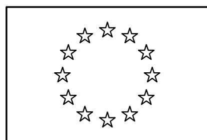

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ANNUAL REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT

ON THIRD COUNTRY ANTI-DUMPING, ANTI-SUBSIDY AND SAFEGUARD ACTION AGAINST THE COMMUNITY (2004)

{SEC(2005) 1519}

INTRODUCTION

The objective of this report is to give an overview of third countries trade defence measures, i.e. anti-dumping ('AD'), countervailing ('CVD') and safeguard cases, against the European Community in the year 2004. The report is divided into two sections, the first one summarises the main trends of the year, while the second one, in the form of an annex, deals with specific countries or groups of countries, focusing in particular on the most notable cases.

PART I: OVERALL TRENDS

Year 2004 has confirmed the increasing trend in the number of trade defence measures targeting Community exporters. The number of measures in force against the Community has increased from 192 at the end of 2003 to 199 in 2004. Indeed, the reduction of tariffs and other trade barriers increases the incentive in individual countries to resort to trade defence. In contrast, the EC remains world wide one of the most disciplined and moderate users of TDI. In principle, we do not object to third countries taking trade defence actions against the EC, as long as this is done in an objective and fair manner and in line with internationally established rules. Unfortunately, this is not always the case. The EC is frequently forced to resort to WTO dispute settlement to ensure that these countries adhere to international trade rules.

The increase in third country anti-dumping measures against EC exporters seems especially difficult to justify since in most industrial sectors the EC market is open to international competition (low import duties). EC producers operate under highly competitive conditions in their home market, which significantly lowers their capacity or incentive to export at dumping conditions on third markets. Further, some third countries continue to apply safeguards almost on a routine basis. This is of particular concern to the EC since the safeguard instrument is directed at fair imports and should for that reason only be used exceptionally to deal with emergency situations. The EC has, in the context of the Doha Development Agenda (DDA), strongly advocated the application of higher standards in trade defence investigations.

It is interesting to note that an increasing number of third countries now almost exclusively initiate AD cases against the EC as a whole and not against individual Member States. As a result, the ensuing AD duties affect all EC exporters. In principle, proceedings against the EC as a whole are legal since the EC is a WTO member in its own right. In addition, there is a growing recognition on the part of third countries that the EC is an integrated market. The benefit or otherwise to EC exporters of these two options is not clear-cut: a case initiated against the EC as a whole may make it more difficult to find dumping and injury (for instance the higher export price of one Member State offsets the lower export price of another). Conversely, targeting only the low priced exports of one Member State can facilitate a finding of injury. It also has to be borne in mind that our position can be influenced by the fact that we apply our trade defence measures on a full Community basis, so it is difficult to challenge third countries that follow the same line.

In terms of statistics, the repartition stays approximately the same as in the previous years: the US accounted in 2004 for 27 % of all measures against the EC, followed by India (18%), Brazil (7%), Canada (6%) and South Africa (5%).

PART II: ACTIVITIES

1. Countries

1.1. United States

Compared with the previous year - dominated by the steel safeguard case - US activity in this area was relatively quiet in 2004. The US did not initiate any new investigations against the EC, but undertook a number of sunset reviews of existing AD and CVD cases. The Commission has been active in particular in five sunset reviews concerning CVD measures, which in one case led to the removal of the duties in place.

The major events in 2004 relate to measures subject to WTO dispute settlement proceedings and, in particular, the initiation of a WTO case on "zeroing" and an implementation panel in the "privatisation case". In the "zeroing case", the EC is contesting a method which allows the US investigating authorities to disregard non-dumped export transactions in their calculations (a method known as "zeroing") with the result of significantly inflating margins of dumping. Without this practice, it is unlikely that the US authorities would have been able to find dumping and impose duties in such a significant number of cases. The "zeroing" practice affects several hundred million USD in trade volume for EC exporters. The panel proceedings started in October 2004. Final panel report is expected at the end of September 2005.

Another major event in 2004 was the establishment of an implementation panel in the privatization case. Despite the improvements brought by the US to its privatization methodology as a result of the WTO panel ruling in 2002, some aspects of the ruling have not been implemented, e.g. on sunset reviews where the US has failed to modify the measures. Unfortunately, for this disputed implementation the only recourse for the EC is to request another panel against the US. This panel was established on 27 September 2004 and the final report is expected on 14 June 2005.

The US is the WTO member whose measures are most frequently challenged in the WTO dispute settlement system. This reveals a certain incompatibility between US practice on Trade Defence Instruments (TDI) and the rules of the WTO. This friction is exacerbated by the US reluctance to implement WTO rulings (e.g. 1916 Anti Dumping act and the Byrd Amendment). Part of the explanation lies in the fact the US administration is under intense pressure from its domestic lobbies and from Congress making it difficult for it to be seen as openly endorsing WTO panel rulings adverse to the interests of US domestic industry.

1.2. Russia, Ukraine and Belarus

A notable development in 2004 has been the significant increase in trade defence activity by Russia, Ukraine and Belarus. In 2004, Belarus initiated 4 safeguard cases on a variety of products whereas Russia and Ukraine each had 2 investigations. In addition, in 2004 both Russia and Ukraine initiated for the first time anti-dumping proceedings against EC exporters on respectively stainless steel and screw compressors.

A major problem in these proceedings has been the lack of transparency and disclosure of information. Another specific concern, highlighted in last years' report, is these countries' continued use of *erga omnes* safeguards to deal with increases in imports brought on by regional trade liberalisation initiatives, i.e. inside the CIS area. The Commission has been very active in these cases and has engaged in numerous discussions with the authorities to improve the transparency of the proceedings.

As a result of the general increase in EC exports to Russia and Ukraine – augmented by enlargement - these cases have caused significant preoccupation amongst EC exporters. They have voiced concern that these trade measures are used to promote national industries. EC Member States, in particular Poland and the Baltic States, have on several occasions raised the issue as to the respect of international trade rules by these countries, especially in the wake of their entry to the WTO.

1.3. China

Although last years' report predicted a rise in the number of trade defence measures taken by China against the EC, 2004 has not confirmed this trend. China has made relatively little use of trade defence against the EC, and only 7 EC products were in 2004 subject to actions. However, globally China is increasingly resorting to TDI, especially in the chemical sector. For instance, EC companies exporting to China from other Asian counties are frequently involved in Chinese anti-dumping proceedings. China‘s significant economic growth rate has not been met with a corresponding increase in imports. EC trade deficit is still growing, partly because EC exporters generally continue to face a number of significant hurdles to penetrate the Chinese market.

1.4. India

India remains one of the largest users of TDI world wide, but year 2004 has seen the lowest number of cases against the EC initiated by India in a number of years. The number of new investigations was only 3 in 2004 compared to 7 in 2003. The WTO dispute brought by the EC at the end of 2003 on 27 anti- dumping measures imposed by India against EC exporters is likely to have had an impact on India's general anti-dumping practice. In parallel to the consultation process, India engaged in a number of reviews of existing AD measures against EC producers. Some of these measures have as a result been terminated in the first months of 2005.

1.5. Latin America

A slight decrease in trade defence activity has been noted in 2004 as compared with the previous year. Argentina, which normally accounts for the major part of trade defence activity directed against the EC, did not initiate any new investigations in 2004. It is likely that the economic recession following the 2002 devaluation has acted as a natural deterrent to imports. However, Argentina carried out expiry reviews of three existing CVD measures against EC exports of processed agricultural products (wheat gluten, canned peaches and olive oil) which at the end of 2004 resulted in the extension of the measures in spite of strong opposition by the EC. The EC is pursuing all three cases at the WTO where consultations are scheduled for July 2005.

2. Sectors

2.1. Agriculture

In terms of sectors affected by trade defence measures, special mention should be made of agriculture. There continue to be a high number of CVD actions targeting EC exports of processed agricultural products, e.g. olive oil, processed fruits and vegetables, sugar, and derivatives of cereals. Of course, the EC does not contest the fact that agricultural subsidises exist or that such subsidies may be subject to countervailing duties. However, the mere existence of subsidies should not justify the imposition of CVD duties without any deeper analysis of whether indeed the subsidies in question have benefited the exported product. In many of the CVD cases initiated in 2004 (e.g. olive oil, canned peaches) third countries have alleged that the exported agricultural products automatically benefit from subsidies granted to the individual farmers and not to the exporters of the processed products. The EC has in 2004 devoted particular attention to these cases to ensure that any CVD action by third countries is based on a full demonstration that the exported goods have clearly benefited from such aid.

It should be noted that the wide ranging reforms of the Common Agricultural Policy undertaken by the EC since 2000 will reshape the nature of the support granted. As a result, an increasing amount of aid will shift from production support to "decoupled" forms of aid (single-farm payment) with no link with production and no trade-distorting effect. Clearly, the Commission will have a role in ensuring that any such changes are properly taken into account by countries applying the CVD instrument. The requirement to demonstrate the existence of "pass through" of the benefit from farming to processed goods should make it more difficult for third countries to countervail the aid schemes concerned.

2.2. Steel and chemicals

After intense activity in the steel sector following the US safeguard in 2003, this sector has experienced a quiet year in 2004. Due to the continuous demand world wide for steel in particular from China, there have been few cases involving steel in 2004 except the remaining high number of AD and CVD duties in force in the US and two notable Russian cases, i.e. the safeguard case against large diameter pipes and anti-dumping case against stainless steel. As noted in the previous years, the chemical and pharmaceutical sector continues to be one of the sectors most affected by trade defence measures.

PART III: CONCRETE RESULTS

Year 2004 has seen several positive results for EC exporters targeted in third country proceedings. A number of important cases have been terminated without the imposition of measures, while in other cases measures have been withdrawn. The Commission has been heavily involved in all these proceedings and this shows that active and direct involvement can have a significant impact on the outcome of TDI proceedings launched by third countries.

The following key cases deserve to be mentioned:

- India: termination of AD investigation into imports of coated paper from the EC and Indonesia;
- Australia: termination of AD and CVD investigations on olive oil from Greece, Italy and Spain;
- Russia: exclusion of EC from safeguard measures on white sugar;
- Turkey: termination of 5 safeguard investigations without measures;
- Korea: termination of AD investigation on particle boards from Belgium, Italy and Spain;
- United States: termination of the CVD duties on corrosions resistant steel rods from Italy

It goes without saying that the involvement of the Commission and Member States in these cases has not been the only factor which resulted in a positive or improved outcome for EC exporters. Active monitoring of all important cases and constant intervention in support of EC exporters coupled with a regular dialogue with third countries' TDI authorities helps creating the conditions for finding acceptable solutions for EC exporters.

As regards relations with Member States on third country measures, the Commission has through out 2004 continued to look for ways to improve co-ordination. Member States either directly or through their representations in third countries are an important asset to alert the Commission to problems encountered by EC exporters abroad, establishing contacts between Commission services and EC exporters, or raising problems on specific TDI actions bilaterally with third countries.

The contact network between the Commission and Member States, formalised by the establishment of special Member State contact points, has proven very useful to disseminate information on third country cases (e.g. on new investigations, imposition of measures or WTO action on TDI matters) and to enable swift action when EC interests are at stake. As of 1 May 2004, this "contact list" was extended to include the new Member States. In general, the direct communication with Member States has been particularly useful when the products targeted are of very particular nature. For instance, in the case of the anti-dumping investigation opened by Ukraine into imports of screw compressors, Member States managed to locate the exporters concerned just before the expiry of the deadline set by the Ukrainian authorities. This enabled the exporters to participate in the investigation procedure.

Discussions have also been undertaken in the course of 2004 with EC industry to identify what additional steps can be taken by the EC to improve communication. Concrete steps have already been taken with respect to Small and Medium Sized Enterprises (SMEs) where DG TRADE has made available on its website a set of guidelines for SMEs when they are targeted in third country trade defence actions[1].

[1] (http://europa.eu.int/comm/trade/issues/respectrules/tdi_sme/faqs.htm)

PART IV: GENERAL ISSUES WITH THIRD COUNTRIES

3. Typical shortcomings

3.1. Low standards of initiation

The problems identified in last year's report continue to be the same. Although there are variations, some problems are common to many third country cases. On a procedural level, the standard for initiating an investigation is often low. Some countries seem to require very little evidence for the complainant *prima facie* to prove the case. As to the substance, the most common deficiency noted is the lack of in-depth analysis of injury and causality. In particular, "other factors" which sometimes clearly are causing more injury than imports are often neglected. As a result, the measures imposed are frequently disproportionate to the injury allegedly suffered by the domestic industry.

3.2. Insufficient transparency

There is equally a recurring problem of insufficient disclosure of information by some countries when using TDI. Naturally, lack of information can make it very difficult to evaluate on what grounds an investigation has been opened or a decision is proposed. The problem of insufficient disclosure is the more serious when it comes to justifying the imposition of measures or the rejection of evidence submitted by Community exporters. It is increasingly noted that some investigating authorities consistently invoke confidentiality reasons for not making proper disclosure, even when this information is not of a confidential nature. Consequently, exporters do not have all the necessary elements to defend themselves in these proceedings.

Paradoxically, some third countries seem unable to guarantee that sensitive information does not reach other interested parties. EC exporters have reported that confidentiality rules are not always respected by the investigating authorities in some third countries and that this strongly discourages them from co-operating in the proceedings, especially in anti-dumping investigations, where parties are required to submit information of a very sensitive nature.

3.3. Abuse of trade defence instruments

An increasing number of countries, mainly developing and "transition" countries, are becoming active users of trade defence instruments. This development is especially noticeable in the area of safeguards, which some countries seem to be using rather as routine measures of protectionism instead of an "emergency valve", intended to counter unexpected surges in imports. The reason probably lies in the fact that safeguard investigations are less demanding and less costly than anti-dumping or anti-subsidy investigations since they do not require gathering information abroad or on spot verifications; safeguard measures enable a country to seal off imports from all sources, even when the injury can be traced to one country or a specific group of countries. The Community has consistently raised the problem of the excessive use of safeguards within the WTO and has strongly advocated the need to apply very high standards for the use of safeguards to preserve the exceptional nature of this instrument.

PART V: CONCLUSION

In spite of the significant number of measures in force against Community exporters, there is some ground for optimism for the coming year(s). On the multinational front, the EC is in the context of the Doha Development Agenda pushing for the application of higher standards in anti-dumping and anti-subsidy investigations (e.g. harmonisation of investigative procedures and reduction in costs). On a bilateral level, the EC is setting up TDI ad hoc expert groups with a number of trade partners (India, China and Korea). These groups offer an opportunity to exchange information and views on better ways of carrying out investigations and applying TDI rules. This contributes to achieve better understanding of each other's practices.

In addition, the Directorate General for Trade (DG Trade) is frequently solicited by third countries to organise training for their officials on EC TDI practice. EC practice is increasingly viewed by third countries as a "model to emulate" ("Vorbildsfunktion"), due to the high standards applied in trade defence matters. Typically, the EC finances two such training seminars a year, with a variable number of other events paid by the third countries concerned. This exercise allows DG Trade to "coach" third-country officials in order to improve their investigative methods. Since 2001, seminars have so far taken place in Thailand, Indonesia, Ukraine, China, Russia, India, Pakistan and Romania, just to mention a few. In 2004, seminars were held for officials of Korea, Argentina, Russia, China, Vietnam, Turkey, Ukraine and Romania.