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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT

TENTH REPORT

**OVERVIEW OF THIRD COUNTRY TRADE DEFENCE ACTIONS
AGAINST THE EUROPEAN UNION FOR THE YEAR 2012**

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1. INTRODUCTION

EU exporters remain exposed to Trade Defence Measures imposed by third countries. Such measures are in principle allowed under the WTO rules but if not properly applied, they turn into protectionist tools. To avoid resorting to protectionism was also one of the pledges leaders have taken in G20.

The EU uses Trade Defence Measures as well although they affect only a very small share of imports. Moreover, the EU is more demanding than other WTO members when it considers the imposition of measures because additional tests have to be met before such measures are adopted (so-called 'WTO pluses').

In addition to applying high standards in its own investigations, the role of the Commission is to monitor the activity of third countries when they use Trade Defence against EU exports, and to intervene if WTO rules are not respected. This is for instance done through technical interventions within the framework of on-going investigations. The ultimate possibility is resorting to WTO dispute settlement proceedings when the issues are important and no other solution can be found.

Even if the activity concerning EU exports has stabilised in the most recent years, after a steep increase of the number of investigations in 2008-2009, cases are becoming more complex and new users of the instruments have appeared in the last years. This has required careful monitoring and ever increasing activity in 2012.

This report describes overall trends, the problems identified and results achieved in 2012. 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

In total there were **138 measures in force** at the end of 2012, a number relatively stable as compared to last year. The number of measures in force has thus stabilised in 2012, after a significant increase in the period 2010-2011, from 123 to 146 measures.

As in the previous years, the vast majority of these measures are anti-dumping actions (94 measures) while safeguards still represents about one third of the total. It should however be noted that not all these safeguard measures directly affect EU exports. Indeed, since safeguards are imposed against all countries of origins, all of them are included in the statistics, even if there are no or little EU exports.

India has been an intensive user of the instrument in 2012 (see below) and has reached a higher number of measures in force against the EU than the USA, the historical leader, with respectively 21 and 18 measures. China confirmed its third position (16 measures) while other important users such as Brazil and Turkey have reduced their number of measures in force against the EU (10 measures each).

In total, **20 new measures** have been imposed in 2012. This is much less than in 2011 (36), which was however an exceptional year mostly because a significant number of safeguard measures were imposed that year (22). In 2012 the number of new safeguard measures was more limited (8) and the number of new anti-dumping measures (12) remained comparable to the prior year. Not surprisingly, India was the most active player with the imposition of 7 new measures in 2012 (6 anti-dumping and 1 safeguard).

37 new investigations have been initiated in 2012, as compared to 33 in 2011. It should be noted that about half of these investigations have been initiated in the last two months of the year, i.e. most of the monitoring work for these investigations will occur in 2013. Indonesia

was the most active country (6 safeguards) followed by China, Egypt and Turkey (4 new investigations each). The vast majority of these new investigations concerned safeguards (23).

3. ONGOING PROBLEMS

Even if the Commission's interventions have helped solving a number of issues and resulted in the improvements of the standards in some countries, many problems identified in the past continue to exist. The Commission is applying high standards in its own investigations and expects that comparable standards are applied by third countries. Basic WTO rules should be strictly applied in order to avoid undue market access restrictions for EU industries abroad.

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 by third countries in retaliation to measures imposed by the EU rather than based on justified grounds supported by a duly documented application made by the domestic industry concerned. For example, in the past, measures have been imposed against EU exports of products similar to those which were previously targeted by EU investigations, and this occurred shortly after the EU had introduced its own measures.

In this context, there are indications that in 2012 China continued to make use of Trade Defence Instruments in reaction to cases initiated against them. According to press reports, another example occurred in 2012: China initiated a combined anti-dumping and anti-subsidy investigation against imports of polysilicon produced in the EU most likely in reaction to the initiation of the EU investigations against solar panels from China. The US had experienced exactly the same problems when they imposed measures against solar panels from China.

Such a use of the instrument is not acceptable, as it is not based on a genuine application from an allegedly injured industry to address perceived unfair competition, but likely to have a weak factual and legal basis. The Commission has addressed this issue both at political and at technical level during the investigations. Lacking any meaningful response to its concerns, it had no other option than having recourse to the WTO dispute settlement. The Commission requested the establishment of a panel in 2012 concerning the Chinese measures on X-ray scanners (imposed in reaction to EU measures on the same product). As explained below, the Commission was successful in this legal dispute and it is hoped that China will change its practice in the future. As long as this is not the case the Commission will continue its strong interventions, including at WTO level if necessary.

3.2. Use of safeguards

The number of safeguard measures imposed decreased significantly in 2012. This is certainly a positive development, but nevertheless the high number of new initiations of safeguard investigations remains worrying.

On the positive side, safeguard measures could be avoided in a number of occasions, also following the Commission's interventions. However, even in these cases, the situation remains problematic because investigations are still too often initiated on a weak basis and, in spite of the absence of measures, trade flows are negatively affected during the time of the investigation because of the uncertainties it creates on the market. The Commission thus continues to advocate for a stricter approach when considering the initiation of safeguard investigations.

In 2012 some countries have substantially used the safeguard instrument. This is in particular the case of Indonesia (6 new initiations in 2012, 3 in 2011 and 5 in 2010), Egypt (4 new

initiations in 2012) and the Eurasian Customs Union formed by Russia, Belarus and Kazakhstan (3 new investigations in 2012). The latter investigations are those that could potentially have the most important impact on EU Member States, not least because of the importance of the markets and the geographical proximity that also has an effect on trade flows. The investigations initiated by Indonesia and Egypt are less important in economic terms but however require also a careful monitoring because they indicate a worrying trend in the use of safeguards.

3.3. Lack of transparency

The lack of transparency continues to be a major concern both at initiation stage and when results of the investigations are disclosed. This is of course an essential issue since it deprives the parties from their rights of defence and leaves doubts as to whether the rules were indeed properly applied.

The Commission continuously intervenes in individual cases to improve the situation and, when possible, uses bi-lateral technical communication channels established with some countries in order to reach more transparency.

4. MAIN ACHIEVEMENTS

In the last years the Commission had to resort occasionally to WTO settlement in order to solve some important and systemic issues. Panel proceedings require considerable resources, are very time consuming and results may only materialise after years of proceedings. In this context, some significant positive results were achieved in the last years. The long dispute against the US led to the abolishment of the practice of zeroing (see last year's report) and the more recent dispute against China could tackle the unacceptable practice of retaliation. The resolution of these disputes has a direct impact on existing cases or measures, but it is likely to also be beneficial for the future since the issues challenged were of a systemic nature.

In addition to solution for systemic issues, the Commission also intervened almost systematically in investigations for which there was a clear interest for EU industries. This has led to a number of achievements in a number of individual cases.

The systematic interventions as well as regular bi-lateral contacts with third countries in order to promote high standards in Trade Defence investigations also had undoubtedly an important positive impact, which is however very difficult to measure.

The Commission also received regular positive feedback from industries for the guidance and assistance they have received even if measures could not always be avoided.

Below is a list of some of the individual positive results achieved during the year 2012.

China – Panel report on measures against x-ray scanners

The Commission has decided to challenge the Chinese anti-dumping duties on imports of x-ray security scanners (measures ranging from of 33.5% to 71.8%) because it was considered that these measures were not legally warranted and that they had been imposed in retaliation against the EU's own case concerning cargo scanners from China. A WTO Panel was established at the beginning of 2012 which, in November 2012, released an interim report - with its findings on the EU claims. The interim report was confirmed by the final report circulated in February 2013.

This report represents a clear victory for the EU since it indeed confirmed that China acted inconsistently with several provisions of the WTO Anti-dumping agreement. The EU prevailed in particular on the claims relating to China's injury investigation which was considered not to be objective, and the Panel considered favourably most of the EU's

procedural claims, including a breach of the rules on transparency due to the lack of disclosure in the public file, in the final determination and in the public notice.

The panel's findings are of systemic importance, as they concern recurrent features of investigations carried out by China. The outcome is thus clearly positive to the EU and should have a positive impact for the future as well.

Brazil wine – termination without measures

In March 2012, Brazil initiated a safeguard investigation against imports of wine. The case was economically important since **more than €85 million yearly exports** were potentially affected (Spain, Portugal, Italy and France), and the Brazilian market is further expanding. After an in-depth analysis of the case, the Commission identified important weaknesses, in particular with respect to the definition of the domestic industry, the injury and causality aspects. The Commission made extensive submissions in this regard, and participated in the public hearing held in Brasilia in June 2012. The investigation was finally terminated without the imposition of measures in October 2012, and the Commission's strong interventions, the very good co-ordination with the Member States concerned, the industry and the importers in Brazil that were also very active in this case have all contributed to this positive result.

Russia-Belarus-Kazakhstan – termination without measures

On 1 February 2012 the Eurasian Economic Commission (EAEC), the legal successor of the Commission of the Customs Union, started its activity and all investigations from national authorities of Russia, Belarus and Kazakhstan were ultimately transferred to the EAEC on 6 July 2012. This new authority has been very active initiating new cases and the Commission has persistently intervened with a view to highlight the legal weaknesses identified.

In this context, the safeguard investigation on graphite electrodes initiated on 31 August 2011 by Russia and later transferred to the EAEC was terminated on 30 August 2012 without the imposition of any safeguard measure. The Commission had actively intervened in this case for which EU exports represented **around €25 million per year**.

Israel – measures avoided

Over the last years Israel has become a relatively important user of the anti-dumping instrument against the EU (8 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. In 2011 two investigations were terminated without measures and again in 2012 measures could also be avoided in two cases (**around €20 million of yearly exports**), despite the proposal of the investigating authorities to impose measures in one of these cases (food mixers). Strict monitoring, however, remains necessary because there are still on-going investigations and unfortunately the same problems (e.g. meaningless non-confidential complaints) are still present.

5. CONCLUSION

The Commission applies high standards in its own investigations and expects third countries to do the same in their proceedings. In this context, systematic interventions are necessary in order to remind them of their WTO obligations.

Even if the number of measures in force has stabilised in 2012 after an important increase in previous years, there has been a significant number of new initiations in the last quarter of the year. The issues are becoming more complex and relatively new users have appeared recently.

In this context, the Commission has been forcefully monitoring third country cases and intervened in almost all cases for which EU exports were targeted. In addition considerable efforts and resources have also been allocated to resolve issues through WTO disputes. Favourable Panel reports are expected to have positive impact also for future cases.

This has resulted in a number of positive developments and significant results were achieved in 2012: measures could be avoided in some cases or their negative impact reduced, and very important systemic issues were also solved.

This year again there has been an excellent cooperation with the EU Member States, the European associations of producers, and the companies concerned. Assistance provided by EU delegations on the export market has also been intense and well appreciated by EU industries and Member States. Once more, co-ordinated joint actions significantly increased the chances of success.