

Third-country anti-dumping, anti-subsidy and safeguard action against the Community. 2004 report

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PURPOSE : Commission's annual report on third country anti-dumping, anti-subsidy and safeguard action against the Community (2004.)

CONTENT : 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.

Overall trends: 2004 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 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. 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 report describes the benefit, or otherwise, to EC exporters, which is not clear-cut. 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%).

Countries: the report describes activity by the United States, (with particular reference to the initiation of a WTO case on "zeroing" and an implementation panel in the "privatisation case"); the significant increase in trade defence activity by Russia, Ukraine and Belarus; China, which has made relatively little use of trade defence against the EC, but is, globally, increasingly resorting to TDI, especially in the chemical sector; India, which has initiated fewer cases against the EC in 2004; Latin America, where a slight decrease in trade defence activity has been noted in 2004;

Sectors: in terms of sectors affected by trade defence measures, special mention is made of agriculture. There continue to be a high number of CVD actions targeting EC exports of processed agricultural products. The EC does not contest the fact that agricultural subsidies 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. The EC has in 2004 devoted particular attention to these cases to ensure that any CVD action by third countries is based on a demonstration that the exported goods have clearly

benefited from such aid. With regard to 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.

Concrete results: 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 report discusses certain key cases.

General issues with third countries: the report discusses the problems of low standards of initiation, with some countries requiring 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. The report also discusses the problems of insufficient disclosure of information by some countries when using TDI, and abuse of trade defence instruments.

An increasing number of 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.

In spite of the significant number of measures in force against Community exporters, there is some ground for optimism for the coming year. 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 DG Trade is often asked 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.