

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 4.7.2008
COM(2008) 406 final

**FIFTH ANNUAL REPORT FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT**

**overview of third country trade defence actions against the Community (statistics up to
31 December 2007 but commentary on cases and text is updated to March 2008)**

[SEC(2008) 2149]

FIFTH ANNUAL REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT

**OVERVIEW OF THIRD COUNTRY TRADE DEFENCE ACTIONS AGAINST THE COMMUNITY
(STATISTICS UP TO 31 DECEMBER 2007 BUT COMMENTARY ON CASES AND TEXT IS UPDATED
TO MARCH 2008)**

Executive summary

The number of trade defence measures in force against the EU at the end of 2007 increased slightly compared to the previous year. Those measures are mainly anti-dumping, but the use of the safeguard instrument is constantly increasing. The Commission continued to closely monitor this activity, to provide assistance to the EU industry concerned and to intervene where appropriate. Positive results were achieved this year but the problems identified in the past still exist and often unduly restrict market access for EU exporters. The Commission will therefore continue this important activity and intensify bi-lateral contacts with third countries in order to promote increased disciplines when using trade defence instruments.

1. INTRODUCTION

While the number of measures in force against the EU or its Member States has fluctuated over the last years, not only have the concerns related to their appropriate use remained the same but new problems have emerged more recently. The EU is a user of trade defence instruments and recognizes the right of third countries to use them as well. However, experience has shown that, in many instances, the standards applied by third countries when using the instruments are not always adequate and the resulting measures do not always conform to WTO legal requirements.

The need to reinforce EU competitiveness on world markets is one of the main objectives of Commission's Trade policy. Unwarranted trade defence measures constitute an obstacle to legitimate market access for our exporters and the Commission's aim therefore is to avoid that such measures are introduced by third countries or, at least, to minimise their negative impact, as much as possible.

The Commission therefore continues to intervene as much as possible in individual cases while also maintaining dialogue and bi-lateral contacts with third countries administrations in order to promote the highest standards in the use of the instruments, similar to those applied by the Commission in its own practice.

The previous reports have underlined the need to continue to monitor third country actions and maintain technical assistance to the industries concerned. This year's trends and developments certainly confirm this, in particular when considering the recent positive results that have been achieved. Member States and industries have also made it very clear that they rely on the Commission's work and support in this field.

2. OVERALL TRENDS

At the end of 2007 there was a total of 147 trade defence measures in place against the European Community or its Member States. This compares to 143 at the end of 2006.

While the number of measures in place followed a decreasing trend in the last three years until 2006, for the first time in 2007 they increased as compared to the previous year. This should however been seen in the light of the enlargement of the Union that took place in January 2007. In this context, the measures which third countries were already in place against Romania and Bulgaria before the enlargement, 9 in total, have now been included in the statistics. In total there were 23 new measures in 2007 (14 provisional or definitive measures and 9 resulting from the enlargement) while at the same time 19 measures lapsed or have been revoked.

Concerning the **use of the various trade defence instruments**, anti-dumping still constitute the bulk of the measures, i.e. around two thirds of the measures in place. Similar to the previous years the number of countervailing measures has been decreasing, but the breakdown of the measures in place shows again an increase in the number of safeguard measures, from 32 in 2006 to 36 in 2007. Those measures now represent 25% of the overall measures in place.

Since safeguards are imposed on an erga-omnes basis, they affect EC exporters, even when their exports do not cause any problems to the domestic industry of the country imposing the measures. The Commission therefore continues to apply pressure to the users of safeguards to be more circumspect in their use while also making every effort to minimise the negative impact of any safeguard measures imposed. While such interventions have been successful in some instances, unfortunately this was not always the case, in particular concerning measures imposed by Turkey.

In terms of countries, the USA remains the main user of trade defence instruments against the EC, with 25 measures in force, i.e. almost 20% of the total. For many of the products concerned (e.g. low-enriched uranium, hot-rolled steel) trade volumes are substantial. The other main countries are India (19 measures), Brazil (12 measures), China (10 measures), Ukraine (10 measures), Mexico and Turkey (9 measures each).

The **number of new measures imposed** (provisional and definitive) decreased significantly, from 27 in 2006 to 18 in 2007 (including 14 new measures and 4 provisional measures already imposed in 2006 but definitively confirmed in 2007). This drop is explained by the fact that China and Turkey imposed in total 9 measures in 2006 but only 2 in 2007. However, while China indeed decreased its overall trade defence activity, Turkey remains an important user, as detailed below. Similar to the previous year, half of the new measures are safeguards.

Finally, after a peak in 2006, the number of **new initiations** in 2007 fell back to a relatively moderate level, from 28 to 20 new cases. This is due to the fact that only 9 safeguard cases were initiated in 2007 as compared to 18 the previous year. This is a positive development and hopefully this trend will continue.

3. TRENDS BY COUNTRIES

While the USA and India decreased their number of measures in the last years, countries such as Brazil, Ukraine, Mexico, Turkey and Russia significantly increased their measures in the last three years. While these five countries together accounted for 26 measures in 2005, that figure had increased to 45 measures in 2007.

In the case of the USA, the reduction mainly results from the revocation of various measures, while the trend for India still reflects the termination of measures following WTO consultations concerning a substantial number of measures. Concerning Russia, Ukraine and Turkey, it should be underlined that the increase of measures almost exclusively relates to

new safeguard measures introduced in 2007. Finally the rise for Brazil and Mexico reveals an increasing TDI activity in Latin America.

A detailed description of the trends and main cases for each third country is given in annex.

4. ONGOING PROBLEMS

Even if there has been some progress overall, the Commission still faced the same problems it has identified in the past. Those concerns mainly relate to poor standards of initiation, poor injury and causality analysis and disregard for the rights of defence of interested parties. Those were explained in detailed in the previous reports and therefore not repeated in this one.

The increasing use of safeguard measures was also added to the list of issues last year, and unfortunately it remains a problem in 2007. In addition, another important problem which came to the fore was that the majority of the most recent EU Member States are still not automatically granted market economy status in anti-dumping investigations in Argentina and Brazil.

The two most recent issues are detailed below.

4.1. Extensive use of safeguards

The last years have seen a worrying increasing trend of new safeguard measures, and this has been confirmed in 2007. Indeed, between 2006 and 2007, the number of safeguard measures in place increased from 32 to 36. One in four trade defence measures at the end of 2007 were safeguards. While there were less new safeguard cases initiated in 2007 (9 as compared to 18 in 2006), these cases still accounted for half of the new initiations.

Various countries still 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. The legal conditions for the imposition of safeguard measures are however intentionally very strict, and in fact much stricter than those required for the other trade defence instruments, because these measures address free trade rather than unfair trade. Those conditions are unfortunately frequently not met.

In addition, and more importantly, given the multilateral nature of the instrument, safeguard measures are imposed against all imports regardless of origin, irrespective of whether they are the cause of the problems or not. As a consequence, in various instances, EU exports have been unduly affected by safeguard measures despite them clearly not causing any injury to the domestic industry requesting protection. Those exporters are therefore sometimes unduly penalised and their market access obstructed without any valid justification.

When problems are related to low priced imports, it is often more appropriate that they are addressed by the anti-dumping instrument. Even if some countries introduce forms of measures that specifically address the nature and origin of the problems, i.e. low priced imports, other countries do not systematically follow this approach. The Commission's role is therefore also to try and minimise, as much as possible, the impact of any such measures on EU exports. However, this is not an easy task since certain countries are less willing than others to implement measures that would only target the genuine origin of the problems.

4.2. Market economy status of new EU Members States

During 2007 it emerged that Brazil and Argentina continue to treat the newer EU Members States as countries that have not reached full and unconditional market economy status (MES)

in the framework of anti-dumping investigations. In practical terms it means that an investigating authority uses a surrogate normal value for dumping calculations. Even though there is only one on-going investigation in those two countries specifically targeting new Member States, the Commission takes this very seriously because it is inconceivable that EU Member States are not considered fully fledged market economies. In addition it is not acceptable that certain EU Member States are treated differently than others while all have adopted the Community *acquis*.

The Commission has therefore vigorously intervened in order to obtain a swift solution to this issue. Substantial information in response to Brazil's and Argentina's questions concerning MES of the 'new' Member States has been provided. On this basis, the Argentinean and Brazilian authorities should no longer be in a position to invoke 'technical grounds' as an excuse for not granting MES to Bulgaria, Czech Republic, Estonia Hungary, Latvia, Lithuania, Poland, Romania, Slovak Republic and Slovenia.

As a matter of principle, all EU Member States should be treated as market economies irrespective of the date of their accession. Not only is it a pre-condition (as part of the accession criteria) that candidate countries must be full market economies before they can accede to the EU, but they also must adopt and implement the full *acquis communautaire* which has regulated economic activity in the former Member States. Therefore, there can be no legal or economic reason to treat any of the EU Member States as economies in transition or even non-market economies. The Commission is actively pursuing this issue in its bilateral relations with Brazil and Argentina in order to obtain a swift positive outcome.

5. MAIN ACHIEVEMENTS

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

In addition to the concrete achievements detailed below, it should be noted that the Commission has multiplied its contacts with the industries concerned by any trade defence investigation in order to provide assistance, guidance and explanations concerning Third Country actions. These contacts have in certain instances led to co-operation of the EU industry while in other instances industry may have decided not to participate in the investigation. In those cases, even if there was no concrete positive outcome (co-operation is indeed an important pre-requisite), at least the Commission made sure that the industry was aware of the on-going investigations and the possible negative consequences of non co-operation. Participating in trade defence investigations indeed remains an economic decision which has to be made by the companies concerned based on more general considerations.

The main successes in 2007 were the following:

(1) Zeroing – revocation of measures

Although already highlighted in the previous report, it should be recalled that, as a result of the intensive work of the Commission in co-operation with the exporters and Member States concerned, the US in April 2007 have implemented, although only partially, the rulings of the WTO panel requested by the European Commission (DS294) concerning the zeroing methodology. Many European exporters have seen the contested anti-dumping duties either entirely revoked or substantially reduced.

Unfortunately not all the problems have been solved and the Commission had to request a so-called implementing panel because it is considered that the US did not adequately implement the rulings of the WTO panel. The second EC zeroing panel against the US (DS350) is ongoing.

(2) Absence of prolongation of US measures in expiry reviews on steel products

As explained above, the biggest EU exporters of stainless steel bars already saw their measures revoked following the implementation by the USA of the WTO ruling on zeroing. The Commission, together with the industry concerned, subsequently claimed within the framework of expiry reviews that, as a result of these revocations, the market shares of the remaining exporters still subject to the duties were much lower than in the overall initial volumes, and therefore no material injury was likely to occur for the domestic industry. This argument was accepted and the USA revoked the anti-dumping measures and/or countervailing orders on stainless steel bar from France, Germany, the UK and Italy due to the absence of likelihood of recurring material injury for the US industry. The outcome of this case shows once more the value of close cooperation between the Commission, Member States, and the EC industry.

The revocation of those duties, in addition to the revocations in 2006/2007 of anti-dumping measures on other steel products (e.g. cut-to length plate, corrosion-resistant flat products, oil country tubular goods), is a very welcome development.

(3) Decreasing number of measures by India

The number of measures in place by India has been decreasing over the last years as a result of successful reviews following the WTO consultations requested by the EU. For the few cases for which no review was requested, it was expected that the measures would be allowed to lapse after their normal period of imposition of five years. Unfortunately India initiated two expiry reviews (one in 2006 and one in 2007) concerning those measures. The Commission strongly opposed these new investigations on the grounds that it would be totally unacceptable that such measures, which were originally considered not legally warranted, may be prolonged for another five years.

Our intervention was successful at least in one case. Indeed, despite no co-operation from the EU industry, India concluded in 2007 that the measure should be maintained for all countries concerned by the investigation with the exception of those concerning the EU.

(4) Improving rights of defence in Chinese investigations

In last years report it was mentioned that China continued to have problems regarding lack of transparency and poor disclosure in their cases. Transparency is a vital factor of in the administration of trade defence instruments as it is an essential element to ensure right of defence of interested parties. While this issue was raised constantly with Chinese authorities in the context of individual cases, unfortunately no major improvements were noted. Therefore this issue was raised again in the context of a bilateral 'Best Practices Group' during which the Chinese administration was given detailed examples of how the EC handles this aspect of investigations. The Chinese have welcomed our advice on this matter and indications are that they will improve this aspect of their cases in the future. While there are no ongoing cases by China we will continue to monitor this aspect closely in future proceedings and remain hopeful that our bilateral contacts will bear fruit. It is however an

encouragement to pursue bi-lateral contacts with third countries in order to promote the EC's high standards and encourage third countries to also apply them.

(5) Elimination and minimising impact of measures taken by Mexico

Positive results were achieved in the framework of two investigations concluded by Mexico in 2007. The first one concerns an anti-dumping investigation against imports of certain pesticides from Denmark. The Commission actively supported and assisted the Danish producer in this case. The prohibitive provisional measures of more than 90% were challenged on the grounds of erroneous calculation of the margin of dumping and, after various interventions, Mexico finally accepted the price undertaking offered by the Danish exporter. Even if a termination of the investigation without any kind of measures would have been a preferable outcome in this case, at least the negative economic impact was minimised and market access ensured. The Commission continues to closely monitor this case as there are indications that the only producer in Mexico may go bankrupt in the near future, which would make any measure unnecessary.

The second case concerns an anti-dumping investigation against imports of welded pipes from Germany. Although a provisional measure was also imposed in this case, the Commission intensely intervened at various levels, mainly on grounds of a lack of evidence that the domestic industry suffered of any threat of material injury, as alleged by the Mexican authorities at provisional stage. These efforts were successful and finally Mexico decided to terminate the case without imposition of any measure.

For the sake of completeness it should also be mentioned that the WTO dispute settlement case concerning the countervailing duties imposed against imports of olive oil is still ongoing. The interim report which was supposed to be released by mid-May 2008 is still pending.

(6) Impact of safeguard measures

For reasons outlined earlier the Commission emphasises that the safeguard instrument should only be used in exceptional circumstances, it is used against fair trade, unlike anti-dumping and countervailing duties, and also because any resulting measures have a negative impact also for those exporters that do not cause any injury. Where measures cannot be avoided, the Commission promotes types of measures which have a minimum negative effect on EU exporters.

In this respect, the Commission was successful in the case for the three safeguard measures imposed by Ukraine in 2007. These measures only apply to imports below a certain price, which effectively does not concern EU exports that are above that price level.

The same success can be reported in the case of measures imposed by Turkey against imports of certain motorcycles. Although provisional measures under the form of a specific duty per piece was imposed simultaneously with the initiation of this case, after various interventions, the definitive measures introduced in 2007 were also only applied to imports below a specific import price. As a result EU exports were not affected as their prices are, on average, above the threshold.

Unfortunately the Commission was not successful in all cases. Indeed, despite various interventions and discussions with the Turkish authorities, no positive outcome could be reached in two safeguard cases for which duties were imposed early in 2008. Those measures took the form of a specific duty per piece, which also affects EU exports. Those cases were however clearly targeting low price imports from specific countries, other than the EU.

Turkey continues to be one of the major users of safeguards and the Commission will pursue its efforts to convince them to use country specific instruments when problems are caused by well identified countries only.

(7) Australia pig meat

At the end of 2007, Australia initiated a safeguard investigation into imports of meat of swine. Australian pig farmers had requested the initiation of a safeguard investigation against imports of frozen cuts of meat of swine in October 2007 since they were experiencing difficulties, notwithstanding the fact that they compete with imports only on part of the pig meat market. Today only USA, Canada and Denmark meet the sanitary and phytosanitary requirements to export to Australia. On 14 December 2007 and again on 4 April 2008, the Australian investigating authority proposed not to impose measures, since no causal link was found between imports and the difficult situation of the Australian pig farmers, the principal cause of injury being the higher domestic feed prices (pig producers worldwide, including in the EU, face a similar situation). This case is an example of good coordination among EU, Member State and EU industry to avoid the imposition of measures which are not legally warranted.

6. CONCLUSION

After a decrease in the last years, the number of measures against the EC remained relatively stable in 2007. Given the current global economic situation it is not unreasonable to expect that the number of measures may increase again in the near future. Indeed, when faced with difficult economic conditions, industries may be more inclined to ask for protective measures.

The 'old' and familiar problems are still present, and new concerns have emerged. Therefore the need to closely monitor third country cases is necessary more than ever. Unwarranted measures deprive Community exporters of their business opportunities abroad and constitute an impediment on Europe's competitiveness. Therefore, these obstacles to market access should systematically be addressed. On this basis, the Commission follows third country activity closely, continues to assist the EU industry concerned and intervenes where necessary.

This year again has showed that joint efforts between the Commission, industries and the Member States concerned strongly increase the chance of successful intervention in third country cases. Noticeable achievements were obtained this year: measures were avoided in some cases or their negative economic impact on Community operators was reduced in other instances. The Commission will continue to intensify its contacts with the industry and intervene as much as possible and in the most appropriate form.

The Commission also continues to foster bi-lateral contacts with third countries in order to improve disciplines and promote the high standards applied in its own investigations.