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12th REPORT

**OVERVIEW OF THIRD COUNTRY TRADE DEFENCE ACTIONS
AGAINST THE EUROPEAN UNION FOR THE YEAR 2014**

{SWD(2015) 145 final}

1. INTRODUCTION

Anti-dumping, anti-subsidy and safeguards are the three trade defence instruments ('TDIs'). Anti-dumping ('AD') and anti-subsidy ('AS') measures aim at counteracting the negative effect of unfair trade practices such as dumped/subsidised imports, while safeguards (SFG') should temporarily shield industries from the negative effect of unforeseen and significant increases of imports. Safeguard measures also differ from the other two instruments, as they are applied on imports from all origins, while anti-dumping and anti-subsidy measures are country (and even company) specific.

–In the application of TDIs, WTO rules need to be scrupulously respected. Misapplication of TDIs leads to unlawful and unjustified measures that have a negative impact on free and fair trade. This is in particular the case for the safeguard instrument, which is the most trade restrictive instrument, and for which the rules are even stricter than for anti-dumping and anti-subsidy measures.

Over the past years, and in conjunction with the global economic crises, an increase of the use of trade defence measures has been observed. In times of economic crises, when domestic consumption in certain sectors decreases, industries naturally look for other outlets for their production and focus on export markets. It is therefore crucial that these export opportunities are not hampered by unwarranted trade defence measures, which unduly restrict market access.

WTO members have the right to make use of the TDIs. The EU itself is a regular user of these instruments (with the exception of safeguards), but employs a balanced and moderate approach and applies strict standards that go even beyond its WTO commitments. The EU expects its trading partners to follow the agreed WTO required standards in their use of the instruments. In this context, the Commission has continued its efforts to promote best practices in the use of TDI among its trading partners, and the monitoring activity has been further intensified.

The Commission intervenes, whenever necessary, in order to address systemic issues identified in third countries' use and practice of trade defence and ensure WTO compatibility. The Commission systemically submits comments in writing, and also increasingly participates in public hearings in third country TDI proceedings, especially when EU exporters' rights and interests are unjustifiably affected.

Furthermore, the Commission provides detailed TDI related training to officials from the investigating authorities of third countries, in an effort to spread its own high standards in TDI investigations and thereby increasing the quality of investigations carried out by third countries. Such training is usually organised once a year, in the form of a one week seminar, for up to 25 participants from around five third countries. Due to high interest, a second such seminar was organised in 2014. Officials from Israel, Kosovo, Pakistan, Panama, Tajikistan, Ukraine, Vietnam, Dominican Republic and Turkey participated in the two trainings provided in 2014. Furthermore, Commission TDI experts provided training to Moroccan officials in a seminar in Rabat. Additional requests from Egypt and Tunisia for training of their officials 'sur place' by Commission TDI experts were received during 2014.

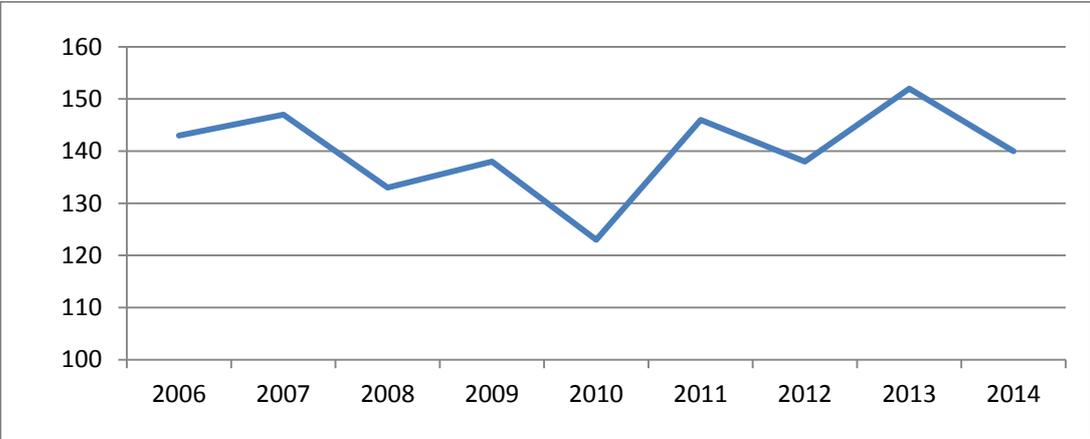
This report describes the overall trends in trade defence activities by third countries, which adversely impact or could potentially impact EU exports (AD or AS measures by third countries can target either the EU as a whole or individual Member State(s)). It also gives an overview of what third country monitoring means concretely with detailed analyses per country and detailed figures in the annex.

2. OVERALL TRENDS

Similar to 2013, the trade defence activity by third countries in 2014 remained intense.

While the number of measures in force has decreased to 140 (from 152 in 2013), mainly due to the expiry of certain measures, 34 new measures were imposed in 2014 (compared to 27 in 2013) and 41 new investigations were initiated (compared to 43 in 2013). It is thus expected that this intense activity will remain also in 2015.

Total number of measures in force

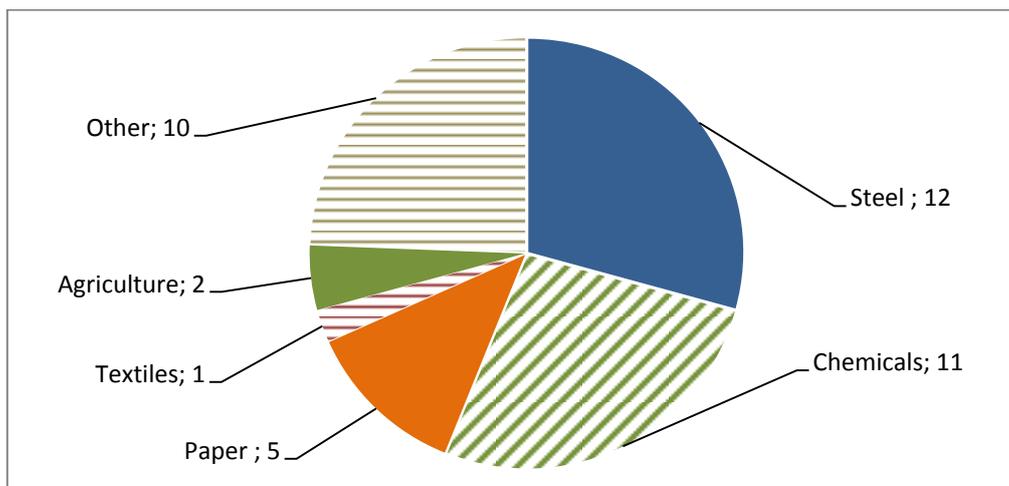


Source: WTO and EU statistics

Regarding the types of instruments used, out of the 140 measures in force, 104 are anti-dumping measures, 4 are anti-subsidy measures and 32 are safeguards (it is recalled that not all safeguard measures affect EU exports). The 34 new measures imposed in 2014 consist of 19 anti-dumping, 1 anti-subsidy and 14 safeguard measures. In terms of new initiations, 23 safeguard investigations, 17 anti-dumping and 1 anti-subsidy investigations were initiated in 2014. The number of new safeguard investigations in 2013 seemed to indicate a decreasing trend, in particular compared to the number of anti-dumping investigations. But this trend has not been confirmed in 2014. In fact, the number of safeguard investigations initiated in 2014 (23) is as high as in 2012, and was only higher in 2009, when 31 new safeguard investigations had been initiated.

In 2014, it seems that **certain sectors** have been targeted specifically. The steel sector is indeed frequently affected by trade defence action, in particular in the Mediterranean region, but also in Latin America. In fact, 12 of the new investigations initiated in 2014, concerned steel products. The chemical sector closely follows with 11 new investigations initiated in 2014. The paper industry was especially targeted in 2014, with 5 new investigations initiated followed by another one initiated early in 2015.

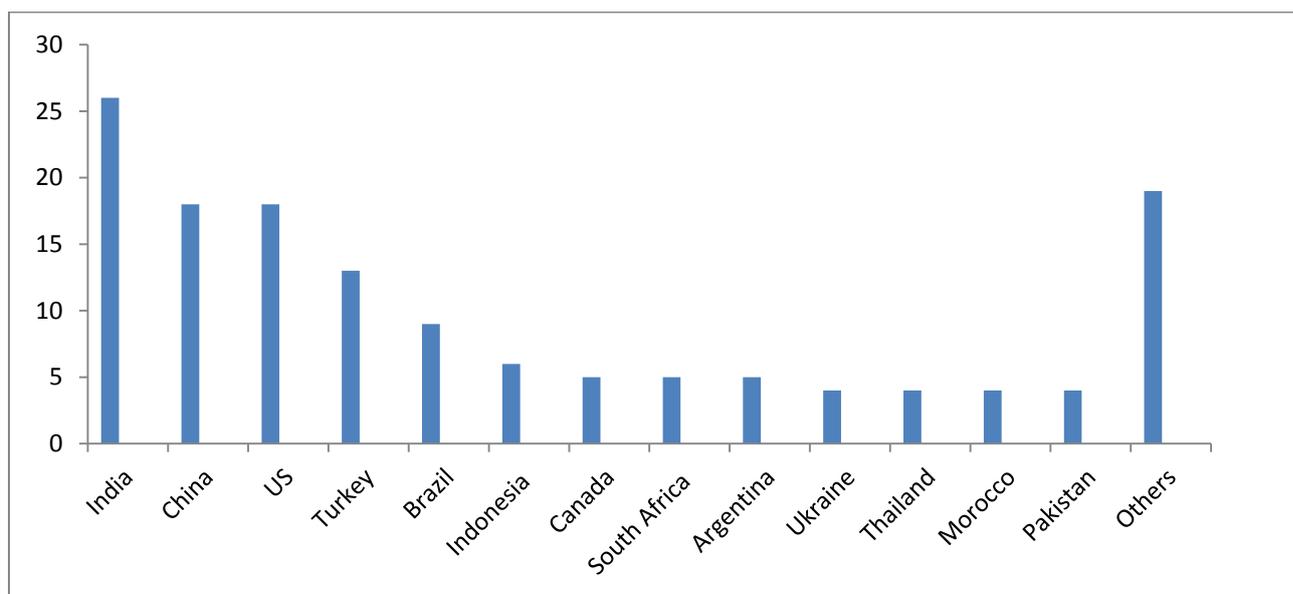
New investigations initiated in 2014 by sector



Source: WTO and EU statistics

The most active country in 2014 was **India**. India has a total of 26 measures in force (4 safeguard, 22 anti-dumping measures). In 2014, it imposed 4 new anti-dumping measures and 4 new safeguard measures, and initiated 7 new safeguard and 3 new anti-dumping investigations. It is followed by **China** and the **US** with 18 measures in force (16 anti-dumping and 2 anti-subsidy measures for China, and 17 anti-dumping and 1 anti-subsidy measure for the US). In 2014, **China** imposed 4 new measures (3 anti-dumping, 1 anti-subsidy) and initiated 1 anti-dumping investigation. The **US** imposed 1 new anti-dumping measure and did not initiate any new investigations.

Measures in force at the end of 2014 by country



Source: WTO and EU statistics

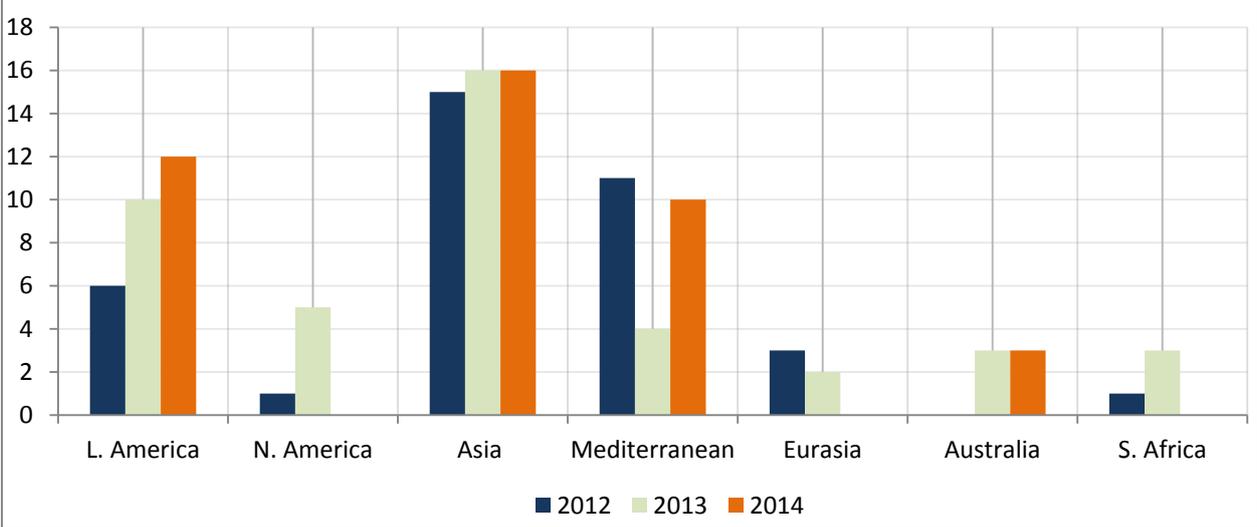
In terms of regions, **Asia**, **Latin America** and the **Mediterranean region** have been most active with respectively 16, 12 and 10 new investigations initiated in 2014.

Latin America is clearly on an increasing trend with respectively 6, 10 and 12 new initiations over the past 3 years.

The **Mediterranean region** has also increased its activity in 2014, with 7 new investigations initiated (compared to 4 investigations initiated in 2013). But it is still below the level of 2012 (11 new initiations).

One of the main concerns in Asia and in the Mediterranean region is the extensive use of safeguards. In Asia, safeguard investigations accounted for 12 out of the 16 investigations initiated in 2014, and in the Mediterranean for 6 out of the 7 new investigations initiated. In Latin America, only 2 out of 12 new investigations were safeguard investigations.

New investigations initiated in 2014 by region



Source: WTO and EU statistics

3. RECURRING ISSUES

3.1. Use of safeguards

The proliferation of initiations of new safeguard investigations continues to raise concerns. In 2014, third countries initiated 23 new safeguard investigations compared to 18 in 2013. This trend is all the more worrying, because in many of the investigations, it is questionable whether the strict rules provided for in the WTO Safeguard Agreement are respected. As mentioned in previous reports, the safeguard instrument is the most restrictive instrument and should thus be used in truly exceptional circumstances only. Even though not all safeguard investigations affect EU exports directly, the Commission intervenes systematically in almost all investigations, in order to raise serious shortcomings in many of these investigations, already at initiation stage.

There are many common flaws in these safeguard initiations and investigations. Often, third countries do not establish an unforeseen development, or react to an increase of imports which is not recent, sudden, sharp and significant enough. Further, the injury picture is often questionable and the causal link doubtful. In this context, it is recalled that the injury standard in safeguard investigations is *serious* injury, which is a more demanding standard than

material injury, as required in anti-dumping and anti-subsidy investigations. Despite the interventions by the Commission, in cooperation with industry, in most cases measures are nevertheless imposed. However, such interventions have led, at least in some cases, to less restrictive measures (lower duty rates, higher quota, shorter duration or faster liberalisation of measures).

3.2. Use of the instruments by emerging economies

Non-respect of the WTO rules in the area of trade defence leads to unwarranted measures that do not achieve their intended purpose. The Commission observed that some emerging economies readily use safeguards and regardless if imports are dumped or subsidised. In particular, in cases where imports increase mainly from one source the appropriate instrument would often be the anti-dumping or the anti-subsidy instruments, which are both country specific and provide a targeted response to the unfair trading practice at stake.

Unlike anti-dumping and anti-subsidy measures, safeguards affect imports from all sources, and thus may hamper fair competition. When taking a closer look at many of the safeguard investigations opened during the past year, most of which in emerging economies, they often involved industries with either a dominant position on the local market or in the process of massive capacity building. Clearly, these are situations in which the use of the safeguard instrument is not warranted.

The Commission has also observed a ‘contagion’ effect in some regions. This has specifically been observed in the Mediterranean region, where Morocco started to use the instruments regularly since 2012 and was then emulated by Egypt, Tunisia, and Jordan, while Turkey is a more traditional and very active user of the TDIs.

3.3. Lack of transparency

A key element in each trade defence investigation concerns the rights of defence of the parties affected. It is up to the investigating authorities to ensure that an appropriate, meaningful non-confidential file is made available for parties to consult on a timely basis. Such a file must contain a non-confidential version of each document on the record and/or meaningful summaries of information provided in confidence. Unfortunately, in many investigations, in particular with few or only one complainant, hardly any information is provided in the non-confidential file. In such cases the Commission intervenes in order for the investigating authorities to at least provide information in the form of indices or ranges, so that parties can obtain at least a general picture of the situation.

4. WTO ACTIVITY

The Commission is active in the WTO in order to ensure full respect of WTO law.

If measures taken by other WTO members violate WTO rules the Commission may request the establishment of a WTO Panel.

For instance, in August 2013, the Commission had requested the establishment of a Panel against *anti-dumping measures imposed by China on imports of certain steel tubes*. The proceeding took place mostly in 2014 and resulted in a favourable final outcome for the EU (more details below). In 2014, the Commission had also requested the establishment of a Panel concerning the *anti-dumping measures imposed by Russia against imports of light commercial vehicles*. The proceeding will continue through 2015.

Furthermore, the Commission also intervenes as a third party in WTO Panels requested by third countries, with the main objective to address and monitor issues of systemic interest, which may also impact the EU's use of the trade defence instruments. Such interventions have also an offensive interest, since the Commission advocates for higher standards in trade defence investigations abroad. In 2014, the Commission intervened as a third party, inter alia, in cases such as, *United States – anti-dumping and countervailing measures regarding large residential washers from Korea (WT/DS464)*, and *United States – anti-dumping measures on certain shrimp from Viet Nam (AB-2015-01)(DS429)*.

Finally, the Commission also actively participates in the relevant WTO committees in Geneva. In the Anti-dumping/Anti-subsidy Committees, actions taken by other WTO Members are reviewed in the context of the semi-annual and monthly reporting exercises to the WTO. Special focus is paid to the Safeguard Committee, given the increasing use of this instrument, which is a cause of concern. The Commission raises individual cases, where the EU has an economic or a systemic interest. In addition, the Commission also participates in a more general discussion group on safeguard issues, which takes place in the margins of this WTO Committee. The main objective is to exchange views on the respective practices of WTO members.

5. MAIN ACHIEVEMENTS

5.1. Egypt – termination of an anti-subsidy investigation without imposition of measures

In June 2014, Egypt initiated an anti-subsidy investigation regarding imports of **Edam cheese** from the Netherlands. The subsidies targeted were EU as well as Dutch programs. The Commission cooperated in the investigation and also assisted the Dutch authorities. In addition the Commission made a submission highlighting that the subsidy programs under investigation were non-specific and thus not actionable under WTO rules. Furthermore, it raised strong doubts as to the injury and causal link analysis. The Commission also participated in consultations held in Cairo. In March 2015, the investigation was terminated without imposition of measures. The Egyptian authorities concluded that the subsidy programs were non-specific and thus not actionable and that their investigation could not find that the domestic industry was suffering material injury.

5.2. South Africa – decrease in the final duty rates

In the investigation regarding **frozen chicken parts** from Germany, the Netherlands and the United Kingdom, South Africa (ITAC) proposed definitive duties for imports from those three member states. Following comments received from interested parties, including the Commission's intervention especially concerning the dumping margins and their calculations for the UK, ITAC significantly lowered those rates for both individual UK producers (from 18.68% to 13.07%) and for the "all others" UK rate (from 34.7% to 22.3%).

5.3. Turkey – decrease of the negative impact of measures

Turkey imposed safeguard measures concerning **terephthalic acid (PTA)**. However, following active interventions by the Commission in support of the EU industry, the duty rates imposed are relatively low (4%) and will last only 2 years. The Commission highlighted weaknesses in the causal link analysis and stressed that due to the increase in consumption, any duties could endanger sufficient levels of supply.

5.4. Morocco – undertaking accepted

Morocco initiated an anti-dumping investigation regarding imports of **insulin** in December 2012. Provisional duties were imposed in April 2014 and the imposition of definitive duties of 13.89% was proposed in August 2014. Following interventions by the Commission in support of EU industry, the Moroccan authorities accepted an undertaking from the Danish producer concerned and thus the duties have been suspended.

5.5. US – termination of a sunset review without continuation of measures

The Commission was actively involved in the first full sunset review of the anti-dumping measures imposed in 2008 on imports of **lightweight thermal paper** from Germany. On 28 May 2014, the US DOC found that the revocation of the order would be likely to lead to the continuation or recurrence of dumping. Subsequently, the Commission intervened during the public hearing before the US ITC in October 2014 supporting German industry. Following a favourable vote by the US ITC, the anti-dumping order was revoked on 17 December 2014.

5.6. Australia – low or no duty for several companies

On 9 July 2013, the Australian authorities initiated an anti-dumping investigation concerning **processed tomato products** from Italy. The Commission intervened on several occasions through a number of submissions to the Australian Anti-dumping Commission in support of Italian industry. Furthermore, during the verification visits, a Commission expert was present to support the companies concerned. As a result, 45% of exports were excluded from the measure and duties for the other cooperating exporters were relatively low (on average 4%).

Unfortunately, the Australian authorities initiated a new investigation only a few months later, in 2015, to re-investigate the imports from the two companies earlier excluded from the measure. The Commission will continue to intervene supporting the Italian exporters since the grounds for initiating a new investigation appear extremely weak.

5.7. Philippines – termination of a safeguard investigation without imposition of measures

In September 2012, the Philippine authorities initiated a safeguard investigation against imports of **galvanised iron and pre-painted galvanised iron sheets and coils**. The Commission intervened at an early stage of the investigation in order to point out that the evidence disclosed was insufficient to justify any imposition of measures. The investigation, which raised general concerns regarding a potential abuse of the safeguard instrument, was finally terminated without imposition of measures in February 2015, on the grounds that the subject imports did not cause any injury to the domestic industry.

5.8. China – termination of an antidumping investigation without imposition of measures

In June 2014, China initiated an antidumping investigation against imports of **haemodialysis equipment** originating in the EU and Japan. The main EU exporters affected by the investigation were based in Germany, Sweden and Italy. The Commission intervened with the Chinese authorities pointing out technical flaws in the complaint and provided technical support to the exporters concerned. The complaint was finally withdrawn and the case was terminated in December 2014 without imposition of measures.

5.9. China - successful WTO Panel outcome

In November 2012, the EU (and Japan) had requested the establishment of a WTO Panel concerning anti-dumping measures imposed by **China against imports of certain stainless**

steel tubes. The Commission had identified significant flaws in this investigation. The major part of the Panel proceeding took place in 2014 and the results were released early in 2015. In its conclusions, the Panel upheld a number of important claims of the EU (China's failure to ensure a fair comparison between export price and normal value, and its flawed non-attribution analysis). It is considered that in order to correctly implement the Panel's findings, China would have to remove the WTO inconsistent measures. The case has been appealed and the Appellate Body is currently reviewing the Panel report.

The panel's findings are of systemic importance. They highlight recurrent shortcomings in trade defence investigations carried out by China. This would be the second time that the EU successfully challenged anti-dumping duties imposed by China in the WTO. Following the previous ruling (DS425), China repealed its WTO-incompatible anti-dumping duties on x-ray scanners.

In this context, and following the widely publicised wine and polysilicon cases in 2013, in 2014, there were no indications that new investigations by China were initiated as retaliation to an investigation initiated by the EU. However, this does not mean that this inappropriate practice is at bay, and the Commission will remain vigilant in this regard.

6. CONCLUSION

The trade defence activity against the EU or its Member States in 2014 remained similar to that of 2013. Although the total number of measures has decreased, the number of new investigations, and in particular new safeguard investigations, is significant.

In 2014, the Commission continued its efforts, in order to mitigate the negative impact of the trade defence measures imposed by third countries, through interventions, both at technical, and in certain cases, also at political level. In some cases, such interventions were successful, as described above.

However, many of the issues encountered over past years persist, and some even in an aggravated manner, in particular the proliferated use of safeguards and the questionable way this instrument is used by a number of third countries. In general, unwarranted trade defence measures go clearly against the EU's strategy of open markets and market access for fairly traded goods.

Trade defence measures imposed by third countries, as well as ongoing investigations, have an important impact on EU exports. Therefore, the Commission will continue its efforts to promote the high standards the EU applies, when using the instruments, among our trading partners. It will also intensify its interventions and its provision of technical support and advice to EU exporters especially when they are faced with potential abuse of the TDIs by third countries. These efforts are fully in line with the Commission's other efforts regarding market access. In that sense, the Commission's activities regarding third countries' use of TDI go far beyond simple monitoring.