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ELEVENTH REPORT

**OVERVIEW OF THIRD COUNTRY TRADE DEFENCE ACTIONS
AGAINST THE EUROPEAN UNION FOR THE YEAR 2013**

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1. INTRODUCTION

Trade defence instruments (TDI) – anti-dumping, countervailing and safeguards – are important tools allowed under the WTO rules to remove economic damages caused by unfair trade practices or, in case of safeguards, provide a temporary relief from unforeseen and significant increase of imports. However, if not applied strictly in accordance with the WTO rules, they can become tools of protectionist policies that hamper world trade and economic development.

Accordingly, while recognizing the right of third countries to make use of TDI, the Commission has defined the **promotion of adequate standards and action against abusive use by third countries of these instruments against EU exporters** as trade policy objectives helping to improve market access for EU exporters. In cases of serious breaches of WTO rules and lack of other means to solve the problems, bringing a case to WTO dispute settlement remains a possibility, but the Commission's preferred approach is to achieve the above-mentioned objectives through a comprehensive monitoring of the TDI activity of third countries and interventions within the framework of on-going investigations where WTO rules are not respected.

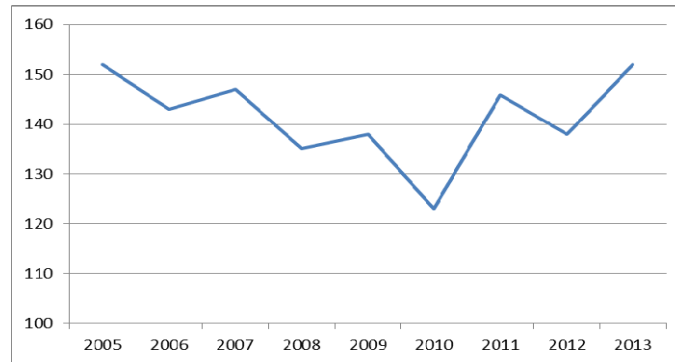
The promotion of adequate standards include not only monitoring TDI activities of third countries, but also a constant scrutiny and improvement of the way the Commission itself conducts trade defence investigations and applies the measures. The EU is already a very prudent user of TDI, which is illustrated by the fact that such measures affect only a very small share of EU imports. In addition, because the EU legislation sets standards that are even more demanding than WTO rules, i.e., so-called ‘WTO pluses’, its investigations do not necessarily result in the application of measures and, in cases where measures are applied, their level is usually lower than measures imposed by other countries in similar cases. In recent years the Commission has also embarked on the process of modernization of its trade defence instruments with legislative changes and related documents scheduled for adoption in 2014. The Commission encourages third countries to also constantly analyse their TDI legislation and practice with the aim of improving them and ensuring their full compliance with the WTO rules.

In 2013 the significant increase in the number of investigations opened and measures imposed against EU exports by third countries has required the Commission to reinforce its activities in this area. The additional pressure on its resources in this area has come from the increasing complexity of the cases, the appearance of new countries that have started to make use of trade defence instruments affecting EU exports and, in particular, the required active participation in third countries’ countervailing duty investigations concerning alleged EU subsidy schemes, e.g., China’s investigation on wine involving around 5000 EU wine exporters.

This report describes the overall trends in 2013 in the use of TDI by third countries against EU exports and the activities that the Commission has carried out to address problems that it has identified. The annex provides a much more detailed country-by-country analysis shedding light on the trends of trade defence activity of the most important users of the instrument, systemic problems and developments concerning specific cases.

2. OVERALL TRENDS

At the end of 2013 there was a total of **152 measures in force** against the EU or EU Member States, which is an increase of 14 measures compared to the end of 2012 when the number of measures was 138. The following graph shows that the decrease in the number of measures in force in 2012 was an exception and that the overall trend since 2010 is a significant increase in trade defence activity:



Following the beginning of the global financial and economic crisis at the end of 2008, many countries started new trade defence investigations. For example, on average, 40 new investigations were initiated each year in the period 2008-2010, as compared to just 19 such investigations in 2007. In most cases the investigation was concluded by the imposition of measures and so the total number of measures in force since 2010 significantly increased. It should be noted that while in 2010-2011 the increase in the total number of measures in force was mostly due to new safeguard measures (16 out of 23 new measures), in 2013 the increase is mainly because of new anti-dumping measures (10 out of 14 new measures). In this context, it should be reminded that safeguards apply to all countries of origins and would appear in the statistics even when the EU is not directly targeted. This is in contrast with anti-dumping measures which are country specific and thus directly affect EU exports. Accordingly, the recent increase in the total number of measures in force appears to have a direct effect on EU exports.

The **breakdown of these measures by type** reveals a situation similar to previous years: the vast majority of these measures are anti-dumping actions (104 measures), while safeguards still represent about a third of the total. Concerning the latter, however, it should be recalled that all safeguards have been included in the statistics as they apply to imports of all origin, but some of them might have little economic impact on the EU because the EU has little or no exports of the particular product.

The overall increase of the number of measures in force in 2013 resulted from the expiry or the termination of 13 measures and the imposition of **27 new measures**. This latter number is in line with the average number of new measures imposed annually in recent years and the breakdown by type – two thirds anti-dumping and one third safeguards – also corresponds to average trends. In terms of countries, China has imposed more new measures than any other country. Other third countries that have imposed at least 2 new measures include Brazil, Colombia, Eurasian Customs Union (comprised of Russia, Belarus, and Kazakhstan), India, South Africa and Turkey. Due to the high volume of trade flows, the measures imposed by China and the Eurasian Customs Union could have the most negative impact on EU exports.

In terms of measures in force, with 21 measures in force, India remains the most prolific user of TDI against the EU or EU Member States, but it is closely followed by China with 19 measures. The steady and fast growth of the number of measures that China has imposed against the EU or EU Member States is truly remarkable, as the number of such measures was just 9 as recently as 2008. The USA which historically was a leader in this ranking of third countries has dropped to the third place with 17 measures in force. Turkey's and Indonesia's very extensive use of safeguards have placed these countries among the top five in this list.

43 new investigations have been initiated in 2013, as compared to 37 in 2012, i.e. a significant increase. India was by far the most active country followed by China, Colombia, Australia, Brazil, Canada, and South Africa. Compared to the previous year, the raise in activity by India (4 new anti-dumping and 3 new safeguard investigations) and Colombia (4 new safeguard investigations) is particularly noticeable. As mentioned above, while in the recent past the vast majority of these new investigations were safeguards, in 2013 anti-dumping instrument had become more popular.

3. ON-GOING PROBLEMS

There are a number of persistent problems in the use of TDI by third countries that the Commission has identified and outlined already in its previous reports. While the Commission's interventions have helped in solving problems in a number of individual cases, from the overall perspective many of the issues remain the same.

The main problems that have been recently identified are the following:

3.1. Inappropriate use of the instruments

The inappropriate use of trade defence instruments remains the most important problem. This year again there have been strong indications that investigations against the EU have been initiated in reaction to trade defence actions taken by the EU itself. In 2012 China initiated a combined anti-dumping and anti-subsidy investigation against imports of polysilicon from the EU after the EU had initiated an investigation against imports of Chinese solar panels. There were rumours that in reaction to the EU's investigation concerning solar panels, China would also initiate a case against imports of EU wine. These rumours materialized when in 2013 China indeed initiated an anti-dumping and an anti-subsidy investigation against imports of EU wine.

The Commission recognizes the rights of third countries to initiate investigations based on genuine complaints lodged by a domestic industry, but it strongly condemns the cases that are initiated for any other reasons.

The Commission treats this issue as a priority because of its systemic nature and significant negative economic impact. In the past the Commission has already successfully challenged a similar case at the WTO (see below) and will continue to defend the interests of the European Union.

3.2. Use of safeguards

While the number of new safeguard measures imposed this year is still much lower than in 2011, the number of new initiations of safeguard investigations still remains too high.

In 2013, 10 new safeguard measures were imposed, which is considerably less than the number of on-going investigations in recent years (on average around 20). On the positive side, this means that safeguard measures have been avoided in some investigations where the

Commission and the EU Member States had actively intervened. On a more negative side, it again illustrates the unfortunate practice by several third countries to initiate safeguard investigations on a weak basis. Even if measures are not imposed in the end, the simple fact of initiation creates uncertainties to importers during the time of the investigations and thus negatively affects trade flows.

The Commission also remains concerned that some countries continue to initiate parallel anti-dumping and safeguard investigations on the same product. Furthermore, one country in particular continues to almost automatically extend the application of its safeguard measures to the maximum period allowed under the WTO Safeguards Agreement.

The Commission continues to pay a very close attention to this issue and continues to advocate for higher standards in the initiation of safeguard investigations and application of measures.

3.3. Trade defence activity in emerging economies

When applying trade defence measures, countries often use them primarily against the trading partners with the most substantial and/or most rapidly increasing bilateral trade flows. So it is not unusual that EU exporters increasingly face trade defence measures in emerging economies with whom EU's trade relations are developing fast. However, it is very important that investigations are initiated and measures are imposed only where truly warranted, which is not always the case.

The Commission is concerned that several trade defence investigations are initiated in situations where imports account for a very minor share of the domestic market. For example, in 2013 South Africa initiated 3 trade defence investigations concerning the same product, including a safeguard and an anti-dumping investigation. In these cases the domestic industry mostly complained about the loss of their market share which a couple of years ago had been 98% (sic). Similarly, Morocco is contemplating the imposition of safeguard measures in a case where the market share of the imports of the product concerned has increased from 2.5% to just 5%.

The Commission is also concerned about a number of measures taken by the newly established Eurasian Customs Union which due to the size of the market, geographical proximity and historical trade flows have a significant negative impact on the EU. According to our analysis, the justification of these measures remains insufficient.

4. MAIN ACHIEVEMENTS

In past years the EU had solved some important cases by resorting to WTO dispute settlement mechanism, e.g. the dispute with China concerning the unacceptable practice of retaliation (see below). Sometimes there is no alternative, but to use the WTO dispute settlement. However, it remains an action of last resort, as WTO dispute settlement procedures take a long time and meanwhile the unwarranted measures remain in force.

For these reasons, the Commission as much as possible intervenes already during the investigation in order to convince third countries' investigating authorities to either improve their analysis or not impose the measures. In a number of individual cases the Commission's interventions have been successful or at least partially successful in either preventing the imposition of measures or limiting the negative impact of such measures.

In 2013 the Commission also assisted many EU exporters that were willing to co-operate in third countries' investigations. EU industries and Member States have positively appraised such guidance and assistance even where this had not prevented the imposition of measures.

Finally, it should be noted that there are several very important investigations that have demanded much work and attention on the part of the Commission already in 2013, but which cannot be listed under achievements, as they are still on-going in the beginning of 2014 and their outcomes are not yet known.

Below is a list of some of the individual positive results achieved in 2013.

4.1. China - Implementation of the WTO panel report on X-ray scanners.

On 23 January 2011, China decided to impose anti-dumping duties on imports of X-ray security inspection equipment originating from the EU (measures ranging from of 33.5% to 71.8%). The Commission decided to challenge these duties as it was considered that these measures were not in conformity with WTO rules and that they had been imposed in retaliation against the EU's own case concerning cargo scanners from China.

On 24 April 2013, the WTO published the panel report confirming that China acted inconsistently with several provisions of the WTO anti-dumping agreement. As a result, China announced the termination of the measure on 19 February 2014.

4.2. Russia-Belarus-Kazakhstan – termination without measures.

The safeguard investigation on woven fabrics was initiated by the Eurasian Economic Commission (EAEC) on 1 October 2012. The case was economically important since annual EU exports amounted to €65 million. During the course of the investigation, the Commission identified several WTO inconsistencies, in particular with respect to the definition of the product scope, the injury and causality aspects. The Commission made interventions in this regard and the investigation was ultimately terminated on 2 October 2013 without the imposition of measures.

After some years of active use of the TDI and safeguards in particular, in 2013 the EAEC did not initiate any new investigation and reviewed two existing measures (caramel and stainless steel pipes) with the final outcome being some degree liberalization or reduction of the product scope of the application of the measure. As mentioned above, the Commission is nevertheless concerned by the application of trade defence actions by the Eurasian Economic Commission.

4.3. Ukraine- limited use of the trade defence instruments.

From 2009 to 2011 Ukraine initiated a very high number of safeguard investigations. During those years, the Commission intervened in each of those safeguard cases as well as criticized Ukraine for the excessive use of the safeguard instrument in general. Compared to 2012, when no case was initiated, in 2013 Ukraine only initiated one safeguard investigation on porcelain tableware and kitchenware. However, optimism about the observed restraint on the use of safeguards can be only limited because despite the Commission's concerns and numerous interventions, on 14 April 2013 Ukraine imposed safeguard measures against imports of cars, which touch very important EU economic interests. The Commission has been very active in this proceeding and has joined, as a third party, the WTO consultations requested by Japan.

4.4. Peru – repeal of measures.

Since the initiation by the Peruvian authorities of an anti-subsidy proceeding and imposition of measures in December 2010 concerning imports of olive oil from Spain and Italy, the Commission as well as EU Member States had actively defended the interests of the EU in this case. The incompatibilities of the proceedings and measures with the WTO were brought to light in numerous submissions, hearings and interventions at both technical and political level as well as through the launch of an administrative appeal procedure. Finally, in March 2013, these interventions brought the results in the form of the repeal of these measures.

4.5. Morocco – decrease of the negative impact of measures.

The Commission strongly intervened in the Moroccan safeguard investigation concerning imports of steel products. The Commission intervened in writing as well as during the public hearing and various ad-hoc meetings were organised in order to ensure the best outcome for EU exporters. These interventions have led to a more flexible measure as the quota proposed for one product has been doubled following the Commission's interventions. Even though this is a positive achievement, it is still regrettable that measures were taken on this product given the obvious weaknesses. The Moroccan investigations continue to be closely monitored since so far systemic weaknesses have been identified.

4.6. South Africa – suspension of safeguard measures.

South Africa imposed a prohibitive provisional safeguard measure of 60% against imports of frozen fries, based on very weak grounds, and the Commission has also made considerable interventions in this case. Several ad-hoc meetings were organised at various level in order to convince the South African authorities not to impose definitive measures. As a result of this, the decision to impose these measures has so far been postponed, allowing the provisional measures to lapse. EU exports could no longer access the South African market with a duty of 60%. It should however be noted that South Africa had initiated an anti-dumping case (against Belgium and The Netherlands) and imposed provisional measures on the same product despite a weak injury analysis. The investigation is still on-going and provisional duties range from 0% to around 30% for non-cooperating exporters.

4.7. Turkey – decrease of the negative impact of measures

Turkey concluded two on-going anti-dumping investigations in 2013 (float glass and electric water heaters). In both cases Turkey decided to impose measures. However, thanks to the active joint interventions of the Commission and the EU industry, the definitive duty rates were significantly lower than the ones proposed at earlier stages of the investigations. In the float glass case the provisional duty was 41%, while the definitive duty for the co-operating company was decreased to 16%. In the electric water heaters case the Turkish authorities agreed to change the calculation method in order to better reflect the actual situation for one exporter. With the new method, the duty decreased from the originally proposed 19.82% to 9%.

4.8. Egypt – termination without measures

Further to the Commission's vigorous efforts that included interventions concerning the shortcomings of the case at the WTO Committee on Safeguards and bilateral WTO consultations, Egypt did not impose definitive measures and committed itself to refund the previously paid provisional duties in the raw and white sugar case. In November 2013 Egypt also terminated the investigation on steel bars without the imposition of any definitive measures.

4.9. Australia – termination of safeguard investigations without measures

In December 2013 Australia decided to terminate two safeguard investigations – against imports of processed tomato products and against imports of processed fruit products – without the imposition of any measures. This followed a number of interventions including written submissions and participation in oral hearings by the Commission, EU Member States and EU industry.

5. CONCLUSION

The trade defence activity against the EU or its Member States has again increased in 2013. It is not only the total number of the measures in force that has significantly increased in 2013 compared to 2012, but also the importance and complexity of the issues at stake.

Significant efforts and resources have been deployed in order to ensure a correct application of the rules and the best possible outcome for EU exporters. As a result, there have been a number of achievements, some of which have been listed above.

Unfortunately, many problems still persist and, in order to address them, the Commission will continue to closely monitor third countries' trade defence activities and to actively intervene where required.

The Commission will also continue bilateral contacts with third countries' investigating authorities and continue to give them advice/training with the aim of preventing the initiation of unnecessary cases or incorrect application of the rules.

The EU applies the rules governing the use of trade defence instruments in very strict and transparent way and it expects other countries to do the same. In this respect, one of the major objectives of the Commission in the field of trade is to ensure full and fair market access in third countries. Fighting unwarranted trade defence measures is clearly part of this objective.