

# The Future of Trade Remedies

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# THE EUROPEAN TRADE REMEDIES

## □ **Table of contents**

1. CURRENT REFORM (“MODERNIZATION”) OF THE EUROPEAN TRADE REMEDIES
2. KEY DATA ON THE RECENT USE OF EUROPEAN TRADE REMEDIES
3. EXPECTED EVOLUTION OF EUROPEAN TRADE REMEDIES

# 1. CURRENT REFORM (MODERNIZATION) OF THE EU TRADE REMEDIES

- ❑ Classical controversy in Europe between:
  - Supporters of **free trade** (protectionist devices without economic justification)
  - Supporters of **fair trade** (not used vigorously enough)
  
- ❑ However, it is clear that :
  - While businesses must be open to the world, favour innovation and competitiveness;
  - They must also be protected when confronted with unfair practices
  
- ❑ In the current international legal system, trade remedies are **virtually the only tools** at the European Union's disposal for fighting unfair international competition

# 1. CURRENT REFORM (MODERNIZATION) OF THE EU TRADE REMEDIES

- ❑ There should therefore be no debate as to the need to protect a company/industry that is confronted with **unfair and injurious distortive practices** provided the trade remedies are both effective and transparent
- ❑ **Any different avenue would be the best way of playing in the hands of these that are advocating a return to protectionism, and therefore the best way not to resisting protectionism.**

# 1. CURRENT REFORM (MODERNIZATION) OF THE EU TRADE REMEDIES

□ The issue at stake in the pending EU reform is the following:

➤ **Effectiveness**

□ New challenges posed by State capitalism:

- Capturing them in CVD or AD
- Refusing to apply the “lesser duty rule” to exporters of countries practicing such policies (in particular export taxes and dual prices on raw materials and energy)

# 1. CURRENT REFORM (MODERNIZATION) OF THE EU TRADE REMEDIES

## □ Threats of retaliation

- No perfect solutions, but possible avenues :
  - Anonymous treatment?
  - Self-initiation of proceedings by the EU Commission?
  - Systematic WTO challenge of merely retaliatory proceedings?
  - Normalization in the use of non-abusive trade remedies?

### » **WTO Challenge of rules legalizing retaliations...**

Ex. *“Where a country (region) discriminatorily imposes anti-dumping measures on the exports from the People's Republic of China, China may, on the basis of the actual situations, take corresponding measures against that country (region)”*.

# 1. CURRENT REFORM (MODERNIZATION) OF THE EU TRADE REMEDIES

## □ Length of procedure

- The time necessary for imposing provisional measures is too long (9 months) but in fact around 12 to 15 months between issue first being raised with the Commission and provisional measures.
- This can have a severe impact on the EU industry. There are many cases in which many companies closed before or during the investigation
- Proposals to impose a provisional measure after 7 months (6 months proposed by the European Parliament).
- Registration of imports with possible retroactivity should also be imposed routinely, while it is still used sparingly.

# 1. CURRENT REFORM (MODERNIZATION) OF THE EU TRADE REMEDIES

## □ Transparency and predictability

- Pre-disclosure
- Controversial “shipping clause”
- Access to (and quality) of non-confidential files
- Guidelines on key methodological issues



## 2. KEY DATA ON THE RECENT USE OF TRADE REMEDIES IN EUROPE

	2010	2011	2012	2013	2014
<i>Chemical</i>	7	11	-	1	1
<i>Textile</i>	-	-	-	3	-
<i>Paper/Wood</i>	2	-	-	-	-
<i>Electronics</i>	2	-	2	-	-
<i>Mechanical Engineering</i>	1	1	1	-	-
<i>Iron / Steel</i>	3	6	11	1	8
<i>Metals</i>	-	1	-	-	-
<i>Others</i>	3	2	5	4	2
<b>Total</b>	<b>18</b>	<b>21</b>	<b>19</b>	<b>9</b>	<b>11</b>
<b>-CVD</b>	3	4	6	5	2
<b>- AD</b>	18	21	19	4	9

## 2. KEY DATA ON THE RECENT USE OF TRADE REMEDIES IN EUROPE

- ❑ Main exporting countries: by far China (30) and then India (6), Indonesia and Thailand (3); Malaysia, Taipei, Turkey, USA (2). Others are Argentina, Belarus, Bosnia and Herzegovina, Macedonia, Iran, Kazakhstan, Korea Rep, Oman, Pakistan, Russia, Saudi Arabia, Ukraine, UEA (1)
  
- ❑ EU **antidumping** proceedings have decreased over the last ten years by virtue of:
  - The weakening or virtual disappearance of certain industries in the EU
  - The globalisation of production
  - The uncertain outcome of proceedings, partly due to the fact that in certain sectors the importers'/consumers' interests outweigh the producers' interests

## 2. KEY DATA ON THE RECENT USE OF TRADE REMEDIES IN EUROPE

- ❑ **CVD** proceedings initiated by the EU are increasing
  
- ❑ However, the start nevertheless is still modest:
  - Great complexity and opacity of the subsidy systems
  
  - Results generally far less favorable for the complainant than those of the AD investigations

## 2. KEY DATA ON THE RECENT USE OF TRADE REMEDIES IN EUROPE

- **An experienced and far from passive European Commission:**
  - Moderate use of the trade remedies, largely in compliance with the WTO rules (which counts in terms of credibility with respect to third countries which launch proceedings against Europe - 94 between 2009 and 2013);
  - A European Commission which is improving the transparency of its system (on-line access to NC file; guidelines...)
  - A Commission which can show that it has "teeth" and even be innovative when circumstances demand:
    - US Biodiesel (B99)
    - DET Biodiesel Argentina and Indonesia

### 3. EXPECTED EVOLUTION OF EU TRADE REMEDIES

#### □ **New EU decision-making process**

- Henceforth a competence of the European Commission
- The Commission will always be subject to control by the Member States, but the process will be more technical and less political
- Much more difficult for the Member States to block a Commission proposal (qualified majority against)
- The new “joint decision” procedure will enable the Member States to propose amendments, but that are compatible with EU and WTO rules

### 3. EXPECTED EVOLUTION OF EU TRADE REMEDIES

#### □ The new 2014-2019 European Commission:

##### ➤ New Trade Commissioner (Mrs Malström)

– Swedish nationality

– Criticisms of the Commission's “naivety” or neo-liberalism as regards foreign trade should continue

– However, once in Brussels, the representatives of the liberal States are not necessarily those that conduct the most liberal policies (and vice versa, furthermore).

### 3. EXPECTED EVOLUTION OF EU TRADE REMEDIES

#### □ The new 2014-2019 European Commission:

- A Vice-President of the Commission “overseeing” Trade and other Directorates, including Growth and Competitiveness (Mr. Katainen)
  - Also from a Scandinavian country (Finland)
  - Risk of a multiplication of the pressure points on the Commission for companies, particularly in the field of trade remedies
  - Those who will want to modify an orientation taken by Mrs. Malström may turn to the Vice-President
  - That could reinforce the weight given to the concept of Union interest in the decision-making

# CONCLUSIONS

- ❑ The use of trade remedies is fully legitimate, but requires transparency, effectiveness and WTO compatibility
- ❑ The antidumping remedy, although now less used in Europe than in the past, will remain a relevant instrument for countering manifest situations of prejudicial dumping and for confronting certain governmental interferences which cannot yet easily be categorized as subsidies (e.g. export taxes).
- ❑ Europe will also probably make ever greater use of the anti-subsidy instrument, particularly with regard to countries which maintain subsidizing systems that are clearly countervailable according to WTO rules, especially if the country concerned maintains a high level of restrictions at entry or on its territory.
- ❑ Increasing concern in Europe among companies faced with the imbalance between the strict discipline to which the Community industries are subject and the absence of similar disciplines elsewhere.



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