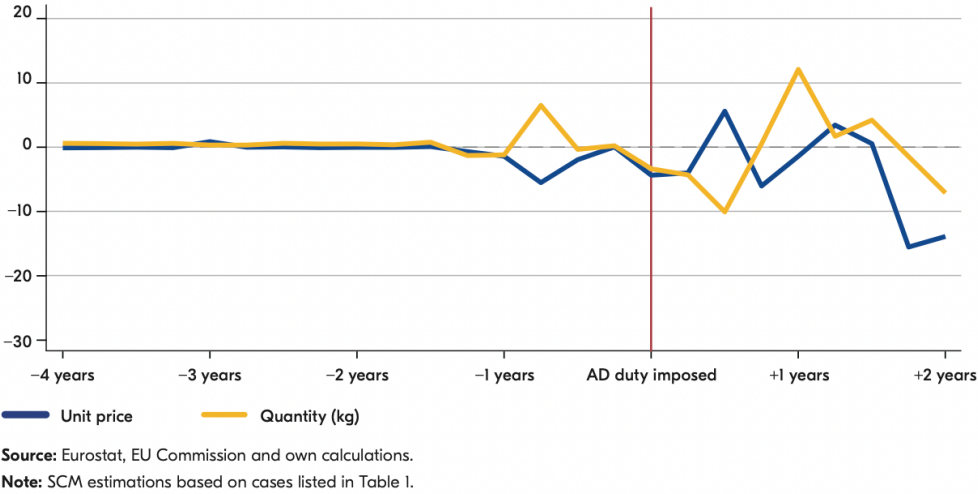


Table 3.3: Average impact on intra-EU trade on quantity and price in targeted products

Source: Kommerskollegium National Board of Trade, Report “EU Trade Defence – The unintended effects of the anti-dumping measures”, (2021), pp.18.

Consequently, the anti-dumping duty did not achieve the goal of significantly increasing trade among Member States (Table 3.4), but at least it managed to decrease the volume of harmfully dumped products into the EU (Table 3.3).

On the contrary, the impacts of anti-dumping duties on importation from non-targeted countries (extra-EU trade) led to a quite ambiguous result: increased importing

⁶³⁷ Ibidem, pp.19.

quantities (an average of 13%) in the first two years and a fluctuation of upward and downward values for import prices⁶³⁸.

So, for trade with non-targeted countries, the European anti-dumping duty did meet the pre-defined target of rising importation volumes in the short-term.



Source: Eurostat, EU Commission and own calculations.

Table 3.4: Average impact on imports from non-targeted countries (extra-EU trade) on quantity and import price
 Source: Kommerkollegium National Board of Trade, Report “EU Trade Defence – The unintended effects of the anti-dumping measures”, (2021), pp.19.

Overall, we can state that anti-dumping is a good instrument to prevent harmful trade practices because it contributes to significantly decrease the importation of dumped products from the targeted countries which would face difficulties to re-enter the market in the future, even after the duty’s revocation.

However, since the anti-dumping effects on the internal and the external European trade are not fully positive and/or at times ambiguous, the strategy of the current AD trade defense policy shall be soon redefined by the competent authorities, making sure to guarantee more long-term prospects of future permanent gains and benefits for all the European economic players (producers, users, and consumers), especially for what concerns intra-EU trade.

⁶³⁸ Ibidem, pp.20.

CHAPTER IV: EU-RUSSIA ANTI-DUMPING CASE ON BIRCH PLYWOOD PRODUCTS

4.1. EU-RUSSIA TRADE RELATIONS

Over the last ten years, the EU has considered increasingly important the relations with the BRIC countries (Brazil, Russia, India, and China)⁶³⁹ with which it has developed several strategic partnerships.

These countries are now the top trading partners of the EU.

In particular, Russia has represented for several years the EU's most important trading partner and in 2021 it accounted to be its fifth largest partner for the exports of goods (4.1%), and its third largest partner for the imports of goods (7.5%)⁶⁴⁰, with a total trade in goods of 257.5 billion of euro⁶⁴¹.

In the same year, the most imported goods from Russia to the EU were 333 different types of crude petroleum oils⁶⁴² and mineral fuels, which accounted for a total export value of 96.5 billion dollars⁶⁴³ (the EU's dependency on Russia's gas supplies is set for about 40%⁶⁴⁴).

⁶³⁹ J. Olsen, *The European Union, Politics and Policies*, Seventh Edition, "Relations with BRIC countries", Routledge Taylor & Francis Group, New York and London, (2021), pp.275.

⁶⁴⁰ Eurostat Statistics Explained, *Russia-EU-international trade in goods statistics, "Recent developments"*, (2022), (Access 22/05/2022), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Russia-EU_-_international_trade_in_goods_statistics&oldid=560076#Recent_developments

⁶⁴¹ EU Commission, *"Russia – EU trade relations with Russia. Facts, figures and latest developments"*, (2022), (Access 23/05/2022), https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/russia_en

⁶⁴² Eurostat Statistics Explained, *"EU trade in goods with Russia, 2011-2021"*, (2022), (Access 01/06/2022), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Russia-EU_-_international_trade_in_goods_statistics#EU-Russia_most_traded_goods

⁶⁴³ Statista.com, *"Value of Russian exports to EU-27 in 2021, by commodity"*, (2022), (Access 01/06/2022), <https://www.statista.com/statistics/1102603/russia-value-exports-to-eu-by-commodity/>

⁶⁴⁴ Reuters.com, *"Energy represented majority of EU's Russian imports in 2021, Eurostat says"*, (2022), (Access 01/06/2022), <https://www.reuters.com/business/energy/energy-represented-majority-eus-russian-imports-2021-eurostat-says-2022-03-07/>

As its principal gas supplier and neighbor, the security, the economic prosperity and the stability of Russia have always preoccupied the EU so much that it stayed vigilant in front of its most recent crucial happenings⁶⁴⁵.

With the end of the cold war in 1991, the European Union and the new Russian Federation had the chance to reorganize their bilateral economic and diplomatic relations⁶⁴⁶ and reshape the Central and Eastern European balances but in fact, both superpowers took two different paths and demonstrated a *defensive* mode of action against one another⁶⁴⁷.

On the eve of the end of the war, the main interest of the EU was to undertake a profound transformation towards the construction of a “*wider Europe*”, by integrating more future member countries under his wing and by supporting the transition of the former Communist countries towards market economies, with entrenched liberal values and a rules-based democratic order⁶⁴⁸. Its role was to make the democratization process “*smoother and faster*”⁶⁴⁹, but it never managed to reach out to Russia, which was instead characterized by a more authoritarian and technocratic regime.

So, the EU was going towards a political and economic integration, whereas the Soviet Union (USSR) was leaning towards an internal disintegration process that came true with the dissolution of its fifteen-republic-confederation due to profound internal economic weakness (military spending, high costs of maintenance of the republics), political unaccountability (nepotism, corruption, lack of transparency), rise of nationalism and national feelings⁶⁵⁰ and, most of all, Mikhail Gorbachev’s reforms of “*glasnost*” and “*perestroika*”

⁶⁴⁵ J. Olsen, *The European Union, Politics and Policies*, Seventh Edition, “*The EU’s rocky relationship with Russia*”, Routledge Taylor & Francis Group, New York and London, (2021), pp.273.

⁶⁴⁶ N. Kapoor, “*Russia-EU Relations: The End of a Strategic Partnership*”, ORF Issue Brief No.451, Observer Research Foundation, (2021), (Access 16/05/2022), <https://www.orfonline.org/research/russia-eu-relations-the-end-of-a-strategic-partnership/>

⁶⁴⁷ K. Raik, “*EU-Russia Relations 30 Years After the Collapse of the Soviet Union: The Art of Managing Tensions*”, Rahvusvaheline Kaitseuringute Keskus International Centre for Defence and Security Eesti, Estonia, (2021), (Access 16/05/2022), <https://icds.ee/en/eu-russia-relations-30-years-after-the-collapse-of-the-soviet-union-the-art-of-managing-tensions/>

⁶⁴⁸ Ibidem.

⁶⁴⁹ Ibidem.

⁶⁵⁰ ClearIAS, A. A. George, “*Disintegration of the USSR (1991): Reasons and Impacts*”, (2016), (Access 23/05/2022), <https://www.clearias.com/disintegration-of-the-ussr/>

(1985-1991) that would have brought the most fundamental changes to the economic engine of the nation.

However, for more than a decade after the war, the EU and Russia managed to keep close beneficial cultural, economic, and political ties, promoting trade and investment, and creating the right conditions for the establishment of a free trade area, crowned with the bilateral Partnership and Cooperation Agreement (PCA)⁶⁵¹, signed more than twenty years ago in June 1994.

In addition, as Russia decided not to be a partner of the European Neighborhood Policy (ENP)⁶⁵², both the EU and Russia decided to create four Common Spaces for cooperation to further reinforce their strategic partnership in the spheres of:

1. economy;
2. freedom, security, and justice;
3. external security;
4. research, education, and culture⁶⁵³.

The multipolar international order had always preoccupied Russia which was starting to see the EU as a dependent pawn under the powerful hegemony of its historical enemy, the US, with which the Union was sharing the same ideals and values on democratic protection and security⁶⁵⁴.

Nonetheless, since the mid-2000s some tensions started to emerge between the EU and Russia, due to issues related to the expansion of the NATO towards the eastern countries,

⁶⁵¹ Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States, of one part, and the Russian Federation, of the other part, (1997), L 327/3.

⁶⁵² The European Neighborhood Policy (ENP) is a foreign type of policy used by the European Union with 16 Southern and Eastern neighboring countries. Launched in 2003 and revised later in 2011, the policy had as purpose that of avoiding tensions between the enlarged EU and its neighbors, strengthening economic prosperity, stability, and security, and promoting their democratic transition, based on rule of law, human rights, and democratic values.

⁶⁵³ Wikipedia, “*Russia-European Union relations - The Four Common Spaces*”, (2022), (Access 23/05/2022), https://en.wikipedia.org/wiki/Russia-European_Union_relations#The_Four_Common_Spaces

⁶⁵⁴ K. Raik, “*EU-Russia Relations 30 Years After the Collapse of the Soviet Union: The Art of Managing Tensions*”, Rahvusvaheline Kaitseuringute Keskus International Centre for Defence and Security Eesti, Estonia, (2021), (Access 16/05/2022), <https://icds.ee/en/eu-russia-relations-30-years-after-the-collapse-of-the-soviet-union-the-art-of-managing-tensions/>

the Union's enlargement, the Russia-Ukraine disputes on gas procurement, and the Russia-Georgia conflict (2008)⁶⁵⁵.

However, their relations started to steadily decline with the anti-constitutional referendum for the annexation of the Ukrainian territory, Crimea, which brought to war in 2014 and "*planted the sea of greater conflict in the peninsula*"⁶⁵⁶.

Following such public illicit of international law, the EU, in close coordination with the US and its international partners, started to gradually impose individual and sectoral economic sanctions to Russia (renewed every six months⁶⁵⁷), and contributed to its economic recession in 2015 by causing downward pressure on the value of the Rouble and increase capital flight⁶⁵⁸.

Even at the WTO level the tensions were brought to the light, with both the EU and Russia filing disputes against one another on several matters from wood exports to anti-dumping import duties on light commercial vehicles⁶⁵⁹.

In the recent cases of poisoning of former spy Sergei Skripal (2018) and Putin's political opponent, Alexei Navalny (2020), even the special relations between Germany and France with Russia, mainly linked to gas importation and/or to former diplomatic alliances in past wars, fell rapidly and brought the EU towards imposing further individual, diplomatic and economic sanctions and restrictions on media on Russia⁶⁶⁰.

⁶⁵⁵ N. Kapoor, "*Russia-EU Relations: The End of a Strategic Partnership*", ORF Issue Brief No.451, Observer Research Foundation, (2021), (Access 16/05/2022), <https://www.orfonline.org/research/russia-eu-relations-the-end-of-a-strategic-partnership/>

⁶⁵⁶ Opendemocracy.net, N. Mirimanova, "*Crimea's referendum: four dangers*", (2014), (Access 01/06/2022), <https://www.opendemocracy.net/en/crimeas-referendum-four-dangers/>

⁶⁵⁷ Ibidem.

⁶⁵⁸ Nato Review, E. H. Christie, "*Sanctions after Crimea: Have they worked?*", (2015), (Access 01/06/2022), <https://www.nato.int/docu/review/articles/2015/07/13/sanctions-after-crimea-have-they-worked/index.html>

⁶⁵⁹ EU Commission, "*Russia – EU trade relations with Russia. Facts, figures and latest developments*", (2022), (Access 23/05/2022), https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/russia_en

⁶⁶⁰ Ibidem.

Over the years, the Russian Federation has seen the expansion of EU and NATO as potentially harmful to its own internal security⁶⁶¹ and the European Neighborhood Policy (ENP) as “*an encroachment on its interests in the neighborhood*”⁶⁶².

In spite of the recent international solidarity showed by the European Union towards Russia through a 13-million-euro package in the fight against the COVID-19 pandemic, it is the resumption of the Russo-Ukrainian war, started with the illegal annexation of the Crimean Peninsula in 2014, that worsened the EU-Russia relations even more⁶⁶³.

Symbolic was a recent statement of the President of the European Commission, Ursula von der Leyen, of June 2021 addressing the then Russia-EU relations, prior to the war:

*“History, geography and people bind the EU and Russia. The state of our relationship is complex. We have to identify the challenges and seize the opportunities. The deliberate choices and aggressive actions of the Russian government over the last years have created a negative spiral. Managing the EU-Russia relationship continues to represent a key strategic challenge for the EU. In response, the EU needs to continue to act in unity and with consistency, defending our fundamental values and interests.”*⁶⁶⁴

On February 24, 2022, after months of extreme tensions in the newly auto-recognized administrative regions of Donetsk and Luhansk in Ukraine, the Russian Federation launched a “*special military operation*” aimed at “*demilitarize and denazify*” the whole country⁶⁶⁵.

⁶⁶¹ Ibidem.

⁶⁶² N. Kapoor, “*Russia-EU Relations: The End of a Strategic Partnership*”, ORF Issue Brief No.451, Observer Research Foundation, (2021), (Access 16/05/2022), <https://www.orfonline.org/research/russia-eu-relations-the-end-of-a-strategic-partnership/>

⁶⁶³ European Union External Action, “*Facts and figures about EU-RUSSIA RELATIONS*”, (2021), (Access 03/06/2022), https://www.eeas.europa.eu/sites/default/files/eeas-eu-russia_relation-en_2021-07.pdf

⁶⁶⁴ EU Commission, “*EU-Russia relations: Commission and High Representative propose the way forward*”, (2021), (Access 31/05/2022), https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3010

⁶⁶⁵ Wikipedia, Russo-Ukrainian war, “*2022 Russian invasion of Ukraine*” (2022), (Access 19/05/2022), https://en.wikipedia.org/wiki/Russo-Ukrainian_War#2022_Russian_invasion_of_Ukraine

Since that day, the war has been highly denounced and condemned by the international community for the cruelty and aggressiveness perpetrated by the Russian army to the Ukrainian people and for the non-compliance of the Russians with the international law obligations, such as the prohibition of the use of force, the principle of the territorial sovereignty, integrity, and independence of Ukraine and the principle of non-interference in its internal state affairs.

On March 2nd, 2022, the United Nations General Assembly presented resolution ES-11/1⁶⁶⁶ expressing its deploration against the Russian aggression and demanding the immediate and unconditional cease of fire and withdraw of the Russian forces from the Ukrainian territory and the reverse of the decision related to the Donetsk and Luhansk regions⁶⁶⁷.

Also, the International Court of Justice asked for the suspension of the military operations and the Council of Europe decided on the expulsion of Russia from its permanent members⁶⁶⁸.

Apart from these position statements, many countries independently or under the European Union's power, provided humanitarian and military aid to Ukraine (including most of all support to the refugees) and imposed massively expanded economic and financial sanctions which are now affecting more than ever the economic stability and prosperity of Russia and that will bring the nation towards the greatest rate of inflation ever seen in history, weakening its economic base and "*curtailing its ability to wage war*"⁶⁶⁹.

These sanctions consist of:

- 1) individual restrictive sanctions: asset freezes and travel ban to 1158 individuals and 98 entities;

⁶⁶⁶ United Nations General Assembly, Resolution adopted by the General Assembly on 2 March 2022 ES-11/1. Aggression against Ukraine, A/RES/ES-11/1, (2022), (Access 01/06/2022), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/293/36/PDF/N2229336.pdf?OpenElement>

⁶⁶⁷ Ibidem.

⁶⁶⁸ Ibidem.

⁶⁶⁹ European Council, Council of the EU, "*EU response to Russia's invasion of Ukraine*", Latest news "*EU adopts fifth package of sanctions*", (2022), (Access 19/05/2022), <https://www.consilium.europa.eu/en/policies/eu-response-ukraine-invasion/#group-section-Five-guiding-principles-raHaVQon5T>

2) economic sanctions:

1. on the financial sector: disconnection of some of the Russian largest banks from the international payments system Swift;
 2. on the energy sector: ban on coal/oil imports, ban on new investments in the Russian energy sector, ban on exports to Russia of technological goods;
 3. on the transport sector: closure of European airspace/ports to all Russian aircrafts/vessels, ban on exports to Russia of technological goods of aviation, maritime and space industry;
 4. on the defense sector: ban on trade in armaments;
 5. on the raw material sector: ban on imports from Russia of iron, steel, wood, cement, seafood, and liquor, ban on exports of luxury goods to Russia;
- 3) restrictions on media: cut-off of some state-owned broadcasting TV from the EU (Sputnik, Russia Today, Rossiya RTR, etc.);
- 4) diplomatic sanctions: suspension of EU-Russia summit, regular bilateral summits and G7 meeting without the Russian participation⁶⁷⁰.

Overall, finance, transport, defense, trade, energy, and technology are the sectors of the Russian economy hit by the European sanctions (finance and trade sectors in Belarus are also hit) and remaining in place until the 31st of July, 2022⁶⁷¹. As for the sanctions against individuals and entities, the deadline is September 15th, 2022⁶⁷².

At the moment, the war is still ongoing, and it is recognized by the Western nations as the most terrible “*war of aggression*” of the past decade.

⁶⁷⁰ European Council, Council of the EU, “*EU restrictive measures against Russia over Ukraine (since 2014)*”, (2022), (Access 01/07/2022), <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/>

⁶⁷¹ European Council, Council of the EU, “*Infografica-EU sanctions against Russia over Ukraine (since 2014)*”, (2022), (Access 19/05/2022), <https://www.consilium.europa.eu/it/infographics/eu-sanctions-against-russia-over-ukraine/>

⁶⁷² Ibidem.

Many protests against the occupiers spread around the world calling for peace talks and armistices, but their inability to bring about concrete results led to a growing *anti-Russian* and discrimination sentiment against all the Russian-speaking people⁶⁷³.

Besides the protests and the intervention of Pope Francis, the war continues to rage in Eastern Europe, increasing preoccupation, resentment, spite, cruelty, and rage among people.

Consequently, the relations between the EU and Russia are now at their lowest, especially after the 5th package of sanctions adopted by the EU on April 8th (the 1st package was on February 23rd, the 2nd on February 25th, the 3rd on February 28th/March 2nd and the 4th on March 15th), also prohibiting the access of Russian and Belarusian road transport operators into the EU's territory to add to the economic sanctions⁶⁷⁴.

Moreover, the Russian political influence in the EU with the purpose of creating a common anti-European front through increased propaganda, close ties with some Eurosceptic and/or populist parties, and financial help to some far-right or far-left political parties⁶⁷⁵, contributed to increase the discrepancies between the EU and Russia.

Now, following the war in Ukraine, more than 450 companies⁶⁷⁶ have exited Russia, like Starbucks, McDonald's, Levi's, Mastercard and Visa, which decided to officially suspend their economic activities, by unwinding investments, pausing sales, and closing their points of sale⁶⁷⁷.

This highlights the exacerbation of the tensions between the Western countries and the Russian Federation, especially after the Russian defense minister's announcement of the

⁶⁷³ Wikipedia, "2022 Russian invasion of Ukraine - Reactions", (2022), (Access 23/05/2022), https://en.wikipedia.org/wiki/2022_Russian_invasion_of_Ukraine#Reactions

⁶⁷⁴ European Council, Council of the European Union, "EU response to Russia's invasion of Ukraine", (2022), (Access 22/05/2022), <https://www.consilium.europa.eu/en/policies/eu-response-ukraine-invasion/#group-section-Five-guiding-principles-raHaVQon5T>

⁶⁷⁵ Wikipedia, "Russia-European Union relations - Russian political influence and financial links", (2022), (Access 23/05/2022), https://en.wikipedia.org/wiki/Russia-European_Union_relations#Russian_political_influence_and_financial_links

⁶⁷⁶ Marketplace, "Why over 450 companies have withdrawn from Russia, and why some haven't", (2022), (Access 23/05/2022), <https://www.marketplace.org/2022/03/29/why-over-450-companies-have-withdrawn-from-russia-and-why-some-havent/>

⁶⁷⁷ New York Times, "Companies Are Getting Out of Russia, Sometimes at a Cost", (2022), (Access 23/05/2022), <https://www.nytimes.com/article/russia-invasion-companies.html>

deployment of twelve military units to the western borders, by the end of the year, in response to the NATO expansion towards Finland and Sweden⁶⁷⁸.

Moreover, as we can see from the map below, due to the increase of the escalation and the mutual threats from both European and Russian sides, NATO decided to intensify the number of troops and capabilities under its control in the eastern flank at the borders with Russia, adding four new battlegroups in Bulgaria, Romania, Slovakia, Hungary, and reaching a total of 40,000 troops⁶⁷⁹.



Figure 4.1: NATO's Eastern Flank

Source: Reddit.com, (2022), (Access 23/05/2022), https://www.reddit.com/r/MapPorn/comments/tjg1hg/natos_eastern_flank/

⁶⁷⁸ E. Teslova, “Russia to deploy 12 military units to country’s west in response to NATO expansion”, (2022), (Access 23/05/2022), <https://www.aa.com.tr/en/russia-ukraine-war/russia-to-deploy-12-military-units-in-countrys-west-in-response-to-nato-expansion/2593168#>

⁶⁷⁹ Euronews, “NATO now has 40,000 soldiers on Europe’s border with Russia”, (2022), (Access 23/05/2022), <https://www.euronews.com/my-europe/2022/05/18/nato-now-has-40-000-soldiers-on-europe-s-border-with-russia>

On the 3rd of June 2022, at the end of the European Council's meeting, due to the continuous aggressions and the persistent atrocities perpetrated by the Russian army in the Ukrainian territory, and the military and political support of its neighboring ally, Belarus, the Council of the European Union approved by qualified majority voting, the imposition of the 6th package of economic sanctions targeting both Russia and Belarus.

The High Representative for Foreign Affairs and Security Policy Josep Borrell declared:

“With today’s package, we are increasing limitations to the Kremlin’s ability to finance the war by imposing further economic sanctions. We are banning the import of Russian oil into the EU and with this cutting a massive source of revenue for Russia. We are cutting off more of the key Russian banks from the international payment system SWIFT. We are also sanctioning those responsible for the atrocities that took place in Bucha and Mariupol and banning more disinformation actors actively contributing to President Putin’s war propaganda”⁶⁸⁰.

The European Union is unwavering in condemning the Russian aggression against Ukraine and is urging Russia to immediately and unconditionally stop the cruel attacks, withdraw all the military forces and the armaments from the territory of the sovereign state of Ukraine and is asking Russia to allow the safe passage of all individuals who want to flee the war and have the right to live in peace⁶⁸¹.

To conclude, *“Russia, Belarus and all those responsible, will be held to account for their actions in accordance with international law”⁶⁸².*

⁶⁸⁰ Council of the EU, Press release, *“Russia’s aggression against Ukraine: EU adopts sixth package of sanctions”*, (2022), (Access 03/06/2022), <https://www.consilium.europa.eu/it/press/press-releases/2022/06/03/russia-s-aggression-against-ukraine-eu-adopts-sixth-package-of-sanctions/>

⁶⁸¹ Ibidem.

⁶⁸² Finnish Government, Government Communications Department, Press Release, *“EU leaders agree on sixth package of sanctions against Russia”*, (2022), (Access 03/06/2022), <https://valtioneuvosto.fi/en/-/10616/eu-leaders-agree-on-sixth-package-of-sanctions-against-russia>

4.2. CASE STUDY: CONCERNED PRODUCT AND CHARACTERISTICS

On the 31st of August 2020, pursuant to Article 5, paragraph 4, of Regulation 2016/1036⁶⁸³, the Woodstock Consortium, representing more than 25% of the total EU production and acting on behalf of the Union's producers of birch plywood⁶⁸⁴, filed a complaint against some Russian exporters of birch plywood products (classified under CN code ex 4412 33 00 – TARIC CODE: 4412330010)⁶⁸⁵ making use of dumping and causing material injury⁶⁸⁶ to the Union industry.

It's important to point that Russia is the main supplier of birch plywood products, it suffices to say that in 2019 it exported 1.082 million cubic meters to the European Union and through the years kept increasing its market share until the highest figure ever observed of 56% in 2020⁶⁸⁷.

Following the publication of the Notice of Initiation in the Official Journal of the EU⁶⁸⁸, the Commission, on the 14th of October 2020, initiated an in-depth anti-dumping investigation and noticed the systematic application of dumping by the Russian producers⁶⁸⁹.

⁶⁸³ Article 5, paragraph 4, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁶⁸⁴ Timberbiz.com, “EU launches anti-dumping procedure against Russia”, (2020), (Access 25/05/2022), <https://www.timberbiz.com.au/eu-launches-anti-dumping-procedure-against-russia/>

⁶⁸⁵ Article 1.1(1) and 3. Allegation of dumping, Commission Implementing Regulation (EU) 2021/1930 of 8 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of birch plywood originating in Russia, (2021), L 394/7.

⁶⁸⁶ On the text, the term “Injury” refers to as material injury, threat of material injury or material retardation of the establishment of an industry, as stated by Article 3(1) of the basic AD regulation.

⁶⁸⁷ iNews, “The EU officially approved the imposition of permanent import duties on Russian birch plywood for a period of 5 years”, (2022), (Access 24/05/2022), <https://inf.news/en/world/970dc32790ca172d6cbd50306b2fc2b0.html>

⁶⁸⁸ EU Commission, Procedures relating to the implementation of the common commercial policy, Notice of initiation of an anti-dumping proceeding concerning imports of birch plywood originating in Russia, (2020), C 342/2.

⁶⁸⁹ WoodStock Consortium, “Provisional anti-dumping duties on Russian birch plywood”, (2020), (Access 24/05/2022), <https://woodstockconsortium.com/provisional-anti-dumping-duties-on-russian-birch-plywood/>

The Commission informed all the concerned complainants, the importers, the suppliers, the users, and the trade associations about the initiation of the investigation⁶⁹⁰, giving them the chance to comment and request oral hearings⁶⁹¹.

The allegation of dumping made by the complainants was based on a price comparison mechanism: the domestic price of the concerned product in Russia, with the export price at ex-work level in the EU. Instead, the allegation of injury and causation was based on evidence that *“the volume and the prices of the imported product under investigation have had, among other consequences, a negative impact on the quantities sold and on the level of prices charged as well as on the market share held by the Union industry, resulting in adverse effects on the financial situation of the Union industry”*⁶⁹².

In the case, the product under investigation is described as: *“plywood consisting solely of sheets of wood, each ply not exceeding 6 mm thickness, with outer plies of wood specified under subheading 4412 33, with at least on outer of birch wood, whether or not coated, (“birch plywood” or the “product under investigation”)*⁶⁹³.

Moreover, as stated by Article 2.1(33) of the Regulation 2021/940, birch plywood *“consisted of layers or strands of wood veneers pressed together with glue into large, flat sheets [...] included in a wide range of applications, for example, in the construction, packaging and furniture sectors”*⁶⁹⁴.

⁶⁹⁰ 1.4 (6) Interested parties, Commission implementing regulation (EU) 2021/940 of June 2021 imposing a provisional anti-dumping duty on imports of birch plywood originating in Russia, (2021), L 205/47.

⁶⁹¹ Ibidem, 1.4 (7).

⁶⁹² 4. Allegation of injury/causation, EU Commission, Procedures relating to the implementation of the common commercial policy, Notice of initiation of an anti-dumping proceeding concerning imports of birch plywood originating in Russia, (2020), C 342/2.

⁶⁹³ EU Commission, 2. Product under investigation, Procedures relating to the implementation of the common commercial policy, Notice of initiation of an anti-dumping proceeding concerning imports of birch plywood originating in Russia, (2020), C 342/2.

⁶⁹⁴ Article 2.1(33) Product concerned, Commission implementing regulation (EU) 2021/940 of June 2021 imposing a provisional anti-dumping duty on imports of birch plywood originating in Russia, (2021), L 205/47.

4.3. REGULATION 2021/940 ON PROVISIONAL MEASURES

Pursuant to Article 5 of the basic AD regulation and according to the new rules dictated by the COVID-19 pandemic, the Commission initiated the investigation which covered the period from the 1st of July 2019 to the 30th of June 2020 and previewed, for the assessment of the injury, an examination of the period from the 1st of January 2017 to the end date of the investigation period aforesaid⁶⁹⁵.

The sampling used in the legal proceeding was limited to a small number of exporting producers, based on the largest representative volume of exports to the Union⁶⁹⁶, according to Article 17 of the basic AD regulation⁶⁹⁷.

The Commission then sent questionnaires to three of the fifteen exporting producers that agreed to be included in the sample⁶⁹⁸ and held verification visits, not pursuant to the ordinary Article 6 of the basic AD regulation, but instead executed remote crosschecks of the below companies:

“Union producers:

- *Latvijas Finieris AS, Latvia and related sales companies.*
- *Paged Pisz sp. S o.o., Poland and related sales companies.*
- *Metsä Wood, Finland and related sales companies.*

Importers:

- *Orlimex CZ s.r.o., Osik, Czech Republic*
- *Robert Neudeck GmbH & Co KG, Gernersheim, Germany*

⁶⁹⁵ 5.1. Investigation period and period considered, EU Commission, Procedures relating to the implementation of the common commercial policy, Notice of initiation of an anti-dumping proceeding concerning imports of birch plywood originating in Russia, (2020), C 342/2.

⁶⁹⁶ 5.3.1.1.(a) Sampling, EU Commission, Procedures relating to the implementation of the common commercial policy, Notice of initiation of an anti-dumping proceeding concerning imports of birch plywood originating in Russia, (2020), C 342/2.

⁶⁹⁷ Article 17, Regulation 2016/1036 of the European Parliament and of the Council of June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

⁶⁹⁸ 1.6.3(21) Sampling of exporting producers in Russia, Commission implementing regulation (EU) 2021/940 of June 2021 imposing a provisional anti-dumping duty on imports of birch plywood originating in Russia, (2021), L 205/47.

⁶⁹⁸ Ibidem, 1.4(7), Interested parties.

- *Group ISB, Pacé, France*

Exporting producers in Russia:

- *Sveza Group composed of seven exporting producers: JSC “SVEZA Manturovo”;*
- *JSC “SVEZA Novator”; Tyumen Plywood Plant Limited; JSC “SVEZA Ust-Izhora”; JSC “SVEZA Uralskiy”; JSC “SVEZA Kostroma”; JSC “SVEZA Verhnaya Sinyachiha” (‘Sveza Group’);*
- *Zheshartsky LPK LLC (‘UPG’);*
- *Syktyvkar Plywood Mill Ltd”⁶⁹⁹.*

All the Union producers who supported the complaint were companies located near the birch forests in Northern Europe and they employed overall around 5000 workers⁷⁰⁰.

According to the European complainants, the non-imposition of anti-dumping duties against the imports from Russia would have continued to cause harmful injury to the Union industry of birch plywood products⁷⁰¹, “*thus translating into more losses and likely closure of production facilities and dismissals*”⁷⁰².

Based on the investigation, at the moment of the increased volume of exports of the dumped birch plywood products and their market penetration in the EU, the economic situation of the Union industry consistently deteriorated and led to a decrease of prices and even to price suppression⁷⁰³.

⁶⁹⁹ Ibidem, 1.8.(27) Questionnaire replies and verification visits.

⁷⁰⁰ Ibidem, 7.1(179), Interest of the Union industry.

⁷⁰¹ Timberbiz.com, “*EU launches anti-dumping procedure against Russia*”, (2020), (Access 25/05/2022), <https://www.timberbiz.com.au/eu-launches-anti-dumping-procedure-against-russia/>

⁷⁰² 7.1(181), Interest of the Union industry, Commission implementing regulation (EU) 2021/940 of June 2021 imposing a provisional anti-dumping duty on imports of birch plywood originating in Russia, (2021), L 205/47.

⁷⁰³ Ibidem, 5.2(138) Effects of the dumped imports.

Also, in the same period, the Union industry experienced a significant decrease in the level of employment (12%)⁷⁰⁴ and productivity (2%)⁷⁰⁵ and even in the average unit sales prices of the sampled producers in the EU (3%)⁷⁰⁶.

The Commission took into account also the profitability of the sampled Union's producers and found that it dropped *"from almost 10% in 2017 to close to -3% in the investigation period"*⁷⁰⁷.

Therefore, it was finally considered the presence of a causal link between the dumped imports of birch plywood products from Russia and the injury caused to the EU⁷⁰⁸ and with the imposition of an anti-dumping duty the Union industry would have been likely to recover some lost market share and set higher prices to cover the costs⁷⁰⁹.

As for what concerns the Union interest, the Commission, taking into consideration the various interests of the Union industry, namely the importers, traders, users, suppliers and of other possible interested parties from France, Italy, and Spain⁷¹⁰, concluded that *"there were no compelling reasons that it was not in the Union interest to impose measures on imports of birch plywood originating in Russia"*⁷¹¹.

In light of the aforementioned statements and on the basis of the findings, on the 12th of June 2021, the Commission imposed a provisional ad-valorem anti-dumping duty ranging from 15.0% to 15.9% (expressed on the net free-at-Union-frontier price) on all Russian imports of birch plywood merchandise.

The duties were set at the level of the lower margin of dumping and underselling margins⁷¹² and their amounts were different based on the concerned exporting producer, as follows:

⁷⁰⁴ Ibidem, 4.4.2.4 (115), Employment and productivity.

⁷⁰⁵ Ibidem, 4.4.2.4 (116), Employment and productivity.

⁷⁰⁶ Ibidem, 4.4.3.1(120), Prices and factors affecting prices.

⁷⁰⁷ Ibidem, 4.4.3.4.(127), Profitability, cash flow, investments, return on investments and ability to raise capital.

⁷⁰⁸ Ibidem, 5.2(141) Effects of the dumped imports.

⁷⁰⁹ Ibidem, 7.1(180), Interest of the Union industry.

⁷¹⁰ Ibidem, 7.5(201), Other interested parties: other wood plywood producers, environmental interest and COVID-19.

⁷¹¹ Ibidem, 7.6(204), Conclusion on Union interest.

⁷¹² Ibidem, (206).

Company	Provisional anti-dumping duty	TARIC additional code
Sveza Group composed of seven exporting producers: JSC «SVEZA Manturovo»; JSC «SVEZA Novator»; Tyumen Plywood Plant Limited; JSC «SVEZA Ust-Izhora»; JSC «SVEZA Uralskiy»; JSC «SVEZA Kostroma»; JSC «SVEZA Verhnaya Sinyachiha»	15,9 %	C659
Syktyvkar Plywood Mill Ltd.	15,0 %	C660
Zheshartsky LPK LLC	15,3 %	C661
Other cooperating companies listed in Annex	15,7 %	
All other companies	15,9 %	C999

Table 4.2: Provisional anti-dumping duties for each concerned exporting producer

Source: 10(2) Final provisions, Provisional anti-dumping measures, Commission implementing regulation (EU) 2021/940 of June 2021 imposing a provisional anti-dumping duty on imports of birch plywood originating in Russia, (2021), L 205/47.

The duty rates were decided on the basis of a profound examination of the dumping (which was found to be of predatory type as totally aimed at the elimination of the local competition) and the injury margin, the causal link and the Union interest test⁷¹³, and on the basis of the lesser duty rule, pursuant to Article 7, paragraph 2, of the basic AD regulation.

Company	Dumping margin (%)	Injury margin (%)
Sveza Group	15,9 %	30,9 %
Syktyvkar Plywood Mill Ltd.	15,0 %	43,8 %
Zheshartsky LPK LLC	15,3 %	54,0 %
Other cooperating companies	15,7 %	38,1 %
All other companies	15,9 %	54,0 %

Table 4.3: Dumping margin and injury margin rates for each concerned exporting producer

Source: 6.1 (177), Injury margin, Commission implementing regulation (EU) 2021/940 of June 2021 imposing a provisional anti-dumping duty on imports of birch plywood originating in Russia, (2021), L 205/47.

The application of the individual provisional duty should be conditional upon presentation of a sound commercial invoice, properly dated and signed by the entity in question, to the Member State's responsible customs authority⁷¹⁴.

⁷¹³ Ibidem, 8 (205), Provisional anti-dumping measures.

⁷¹⁴ Ibidem, 10(3), Final provisions.

The following release of the concerned product for circulation into the Union “*is subject to the provision of a security deposit equivalent to the amount of the provisional duty*”⁷¹⁵.

4.4. REGULATION 2021/1930 ON DEFINITIVE MEASURES

After the provisional duty application, some of the concerned parties expressed their views and made written submissions to the European institutions⁷¹⁶, within fifteen calendar days from the entry into force of the provisional regulation⁷¹⁷.

In particular, the Sveza Group requested additional measures contesting that the previous examinations lacked important details on matters related to the dumping margin and the importation statistics⁷¹⁸.

However, the Commission did not agree with the Russian company but still continued with its verification activities and, at the moment of reaching its definitive findings, it considered appropriate to revise the provisional duty⁷¹⁹.

On the 8th of November 2021, the European Commission revoked the provisional duty, established in Regulation 2021/940 (the provisional regulation), and imposed a definitive anti-dumping duty, set up in the new Regulation 2021/1930⁷²⁰(the definitive regulation).

⁷¹⁵ Ibidem, 10(4), Final provisions.

⁷¹⁶ 1.5(8), Subsequent procedure, Commission implementing regulation (EU) 2021/1930 of 8 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on birch plywood originating in Russia, (2021), L 394/7.

⁷¹⁷ Article 2, paragraph 1, Commission implementing regulation (EU) 2021/940 of June 2021 imposing a provisional anti-dumping duty on imports of birch plywood originating in Russia, (2021), L 205/47.

⁷¹⁸ Ibidem, (10).

⁷¹⁹ Ibidem, (11).

⁷²⁰ Commission implementing regulation (EU) 2021/1930 of 8 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on birch plywood originating in Russia, (2021), L 394/7.

4.4.1. CALCULATION OF DUMPING MARGIN

The re-calculations of the individual dumping margins, expressed as a percentage of the CIF price⁷²¹, included adjustments and corrections of the provisional ones (following the comments of the interested parties) and resulted in the following figures:

Company	Definitive dumping margin
Zheshartsky LPK LLC	15,80 %
Sveza Group	14,40 %
Syktyvkar Plywood Mill	15,72 %
Other cooperating companies	14,85 %
All other companies	15,80 %

Table 4.4: Definitive dumping margins for each concerned exporting producer

Source: 3.4(121), Dumping margins, Commission implementing regulation (EU) 2021/1930 of 8 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on birch plywood originating in Russia, (2021), L 394/7.

Throughout the period considered (from 2017 up to the investigation), both the market share and the total sales volume of the European producers decreased: the former by 8% and the latter by 17%⁷²².

Instead, the Union industry, the Union production activity and the employment levels remained unaltered.

However, the final conclusions related to the injury caused to the Union industry were that, thanks to the price competitiveness, the imports from Russia significantly augmented during the investigation period (14%)⁷²³, allowing the Russian producers to conquer a market share of an overall 46%⁷²⁴.

In response to the pressure employed by the Russian exporters, the Union industry reduced employment and significantly increased the cost of production of the like products even higher than the sales prices, due to the high prices of raw materials⁷²⁵.

⁷²¹ Ibidem, 3.4(121), Dumping margins.

⁷²² Ibidem, 4.4(152), Economic situation of the Union industry.

⁷²³ Ibidem, 4.5(158), Conclusion on injury.

⁷²⁴ Ibidem, 4.5(159).

⁷²⁵ Ibidem, (161).

As a consequence, the Union's profitability massively collapsed (2.8%) causing an unsustainable loss for the whole EU that, translated into legislative language, turns into material injury⁷²⁶.

4.4.2. MATERIAL INJURY AND CAUSALITY

Since that during the period of pre-disclosure of the provisional duty, there has been an increased in the volume of importation from Russia (subject to the investigation), the injury margins had to be revised by the Commission⁷²⁷, and the amounts turned out as follows:

Country	Company	Injury margin
Russia	Zheshartsky LPK LLC	58,3 %
	Sveza Group	32,2 %
	Syktyvkar Plywood Mill	43,8 %
	Other cooperating companies	39,9 %
	All other companies	58,3 %

Table 4.5: Definitive injury margin for each concerned exporting producer

Source: 6.1(209), Injury margin, Commission implementing regulation (EU) 2021/1930 of 8 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on birch plywood originating in Russia, (2021), L 394/7.

Concerning the causality between the dumped product and the material injury caused to the Union, the lack of comments in respect to such matter did not entitle the Commission to make revisions⁷²⁸.

⁷²⁶ Ibidem, (162).

⁷²⁷ Ibidem, 6.1(208), Injury margin.

⁷²⁸ Ibidem, 5.1(166), Effects of the dumped imports.

Indeed, the conclusions set from recital (138) to recital (141) of the provisional Regulation 2021/940,⁷²⁹ concluding that the Russian imports caused material injury to the Union in terms of price and volume, shall be referred to.

4.4.3. UNION INTEREST AND FINAL DEFINITIVE DUTIES

The Commission received comments by the Segezha exporting producer claiming that the provisional duty would have been against the interests of the Union producers because of the possible risk of retaliation by the Government of the Russian Federation, exacerbated also by the export restrictions of some raw materials.

Moreover, the other exporting producer, the Sveva Group, claimed that the provisional duty would not have brought real benefits for the Union industry because of the incapacity of the EU to provide sufficient production to respond to the Union's demand and that the imports from Russia would have saved the future lack-of-supply-situation.

However, the Commission pointed that the purpose of the anti-dumping duty was *“not to block the imports from Russia but to establish a level playing field that allows the continuation of the sourcing of birch plywood from Russia but at a fair price”*⁷³⁰.

Apart from the aforementioned comments, the Commission did not receive any others and thus confirmed the conclusions laid out from recital (179) to recital (182)⁷³¹ of the provisional regulation which state that due to the unsustainable levels of profitability, the imposition of measures would help the Union industry to recover some lost market share and set prices that manage to cover the costs.

⁷²⁹ 5.2(138) - (141), Effects of the dumped imports, Commission implementing regulation (EU) 2021/940 of June 2021 imposing a provisional anti-dumping duty on imports of birch plywood originating in Russia, (2021), L 205/47.

⁷³⁰ Ibidem, 7.1(214), Interest of the Union industry.

⁷³¹ 7.1(179) - (182), Interest of the Union industry, Commission implementing regulation (EU) 2021/940 of June 2021 imposing a provisional anti-dumping duty on imports of birch plywood originating in Russia, (2021), L 205/47.

As pointed out in the (236) recital of the definitive regulation⁷³², the Commission confirmed the conclusions contained under the paragraph “*conclusion on Union interest*” of the provisional regulation (“*there were no compelling reasons that it was not in the Union interest to impose measures on birch plywood originating in Russia*”)⁷³³ and thus, decided on the imposition of definitive ad-valorem duties (expressed at the net free-at-Union-frontier price and ranging from 14.85% to 15.80%), which shall be as dictated in the table below:

Company	Definitive anti-dumping duty	TARIC additional code
Zheshartsky LPK LLC	15,80 %	C661
Sveza Group composed of seven exporting producers: “SVEZA Tyumen” Limited Liability Company; Joint Stock Company “SVEZA Ust-Izhora”; Joint Stock Company “SVEZA Verhnaya Sinyachiha”; Joint Stock Company “SVEZA Kostroma”; Joint Stock Company “SVEZA Manturovo”; Joint Stock Company “SVEZA Novator”; Limited Liability Company “SVEZA Uralskiy”	14,40 %	C659
Syktyvkar Plywood Mill Ltd.	15,72 %	C660
Other cooperating companies listed in the Annex	14,85 %	
All other companies	15,80 %	C999

Table 4.6: Definitive anti-dumping duties for each concerned exporting company

Source: Article 1, paragraph 3, Commission implementing regulation (EU) 2021/940 of June 2021 imposing a provisional anti-dumping duty on imports of birch plywood originating in Russia, (2021), L 205/47.

The duties are individual, namely they depend on the company’s name, and they are to be applied (for a straight 5-year period), upon presentation to the customs authorities of the Member State in question, of a valid commercial invoice⁷³⁴, properly signed and dated

⁷³² 7.6(236), Conclusion on Union interest, Commission implementing regulation (EU) 2021/1930 of 8 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on birch plywood originating in Russia, (2021), L 394/7.

⁷³³ 7.6(204), Conclusion on Union interest, Commission implementing regulation (EU) 2021/940 of June 2021 imposing a provisional anti-dumping duty on imports of birch plywood originating in Russia, (2021), L 205/47.

⁷³⁴ Article 1, paragraph 3, Commission implementing regulation (EU) 2021/1930 of 8 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on birch plywood originating in Russia, (2021), L 394/7.

by the official entity (Article 1, paragraph 3, of Regulation 2021/1930⁷³⁵) and laid out as follows:

“I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in [country concerned]. I declare that the information provided in this invoice is complete and correct”⁷³⁶.

If no such criteria are respected, the duty pertaining to the citation “*all other companies*”, shall be applied⁷³⁷.

4.5. CONCLUSION OF THE CASE

On the 3rd of December 2021, the Commission implemented a decision on not to suspend the anti-dumping measures since that the findings on the post investigation period (IP), suggested that the Union industry has continued to be materially injured by the Russian dumped exports of birch plywood.

Indeed, the Commission’s implementing decision 2021/2145⁷³⁸ showed a positive trend for the Union producers’ sales with a 9% increase compared to the IP period, but still considerably lower than the reference year (2017)⁷³⁹.

⁷³⁵ Commission implementing regulation (EU) 2021/1930 of 8 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on birch plywood originating in Russia, (2021), L 394/7.

⁷³⁶ Article 1, paragraph 3, Commission implementing regulation (EU) 2021/1930 of 8 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on birch plywood originating in Russia, (2021), L 394/7.

⁷³⁷ Ibidem.

⁷³⁸ Commission implementing decision (EU) 2021/2145 of 3 December 2021 not to suspend the definitive anti-dumping duties on imports of birch plywood originating in Russia imposed by Implementing Regulation (EU) 2021/1930.

⁷³⁹ Ibidem, 2.2(10), Post-IP situation of the Union industry.

As for what concerns profitability, production volume and capacity, the Commission registered positive upturns (despite remaining lower than the 2017 reference year's figures⁷⁴⁰), where the European market operated under no dumping conditions.

Therefore, the Commission determined that there were no significant changes and no signs of recovery for the whole European market economy, which continued to suffer loss makings in the post IP period, and thus, decided not to suspend the measures.

Also, the European institution found that there was no ground for making a prospective analysis (as claimed by some parties) of "*whether the injury would be unlikely to result of the suspension, given that the analysis showed Union industry continued to be materially injured in the post-IP period*"⁷⁴¹.

To conclude, the provisional and/or definitive anti-dumping duties did bring some qualitative and quantitative changes for the Union industry in terms of higher demand and prices but did not manage yet to completely eliminate the material injury.

As shown in the Decision 2021/2145, the post-IP developments showed a persistent injury to the Union industry and so the conditions for the suspension of the duties were not met⁷⁴².

As for what concerns the future consequences of the timber market situation in the EU following the application of the duties, many member countries will endure the Russian restrictions since that in 2021 the plywood exports to the EU accounted for a total of 727 million dollars⁷⁴³.

Due to the anti-dumping measures on birch plywood products, in February 2022, the exportation of Russian logs to the EU decreased by 41% to a total of 80.6 thousand cubic meters, while its price doubled to 741 dollars per cubic meter⁷⁴⁴.

⁷⁴⁰ Ibidem.

⁷⁴¹ Ibidem, 2.3(17), Conclusions on the Post-IP situation of the Union industry.

⁷⁴² Ibidem, 3(22), Conclusion.

⁷⁴³ Lesprom.com, "*In February, exports of log from Russia to EU fall 43%, plywood 41%*", (2022), (Access 26/05/2022), https://www.lesprom.com/en/news/In_February_exports_of_log_from_Russia_to_EU_fall_43_plywood_41_102999/

⁷⁴⁴ Ibidem.

This brought to a downward change of the Russian market share in the Union's plywood market that gave space to new plywood suppliers coming from Gabon and Brazil willing to gain more European market share⁷⁴⁵.

Besides the AD measures, also the Russo-Ukrainian war and the consequent European bans to the exports from Russia and Belarus with the suspension of trade certificates (FSC and PEFC chain of custody certification for timber products⁷⁴⁶) are considered other important causes of such economic downturns⁷⁴⁷.

In a recent statement on Telegram, the Russian Industry and Trade Minister, Denis Manturov, proposed a ban of future forestry products like birch plywood, fuel chips and plywood logs, by the end of 2022, to all the Russia's "*unfriendly countries*", including the EU and the US⁷⁴⁸.

According to the Minister, since these goods are important raw materials for paper production and critical commodities in the EU, this ban would cause harmful effects for the European economy and "*prevent European producers from boosting capacities of their own enterprises*"⁷⁴⁹.

A draft decree had already been submitted to the Economic Development Ministry of Russia and it would be approved shortly⁷⁵⁰.

However, even if Russian birch plywood importation attested for 1.5 million cubic meters in the last few years, the Indufor association found out that if the European existing production capacities, located in Finland and in the Baltic region, could work for 24/7 shifts,

⁷⁴⁵ Ibidem.

⁷⁴⁶ "*The FSC and PEFC Chain of custody certification for timber products*" are custody certification schemes for the type of product that an individual wants to trace through the supply chain. They provide protection and guarantee individual consumers and/or companies to obtain the original source timber they request when buying wood products from responsibly certified forests.

⁷⁴⁷ Ibidem.

⁷⁴⁸ Tass.com, "*Russian ministry suggests banning wood, timber-related exports to EU*", (2022), (Access 26/05/2022), https://tass.com/economy/1419909?utm_source=google.com&utm_medium=organic&utm_campaign=google.com&utm_referrer=google.com.

⁷⁴⁹ Ibidem.

⁷⁵⁰ Ibidem.

they might be able to produce about the same quantity of birch plywood goods coming from Russia⁷⁵¹.

⁷⁵¹ A. Blasten, Indufor, “*Can the European Market Survive without Russian Birch Plywood*”, (2022), (Access 30/05/2022), <https://induforgroup.com/can-the-european-market-survive-without-russian-birch-plywood/>

CONCLUSIONS

Since the second post-war period, the waves of globalization, liberalization and internationalization of markets augmented the necessity of intense transnational trading among countries and led to the development of unfair trade practices, such as dumping, subsidy and safeguard.

In particular, dumping is the most common price discrimination practice manifested when a foreign fierce exporter sells a product at an artificially low price to an importing country, far lower than its normal value, often defined as the ordinary product price applied in the original domestic market.

Independently of the type, dumping indicates profound market distortions of the normal internal economic equilibrium and it is responsible of provoking extensive damages to the detriments of the productive system of the receiving country, in terms of unequal competitiveness, unpredictable elevations of prices and future surges of unemployment levels.

The continuous and growing recourse to dumping, subsidy and safeguard by foreign exporters, has brought out the impelling necessity for the European businesses to avail of the so-called Trade Defense Instruments (TDIs) to promptly and efficiently block them in full respect of the WTO's international dispositions.

Specifically, this thesis was focused on the *anti-dumping duty* applied by the European Union which, having exclusive competence on the common commercial policy towards third countries, promulgated Regulation 2016/1036⁷⁵² with the purpose of protecting the Union industries from dumping interferences implemented by foreign exporters willing to gain a spot in the European market and perhaps to lay the ground for future monopolistic powers.

As stated in the previous chapters, the requirements for the application of an anti-dumping duty comprehend the existence of dumping itself, a material injury against the

⁷⁵² Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union, (2016), L 176/21.

Union industry producing the like product, a causal link between the dumped product and the injury occurred, and the fact that the anti-dumping measure shall not be against the Union interest.

To adapt the modern trade defense instruments to the new economic scenarios, the basic anti-dumping regulation had been improved twice, in 2017 and in 2018, to enhance the transparency and predictability of the investigation proceedings, reform the dumping calculations' methodology and increase the effectiveness of its enforcement⁷⁵³.

However, as discussed in the thesis, the current anti-dumping strategy needs to be further modernized and updated to the current commercial realities, to ensure more long-term benefits especially for European producers, in terms of profitability and growth in internal market share.

For some, anti-dumping might be seen as a policy, a political decision primarily driven by protectionist preferences of national governments when it comes to national trade policy choices, but in fact it is considered the sole legitimate response aimed at safeguarding the Union industries hit by unfair dumping practices⁷⁵⁴ and ensuring them with a legal playing field in terms of competitiveness, productivity, employment, and overall social and economic affluence.

This thesis was aimed at observing in-depth the shades of the anti-dumping mechanism, widely executed by the European institutions, and giving a full overview of its characteristics, its legislative procedure, and its methods of use, with regard to an European case of allegedly dumped imports of birch plywood products originating in the Russian Federation, with which the European Union had established a strong but (now) declining relationship, due to the recent *“deliberate choices and aggressive actions of the Russian government”*⁷⁵⁵.

⁷⁵³ EU Parliament, Briefing, *“Modernising trade defence instruments”*, (2018), (Access 31/05/2022), [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2018\)621884](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2018)621884)

⁷⁵⁴ L. Labruzzo, tesi di laurea: *“La difesa del commercio dell’Unione Europea tramite misure antidumping e antisovvenzione”*, Conclusioni, Luiss, Dipartimento di Scienze Politiche, Relatore Prof. Francesco Cherubini, pp.56.

⁷⁵⁵ EU Commission, *“EU-Russia relations: Commission and High Representative propose the way forward”*, (2021), (Access 31/05/2022), https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3010

Due to the existence of predatory dumping put in practice by some Russian birch plywood exporters, the Council, upon the Commission's proposal and the previous presentation of a complaint, decided to impose a definitive ad-valorem anti-dumping duty, varying between 14,40% and 15,80%, to the different concerned exporting producers, with the aim of *"not to block the imports from Russia but to establish a level playing field that allows the continuation of the sourcing of birch plywood from Russia but at a fair price"*⁷⁵⁶.

However, from the first duty application in December 2021 until now, the European producers couldn't enjoy concrete benefits in terms of profitability and increase in sales, but rather have been continuing to suffer injurious dumping in the post-investigation period.

As we have seen in the thesis, the anti-dumping is an efficient mechanism because it contributes to lower the importation of the dumped products from the targeted country but, it is important to point out that it takes some months before provoking positive effects in terms of internal market share and profitability and thus the Commission decided on the continuation of the duty's application for the following five years ahead.

To conclude, besides the critical oppositions presented by economists on its efficiency, the existence of the European anti-dumping duty has the sole purpose of allowing the Union to acquire foreign-manufactured-products at their fair market price (corresponding to the normal value determined in the exporting country), to discard the trade distortive effects of dumping and re-establish free trade conditions, but also to ensure the correct working of the traditional market balance and safeguard the correct European competitiveness for businesses, not only in the short-term but, most importantly, in the long-term period.

⁷⁵⁶ Ibidem, 7.1(214), Interest of the Union industry.

BIBLIOGRAPHY

Books

Bonanno M., *“Diritto dell’Unione Europea”*, Key Editore (2019), pp.127.

De Bievre/Eckhardt (fn.99), (2010), pp.2.

Di Gaspare G., *Diritto dell’economia e dinamiche istituzionali*, Cedam Editore, Vicenza, (2015), pp. 281 ss.

Farah P. D., *Le misure antidumping dell’Unione Europea alla luce del regolamento n. 182/2011*, Anno XXVII, Fascicolo 3, Giuffrè Editore, Milano, (2013), pp.868.

Frankel J. & Romer D., *“Does trade cause growth”*, American Economic Review, vol 89(3), (1999), pp. 379-399.

Giannakopoulos T. K., *“A Concise Guide to the EU Anti-dumping/Anti-subsidies Procedures”*, Kluwer Law International, The Netherlands, (2006), pp.5-55.

Imbriani C., Pittiglio R. & Reganati F., *“Economia internazionale di base ed investimenti esteri: teorie e politiche”*, G. Giappichelli Editore, (2014), pp.135.

Jacqué J.P., *“The Principle of Institutional Balance”*, Common Market Law Review 41: 383-391, Kluwer Law International, (2004), pp. 384.

Kotzur M., op.cit., p. 1026.

Krugman P. R. & Obstfeld M., *“Economia internazionale”*, Volume 1, Pearson Italia S.p.a, (2007), pp.173

Leebron D. W., *“An Overview of the Uruguay Round Results”*, 34 COLUM. J. TRANSAT’L L. 11, 20 (1995).

Lewellen T. C., *“The anthropology of Globalization-Cultural anthropology enters the 21st century”*, Praeger, (2002), preface.

McGovern, *“European Community anti-dumping and trade defence law and practice”*, Injury - Industry, (2008), pp.431.

Olsen J., The European Union, Politics and Policies, Seventh Edition, *“Relations with BRIC countries”*, Routledge Taylor & Francis Group, New York and London, (2021), pp.275.

Pammoli F., *“Modelli e strategie di marketing”* Franco Angeli Editor, (2005), pp.168.

Rodrik D. & Subramanian A., *“The primacy of institutions”*, Finance & Development, (2003).

Romeo F., *La difesa del Made in Italy nel settore agroalimentare fra spinte protezionistiche e crisi pandemica*, (2021), Milano.

Van Bael I., Bellis J.F., *“EU Anti-Dumping and other trade defense instruments”*, Kluwer Law International, Brussels, Belgium, (2011).

Van Elsuwege P., *“The duty of sincere cooperation (Art. 4 (3) TEU and its implications for the national interest of the EU Member States in the field of external relations”*, (2011), pp.1.

Vermulst E., Article *“Circumvention of Anti-Dumping Measures: Law and Practice of the European Union”*, Global Trade and Customs Journal Volume 11, Issue 11/12, (2016), pp.499.

Vermulst E. & Rovetta D., *“Judicial Review of Anti-dumping determinations in the EU”*, Introduction, Wolters Kluwer, pp.240.

Legislation

Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States, of one part, and the Russian Federation, of the other part, (1997), L 327/3.

Commission implementing Decision (EU) 2021/2145 of 3 December 2021 not to suspend the definitive anti-dumping duties on imports of birch plywood originating in Russia imposed by Implementing Regulation (EU) 2021/1930.

Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (Text with EEA relevance) (notified under document number C(2003) 1422), (2003).

Consolidated version of the Treaty establishing the European Atomic Energy Community (EURATOM), 2012/C 327/01.

Council Regulation (EEC) No 3017/79 of 20 December 1979 on protection against dumped or subsidized imports from countries not members of the European Economic Community, (1979), L 339/1.

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community, (2009), L 343/51.

Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis, (2020), L1 433/23.

Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community, (1988), L 209/1.

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, (1995), L 56/1.

Council Regulation (EC) No 3284/94 of 22 December 1994 on protection against subsidized imports from countries not members of the European Community, (1994), L 349/22.
EU Charter of Fundamental Rights, (2007).

EU Commission, “*Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions REPowerEU: Joint European Action for more affordable, secure and sustainable energy*”, (2022).

EU Commission, Procedures relating to the implementation of the common commercial policy, Notice of initiation of an anti-dumping proceeding concerning imports of birch plywood originating in Russia, (2020), C 342/2.

EU Court of Justice (CJEU), Judgment of the Court of 13 June 1958. Meroni & Co., Industrie Metallurgiche, SpA v High Authority of the European Coal and Steel Community, Case 9-56, (1958).

European Court of Justice (ECJ), Judgement of the Court of 2 December 1971, Aktien-Zuckerfabrik Schöppenstedt v Council of the European Communities, Case 5-71, (1971).

European Court of Justice (ECJ), Judgment of the Court (Sixth Chamber) of 13 February 1992, Goldstar Co. Ltd v Council of the European Communities, Case C-105/90, (1992).

EU-Singapore Free Trade Agreement Investment Protection Agreement, (2018).

EU-Vietnam Trade Agreement Investment Protection Agreement, (2019).

Joined opinion of Mr Advocate General Warner delivered on 14 February 1979. NTN Toyo Bearing Company Ltd and others v Council of the European Communities. Ball bearings, Case 113/77, (1979).

Judgment of the Court of 21 January 2003. Commission of the European Communities v European Parliament and the Council of the European Union. Comitology – Council

Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission – Criteria for choosing between the different procedures for adopting implementing measures – Effects – Obligation to state reasons – Annulment in part of Regulation (EC) No 1655/2000 of the European Parliament and of the Council concerning the Financial Instrument for the Environment (LIFE). Case C-378/00.

Regulation (EU) No 1238/2013 of 2 December 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China, (2013), L 325/1.

Regulation (EU) no 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, (2011), L 55/13.

Regulation (EU) No 498/2012 of 12 June 2012 on the allocation of tariff-rate quotas applying to exports of wood from the Russian Federation to the European Union, (2012), L 152/28.

Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast), (2013).

Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports (codification), L 83/16, (2015).

Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (recast), L 123/33, (2015).

Regulation (EU) 2015/936 of the European Parliament and the Council of 9 June 2015 on common rules for imports of textile products from certain third countries not covered by bilateral agreements, protocols, or other arrangements, or by other specific Union import rules (recast), (2015), L 160/1.

Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, (2015).

Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union as regards the duration of the period of pre-disclosure, L 259/1, (2020).

Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union, L 176/55, (2016).

Regulation (EU) 2017/2321 of the European Parliament and of the Council of 12 December 2017 amending regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European union and Regulation (EU) 2016/1037 on protection against subsidized imports from countries not members of the European Union, (2017), L 338/1.

Regulation (EU) 2018/825 of the European Parliament and of the Council of 30 May 2018 amending regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European union and Regulation (EU) 2016/1037 on protection against subsidized imports from countries not members of the European Union, (2018), L 143/1.

Regulation (EU) 2019/287 of the European Parliament and of the Council of 13 February 2019 implementing bilateral safeguard clauses and other mechanisms allowing for the temporary withdrawal of preferences in certain trade agreements concluded between the European Union and third countries, (2019), L 53/1.

Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union, LI 79/1, (2019).

Regulation (EU) 2020/1173 of 4 June 2020 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union

Regulation (EU) 2021/940 of 10 June 2021 imposing a provisional anti-dumping duty on imports of birch plywood originating in Russia, L 205/47, (2021).

Regulation (EU) 2021/1930 of 8 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of birch plywood originating in Russia, L 394/7, (2021).

Regulation (EU) 2021/2145 of 3 December 2021 not to suspend the definitive anti-dumping duties on imports of birch plywood originating in Russia imposed by Implementing Regulation (EU) 2021/1930, L 433/19, (2021).

Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, (2015), 215/998, L164/548.

Trade and investment Enhancement Agreement (TIEA), (2004).

Treaty establishing the European Economic Community (EEC Treaty), (1957).

Treaty on the European union (TEU), (2012).

Treaty on the Functioning of the European Union (TFEU) (consolidated version), C326/47, (2012).

United Nations Environment Programme (UNEP), Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their disposal, (1989).

United Nations Environment Programme (UNEP), Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous Chemicals & Pesticides in International trade, (1998).

United Nations (UN), Montreal Protocol on Substances that Deplete the Ozone Layer, (1987).

WTO, Accession of the People's Republic of China, (2001).

WTO, Anti-Dumping Agreement (ADA) or Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade, (1994).

WTO, Agreement on Safeguards (SG Agreement), (1994).

WTO, Agreement on Subsidies and Countervailing Measures (ASCM), (1994).

United Nations (UN), Montreal Protocol on Substances that Deplete the Ozone Layer, (1987).

Papers & Reports

Commission Notice concerning the reimbursement of anti-dumping duties 2021/C 118/06, C 118/59, (2021).

Crowell & Moring, *“Guide to EU anti-dumping law”*, (2006).

Davis L., *“Anti-dumping investigation in the EU: how does it work?”*, Section two: the Community interest test, European Centre for International Political Economy (ECIPE) Working Paper no. 04/2009, (2009), pp.5.

Department of trade and Industry, *“The Uruguay Round of Multilateral Trade Negotiations 1986-94”*, Chapter 1, Introduction 1.2-1.3, (1994).

Dr S. Woolcock, *“The role of the European Union in the International trade and investment order”*, Discussion Paper no. 2019-02, The University of Adelaide, (2019).

EU Commission, *“Anti-Dumping, Anti-Subsidy, Safeguard – Statistics Covering the first eight months of 2021”*, (2021), pp.1.

EU Commission, “*Commercio per tutti: verso una politica commerciale e di investimento più responsabile*”, Publications’ Office of the European Union, (2011), pp.3.

EU Commission, 1.2.1 European Court of Auditors – Audit of the EU’s TDI, Report from the Commission to the European Parliament and the Council “*39th Annual Report from the Commission to the European Parliament and the Council on the EU’s Anti-Dumping, Anti-Subsidy and Safeguard activities and the Use of Trade Defence Instruments by Third Countries targeting the EU in 2020*”, (2021).

EU Commission, Factsheet, “*Unleashing the full potential of European SMEs*”, (Access 15/04/2022), (2020).

EU Commission JRC Technical Reports, Z. Vrontisi, A. Kitous, B. Saveyn, T. Vandyck, “*Impact of low prices on the EU economy*”, (2015), (Access 05/04/2022).

EU Commission, “*How to make an anti-dumping complaint - A Guide*”, pp.14.

EU Commission, “*Le politiche dell’Unione Europea: commercio*”, Publications’ Office of the European Union, Luxembourg, (2016), pp. 5.

EU Commission, “*Report from the Commission to the European Parliament and the Council on the EU’s Anti-Dumping, Anti-Subsidy and Safeguard activities and the Use of Trade Defense Instruments by Third Countries targeting the EU in 2020*”, (2021).

EU Commission, “*TDI Trade Defence Instruments: Anti-dumping & anti-subsidy, A guide for Small and Medium-Sized Businesses*”, (2018).

EU Court of Auditors (ECA), “*Trade defence instruments*”, Audit preview, (2019), pp.11.

EU Court of Auditors (ECA), “*Trade defence instruments: system for protecting EU businesses from dumped and subsidized imports functions well*”, Special report 17, (2020), pp.11-13.

EU Parliament, “*Answer given by Mr Katainen on behalf of the Commission*”, question reference: E-006883/2014, (October 30th, 2014).

EU Parliament, R. Manko, “*Action for damages against the EU*”, Briefing, Court of Justice at work, European Parliamentary Research Service (EPRS), (2018), pp.2.

Jiwon S. L., Europa-Kolleg Hamburg Institute for European Integration, “*A Critical Analysis of Antidumping Policy at the Multilateral and Regional Levels: The Potential Influence of Europe’s Trade Power for Possible Reform*”, Study Paper No 3/13, pp.26.

Journal of Economic Integration (JEI), A. Steinbach, *“Price Undertakings in EU Anti-Dumping Proceedings – an Instrument of the Past?”*, (2013), pp.169.

Kleimann D., *“Taking Stock: EU Common Commercial Policy in the Lisbon Era”*, CEPS Working Document No. 346/April 2011, (2011), pp.1.

Kommerskollegium National Board of Trade, Report *“Do EU Producers and the EU Economy Really Benefit from Anti-Dumping Policy?”*, (2014).

Kommerskollegium National Board of Trade, Report *“EU Trade Defence – The unintended effects of the anti-dumping measures”*, (2021).

Labruzzo L., tesi di laurea: *“La difesa del commercio dell’Unione Europea tramite misure antidumping e antisovvenzione”*, Conclusioni, Luiss, Dipartimento di Scienze Politiche, Relatore Prof. Francesco Cherubini, pp.56.

Lee J. S., *“A Critical Analysis of Antidumping Policy at the Multilateral and regional Levels: The Potential Influence of Europe’s Trade Power for Possible Reform”*, Europa-Kolleg Hamburg Institute for European Integration, Study Paper No 3/13, pp.27.

Marton P., *“Reacting to Uncertainty: Institutional Responses to the Politicization of the EU Trade Policy”*, Central European University (CEU), (2020), pp.81.

Meunier S. & Nicolaidis K., *“The European Union as a Trade Power”*, Chapter 12, pp. 2-40, (publication’s year unknown).

Meunier S. and Nicolaidis K., *“Who Speaks for Europe? The Delegation of Trade Authority in the EU”*, Journal of Common Market Studies, Vol.37, No.3, (1999), pp.488.

Nenci S., *Dottorato di ricerca in barriere tariffarie e crescita del commercio*, (2004).

Rosas A., *“The Status in EU Law of International Agreements concluded by EU Member States”*, Fordham International Law Journal, (2011), pp.1310.

Sapir A., *“Some ideas for Reforming the Community Anti-Dumping Instrument”*, Professor of Economics, ECARES, Université Libre de Bruxelles, (2006).

Sieglinde G., *“The European Union’s Trade Policy”*, Institute of International Relations and Area Studies, Ritsumeikan University, (2013), pp.6.

Smith H., *“A legal guide to EU Anti-Dumping”*, Second Edition, (2016).

SITOGRAPHY

Accountlearning.com, “*Different types of dumping with example*”, (Access 24/05/2022), <https://accountlearning.com/different-types-of-dumping-with-example/>

Adewole o Mayowa, “*Il sistema di libero scambio oggi e il dibattito in America – “A che punto siamo e qual è la via da seguire?”*”, Rome Business School, (2020), (Access 05/02/2022), <https://romebusinessschool.com/it/blog/sistema-libero-scambio-oggi-dibattito-america-punto-qual-la-via-seguire/>

Article VI, paragraph 1, Anti-dumping and Countervailing Duties, GATT, (1994), https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art6_jur.pdf

Avv. Di Maggio E.M., “*Il processo di delocalizzazione produttiva*”, (2016), (Access 10/02/2022) <https://www.nuovefrontierediritto.it/il-processo-di-delocalizzazione-produttiva/>

Bellini E., “*EU maintains anti-subsidy and anti-dumping duties on solar glass from China*”, (2020); (Access 12/06/2022), <https://www.pv-magazine.com/2020/07/27/eu-maintains-anti-subsidy-duties-on-solar-glass-from-china/>

Blasten A., Indufor, “*Can the European Market Survive without Russian Birch Plywood*”, (2022), (Access 30/05/2022), <https://induforgroup.com/can-the-european-market-survive-without-russian-birch-plywood/>

ClearIAS, A. A. George, “*Disintegration of the USSR (1991): Reasons and Impacts*”, (2016), (Access 23/05/2022), <https://www.clearias.com/disintegration-of-the-ussr/>

Council of the EU, Press release, “*Russia’s aggression against Ukraine: EU adopts sixth package of sanctions*”, (2022), (Access 03/06/2022), <https://www.consilium.europa.eu/it/press/press-releases/2022/06/03/russia-s-aggression-against-ukraine-eu-adopts-sixth-package-of-sanctions/>

Court of Justice of the European Union, “*Jurisdiction*”, (Access 30/03/2022), https://curia.europa.eu/jcms/jcms/Jo2_7033/

Court of Justice of the European Union, “*Presentation – Composition*”, (2012), (Access 01/06/2022), https://curia.europa.eu/jcms/jcms/Jo2_7033/en/

Crowell & Moring, “*Guide to EU anti-dumping law*”, (2006), (Access 01/05/2022), pp.10, https://www.crowell.com/pdf/Guide_EUAnti-Dumping2006_English.pdf

De Angelis F., “*Il Mercato Unico Europeo: successi conseguiti e nuove sfide*”, (2020), (Access 20/02/2022), https://www.treccani.it/magazine/agenda/articoli/istituzioni/mercato_unico_successi_sfide.html

De Baere P., Van Bael & Bellis, “*The international Trade Law Review: World Trade Organization*”, The Law Reviews, (2021), (Access 30/03/2022), <https://thelawreviews.co.uk/title/the-international-trade-law-review/world-trade-organization>

De Matteis B., “*Il rischio della globalizzazione: mondializzazione dei mercati, megalopoli, multiculturalismo, identità e consumi*”, (Access 01/03/2022), <https://www.studenti.it/rischio-globalizzazione-mercati-megalopoli-multiculturalismo-identita-e-consumi.html>

Descotis E., “*Application of lesser duty rule in anti-dumping investigations*”, Lakshmikumaran & Sridharan attorneys, (2016), (Access 12/06/2022), <https://www.lakshmisri.com/insights/articles/application-of-lesser-duty-rule-in-anti-dumping-investigations/#>

Di Fiore F., “*La normativa europea antidumping*”, Melius Form Business School, (Access 07/04/2022), <https://www.meliusform.it/la-normativa-europea-antidumping.html>

EFinanceManagement.com, “*Sporadic Dumping*”, (2022), (Access 24/05/2022), https://efinancemanagement.com/economics/sporadic-dumping#Example_of_Sporadic_Dumping

EFinanceManagement.com, “*Advantages and Disadvantages of Dumping in International Trade*”, (2022), (Access 30/05/2022), https://efinancemanagement.com/economics/advantages-and-disadvantages-of-dumping-in-international-trade#Disadvantages_to_the_Importing_Country

EFinanceManagement.com, “*Reverse Dumping*”, (2022), (Access 24/05/2022), <https://efinancemanagement.com/economics/reverse-dumping>

EFinanceManagement.com, “*Predatory Dumping – Price elasticity of demand*”, (2022), (Access 20/04/2022), https://efinancemanagement.com/economics/predatory-dumping#Price_elasticity_of_demand

EU Commission, “*Anti-dumping*”, (2021), (Access 18/03/2022), <https://ec.europa.eu/trade/policy/accessing-markets/trade-defence/actions-against-imports-into-the-eu/anti-dumping/>

EU Commission, « *Anti-Dumping Questionnaire* », (Access 01/06/2022), https://trade.ec.europa.eu/doclib/docs/2013/december/tradoc_151932.pdf

EU Commission, “*Commission imposes definitive safeguard measures on imports of steel products*”, (2019), (Access 12/06/2022), https://ec.europa.eu/commission/presscorner/detail/en/IP_19_821

EU Commission, “*Common commercial policy*”, (Access 09/03/2022), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Aa20000>

EU Commission, “*Entrepreneurship and small and medium-sized enterprises (SMEs)*”, (Access 15/04/2022), https://ec.europa.eu/growth/smes_it

EU Commission, “*Anti-dumping measures - Investigations*”, (Access 26/04/2022), https://policy.trade.ec.europa.eu/enforcement-and-protection/trade-defence/anti-dumping-measures/anti-dumping-investigations_en

EU Commission, “*Annulment of legal acts by the Court of Justice*”, (2022), (Access 01/06/2022), <https://eur-lex.europa.eu/EN/legal-content/summary/annulment-of-legal-acts-by-the-court-of-justice.html>

EU Commission, “*About Access2Markets* », (Access 26/04/2022), <https://trade.ec.europa.eu/access-to-markets/en/content/about-access2markets>

EU Commission, Système Intégré de Gestion de Licenses (SIGL), (Access 19/04/2022), <https://webgate.ec.europa.eu/siglbo/public/reports>

EU Commission, “*Complaints*”, (Access 30/04/2022), https://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151018.pdf

EU Commission DG Communication, “*Towards open and fair world-wide trade*”, (2022), (Access 05/03/2022), https://european-union.europa.eu/priorities-and-actions/actions-topic/trade_en

EU Commission, “*DG Trade Statistical Guide August 2021*”, (2021), pp.22, (Access 04/03/2022), https://trade.ec.europa.eu/doclib/docs/2013/may/tradoc_151348.pdf

EU Commission, “*EU position in world trade*”, (2019), (Access 04/03/2022), <https://ec.europa.eu/trade/policy/eu-position-in-world-trade/>

EU Commission, “*EU-Russia relations: Commission and High Representative propose the way forward*”, (2021), (Access 31/05/2022), https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3010

EU Commission, “10 Benefits of trade”, (2019), (Access 07/03/2022), https://trade.ec.europa.eu/doclib/docs/2010/november/tradoc_146935.pdf

EU Commission, “International agreements and the EU’s external competences”, (2020), (Access 01/06/2022), <https://eur-lex.europa.eu/EN/legal-content/summary/international-agreements-and-the-eu-s-external-competences.html>

EU Commission, “Negotiations and agreements”, (2021), (Access 06/03/2022), <https://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/>

EU Commission, “WTO Boeing dispute: EU issues preliminary list of US products considered for countermeasures”, (2019), (Access 18/03/2022), https://ec.europa.eu/commission/presscorner/detail/fi/ip_19_2162

EU Commission, “Investigations – What are safeguard investigations?”, (2020), (Access 18/03/2022), https://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151031.pdf

EU Commission, “What monitoring is there of safeguard measures?”, (2020), (Access 18/03/2022), https://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151033.pdf

EU Commission, “Europe’s trade defence instruments now stronger and more effective”, (2018), (Access 12/06/2022), https://trade.ec.europa.eu/doclib/docs/2018/june/tradoc_156921.pdf

EU Commission, “Safeguards”, (2021), (Access 18/03/2022), <https://ec.europa.eu/trade/policy/accessing-markets/trade-defence/actions-against-imports-into-the-eu/safeguards/>

EU Commission, “Safeguards”, (2022), (Access 01/06/2022), https://policy.trade.ec.europa.eu/enforcement-and-protection/trade-defence/safeguards_en

EU Commission, “The Community interest test in anti-dumping and anti-subsidy proceedings”, (2006) Trade.B.1/AS D(2005)D/568), <https://file.wikileaks.org/file/ec-dumping-community-interest-2006.pdf>

EU Commission, “SME definition”, (Access 145/04/2022), https://ec.europa.eu/growth/smes/sme-definition_it

EU Commission, « Applying EU law », (2022), (Access 01/06/2022), https://ec.europa.eu/info/law/law-making-process/applying-eu-law_en

EU Commission, “Flowchart of a typical anti-dumping investigation”- “Anti-dumping Article 5 Investigation”, https://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151020.pdf

EU Commission, “*Treaty of Rome (EEC)*”, (2017), (Access 09/03/2022), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Axy0023>

EU Commission, « *Trade defence* », (2021), (Access 01/06/2022), https://policy.trade.ec.europa.eu/enforcement-and-protection/trade-defence_en

EU Commission, “*Verso un commercio equo e aperto a livello mondiale*”, (2022), (Accesso: 06/03/2022), https://european-union.europa.eu/priorities-and-actions/actions-topic/trade_it

EU Commission, “*Anti-dumping, anti-subsidy, safeguard statistics covering the full year 2020*”, Annex B, (2020), (Access 23/03/2022), pp.8, https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc_159452.pdf

EU Commission, “*Anti-subsidy measures*”, (2020), (Access 28/03/2022), <https://eur-lex.europa.eu/legal-content/en/LSU/?uri=CELEX%3A32016R1037>

EU Commission, “*Anti-dumping measures*”, (2020), (Access 28/03/2022), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legisum:r11005>

EU Commission, “*Institutional balance*”, Glossary of summaries, (Access 29/03/2022), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:institutional_balance

EU Commission, “*Anti-Dumping: EU acts to increase transparency, efficiency and predictability in the use of trade defence*”, (2003), https://ec.europa.eu/commission/presscorner/detail/pt/IP_04_310

EU Commission, « *Infringement procedure* », (2022), (Access 01/06/2022), https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure_en

EU Commission, “*Hearing Officer*”, (2022), (Access 12/06/2022), https://policy.trade.ec.europa.eu/contacts/hearing-officer_en

EU Commission, “*Trade Defence Instruments Committee*”, (2020), (Access 29/03/2022), https://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151013.pdf

EU Commission, “*Council of the European Union*”, (publication’s year unknown), (Access 02/04/2022), https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/institutions-and-bodies-profiles/council-european-union_en

EU Commission, “*Russia – EU trade relations with Russia. Facts, figures and latest developments*”, (2022), (Access 23/05/2022), https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/russia_en

EU Commission, “*Court of Justice of the European Union (CJEU)*”, (Access 03/30/2022), https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/institutions-and-bodies-profiles/court-justice-european-union-cjeu_en

European Council, Council of the EU, “*COVID-19: the EU’s response to the economic fallout*”, (2021), (Access 01/06/2022), <https://www.consilium.europa.eu/en/policies/coronavirus/covid-19-economy/>

European Council, Council of the EU, “*EU response to Russia’s invasion of Ukraine*”, Latest news “*EU adopts fifth package of sanctions*”, (2022), (Access 19/05/2022), <https://www.consilium.europa.eu/en/policies/eu-response-ukraine-invasion/#group-section-Five-guiding-principles-raHaVQon5T>

European Council, Council of the EU, “*EU restrictive measures against Russia over Ukraine (since 2014)*”, (2022), (Access 01/07/2022), <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/>

European Council, Council of the EU, “*Infografica-EU sanctions against Russia over Ukraine (since 2014)*”, (2022), (Access 19/05/2022), <https://www.consilium.europa.eu/it/infographics/eu-sanctions-against-russia-over-ukraine/>

EU Court of Auditors, “*Trade defence instruments*”, Roles and responsibilities, (2019), pp.10, https://www.eca.europa.eu/lists/ecadocuments/ap19_10/ap_trade_defence_instruments_en.pdf

EU Monitor, Directorate General for Trade (TRADE), <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vg9ibapthoyq>

EU Parliament, Briefing, “*Modernising trade defence instruments*”, (2018), (Access 31/05/2022), [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2018\)621884](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2018)621884)

EU Parliament, “*EU international investment policy: looking ahead*”, Briefing, (2022), (Access 03/04/2022), [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2022\)729276](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2022)729276)

EU Parliament, « *EU Trade Policy* », (2019), (Access 01/04/2022), pp.10, [https://www.europarl.europa.eu/RegData/etudes/IDAN/2019/642229/EPRS_IDA\(2019\)642229_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2019/642229/EPRS_IDA(2019)642229_EN.pdf)

EU Parliament, “*La politica commerciale dell’UE: strumenti per affrontare al meglio la globalizzazione*”, (2019), (Access 15/03/2021), <https://www.europarl.europa.eu/news/it/headlines/economy/20190528STO53303/la-politica-commerciale-dell-ue-per-affrontare-al-meglio-la-globalizzazione>

EU Parliament, “*Relazione sul dumping sociale dell’Unione Europea*”, I. “*Rafforzare i controlli e il coordinamento tra e da parte degli Stati membri*”, (2018), (Access 07/04/2022), https://www.europarl.europa.eu/doceo/document/A-8-2016-0255_IT.html

Euronews, “*NATO now has 40,000 soldiers on Europe’s border with Russia*”, (2022), (Access 23/05/2022), <https://www.euronews.com/my-europe/2022/05/18/nato-now-has-40-000-soldiers-on-europe-s-border-with-russia>

European Central Bank (ECB), “*The European response to the financial crisis, Speech by Gertrude Tumpel-Gugerell Member of the Executive Board of the ECB Bank of New York Mellon Headquarter New York, 16 October 2009*”, (2009), (Access 01/06/2022), https://www.ecb.europa.eu/press/key/date/2009/html/sp091016_1.en.html

European Union External Action, “*Facts and figures about EU-RUSSIA RELATIONS*”, (2021), (Access 03/06/2022), https://www.eeas.europa.eu/sites/default/files/eeas-eu-russia_relation-en_2021-07.pdf

Eurostat, EU Position in world trade, “*Latest Eurostat data on international trade*”, (2022), (Access 07/03/2022), pp.2, https://trade.ec.europa.eu/doclib/docs/2013/december/tradoc_151969.pdf

Eurostat, Statistics Explained, “*EU trade in 2021 strongly recovered from the COVID-19 pandemic*”, (2021), (Access 07/03/2022), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=International_trade_in_goods&stable=0&redirect=no#EU_trade_in_2021_strongly_recovered_from_the_COVID-19_pandemic

Eurostat, “*Extra-EU trade in goods*”, (2021), (Access 05/03/2022), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Extra-EU_trade_in_goods#Evolution_of_extra-EU_trade

Eurostat, “*Globalization patterns in EU trade and investment: international trade in goods for the EU-extra-EU trade in goods, 2002-2020*”, (2021), (Access 04/03/2022), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=International_trade_in_goods_for_the_EU_-_an_overview

Eurostat, “*International trade in goods for the EU-an overview*”, (2021), (Access 05/03/2022), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=International_trade_in_goods_for_the_EU_-_an_overview#Volume_of_goods

Eurostat, “*Main goods in extra-EU imports*”, (2022), (Access 08/03/2022), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Main_goods_in_extra-EU_imports#Crude_petroleum_and_natural_gas

Eurostat Statistics Explained, “*Oil and petroleum products – a statistical overview, Oil imports dependency*”, (2022), (Access 01/06/2022), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Oil_and_petroleum_products_-_a_statistical_overview&oldid=315177#Oil_imports_dependency

Eurostat Statistics Explained, “*EU trade in goods with Russia, 2011-2021*”, (2022), (Access 01/06/2022), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Russia-EU_-_international_trade_in_goods_statistics#EU-Russia_most_traded_goods

Eurostat Statistics Explained, Russia-EU-international trade in goods statistics, “*Recent developments*”, (2022), (Access 22/05/2022), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Russia-EU_-_international_trade_in_goods_statistics&oldid=560076#Recent_developments

Fastmarkets.com, E. Virchenko, “*Europe imposes provisional anti-dumping duties on electrolytic chromium coated steel from China, Brazil*”, (2022), (Access 01/06/2022), <https://www.fastmarkets.com/insights/europe-imposes-provisional-anti-dumping-duties-on-electrolytic-chromium-coated-steel-from-china-brazil>

Finnish Government, Government Communications Department, Press Release, “*EU leaders agree on sixth package of sanctions against Russia*”, (2022), (Access 03/06/2022), <https://valtioneuvosto.fi/en/-/10616/eu-leaders-agree-on-sixth-package-of-sanctions-against-russia>

Glossariomarketing.it, “*Dumping*”, (Access 07/04/2022), <https://www.glossariomarketing.it/significato/dumping/>

iNews, “*The EU officially approved the imposition of permanent import duties on Russian birch plywood for a period of 5 years*”, (2022), (Access 24/05/2022), <https://inf.news/en/world/970dc32790ca172d6cbd50306b2fc2b0.html>

Investire.biz, “*Dumping fiscale: cos'è e come funziona*”, (2021), (Access 07/04/2022), <https://investire.biz/articoli/analisi-previsioni-ricerche/economia-politica-diritto/dumping-fiscale-cosa-e-come-funziona-conseguenze-italia-europa-soluzioni>

Investopedia.com, “*Dumping*”, (2021), (Access 01/06/2022), <https://www.investopedia.com/terms/d/dumping.asp>

Jinji N., “*Social Dumping and International Trade*”, (2005), (Access 01/06/2022), <https://www.etsg.org/ETSG2005/papers/jinji.pdf>

Kapoor N., “*Russia-EU Relations: The End of a Strategic Partnership*”, ORF Issue Brief No.451, Observer Research Foundation, (2021), (Access 16/05/2022), <https://www.orfonline.org/research/russia-eu-relations-the-end-of-a-strategic-partnership/>

Latini S., “*Verso un sistema fiscale comune per le società europee*”, (2021), (Access 07/04/2022), <https://www.ipsoa.it/documents/fisco/fiscalita-internazionale/quotidiano/2021/06/03/sistema-fiscale-comune-societa-europee>

Lesprom.com, “*In February, exports of log from Russia to EU fall 43%, plywood 41%*”, (2022), (Access 26/05/2022), https://www.lesprom.com/en/news/In_February_exports_of_log_from_Russia_to_EU_fall_43_plywood_41_102999/

Luiss Open, “*The erosion of a pillar doctrine of EU law*”, (2020), (Access 01/06/2022), <https://open.luiss.it/en/2020/02/06/the-erosion-of-a-pillar-doctrine-of-eu-law/>

Marketplace, “*Why over 450 companies have withdrawn from Russia, and why some haven't*”, (2022), (Access 23/05/2022), <https://www.marketplace.org/2022/03/29/why-over-450-companies-have-withdrawn-from-russia-and-why-some-havent/>

Meunier S. & Nicolaidis K., “*The European Union as a Trade Power*”, Chapter 12, pp. 2-3, (Access 10/03/2022), <https://www.princeton.edu/~amoraves/www556c/handover.pdf>

Ministry for Finance and Employment of Malta, “*Trade Defence Instruments*”, (Access 18/03/2022), <https://finance.gov.mt/en/epd/pages/international-economic-relations-directorate/trade-defence-instruments.aspx>

Mondaq.com, “*Turkey: Is “Lesser Duty Rule” A Tightrope Walker’s Pole in International Trade Remedies Law of Turkey? – The “Lesser Duty Rule” at the International Level*”, (2017), (Access 01/06/2022), <https://www.mondaq.com/turkey/international-trade-investment/626154/is-lesser-duty-rule-a-tightrope-walker39s-pole-in-international-trade-remedies-law-of-turkey>

Nato Review, E. H. Christie, “*Sanctions after Crimea: Have they worked?*”, (2015), (Access 01/06/2022), <https://www.nato.int/docu/review/articles/2015/07/13/sanctions-after-crimea-have-they-worked/index.html>

New York Times, “*Companies Are Getting Out of Russia, Sometimes at a Cost*”, (2022), (Access 23/05/2022), <https://www.nytimes.com/article/russia-invasion-companies.html>

Niemann A., “*The Common Commercial Policy: From Nice to Lisbon*” in: Laursen, F. (ed.), *The EU’s Lisbon Treaty: Institutional Choices and Implementation*, Ashgate, (2012), (Access 10/03/2022), pp. 2-3 https://international.politics.uni-mainz.de/files/2018/11/Niemann_2012_Common_Commercial_Policy.pdf

Opendemocracy.net, N. Mirimanova, “*Crimea’s referendum: four dangers*”, (2014), (Access 01/06/2022), <https://www.opendemocracy.net/en/crimeas-referendum-four-dangers/>

Organization for Economic Cooperation and Development (OECD), “*The importance of global value chains*”, Our world in data blog, (2018), (Access 01/04/2022), https://www.oecd-ilibrary.org/economics/oecd-compendium-of-productivity-indicators-2018_pdtvy-2018-en

Ortiz-Ospina E., “*Does trade cause growth*”, (2019), (Access 01/04/2022), <https://ourworldindata.org/trade-and-econ-growth>

Ottobre G., “*Le nuove frontiere europee a seguito dell’approvazione delle norme “anti-dumping”: come si evolvono gli scenari economici*”, (2019), (Access 05/02/2022), <https://www.diritto.it/le-nuove-frontiere-europee-a-seguito-dellapprovazione-delle-norme-anti-dumping-come-si-evolvono-gli-scenari-economici/>

Raik K., “*EU-Russia Relations 30 Years After the Collapse of the Soviet Union: The Art of Managing Tensions*”, Rahvusvaheline Kaitseuringute Keskus International Centre for Defence and Security Eesti, Estonia, (2021), (Access 16/05/2022), <https://icds.ee/en/eu-russia-relations-30-years-after-the-collapse-of-the-soviet-union-the-art-of-managing-tensions/>

Reuters.com, “*Energy represented majority of EU’s Russian imports in 2021, Eurostat says*”, (2022), (Access 01/06/2022), <https://www.reuters.com/business/energy/energy-represented-majority-eus-russian-imports-2021-eurostat-says-2022-03-07/>

Statista.com, “*Value of Russian exports to EU-27 in 2021, by commodity*”, (2022), (Access 01/06/2022), <https://www.statista.com/statistics/1102603/russia-value-exports-to-eu-by-commodity/>

Study.com, N. Ackermann, “*How Does Dumping Work?*”, (2022), (Access 01/06/2022), <https://study.com/learn/lesson/dumping-strategy-effects.html>

Tass.com, “*Russian ministry suggests banning wood, timber-related exports to EU*”, (2022), (Access

26/05/2022), https://tass.com/economy/1419909?utm_source=google.com&utm_medium=organic&utm_campaign=google.com&utm_referrer=google.com .

Teslova E., “Russia to deploy 12 military units to country’s west in response to NATO expansion”, (2022), (Access 23/05/2022), <https://www.aa.com.tr/en/russia-ukraine-war/russia-to-deploy-12-military-units-in-countrys-west-in-response-to-nato-expansion/2593168#>

The Penguin Companion to European Union, “Trade defence instruments (TDIs)”, (2012), (Access 18/03/2022), https://penguincompaniontoeu.com/additional_entries/trade-defence-instruments-tdis/

Timberbiz.com, “EU launches anti-dumping procedure against Russia”, (2020), (Access 25/05/2022), <https://www.timberbiz.com.au/eu-launches-anti-dumping-procedure-against-russia/>

Tinagli I., “La liberalizzazione del mercato”, (Access 05/02/2022), www.economia.rai.it.

Trade and Industry Department – the Government of the Hong Kong Special Administrative Region, “Anti-dumping”, (2022), (Access 01/06/2022), https://www.tid.gov.hk/english/trade_relations/ad/ad_action_eu_pro.html#fact

Trading Economics, “European Union imports by category”, (Access 08/03/2022), <https://tradingeconomics.com/european-union/imports-by-category>

Treccani, “Globalizzazione”, enciclopedia online, (Access 05/02/2022), <https://www.treccani.it/enciclopedia/globalizzazione/>

United Nations General Assembly, Resolution adopted by the General Assembly on 2 March 2022 ES-11/1. Aggression against Ukraine, A/RES/ES-11/1, (2022), (Access 01/06/2022), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/293/36/PDF/N2229336.pdf?OpenElement>

UN, Environmental Programme, “The Montreal Protocol”, (publication’s year unknown), (Access 07/04/2022), <https://www.unep.org/ozonaction/who-we-are/about-montreal-protocol>

University of Portsmouth, “Competences in the EU: Who is responsible for what?”, (2010), (Access 01/06/2022), <http://hum.port.ac.uk/europeanstudieshub/learning/module-2-understanding-eu-policy-making/a-question-of-competences/>

Vitali G., “La liberalizzazione dei mercati: introduzione”, Istituto di Ricerca sull’Impresa e lo Sviluppo, (2011), (Access: 03/03/2022), http://www2.ceris.cnr.it/homedipendenti/vitali/dispense2010_11_PE/introduzione%20liberalizzazioni%2026%2011%202010.pdf

Zupi M., *Dall'accordo NAFTA allo USMCA: implicazioni per l'UE e per l'Italia*, Osservatorio di politica internazionale, (2021), pp.8, (Access 09/02/2022), <https://www.parlamento.it/application/xmanager/projects/parlamento/file/repository/affariinternazionali/osservatorio/note/PI0091Not.pdf>

Wikipedia, “*Common Commercial Policy (EU)*”, (2022), (Access 09/03/2022), [https://en.wikipedia.org/wiki/Common_Commercial_Policy_\(EU\)](https://en.wikipedia.org/wiki/Common_Commercial_Policy_(EU))

Wikipedia, “*Common Commercial Policy (EU)*”, (2022), (Access 14/03/2022), [https://en.wikipedia.org/wiki/Common_Commercial_Policy_\(EU\)](https://en.wikipedia.org/wiki/Common_Commercial_Policy_(EU))

Wikipedia, “*Russia-European Union relations - Russian political influence and financial links*”, (2022), (Access 23/05/2022), https://en.wikipedia.org/wiki/Russia-European_Union_relations#Russian_political_influence_and_financial_links

Wikipedia, “*Environmental dumping*”, (2022), (Access 01/06/2022), https://en.wikipedia.org/wiki/Environmental_dumping

Wikipedia, Russo-Ukrainian war, “*2022 Russian invasion of Ukraine*” (2022), (Access 19/05/2022), https://en.wikipedia.org/wiki/Russo-Ukrainian_War#2022_Russian_invasion_of_Ukraine

WoodStock Consortium, “*Provisional anti-dumping duties on Russian birch plywood*”, (2020), (Access 24/05/2022), <https://woodstockconsortium.com/provisional-anti-dumping-duties-on-russian-birch-plywood/>

Woodstock Consortium, “*Provisional anti-dumping duties on Russian birch plywood*”, (2020), <https://woodstockconsortium.com/provisional-anti-dumping-duties-on-russian-birch-plywood/>

Woodstock Consortium, “*The Woodstock Consortium welcomes the imposition of anti-dumping duties on imports of birch plywood from Russia*”, Press release, (2021), <https://woodstockconsortium.com/wp-content/uploads/2021/11/211111-Woodstock-Consortium-press-release-welcomes-the-imposition-of-anti-dumping-duties.pdf>

WTO, “*Technical information of anti-dumping*”, (Access 08/04/2022), https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm