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# REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT

# NINTH REPORT

# OVERVIEW OF THIRD COUNTRY TRADE DEFENCE ACTIONS AGAINST THE EUROPEAN UNION

# (STATISTICS UP TO 31 DECEMBER 2011 BUT COMMENTARY ON CASES AND TEXT IS UPDATED TO MARCH 2012)

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## 1. INTRODUCTION

Since the beginning of the global crisis at the end of 2008 the use of trade defence instruments against the EU has been quite intense. It was feared that in many of the new investigations the relevant rules would not be adequately applied and that the instruments would be abused in order to offer protection to national industries and shield them from foreign competition.

The situation in 2011 has only slightly recovered and, as will be showed below, the use of the trade defence instruments against the EU has stabilised. The number of new investigations remains however rather high and the complexity of the cases has increased. In some instances, despite abundant and vigorous interventions, important issues could not have been solved at technical level and WTO dispute settlements could not be avoided. This has generated a high level of activity this year.

This report describes overall trends, the problems identified and results achieved in 2011. It also gives in the annex a detailed analysis of trends and specific cases of the most important users of the instrument.

## 2. OVERALL TRENDS

There were **146 measures in force** at the end of 2011, which represents and increase of 23 measures as compared to last year's. This is the highest figure since 2008. Since then the number of measures followed a decreasing trend.

The vast majority of these measures are from the area of anti-dumping (94 in 2011 as compared to 89 in 2010), but the proportion of safeguards is ever increasing (46 as compared to 30). This is the main reason for the high number of measures this year. Countervailing measures only represent a minor portion.

The USA remains the country with the most measures in place (23), followed by China and India (each 15), Turkey (13) and Brazil (12). It should also be noted that Indonesia makes a remarkable move from 2 to 8 measures, all of them being safeguards.

In total, **36 new measures** have been imposed in 2011. This is much more than the 15 impositions in 2010. While the number of anti-dumping measures imposed was not insignificant (13 in 2011 as compared to 8 previously), the development in terms of safeguards was remarkable. Indeed, not less than 22 safeguard measures were imposed in 2011. This figure should however be nuanced with the fact that 8 of these measures only consisted of the extension of Russian measures to the territory of Belarus and Kazakhstan following their newly constituted Customs Union. In addition, this figure also includes 6 measures which were imposed by Indonesia but concern products which are hardly exported from the EU. The impact of this expansion of safeguard measures is thus relatively limited for EU firms.

The number of **new investigations** is the best indicator of third countries' TDI activity. Indeed, while not all investigations result in measures – and would thus not be reflected in the above statistics – each new proceeding normally affects trade flows during the time of the investigation and requires significant efforts for exporters in order to defend their interests. In

this respect, the number of new investigation has significantly increased since the end of 2008, i.e. the beginning of the global crisis, and has remained important since then. This year, **33 new investigations have been initiated** as compared to 40 in 2010. It should however be noted that this figure includes a number of investigations limited to the possible extension of Russian measures to the territory of the new Customs Union, as well as two investigations covering the territory of the Customs Union but counted as individual investigations for each country.

The vast majority of these new investigations concern safeguards (20), the remaining being exclusively anti-dumping investigations. Some of these new investigations would possibly affect significant trade flows and therefore require careful monitoring as well as numerous interventions at various level. Other cases, of less important economic interest, are also very important because of the systemic nature of the problems identified and also require specific vigilance.

## 3. ONGOING PROBLEMS

During the last years the Commission has intensified its interventions in order to solve the problems identified in individual cases. These issues are also addressed bi-laterally in the framework of either ad-hoc or regular meetings with the authorities of third countries. These meetings have been successful to some extent as we have seen some improvement in the practice of certain third countries. For example, some countries have now improved transparency when they disclose the results of their investigations by giving an indexation of confidential data rather than disclosing no figures at all. This is a positive development.

Unfortunately, the problems identified in the past still exist despite the fact that these have been raised numerous times at various levels. The Commission therefore continued its efforts to do whatever is necessary and possible – including recourse to WTO dispute settlement – in order to ensure that basic WTO rules are strictly applied and that trade defence instruments are not abused.

The main persisting problems are the following:

### 3.1. Inappropriate use of the instruments

Since a couple of years there have been obvious indications that TDI cases were initiated in reaction to measures imposed by the EU rather than based on justified grounds supported by a duly documented application made by the domestic industry concerned.

As mentioned in last year's annual report, the EU has been confronted with a countervailing investigation and another investigation based on threat of injury shortly after having used the same instrument/criteria against the country that had initiated these two investigations. There had also been cases against the EU concerning products similar to those which were previously targeted by EU investigation. In all these cases, it is very difficult to believe in a pure coincidence.

This trend has unfortunately continued in 2011. Indeed, the investigations mentioned above have materialised with the imposition of definitive duties despite some evident weaknesses, and another 'mirror investigation' has been initiated in 2011. These are not isolated cases as other WTO members have been confronted with the same issues. Recently, there have been threats of further similar action.

Such a use of the instrument is inadequate and not acceptable. The Commission addressed this issue at both political and technical level (including in WTO fora) and will not hesitate to have recourse to WTO dispute settlement when the cases lack any substance. Indeed, the pattern of these cases is often very similar with weak standards of initiation (often also lacking transparency by abusing the rules on confidentiality) and no evidence of injury.

### 3.2. Lack of transparency

Transparency is one of the key factors in Trade Defence investigations. Trade defence measures are only acceptable if they are used within the strict limitations of the WTO rules. Transparency and meaningful disclosures are essential in this process, because this is the only way to ensure that parties are fairly treated and can adequately defend their interest.

Even though there are specific rules to disclose the results of an investigation while still protecting the confidential nature of the data submitted by parties co-operating to the investigations, i.e. requirement to furnish a meaningful non-confidential summary, some investigating authorities still decide to simply blank out crucial data.

In addition, some investigating authorities do not disclose sufficient detailed data to the exporters participating in anti-dumping proceedings, and it is basically impossible for them to know exactly how the dumping margin has been calculated.

When faced with these problems, the Commission intervenes in individual cases and, if justified by the cases and to the extent there is no better option, also has recourse to the WTO dispute settlement mechanism. The Commission also uses bi-lateral technical meetings established with some countries to address these problems.

### 3.3. Improper use of safeguards

The above statistics show that safeguards continue to be used very frequently, and by some countries in particular. While this instrument is of course available to any country, its application should remain exceptional because it affects increased imports from all countries of origin and without requiring the existence of any unfair element (such as dumping or subsidy). The WTO jurisprudence has also established very strict criteria for its application.

Unfortunately, some countries continue to make an excessive use of the instrument despite the fact the problems very often consist of cheap imports from very specific country(ies). In these cases the Commission always advocates for the use of a country specific instrument in order to avoid “co-lateral damages” given the *erga-omnes* nature of the instrument.

Furthermore, it appears that in various cases the investigations were initiated on weak grounds. In these cases, even when they are terminated without measures, the investigations had a negative effect on trade because of the uncertainty of their outcome. Obviously the fact that no measures are imposed ultimately is a positive development, but it is considered that third country should be much more careful when deciding to initiate the investigation in order to avoid these negative consequences.

Finally, in 2011, some measures have again been prolonged beyond their initial 3 year period of application despite the fact that the industry had either recovered or the situation had not change, most likely because the measures originally taken were not adequate. This seems to have been almost systematically the case for the measures extended by the same country, and based on evident procedural flaws.

## 4. MAIN ACHIEVMENTS

The Commission's role in relation to third country cases includes monitoring of investigations but also providing advice and assistance to European exporters concerned.

Over the years, the systematic interventions of the Commission in investigations initiated by third countries had a general positive impact as we have seen some countries improving the quality of their investigations. The Commission is a well respected investigating authority worldwide and its interventions are always well perceived and carefully considered. The main reason being that in its own investigations the Commission applies very high standards.

As mentioned above, some important issues however persist and not all the problems could be solved. In a number of individual cases the Commission could however either avoid measures or decrease their negative impact. Some important systemic issues could also be solved, and this affects a number of past and future measures.

Even if positive results could not be achieved in all cases, the Commission has provided assistance to many industries, exporters and Member States administration, and the Commission had a very good feedback showing that this support was greatly appreciated by the various stakeholders.

Below is a list of some of the individual positive results achieved during the year 2011.

**US Zeroing – a major step forward**

On 6 February 2012, the US and the EU reached an understanding (roadmap) to settle the zeroing disputes. The US had already abolished zeroing in new investigations in 2007 and the roadmap now extends this removal of the use of zeroing to reviews.

This comes after several years of legal dispute, WTO rulings in favour of the EU in two different cases and US failure to comply with the said rulings.

It is recalled that zeroing is a practice whereby non-dumped transactions are disregarded in the calculation of the dumping margin, often resulting in artificially inflated duties. As a result of our efforts, the US revoked a number of anti-dumping orders and revised the current rates of anti-dumping duty without zeroing for all EU exporters subject to measures. Some more reviews to revise current duty rates will have to be concluded by the beginning of June, at which time we will have a "level playing field" with the US on this aspect of dumping calculation. Nevertheless, the Commission will have to carefully monitor the application by the US of its new methodology in order to ensure that zeroing is consistently eliminated from dumping calculations in all future reviews.

More detailed can be found in the annex.

**Russia-Belarus-Kazakhstan – measures not extended**

In the new Customs Union, measures imposed by individual countries are extended to the territory to the Customs Union if, following a review investigation, it is found that the national production represented more than 25% of the Customs Union wide production on average during the last three years. In this context, the analysis of the fibreglass mesh case revealed that Belarus had proposed to extend measures when in fact the domestic production reached more than 25% only during the last year under review. The Commission drew the

attention the Belarusian authorities to the fact that the threshold was not met on average for the last three years and, as a result, it was decided not the extend them to the overall customs union.

**No imposition of safeguard measures in Ukraine**

In the last years Ukraine has initiated a relatively high number of safeguard investigations: 2 in 2009, 3 in 2010 and 4 in 2011. The Commission has actively intervened in these investigations, in particular those cases that would affect significant EU trade flows if measures were taken, in order to highlight the weaknesses of the cases and ensure the best outcome for the EU exporters. The Commission's interventions were successful in 2011. Two investigations have been terminated without the imposition of measures: the fridge case (around €45 million exports per year) and the petroleum product case (around €750 million per year).

Even if this is a positive development, the frequent initiations of safeguard investigations remain a problem, as mentioned in the previous section.

**Israel – measures avoided**

Over the last years Israel has become a relatively important user of the anti-dumping instrument against the EU (7 investigations initiated since 2009). Several WTO inconsistencies were found, including very important and basic ones. Given the systemic nature of the problems identified, the Commission intervened in all these cases and in 2011 two investigations were terminated without measures. This included one for which the investigating authorities even proposed the imposition of definitive measures. Strict monitoring, however, remains necessary because there are still on-going investigations and unfortunately the same problems are still present.

**Jordan – early termination of measures**

Jordan initiated a safeguard investigation against imports of tiles in 2008. This was the third investigation in a period of six years. While measures could be avoided in the two previous cases, in this case Jordan imposed definitive duties in September 2010, for a period of two years. The Commission actively intervened given the 'history' of the case and the weaknesses identified. Unfortunately, measures could not be avoided, but Jordan decided in December 2011 to terminate the measures one year before their normal period of application.

## 5. CONCLUSION

The monitoring activity and Commission's interventions in 2011 once more proved to be necessary in order to limit an abusive use of the instruments and protectionist practices. TDI activity has stabilised as compared to the period 2008-2010, but the Commission's involvement nevertheless remained important given the economic interest at stake and the increasing complexity of the investigations.

The Commission's interventions are usually carefully considered abroad. The Commission is an internationally recognized investigating authority given its expertise, but also due to the fact that it applies high standards in its own proceedings.

A number of positive results were achieved this year. Measures could be avoided in some cases or their negative impact reduced. Also some important systemic issues could be solved

to the benefit of EU exporters. This was done through intensive monitoring, bi-lateral contacts with third countries. Sometimes, the result of WTO panel procedures also helped.

Most of the time those achievements are also the result of a good cooperation with the EU Member States, the European associations of producers, and the companies concerned. Co-ordinated joint actions significantly increases the chances of success.
Unfortunately, important problems still persist. Further and even more intensive interventions will be necessary to solve them, including at WTO level if necessary.

The Commission will also continue to strengthen exchanges with other investigating authorities in order to increase standards, transparency and predictability in the use of trade defence measures. This is indeed crucial in order to anticipate and avoid problems rather than try to solve them in on-going investigations, which often proves to be very difficult.