

## SUMMARY

Article 207 of the Treaty on the Functioning of the EU gives the EU competence to take actions against imports of goods that are subsidised by an exporting country and/or imported at dumped prices. The EU may apply anti-dumping or anti-subsidy measures, which usually take the form of *ad valorem* duties, to protect its market against unfairly priced dumped or subsidised imports. The level of anti-dumping and anti-subsidy duties is determined through an administrative procedure. All legal substantive rules applicable to anti-dumping and anti-subsidy investigations are set in so-called Basic Regulations, *i.e.*, Regulation (EU) 2016/1036 of 8 June 2016 and Regulation (EU) 2016/1037 of 8 June 2016. The Basic Regulations grant EU institutions a high degree of discretion to determine whether all relevant criteria required to impose anti-dumping or anti-subsidy duties have been met and whether there is no Union interest against imposition of such duties.

The EU treaties have not provided any comprehensive regulation of the administrative procedure. Issues such as the status of individuals and protection of their rights vis-à-vis EU's administrative authority were primarily developed in the case law of the Court of Justice of the EU that formulated a number of general principles of EU law, including these that protect fundamental rights. As the EU legal system has been progressively evolving towards the model of federal constitutionalism, the general principles of EU law have been incorporated in the EU treaties. Some of them became also bases for the Charter of Fundamental Rights. One of these principles is the principle of good administration, which is directly relevant to EU's administrative activity. Also, Article 41 of the Charter of Fundamental Rights codifies certain fundamental rights that constitute the right to good administration that—as such—is also the part of the principle of good administration. The constitutionalisation of EU law has eventually led to the multi-layered system of administrative law, where the administrative procedure is governed, in addition to the treaties and general principles of EU law, by a number of sectoral substantive regulations and soft law set by EU institutions and bodies.

Since there is no codified regulation of EU administrative procedural law and the Basic Regulations contain significant structural loopholes preventing the highest attainable level of the protection of good administration in the course of anti-dumping and anti-subsidy investigations, the principle of good administration and the right to good administration play the critical role in

these proceedings. The above-mentioned loopholes could be effectively and significantly reduced through certain revisions to the Basic Regulations, changes in the European Commission's practice and publication of soft law guidance on certain aspect of anti-dumping and anti-subsidy investigations.

First, the Basic Regulation or new soft law guidance should specify clear criteria on the protection of users and importers' interest in the course of proceedings. Second, the political supervision of Member States over the outcome of anti-dumping and anti-subsidy investigations through the comitology should be reduced or eliminated. Third, the Basic Regulations do not provide for the right to be heard before the registration of imports is imposed by the European Commission in the course of anti-dumping/anti-subsidy investigations. Fourth, there is no law or even non-binding guidance concerning the European Commission's practice of anonymity, informal consultations before the lodging of a formal anti-dumping/anti-subsidy complaint or on the form of summaries of confidential evidence. Fifth, the European Commission should verify *ex officio* all requests to accept confidential information being provided without non-confidential summaries due to the nature of this confidential information. Sixth, the hearing officer should become separate and independent from the European Commission.