COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT

OVERVIEW OF THIRD COUNTRY TRADE DEFENCE ACTIONS AGAINST THE COMMUNITY
(STATISTICS UP TO 31 DECEMBER 2006 BUT COMMENTARY ON CASES AND TEXT IS UPDATED TO April 2007)

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1. INTRODUCTION

Last years report, on monitoring third country trade defence actions against the EU, highlighted the importance of this task in the context of the EU's overall trade policy. In particular, the need to ensure that third countries do not use trade defence instruments incorrectly was identified as one of the priorities of DG Trade in the context of improving market access.

As part of its strategy for European competitiveness, the Commission has also launched a reflection process (the Green Paper) on its own application of the trade defence instruments. The Commission Green Paper does not question the fundamental value of trade defence instruments, but invites a public reflection on how the EU can best use them in a changing global economic context.

In this context, while recognizing that third countries have the right to make use of trade defence instruments, they should certainly be encouraged to also question their practice and improve, where necessary, their use of the instruments. Indeed, many third countries continue to use these instruments in a manner which results, all too often, in the imposition of measures, the legitimacy of which is questionable.

Even if there were some improvements in certain areas, we continue to see inappropriate use of the instruments, particularly safeguards as well as poor standards applied across all three instruments (anti dumping, countervailing and safeguard). These include poor initiation standards, disregard for the rights of interested parties as well as poor analysis in respect of injury and causation. The Commission continues to address these problems with the aim of minimising the negative impact of any trade defence measures, as far as possible for our exporters.

As always, our monitoring of third country actions is done against the backdrop of the relevant WTO Agreements. Even where the countries concerned are not WTO Members, these international rules are the benchmark used to determine whether investigating authorities create and maintain a fair and equitable trading environment. It is also our strict observance of these rules which makes us acknowledge, and accept, that countries have a legitimate right to take trade defence action in certain circumstances.

The Commission administers these instruments to a very high standard and will continue to 'export' its best practices in the area of TDI through intervention on individual cases, provision of technical assistance and in dialogue with our trading partners at all levels.

This report sets out the activities of the European Commission during 2006 in monitoring trade defence cases taken by third countries against the EU or its Member States. It should be noted that, for cases which were ongoing before 2006, this report should be read in conjunction with last year's report to the European Parliament, which included commentary on certain cases up to the end of September 2006. For those cases this report provides an update regarding any developments since then.

2. OVERALL TRENDS

At the end of 2006 there were a total of 143 measures in place against the European Community or its Member States, compared to 151 at the end of 2005. It is the third year where the number of measures in place against the Community has dropped. This year's decrease is explained by the imposition of 27 new measures (provisional and definitive) while at the same time 34 measures lapsed or have been revoked.

Of those 34 measures which lapsed, 10 concern the termination or expiry of measures on steel products by the US following a number of sunset reviews. In addition the number of measures in place by India (-6) and Argentina (-5) also dropped, thus contributing to the overall decline. In the case of these two countries, the European Commission services played an active role given that some of the measures were terminated following WTO consultations requested by the Commission services.

The **number of new measures imposed** in 2006 increased slightly over 2005, 27 as compared to 25. The main difference noted between these years was an escalation in the number of safeguard measures, increasing from 10 in 2005 to 15 in 2006, i.e. over 50%. This is mainly due to an increase in the measures imposed by Turkey.

Concerning the **breakdown of the various trade defence instruments**, the trend is the same as for previous years with around two thirds of the measures consisting of anti-dumping measures. While the number of countervailing measures has been decreasing in the last years, there has been an increase in the number of safeguard measures, from 24 in 2005 to 32 in 2006, an increase of 25%. This increase in the use of safeguards across all three categories (cases initiated, measures imposed and measures in place) confirms an alarming trend, identified last year, in the use of this instrument. Of course, this should be seen in the light of the fact that safeguard measures are imposed on an *erga-omnes* basis, unlike the two other instruments which are country specific. Therefore, any increase of safeguard measures worldwide will inevitably also concern the EC, even when the product in question is not exported by the EU in significant quantities. For this reason the Commission continues to apply pressure to the users of this instrument to be more circumspect in its use while also making every effort to minimise the negative impact of any safeguard measures imposed. In this respect, the European Commission services have been relatively successful, as detailed below.

In terms of countries, the USA remains the main user of trade defense instrument against the EC or its Member States, with 29 measures in force, i.e. 20% of the total. This is in spite of the fact that a significant number of their measures were terminated or expired. The other main countries are India (18 measures), China (10 measures), Brazil (9 measures) and Turkey (8 measures). With the exception of the latter, all those countries have in recent years been important users. Turkey ranks among the main users against the EC l as a result of its extensive use of safeguards. Indeed, with 5 new safeguard measures in 2006, it ranks first for this instrument.

Finally, it should be noted that unfortunately the number of third country **cases initiated** affecting the European Community increased from 20 in 2005 to 28 in 2006. Within this total, the number of anti-dumping cases opened remained the same as the previous year at 9.There was one anti-subsidy case opened compared to none in 2005. The increase was mainly accounted for by the number of safeguard cases opened, 18 in comparison to 11 in 2005.

3. TRENDS BY COUNTRIES

This section outlines the major trends of trade defence measures third countries. A description of the main cases for each third country is given in annex.

3.1. United States

At the end of 2006, the US had 29 trade defence measures in place against imports from EU countries. The overwhelming majority are anti-dumping measures (24), with only 5 countervailing measures. These figures compare to a total of 39 measures against the EU at the end of 2005, of which 27 were anti-dumping and 12 countervailing measures.

Continuing the trend of the previous two years, there were no new initiations of investigations against EU exporters in 2006. On the other hand, the US initiated various sunset reviews, mainly concerning the steel sector, and many of those reviews were concluded in 2006 with the revocation of a number of AD and/or CVD measures, including cut-to-length steel plate, corrosion-resistant steel, and oil country tubular goods.

Once again, the focus on the trade defence activity by the US concerned WTO dispute settlement proceedings, namely those related to the US practice of 'zeroing' and the implementation of the 'privatisation' case.

3.2. India & Pakistan

India remains the country with the second highest number of measures against the EC, i.e. 18 in total. In 2006, 6 measures lapsed or were terminated, while two new measures were imposed. India only initiated 1 anti-dumping case involving three EU Member States in 2006, as compared to 2 in 2005. This is the third successive year where the number of initiations by India against the Community has declined.

This is a welcome development, as traditionally India is an active user of this instrument. One of our main concerns vis-à-vis India in 2006 was the fact that they opened a sunset review on a case (Flexible Slabstock Polyol) which had been subject to WTO consultations back in 2004 and on which it was expected the measures would simply expire. This review is ongoing and we are monitoring developments.

Pakistan did not initiate any new investigation against the EC in 2006, which is in contrast to 2005 where 3 AD cases were initiated. Through 2006, work did however continue on two of the cases initiated the previous year resulting in the imposition of measures on formic acid and the termination of the investigation on tinplate. Details regarding these cases were given in last year's report.

3.3. China

At the end of 2006 China had 10 measures imposed against the EU, as compared to 9 in the previous year. Two new measures were imposed while one expired.

China opened only 1 anti-dumping case against the EU concerning potato starch. This was a drop from 3 cases opened by them in 2005. In overall terms their AD activity was significantly lower than in 2005 during which, for the latter six months of the year, they had become the number one initiator at WTO level.

In 2006 it became very evident that China's poor track record regarding lack of transparency and poor disclosure is in fact a systemic problem. The Commission has raised this issue constantly with the Chinese, both in the context of individual cases and in bilateral contacts. We continue to apply pressure on the Chinese authorities and particularly the Bureau of Industry Injury to improve and standardise their practice on disclosure to ensure full respect of the rights of defence of interested parties.

3.4. Latin America

The number of measures in place by Latin American countries decreased in 2006 as compared to the previous year. This is the result of a significant decrease of the measures in place in Argentina (-5 measures) and a limited number of new measures.

However, after relatively low activity by Latin American countries in 2005, 2006 saw 8 TDI cases initiated by these countries. Following three years where Argentina did not use the TDI instruments vis-à-vis the EC, 3 anti-dumping cases were initiated in 2006 and 1 safeguard case. The cases, which are ongoing, are of low economic interest to the EC. Mexico initiated 2 AD cases against certain Member States, a drop compared to previous years' activity. Chile and Panama both initiated 1 safeguard case each with practically no impact for EU exporters.

3.5. Russia and Ukraine

The number of measures imposed by these two countries increased, as both imposed 2 new measures each in 2006.

During 2006, Russia and Ukraine initiated a total of 5 safeguard measures between them as was the case the previous year. However in 2006 it was Ukraine which initiated the bulk of these cases as compared to Russia in 2005. Ukraine imposed two safeguard measures in 2006 on ball bearings and carboxy methylcellulose. However, due to the nature of the measures, they do not impact in any way on EU exports. The measures imposed by Russia were on lamps and steel pipes.

3.6. Turkey

After 2005, when Turkey did not initiate any TDI actions against the Community, in 2006 they became, once again very active in the area of safeguards, initiating 5 cases in total. All 5 cases have resulted in the imposition of measures in 2006. Owing to the variety of products involved and the nature of the measures involved in some cases the impact was greater than others.

3.7. Australia

Australia initiated one CVD case against the EU in 2006 compared to none in 2005. Last years report mentioned the fact that Australia had terminated CVD measures against bulk brandy from France following a sunset review. No causal link had been found between subsidization and injury to the domestic industry. It was therefore somewhat surprising when the Australian authorities initiated a new CVD investigation against bottled and bulk brandy from France in July 2006. This investigation resulted in the imposition of definitive measures in March 2007.

Despite the fact that there was no co-operation form the EU industry, the Commission followed the case and identified some procedural shortcomings, particularly the lack of disclosure. Representations were made to the Australian authorities on this matter.

3.8. Tunisia

On 16 June 2006, Tunisia, for the first time, initiated 2 safeguard investigations concerning iron articles (hardware) and glassware. In both cases the non-confidential versions of the complaints lodged by the Tunisian industry asking for protective measures were very sketchy and did not provide a proper justification for initiating an investigation. Also the range of products covered in each of the two cases was far too broad to be treated as one like product: for glassware, ranging from all sorts of glass containers to glass tableware, while the investigation into hardware covers products as broad ranging as locks, taps and iron fittings for furniture.

The Commission raised these issues at a hearing that took place in Tunis and asked the Tunisian authorities to investigate separately the different types of products. The Commission continues to monitor these investigations and has asked for a full and meaningful disclosure of findings at the end of the investigation.

4. ONGOING PROBLEMS

In recent years we have identified problems which remain prevalent in third country trade defence actions. While we may see improvements occurring in some individual cases, from an overall perspective the issues remain the same i.e. poor standards of initiation, poor injury and causality analysis and disregard for the rights of defence of interested parties. The wealth of jurisprudence which exists on any of these subjects shows that these are recurring problems worldwide. In addition to those persistent problems, the abusive use of safeguard measures should also be added to the list given that, in view of the tendency already outlined above, this has now become a systemic issue.

4.1. Poor standards of initiation

The initiation stage of any proceeding is of course critical. It begins a process which, regardless of whether or not it ends with the imposition of measures, has many implications for those involved. The opening of any proceeding, by its very nature, creates an uncertain trading environment and hence affects normal trade flows. In addition, economic operators co-operating in the proceeding incur considerable investment of resources, including personnel, time and, of course, financial. Therefore it is imperative that users of the trade defence instruments do not initiate without first ensuring that there is, in fact, evidence to suggest that the opening of any case is warranted. The Commission services continue to examine this stage of third country proceedings very carefully and make representations to the investigating authorities where necessary.

4.2. Poor injury and causality analysis

In an increasingly liberalised global economy, economic operators face worldwide competition and need to adapt to remain competitive. This failure to adapt can often lead to demands for protection where this is not necessarily justified. In order to impose legitimate trade defence measures it must first be shown that injury to the domestic industry is the result of injurious dumping or subsidisation or, for safeguard action, from a sudden, massive,

unforeseen increase in imports. But, all too often, there is a failure by investigating authorities to investigate whether in fact the problems faced by their industries has more to do with other factors rather than imports. This is perhaps one of the major weaknesses in trade defence investigations carried out by third countries.

4.3. Rights of defence of interested parties

As with any legal proceeding, respect for the rights of interested parties is essential to ensuring a fair process. This especially applies in the area of TDI. However many countries repeatedly ignore this vital element in their administration of the trade defence instruments. The poor quality of the information provided in the disclosure, as well as the very poor standards of information provided in non-confidential files, repeatedly undermine the rights of defence of interested parties. This is another major problem that has been identified in these third country trade defence cases and one where considerable energy is spent in an effort to have it improved. It is also an issue raised in the Green Paper where four aspects of the EU's own practice have been highlighted for consideration including the role of a hearing officer, public hearings for market economy status decision, level playing field for information as well as access to non-confidential files.

4.4. Extensive use of safeguards

The last years have seen a worrying increasing trend of new safeguard measures. This is probably due to the fact that some countries see the instrument as an easy and rapid way to take actions against imports because, unlike in anti-dumping or anti-subsidy there is no need to demonstrate any unfair element of trade flows, but "only" a surge of imports causing or threatening to cause injury. In this respect, safeguards are often used by certain countries to tackle problems which should normally be addressed by other trade defence instrument such as anti-dumping or anti-subsidy. This is because the nature of the problem in fact often relates to low priced imports from specific countries rather than an overall and sudden increase of imports.

This is problematic for two reasons. Firstly given that WTO injury standards for safeguards are much stricter than those required for the other instruments, safeguard measures imposed often do not comply with WTO rules. For example, the standard of injury in safeguards (serious injury) is higher than for the other trade defence instruments (material injury) and it must be demonstrated that (increased imports) are as a result of unforeseen developments. The Commission services repeatedly address this lack of WTO compliance.

Secondly, in view of the multilateral nature of the instrument, even when EU exports are not the cause of the problem, they are nevertheless also affected by safeguard measures which are applied on an *erga-omnes* basis. Where safeguard investigations are initiated, the Commission services' role is therefore often to try and minimise, as much as possible, the impact of any such measures on EU exports.

5. MAIN ACHIEVEMENTS

As already outlined in the previous year's report, the Commission's activity in monitoring third country cases certainly had some impact on the number of initiations and measures in place against the EC or Member States, which has been decreasing over the years.

Without repeating the details, which are in last year's report, it is useful to recall such successful cases as terminations of safeguard cases on chemicals by Russia, termination of anti-dumping investigation on tinplate by Pakistan and the Moroccan safeguard case on ceramic tiles which resulted in negotiation of high quotas for EC exporters.

In addition, further successes in 2006 were:

a) Zeroing – revocation of measures

Following the WTO dispute settlement requested by the European Commission, in April 2007 the US have implemented, although only partially, the WTO ruling concerning the zeroing methodology. The intensive work of the European Commission services in co-operation with the exporters and Member States concerned is finally rewarded. Indeed, many European exporters have seen the contested anti-dumping duties either entirely revoked or substantially reduced: while for two (and probably even three) cases the orders have been completely revoked, in other cases six individual exporters have seen their duty revoked and the anti-dumping duties for ten other exporters have been reduced.

Unfortunately not all the problems have been solved by this implementation and the Commission will have to consider all the options available for encouraging prompt implementation by the US, and also pursue the other on-going disputes, including a new request for the establishment of a WTO Panel should that be deemed necessary.

b) Termination of measures by India

During the course of 2005, upon request of the EC exporters, India initiated reviews of a number of measures subject to WTO consultations. While several of these reviews led to a termination of the measures, the Indian domestic industry appealed a number of the terminations. In some cases the measures were even reinstated while waiting for the appeals to be decided by the Indian appellate tribunal. The EC strongly opposed these developments and was pleased to note that during the year 2006, most of the appeals have been either withdrawn by the domestic industry or dismissed by the Indian courts.

c) Termination of measures by Argentina

Following long and difficult negotiations in the context of DSU proceedings and after Argentina agreed to end the CVD measures concerning three products (olive oil, wheat gluten and canned peaches)**,** those measures were finally revoked during the year 2006. Concerning the measures on canned peaches, the bound tariff rate was however increased at the same time in order to compensate for the lapse of the CVD duty.

d) Impact of safeguard measures

As outlined above, the number of safeguard measures in force has increased in the last years, which is causing concerns because EU exporters are also affected even when they are not the cause of the problems. However, when those measures could not be avoided, the Commission has been quite successful in defending the EU exporters' interest by promoting types of measures which would have minimum effect. This was for example the case for Turkish (vacuum cleaners and motorcycles) and Ukrainian measures (cotton fabrics and knitted fabrics).

Even if this can be seen as a positive outcome, the Commission is however still calling for a more prudent use of the instrument, insisting that it should be used only in truly exceptional circumstances, which should result in far less safeguard measures being imposed.

6. CONCLUSION

In 2006, for the third consecutive year, the number of measures in force against the EC has decreased. This is of course a positive development for EU exporters, even if the increased number of new investigations as compared to the previous year is an indication that trade defence activity may increase in the short term.

Even if certain improvements in third country trade defence practice have been noticed, the problems identified in the past are still present and others have appeared.

In this context, at a time when the Commission is reflecting on its own use of the instrument, many third countries still continue to use these instruments in a questionable way, sometimes resulting in measures which are not legally warranted. Consequently, there is certainly a need for the Commission to continue to monitor third country actions in order to ensure that third countries respect WTO and bilateral rules, assist and defend interests of EU industries/Member States targeted and aim to reduce the economic impact of third country measures on exporters.

These issues are addressed through direct intervention on specific cases, raising general systemic problems in the framework of both formal and informal bilateral contacts with the countries concerned, discussions in the relevant Committees in the WTO context as well as the continuation of training for third countries regarding our own views and practice in TDI matters.

Positive results have been achieved in this respect, and various EU exporters have relied on the support and advice of the Commission. The EC will therefore pursue its active role in addressing abusive use of trade defence measures because they are considered barriers to trade and an impediment to competitiveness and market access for European exporters.