

**GUIDE TO DRAFTING
A COUNTERVAILING
(ANTI-SUBSIDY) COMPLAINT**

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A. INTRODUCTION

1. The purpose of this guide is to explain how to draft a countervailing (anti-subsidy) complaint (hereafter referred to as a CVD complaint). It sets out the information which is needed for the European Commission to decide whether to open a formal investigation on allegedly subsidised imports which are causing injury to a Union industry¹. The Union legislation implementing the internationally agreed provisions for dealing with subsidised imports is set out in Council Regulation (EC) No 597/2009² (hereinafter, referred to as the “Basic Regulation”).

2. By guiding the reader through the contents and form of a complaint, the Commission services hope to clarify many of the questions that usually arise during the drafting of such a document. It should be noted, however, that this guide is not a legally binding document, nor are its contents compulsory. It is meant only to provide advice to the complainant, who may take another approach which seems more reasonable at any time. Therefore, no conclusions can be drawn from this document as to what constitutes standards of acceptability in CVD complaints. Equally, the use of this guide in drafting a complaint does not imply the automatic acceptance of the complaint.

3. The Commission services are at your disposal at the following address to answer any queries which you may have regarding the lodging of a CVD complaint.

*European Commission
Office of Complaints, TDI Service (Office: N-105 09/66)
Rue de la Loi 200,
B-1049 Brussels, Belgium
Phone: 32-2-298 78 73 Fax: 32-2-295 65 05
E-mail : TRADE-Defence-Complaints@ec.europa.eu*

4. Once the complaint has been drafted, it can be sent to the address mentioned above. The European Commission will then evaluate the complaint and decide whether it contains sufficient *prima facie* evidence of subsidisation, injury and causality. If deemed acceptable, an investigation concerning the allegedly subsidised imports will be initiated within 45 days from the lodging of the complaint. If you experience difficulties during the drafting of the complaint, do not hesitate to contact the Commission informally at any time. In any event, experience has shown that it is normally advisable for complainants to meet with Commission officials before formally submitting a complaint, in order to discuss its contents and to clarify the procedure to be followed.

¹ European Union (EC) legislation allows for the lodging of complaints not only against subsidised imports (covered in this document), but also against dumped imports. For more information on dumped imports, please contact the European Commission, at the above mentioned address.

² Published in OJ L 188 of 18.7.2009, p. 93

B. GENERAL COMMENTS

Documentation

5. Applicants should provide full and accurate information and, wherever possible, give supporting documentary evidence from commercial or governmental sources.

6. All sources of data used should be stated.

Confidentiality

7. Information submitted in complaints is treated as strictly confidential by the Commission services. In order that all parties to a proceeding may defend their interests, a non-confidential version of the complaint must be submitted at the same time as the confidential version. The non-confidential version shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

The non-confidential version should show the trends and/or levels which the confidential data depict by using, for example, indices e.g.

Confidential version

	<u>Year</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Sales volumes in EU (tonnes)		25000	23750	19700

Non-confidential version

	<u>Year</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Sales volumes in EU (tonnes)		100	95	78.8

8. Applicants are asked to provide both the confidential and non-confidential versions in the form of hard copies and also in electronic format if possible³.

³ Preferably in Word for the text and in Excel for tables.

C. PARTS OF A CVD COMPLAINT

9. A CVD complaint should provide information on a number of issues which may be split into four separate headings.

I. **General information**: Identification of :

- (a) the complainant
- (b) the allegedly subsidised product
- (c) the countries of origin
- (d) other known parties concerned.

II. *Prima facie* evidence of alleged **subsidisation**.

III. *Prima facie* evidence of alleged **injury** to the Union industry.

IV. *Prima facie* evidence of a **causal link** between the alleged subsidisation and injury.

I. GENERAL INFORMATION

(a) **Complainant**

10. The name, address, telephone and telefax numbers, and contact person of the complainant should be given. The complainant can be any natural or legal person, or association not having legal personality which has been created to represent individual companies supporting the complaint.

Representativeness of the complainant

11. The complainant must act on behalf of a major proportion of the industry in the European Union⁴ (i.e. the complainant must be representative). The complainant has to state that:

- (i) it is acting on behalf of the Union industry of the product concerned;
- (ii) the portion of Union industry represented accounts for a major proportion of total Union output.

12. A complainant has support of a “major proportion” of total Union output when:

- (i) the production of the companies supporting the complaint accounts for more than 50% of total EU production (i.e. production of the product concerned in a recent period), or

⁴ A special case occurs when there is such a large degree of market isolation in one region of the Union (a region can be a country, a part of it, or several countries together) that the producers within the region in question can be considered as the injured industry. If exports are concentrated in the region, there may be grounds for a regional CVD case. For further information please consult Art. 9(1)(b) of the Basic Regulation and contact the Commission services, if necessary.

- (ii) the production of the companies supporting the complaint accounts for more than 25% of total EU production, and this portion is larger than the percentage of production of producers of the product concerned which express opposition to the complaint.

In short, support for the complaint should be larger than opposition and not less than 25% of total production.

The Commission verifies the representativeness of the complainant prior to the initiation of the proceeding.

EC producers related to exporters/importers

13. The production quantities of EU producers which are related to exporters/importers may be excluded from the total EU production when assessing representativeness. Producers in the Union can be considered to be related to exporters or importers when one of the parties is legally or operationally in a position to exercise restraint or direction over the other. This may happen when

- (i) one of them directly or indirectly controls the other;
- (ii) both of them are directly or indirectly controlled by a third person;
- (iii) together they directly or indirectly control a third person, forming a relationship which leads the producer to behave differently from the other non-related producers.

In this case, known EU producers which can be considered related to exporters/importers of the product concerned should be listed, together with a description of their relationship.

14. Under certain circumstances, the production of companies who themselves import the product concerned may be excluded from total EU production when assessing representativeness. This may be the case where, for example, the primary function of the producer is the importation of the product concerned. Such a producer can be considered to benefit from the subsidised imports and is therefore excluded from the definition of "Union industry". This does not, of course, apply to producers who may be importing a limited quantity of the product as a complement to their production, but are also suffering from the effects of subsidised imports.

If you have any questions on this aspect, do not hesitate to contact the Commission services.

15. If the portion of industry supporting the complaint meets the requirements set out in paragraph 12, it will be considered as the "Union industry" for the purpose of the complaint. All figures and calculations pertaining to the "Union industry" will refer only to the companies supporting the complaint.

Other producers in the Union

16. Comment may also be made on known producers which do not support the complaint. Details should be provided, if possible, of their names and their importance in terms of quantity of Union production. If they are related to the foreign producers/exporters this should be stated.

(b) Allegedly subsidised product (product concerned)

17. Identifying the product affected by the imports is essential as it defines the scope of the proceeding. Within the product, there may, of course, be different varieties which share similar characteristics and are thus relatively interchangeable. The product concerned, covering all its different varieties, will be the product considered in the proceeding. The following information should be given :

- Product definition

This is a short definition which, quoted in legal texts, will precisely depict the scope of the proceeding. It may (or may not) be the definition stated in the relevant CN Code/s. It should be borne in mind that the EU Customs Authorities should be able to identify whether an imported product falls under the scope of the proceeding on the basis of such a definition.

- Product description

This will include:

= Combined Nomenclature Codes of the product or products involved⁵

= General description:

- physical description
- description of the uses of the product and its market.
- sales channels

- Types of the product concerned

If there are a number of different types of the product, it should be stated whether all types should be included in the scope of the product concerned definition. If different types or varieties of the product exist, or it is sold in different phases of its transformation (resulting sometimes in multiple CN codes being used) please outline whether all of them can be treated as a single product concerned and thus be covered by the same proceeding.

Customs duties and other trade measures

⁵ If the product concerned does not cover a full CN code, this should be noted by inserting the prefix *ex-* before the code.

18. List the customs duties payable for the product/s from the countries concerned, as well as any other known tariff regimes applicable to the imports of the product (e.g. quotas, tariff quotas, obligatory import prices, GSP, duty drawback). If there have been any recent changes in any of these, please specify. You may also elaborate on any known rules of origin that may exist for the product/s concerned.

19. If you have any doubts concerning the identification of the product concerned, please contact the Commission services.

(c) Countries of origin/export

20. A CVD complaint concerns imports of products “originating in” one or more countries⁶. For each country, the name and address (together with telephone and fax numbers if available) of the known producing/exporting firms should be provided. If products originating in the countries concerned are also being exported to the Union via another country which has no production of the product concerned, this exporting country should be stated, together with its known exporters.

(d) Other known parties concerned (importers and users/consumers in the Union)

21. For each known importer of the product concerned, state the name and address (together with telephone and fax numbers, if available).

Please include details of the names and addresses of the main users/consumers, and their respective associations, where known.

⁶ “Originating in” means the country where the product has been wholly obtained or, when more than one country is concerned in the production of the product, the country where the last substantial transformation has been carried out.

II. SUBSIDISATION

22. The Union's CVD legislation requires that sufficient evidence shall be provided of the existence of countervailable subsidies (including, if possible, of their amount). A subsidy is subject to countervailing duties where it is granted, either directly or indirectly, for the manufacture, production, export or transport of any product whose import into the Union causes injury. A subsidy means a financial contribution by a government of the country of export that confers a benefit to the recipient. A subsidy is countervailable if it is specific to an enterprise or industry or group of enterprises or industries (a subsidy will always be specific when it is conditional on export performance or where it is conditional on the use of domestic goods over imported goods). Financial contributions include direct transfers of funds (e.g. grants), government revenue foregone or not collected (e.g. tax exemptions) and the provision by government of certain goods or services.

A separate document - "*Guide to Community legislation on anti-subsidy (countervailing duties) measures*" - is available from the Commission at the address at paragraph 3 above. This document explains in more detail the concept of countervailable subsidies.

23. Ideally, information from government/public body sources should be the basis for demonstrating the existence of subsidies. It is accepted, however, that information on subsidies is not always publicly available. In such circumstances, other sources may be used e.g. extracts from the international press of the availability of subsidies in a particular country, privately financed surveys of the availability of subsidies in, say, the Far East, etc. It may be useful to discuss this issue in more detail with the Commission services when preparing a complaint.

24. If a third country has a number of subsidy schemes which can be separately identified, these should be listed, together with a description of how the scheme operates. A calculation of the amount (i.e. benefit to the industry or specific companies) of the scheme should also be given.

25. If a third country subsidises its industry through ad-hoc subsidy measures (e.g. occasional injections of capital or debt write-offs), details of these should also be given together with details/estimations of the amount of subsidy and benefit to the companies/industry concerned.

III. INJURY

26. In order to be able to determine if sufficient *prima facie* evidence exists for the initiation of a CVD proceeding, the Commission needs to be in possession of certain data relating to the alleged injurious effects of the subsidised imports. These data concern, firstly, the volume and value of the subsidised products and their price level and, secondly, the situation of the complainant industry. The data supplied should normally, for certain factors, (e.g. sales, price evolution) demonstrate a trend over at least 3 years and for other factors, notably “price undercutting”, provide documentary evidence relating to a recent period of time. It is not essential that all injury indicators listed below are given - please consult further with the Commission services if all data is not readily available.

- **Consumption in the EC**

Details of consumption of the product concerned in the EU must be given for a recent period. Statistics from Eurostat may prove a useful source of information in helping to estimate the size of the EU market. In practice, industry associations will often have such details readily available.

- **Volume and market share of subsidised imports**

This volume concerns only the subsidised product(s) originating in the countries concerned by the complaint, expressed in the same unit as consumption (tonnes, units...). Again, where EUROSTAT does not exactly cover the product concerned you should try to deduce or at least estimate, based on market data or other sources, the import volumes for the product concerned. Statistics from the exporting country are sometimes a useful source.

The market share is calculated as a percentage of the consumption in the EU and should be shown separately for each exporting country.

- **Price of the subsidised imports**

There are various possibilities for showing the trend in the price of the allegedly subsidised imports of which three suggestions are set out below. The first option is the one most commonly used by industry. These suggestions do not exclude any other method which may be used to demonstrate price trends for imported products.

- a) EUROSTAT indicates the average CIF price per unit. This price does not include customs duties. This method can be useful where:
 - (i) import prices of product's different types vary little from one type to another;
 - (ii) imports of the product are in the form of a few specific types; or
 - (iii) imports are made up of the same types of product concerned year after year;
- b) It is also possible to assess the evolution of sales prices on the EU market by looking at specific representative product types. This method may be more useful where the product is not homogeneous and/or is sold in different types or varieties.

c) Other sources such as public or private studies, market surveys or export statistics from the country(ies) concerned may be used to demonstrate the prices of subsidised imports. The evolution of resale prices in the EU is only indicative of import prices if costs and profits of resales have not varied.

- **Price undercutting of the complainants**

To determine if price undercutting has taken place and/or whether the prices of the subsidised imports have otherwise suppressed prices in the EC, it is essential to compare the sales prices of the subsidised imports and the sales prices of the complainants for a similar product on the Union market.

This comparison needs to be made only for a recent period of time (no trend needs to be shown over a period of years). It is sufficient that representative evidence is presented (for example a comparison of several transactions).

The undercutting margin is the difference between the Union producers' selling price and the price of the subsidised imports, expressed as a percentage of the Union producers' selling price on the Union market.

- **Production, capacity and utilisation of capacity of the complainants**

Where products not concerned by the complaint are produced with the same machinery as the product concerned, it is necessary to make adjustments (for instance an estimation of the product concerned as a percentage of total production) in order to correctly assess the production.

Captive production, which is used in the production of other goods by the complainants, should be included.

If any of the complainant companies have purchased quantities of the product concerned (therefore partly acting as traders) from other EU producers, from countries concerned by the complainant or from other third countries this should be stated. If this is the usual practice, please explain why.

- **Sales, market share and exports of the complainants**

The volume of the complainants' sales in the EU market, as well as sales made outside the EU, should be supplied.

An estimate of the complainants share of the EU market should also be given.

- **EC sales price of the complainants**

The sales price is the average price at which the product manufactured by the complainants is sold on the EU market.

In cases where the product concerned has many variations or types with different prices and different sales volumes, it may be preferable to show the price evolution of

certain product types which best represent, in terms of production and sales, the product concerned as a whole.

- **Profitability of the complainants**

The average profitability of the complainants must be stated (usually expressed as a percentage of the turnover generated by the product concerned). However another basis may be used if appropriate.

The comments in the previous points concerning the types of the product are also applicable here. It would be useful to use the same types as were used in the calculation of your sales prices.

- **Employment of the complainants**

Only the numbers of personnel attributable to the product concerned (i.e. production, sales, research, etc.) should be provided. This should include personnel on part-time or short-time working.

Other injury elements of the complainants

27. Other relevant factors of injury such as the development of stocks, the return on investment, cash-flow, the inability to raise capital and investment, etc. may also be indicative of the injury suffered by the complainant due to subsidised imports. If so, these factors should be mentioned and commented upon.

Other injury factors

28. You are invited to comment on factors other than the subsidised imports, which may have influenced the position of the complainants, such as :

- Production and sales of non-complainants or related producers in the EC
Sales volumes in the EU of non-complainants or related companies (these will have been necessary for the calculation of representativeness and apparent EU consumption as mentioned above)
- Volume and market share of other imports
The volume of (non-subsidised) imports from other third countries should also be given in order to assess their impact on the Union market.

Information on such imports can normally be obtained from EUROSTAT and will cover the same period as the other data.

- Furthermore the following (non-exhaustive) list of elements could have an impact on the performance of the Union industry:
 - changes in demand
 - changes which occurred in the market structure of the sector
 - nature of the market (cyclical, seasonal, etc.)
 - evolution of technical progress in the sector
 - prices of the main raw materials
 - competitive pressure from fair competition

- impact of product marketing

Please comment and provide information on the impact these factors may have had, if appropriate.

Threat of injury

29. In cases where material injury does not yet exist, but is expected to occur in the near future, a threat of material injury can be considered as alternative grounds on which to base a complaint (i.e. alternative to providing evidence of material injury as outlined in paragraphs 26 to 28 above). The determination of a threat of material injury (i.e. the potential injury which the Union industry may suffer in the near future) has to be based on facts and not merely on allegations and any injury has to be imminent and foreseeable. Examples of circumstances in which future injury can be predicted are usually the following (these should be quantified if possible) :

- Rate of increase of subsidised imports
A rising trend in imports of subsidised products could indicate the probability that these imports will substantially increase in the future.
- Change in the nature or amount of subsidy
The granting of new subsidies, or changes to existing subsidy schemes, may also indicate a threat of injury. For instance, limiting availability of a subsidy to exporters only or increasing the available amount of subsidy significantly could be evidence of a likely increase in subsidised imports.
- Capacity of production of exporters
It is important to point out the potential in terms of production capacity of the exporting country in order to make clear that aggressive trade behaviour could continue. The information can usually be obtained from studies, specialised newspaper articles, other sources etc.
- Changes in the export market structure
Structural changes in the exporters' domestic market (fall in demand, investments, technical development, banking reform, opening of the market to foreign products, etc.) can contribute to intensifying exports at subsidised prices.
- Obstacles for exports to other third countries
Exporters could be expected to target the Union market. This expectation may be based on the individual export strategy of the companies, but also on the fact that high import tariffs or other import barriers (such as recently imposed anti-dumping or CVD measures, technical standards, etc.) exist in third countries.

Material retardation

30. Subsidised imports may have discouraged potentially interested EU firms from producing the product concerned, thus causing material retardation in their establishment as producers. If this is the case, please explain how this has happened, appropriately documenting your allegations. It is particularly important to show that subsidised imports prevented the realisation of concrete investment and production

plans; it is not sufficient to allege material retardation unless production was actually due to start.

Again, although it is possible to base a complaint solely on the material retardation in the establishment of a Union industry, allegations of this nature may also supplement those on existing injury or threat of injury with regard to other firms which make up Union industry.

IV. CAUSALITY

Effects of the subsidised imports

31. In addition to providing data which demonstrates that injury is being suffered by the Union industry, it should also be demonstrated that this material injury has been caused by the subsidised imports, i.e. that a causal link exists. This does not mean, however, that the subsidised imports should be the sole or even the main reason for any injury suffered. The causal link is usually shown by the fact that the declining situation of the complainant/s has appeared when subsidised imports have increased and forced down the Union industry's prices and profits.

Effects of other factors

32. Factors other than the subsidised imports which may have influenced the declining situation of the complainants should also be mentioned. Such factors can be imports from other countries at low prices, a decrease in consumption, increase in the price of raw material, etc.

V. CONCLUSION

33. The conclusion of the complaint may restate the *prima facie* evidence submitted on the existence of subsidisation, injury, and a causal link between them, which the complainant considers sufficient to initiate a CVD investigation.

34. Furthermore, the complainant should request in the conclusion that the European Commission initiate a CVD proceeding to investigate the allegations laid out in the complaint.

35. The complaint should be sent to the European Commission (see address above) together with a dated cover-letter signed by a person whom the complainant has empowered to act on his behalf.

For this purpose, the following formula may be used:

“Please find attached a CVD complaint concerning imports of (product) originating in (countries). The undersigned certifies that the information provided is complete and accurate, on the basis of the information in his possession, and that he has been authorized to represent the complainant/s (name of complainant/s) Name, signature, date, address, phone and fax number.”