

TRADE DEFENCE MEASURES *ON AGRICULTURAL PRODUCTS*

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TRADE DEFENCE MEASURES ON AGRICULTURAL PRODUCTS

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1. *TRADE DEFENCE INSTRUMENTS ('TDI')*

- **Anti-dumping instrument**
- **Anti-subsidy (countervailing) instrument**
- **Safeguard instrument**

Legal framework:

WTO and domestic legislation



Anti-dumping (AD), Anti-subsidy (AS) *"unfair trade"*

Dumping: a product is exported at a price lower than its "normal value".

Normal value: the price of a product when sold on the domestic market or its cost of production.

| | | | | |
|----------------|---|-----|---|---------------------|
| Domestic price | = | 100 | → | Dumping margin = 20 |
| Export price | = | 80 | | |

Anti-dumping (AD), Anti-subsidy (AS) "unfair trade"

Subsidy: a financial contribution by a government or a public body, which confers a benefit to a recipient (e.g. grants, loans, tax credits, or government provided goods or services).

A **benefit** is conferred when these contributions are provided on more favourable terms than available on the market.

Actionable subsidies: subsidies that are **specific** to one company or one sector and **export subsidies**.



Safeguards ('SFG') ***"fair trade"***

SFG: recent , sharp and sudden increase of imports, which causes injury to the domestic industry.

SFG should give industry the possibility to adapt to the new situation – obligation to provide a restructuring plan.

Difference to AD and AS:

SFG measures apply equally to all imports, regardless of their origin; thus they significantly restrict "fair" trade; should be used in exceptional circumstances only.

Criteria for imposition of measures

- ***Dumping/subsidisation/increased imports***
- ***Material/serious injury to the domestic industry***
- ***Causal link***

(EU Union interest, WTO+)



TRADE DEFENCE INSTRUMENTS

- ***All WTO Members have the right to use the TDI***
- ***Rules need to be respected***
- ***TD is a Commission competence***
 - ***defensive: action against imports from non EU countries***
 - ***offensive: action against TD measures on EU exports***



THIRD COUNTRY ACTIONS



2. Dealing with THIRD COUNTRY ACTIONS

WHAT?

- ***Inform:*** Member States and interested parties
- ***Assist and advise:*** EU exporters
 - Develop a defense strategy (together with industry/DG AGRI)
 - Guide for EU-exporters
- ***Intervene:*** at technical and political level, WTO
- ***Report:*** Annual report, on-line database
- ***Training:*** for third country officials



Objectives:

- ***Termination of an investigation without measures***
- ***Reducing the negative economic impact for EU exporters*** (shorter duration, lower duties, form of measure)
- ***Successful WTO panels***



Objectives:


AGRI products:

- defend the reformed CAP,
 - BPS is decoupled income support,
 - not trade distortive,
 - not specific and thus not countervailable
- avoid precedence



HOW?

AD, AS, SFG

- 
- written submissions focusing on systemic issues and WTO inconsistencies
 - participation in hearings, meetings
 - high level interventions

Agricultural products:

close cooperation with DG AGRI

HOW?

AS

- questionnaire reply if EU subsidies are involved, e.g. **Basic Payment Scheme ('BPS')**
- consultations Article 12

SFG

- consultations in the framework of FTA or association agreements



Problems:

- **general non/partial compliance with the rules**
- **no timely information or no information**
- **non-satisfactory non-confidential files**
- **weak/insufficient injury and causality analysis**
- **AGRI: countervailability of the BPS
duration of measures (expiry reviews)**





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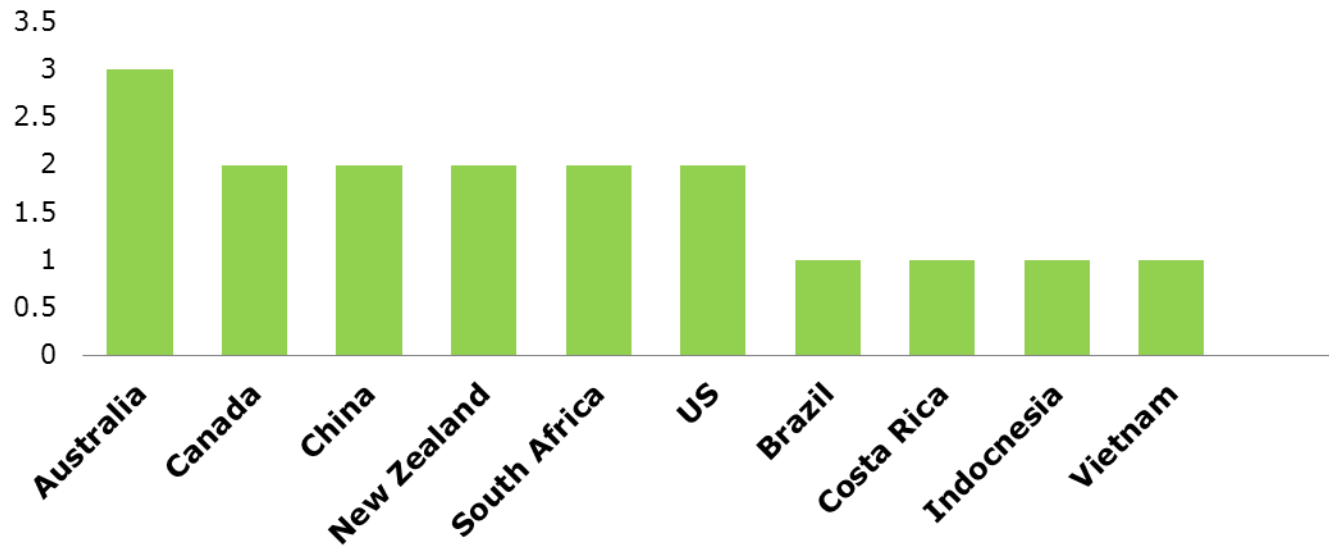


3. STATISTICS

| 2015 | Total | AD | AS | SFG |
|--|--------------|------------|-----------|------------|
| TD measures in force | 147 | 105 | 4 | 38 |
| of which concerning agricultural products | 17 | 10 | 3 | 4 |

Measures in force by country

(concerning agricultural products at the end of 2015)



Source: WTO and EU statistics

TD measures in force on agricultural products (end of 2015)

| | | | | | |
|----------------------|--|-----|-------------|-------------|----------------|
| Australia | Prepared or preserved tomato products | AD | Definitive | 2014-Apr-16 | Italy |
| Australia | Processed tomatoes | AD | Provisional | 2015-Sep-11 | Italy |
| Australia | Processed dried currants | AD | Definitive | 2009-Jan-14 | Greece |
| Brazil | Milk powder | AD | Definitive | 2001-Feb-23 | DK, Ireland |
| Canada | Refined sugar | CVD | Definitive | 1995-Nov-06 | EU |
| Canada | Refined sugar | AD | Definitive | 1995-Nov-06 | DE, UK, DK, NL |
| China | Potato Starch | CVD | Definitive | 2011-Sep-17 | DE, FR, NL |
| China | Potato Starch | AD | Definitive | 2007-Feb-06 | DE, FR, NL |
| Costa Rica | Pounded Rice | SG | Definitive | 2015-Feb-19 | |
| Indonesia | Wheat flour | SG | Definitive | 2014-May-04 | |
| New Zealand | Canned peaches | AD | Definitive | 1998-Mar-09 | Greece |
| New Zealand | Preserved peaches | AD | Definitive | 2011-Aug-04 | Greece |
| South Africa | Frozen chicken | AD | Definitive | 2015-Feb-27 | DE, NL, UK |
| South Africa | Frozen potato chips | SG | Definitive | 2014-Jul-25 | |
| United States | Pasta | AD | Definitive | 1996-Jul-24 | Italy |
| United States | Pasta | CVD | Definitive | 1996-Jul-24 | Italy |
| Viet Nam | Vegetable oils | SG | Definitive | 2013-Sep-06 | |

AGRI products:

- **Relatively small number of TD measures in force**
(~10% of total measures)
- **SFG** – EU exports not always affected
- **Economic importance**
 - *economic importance of each case (vin)*
 - *economic importance for a region*
- **systemic importance – anti-subsidy cases (BPS)**



4. EXAMPLES

WTO Panel olive oil



Mexico – AS measures:

- definitive measures imposed August 2005
- WTO Panel requested in July 2006
- final report issued in September 2008
- measures withdrawn by Mexico in November 2008

Main elements of the panel ruling:

- fatal error of exceeding the absolute time limit of 18 months;
- non-objective injury analysis based on non-consecutive 9 months periods;
- failure to require non-confidential summaries of the confidential information received.

4. EXAMPLES

Administrative review - Olive oil Peru



Peru – AS measures:

- definitive measures imposed December 2010
- appeal filed March 2011, DG AGRI hired Peruvian lawyer
- long complicated procedure, several hearings in Peru
- request for consultations (Article 12) December 2012
- Ruling by the tribunal in March 2013
- measures withdrawn by Peru in March 2013

Reason for withdrawal:

the domestic industry was not suffering material injury

Egypt – SFG measures on white sugar

- investigation initiated and provisional measures imposed in April 2015;
- several written submissions; participation in public hearing; bilateral meeting under the association agreement; final findings in October 2015; official termination in January 2016.

Reason for termination:

- the domestic industry was not suffering serious injury

Canada – AD/AS measures refined sugar:

- definitive measures imposed November 1995, several written submissions, participation in public hearing
- 4th expiry review concluded in October 2015, measures continued until October 2020

Main issue:

- EU sugar regime remains in place until 2017



Egypt - AS investigation – Edam cheese, NL

- investigation initiated in June 2014; written submissions, participation in public hearing and consultations under association agreement;
- investigation terminated in April 2015 without measures

Reasons for termination:

the BPS (basic payment scheme) and other schemes were found **not to be specific** and thus **not countervailable**

US – AD/AS measures – Pasta

- definitive measures imposed in July 1996
- 3rd expiry review concluded in August 2013, measures continued until August 2018



Brazil – SFG - wine

- investigation initiated in March 2012; written submissions, participation in public hearing in Brasilia
- complaint withdrawn in October 2012

Main issues:

- no recent increase of imports, causal link (vitis vinifera, non-vitis vinifera, imports from Argentina and Uruguay)



China – AD/AS - wine

- investigation initiated in July 2013; in relation to the solar panels case; questionnaire reply, written submissions
- complaint withdrawn in March 2014; business to business agreement

Main issue:

- no injury of the domestic industry

Australia – SFG – pig meat

- investigation initiated in July 1998; terminated in January 1999; written submissions; high level letter

Main issues:

no surge of imports, lack of causal link (high feed stuff prices and drought)

Mexico – AS – beef

- definitive measures imposed in June 1994; questionnaire reply, written submissions;
- 3rd expiry review terminated in December 2010, measures discontinued.

Main issue:

Mexico accepted our arguments that due to the reform, the EU had become a net importer of beef



5. CONCLUSION

- **TDI is a right under WTO/rules need to be respected**
- **TD is a Commission Competence**
(individual cooperation in investigations is important)
- **The Commission intervenes in cooperation with industry/AGRI**
 - to avoid unwarranted TD measures
 - or reduce their negative economic impact
 - avoid systemic problems (BPS – domino effect)



Thank you for your attention!

