

EU Trade Defense Measures

1. **Safeguard measure**
2. **Anti-dumping measure**
3. **Anti-subsidy measure**
4. **Defense of EU exporters and producer against unfair practices**
5. **EU and the WTO dispute settlement practice**

1. A. GATT Safeguard measure

✓ Article XIX of the General Agreement on Tariffs and Trade (**GATT 1994**) allows GATT members to take a “safeguard” action to protect a specific domestic industry from an unforeseen increase of imports of any product which is causing, or which is likely to cause, serious injury to the local industry.

COUNCIL REGULATION (EC) No 260/2009

of 26 February 2009

on the common rules for imports

1

✓ Safeguard measures have to follow certain rules:

- Before introducing any restriction an investigation should be carried out.
- The restriction should be applied irrespective of source of imports (supplying country).
- Generally, the duration of a measure should not exceed four years .
- Where quantitative restrictions are imposed (quotas), they should not reduce the quantities of imports below the annual average for the last three representative years.
- **Safeguard measures would not be applicable to a product from a developing country, if the share of the developing country in the imports of the product concerned does not exceed 3 per cent.**



Initiative for the start of an investigation has to come from some Member State. In that, this measure differs from all other trade defense measures which are usually initiated by the interested companies or by the Commission itself. The investigation should be carried out by the European Commission and the restrictive measure has to be introduced by the EU Council.

The EU uses very little the usual GATT safeguard measure because:

- **Initiation of investigation and implementation of sanctions are too slow.**
- **The procedure is not selective in nature and affects too many countries.**
- **In many cases it is necessary to give some compensations to the affected countries.**
- **There are often disputes about the meaning of the definition “serious injury to the local industry”.**
- **It is not appropriate for a developed economy as the EU to apply a measure designed primarily for emerging economies.**

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1. B. Special measure on imports from some non-GATT countries

Armenia
Azerbaijan
Belarus
Kazakhstan
North Korea
Russia
Tajikistan
Turkmenistan
Uzbekistan
Vietnam

COUNCIL REGULATION (EC) No 625/2009
of 7 July 2009
on common rules for imports from certain third countries

Today this special arrangement is explained by the increased risk of dumping of imports from those countries. Therefore the main EU defense instrument is the enhanced **surveillance** of the imports.

In the Cold War years these countries were called "State-trading countries". EEC has introduced quantitative restrictions (quotas) on the imports of various goods from these countries, in particular on the imports of textiles, clothing, steel products, fertilizers, etc.

At that time the list included all member countries of CMEA and China. An exception was Cuba.

Procedure to initiate surveillance is, however, too complex

- **The Commission shall be informed by the Member States if trends in imports appear to call for surveillance.**
- **Consultations may be held either at the request of a Member State or on the initiative of the Commission. Consultations shall take place within an advisory committee, made up of representatives of each Member State with a representative of the Commission as chairman.**
- **Where it is apparent to the Commission that there is sufficient evidence to justify an investigation, the Commission shall initiate an investigation.**
- **At the end of the investigation, the Commission shall submit a report on the results to the advisory committee.**
- **If the Commission considers that Community surveillance measure is necessary, it shall take the necessary decision.**
- **Products under prior Community surveillance may be put into free circulation only with a surveillance document.**

2. Anti-dumping measure

COUNCIL REGULATION (EC) No 1225/2009

of 30 November 2009

on protection against dumped imports from countries not members of the European Community

A) Definition of “International Dumping”

There is international dumping if the export price of some goods (P_x) is below its normal value (V_n).

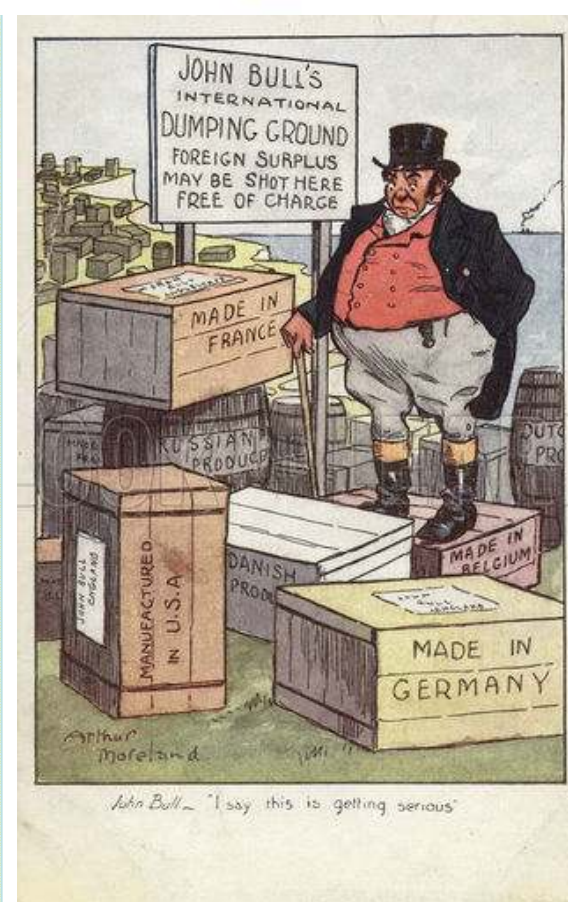
But how is the normal value to be estimated?

Usually this is the domestic price (without taxes) paid for the goods by independent buyers.

But what would happen if the exporting country is too small, or the exported goods are not traded on the domestic market, or the exporting country is a non-market economy country?

In this case the European Commission has to estimate the normal value itself!

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B) Link between international dumping and economy of scale

	Turnover			Variable costs			Fixed costs		Total costs per unit	Profit
	Units	Price per unit	Total sum	Units	per unit	Total sum	Total sum	per unit		
Only domestic sales	1000	400	400000	1000	200	200000	200000	200	400	0
Only exports	2000	300	600000	2000	200	400000	200000	100	300	0
Domestic sales and exports	3000	333	1000000	3000	200	600000	200000	67	267	198 000 = 3000 x (333-267)

Export price may fall below the domestic price in order to achieve additional economy of scale. Is this also unfair competition? There is no easy answer to this question.

EU considers all cases where the export price is below normal value (domestic price) as international dumping. So do other developed economies too. This is because it is impossible to distinguish malicious from non-malicious dumping.

China, India, Indonesia and other developing countries insist that selling internationally goods under their domestic price should not be considered always as dumping. These developing countries have a limited domestic market for some expensive products and have to export a large part of them in order to achieve economic efficiency. Therefore, they are often challenged in the WTO arbitration, the EU and USA anti-dumping measures.

Disputes will increase in number with the development of the globalization process.

It should be a matter of WTO negotiations.

C) Stages in the EU anti-dumping proceeding

❖ Initiation of proceedings

Requirements to start proceedings:

- **Written complaint, representing at least 25% of EU industry**
- **Establishing a link between the dumped imports and EU industry injury**
- **Estimated dumping margin (DM) greater than 2%**

$$DM = \frac{V_n - P_x}{P_x} > 0,02 = 2\%$$

- **Dumped imports not less than 3% of the total EU imports of the same goods**
- **Dumped imports not less than 1% of domestic consumption of the same goods**

Simultaneously with the beginning of the procedure a preliminary duty is imposed, which is equal to expected dumping margin. Duty is charged on a special account of the European Commission.

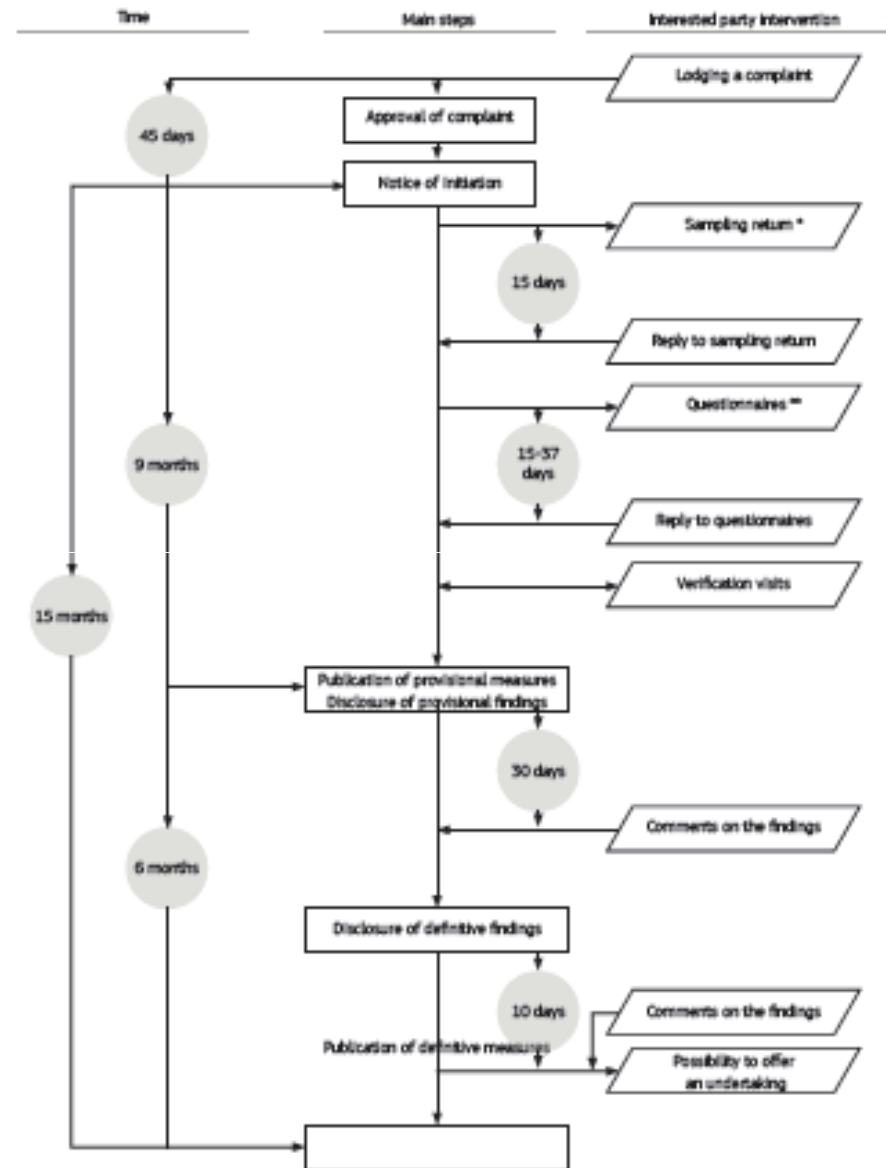
C) Stages in the EU anti-dumping proceeding

❖ Investigation

- The investigation takes from 6 m to 15 m.
- Most important is determination of the normal value. Investigated companies cooperate and complete a special questionnaire. If not then the Commission determines the normal value by analogy. Usually this is not good for the investigated company.

The main task of the investigation is to clarify if a definitive anti-dumping duty is necessary.

Anti-dumping Article 5 Investigation



❖ Investigation

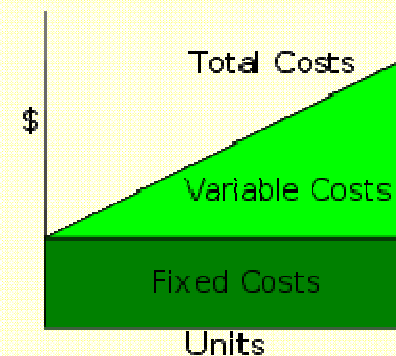
If the domestic price can not be used as a normal value, the normal value should be estimated by the staff of the European Commission using statistical data collected from similar enterprises. The formula is as follows:

$$V_n = C_v + \frac{C_f}{n} + P_n$$

where C_v are the variable costs per unit of output, C_f are the fixed costs for all units produced, n is the number of units produced, and P_n is the average profit per unit (normal profit).

Important: Most important fixed costs are:

Fixed costs often include costs for rent, buildings, machinery, but also R&D, advertisement, distribution channels, etc.



❖ **Completion of investigation**

This is done with the consent of the Advisory Committee comprising representatives of the Member States.

They are 5 possible outcomes:

- ✓ **Voluntary undertaking by the exporter to revise its prices and to cease exports at dumped prices. This is the most used outcome, which obliges the exporter not to drop the export price under some limit!**
- ✓ **Imposition of definitive duty equivalent to preliminary duty;**
- ✓ **Imposition of definitive duty lower than preliminary duty (overpayment to be returned);**
- ✓ **Imposition of definitive duty higher than preliminary duty (the difference shall not be collected);**
- ✓ **Termination of proceedings without measures (almost never happens).**

The maximum duration of definitive anti-dumping duty is 5 years. Decision must be taken by the EU Council. It is possible to appeal to the Court of Justice.

❖ **Reviews and Reinvestigations**

An interim review can be initiated by the European Commission if there is sufficient evidence that the continued imposition of the measure is no longer necessary. Such a review is possible **at least one year after the introduction of the definitive duty.**

3. Anti-subsidy measures

WTO Agreement on Subsidies and Countervailing Measures

COUNCIL REGULATION (EC) No 597/2009

of 11 June 2009

on protection against subsidised imports from countries not members of the European Community

A subsidy may take different forms:

- ❖ a direct or potential transfer of funds (grants, equity injections, guarantees);
- ❖ government revenues (which are otherwise due) foregone or not collected (e.g. tax credits);
- ❖ government provision of goods and services (other than general infrastructure);
- ❖ government purchase of goods without tender
- ❖ any of the above functions performed by a private body (e.g. a bank) on the instruction of the government.

A) PROHIBITED SUBSIDIES (WTO “Red basket”)

- Any subsidy aimed at increasing exports by reducing costs and increasing competitiveness of exports (so called Export subsidies)
- Any specific subsidy which is limited to certain enterprise or enterprises of an industry.

B) AUTHORIZED SUBSIDIES (WTO “Green basket”)

- Assistance for research activities** conducted by firms or by higher education or research establishments on a contract basis with firms. Allowed is to subsidize up to 75% in science and 50% in Development, not allowed is to subsidize marketing and compensation of employees.
- Assistance to disadvantaged regions.** GDP per capita in these regions must not be above 85 per cent of the average or unemployment rate must be at least 110 per cent of the average in the country. WTO Member States have also clearly to define those regions in their legislation.
- Assistance for SMEs** but limited to some amount, indicated in the national legislation of the WTO Member State.
- Assistance for environmental protection.** Allowed are only lump-sum grants to partially cover specific new regulations. Subsidy should not be used for staff salaries.
- Agricultural subsidies** are beyond the effects of the WTO Agreement on Subsidies and Countervailing Measures.

C) WTO “Yellow basket”

Neither explicitly prohibited nor explicitly authorized.

These are non-specific subsidies to support sectors in transition or in crisis.

The procedure for imposing anti-subsidy (countervailing duties) is similar to that for imposing anti-dumping duties.

4. Defense of EU exporters and producers against unfair practices

- ❖ The important difference between the above mentioned three defense measures (WTO safeguard, anti-dumping and anti-subsidiary) and this one is that the above mentioned measures are oriented on the regulation of the EU imports but this one is oriented on the support of EU exports. Nevertheless, all four measures are aimed at helping EU companies.

Example: Provisions in the Patent Law of Taiwan have allowed a Taiwanese company to be granted a compulsory license for the production of recordable compact discs (CDRs), a technology developed by the European company Philips. In this case the European Commission should start WTO proceedings if Taiwan does not take concrete steps to amend its Patent Law and reverse the compulsory license decisions against Philips.

- ❖ A country that restricts access to its internal market for goods from the EU has to bear sanctions, resulting in cancellation of tariff preferences or in introduction of additional customs duties or quantitative restrictions on imports of its goods in the EU.
- ❖ The negative economic impact of sanctions on the imports in the EU must equal the negative economic impact on the EU exports.
- ❖ After the establishment of WTO sanctions against third countries are introduced only after corresponding decision of the
**WTO Dispute Settlement
Body (DSB)**

COUNCIL REGULATION (EC) No 3286/94

of 22 December 1994

laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization

5. EU and the WTO dispute settlement practice

The EU is among the most active participants in the mechanism for solving trade disputes to the WTO. Since the establishment of WTO (1995) the EU has participated in about 145 cases stated in the WTO Dispute Settlement Body (DSB). In 60% of the cases the EU was complainant and in 40% defendant.

Examples:

- ✓ Case against Canada. The EU complains of discrimination in taxation because the domestic Canadian wines were excluded of payment excise duty on wine (hidden duty).
- ✓ Case against India for introduction of restriction measures on trade with imported wines aiming at supporting sale of domestic wines;
- ✓ Case against Indonesia for introducing of the obligation in the assembly of cars to use a certain share of local components.

But most of the cases are about anti-dumping, anti-subsidy or other defense measures imposed on the imports from the EU.

This was the case with the completed in 2003 in favor of the EU steel dispute. At the insistence of the EU, the USA was called by the WTO to remove the introduced in 2002 additional countervailing duty on imports of several steel products.

Now there are between the EU and the USA disputes about subsidies for the production of large civil aircraft (Airbus against Boeing).

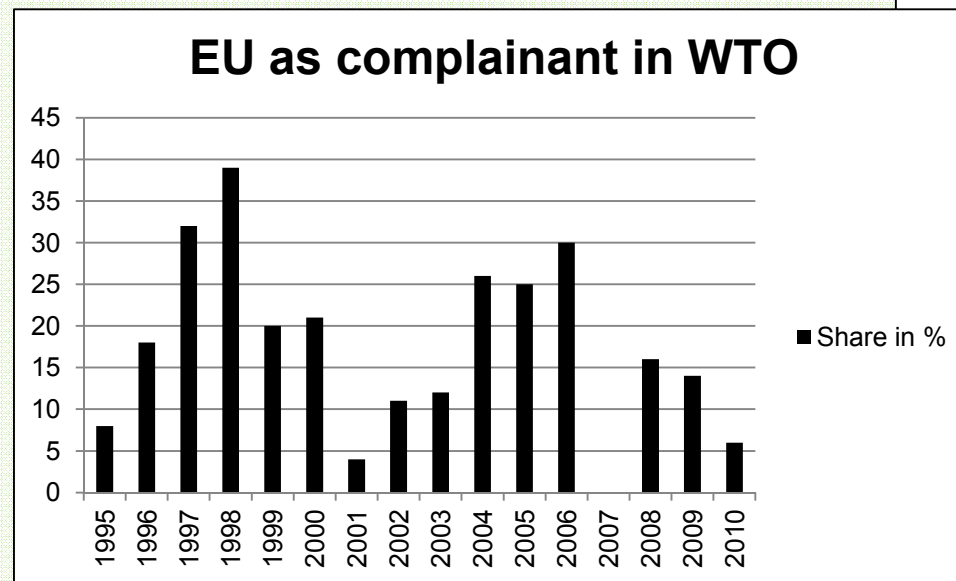
The EU is mainly a defendant in cases involving its CAP, its special relations with the ACP Countries and some specific measures to protect European consumers, leading to restrictions on the imports.

Examples:

- ❑ **The Banana dispute** - Central American countries and the USA accused the EU of trade discrimination as banana imports from the ACP Countries is treated much better than banana imports from Central America.
- ❑ **The Growth Hormones dispute** – The USA accused the EU that it has banned imports into the USA of meat from animals (calves) which have received growth hormones. EU failed to prove that such hormones harm people and was unsuccessful in the WTO arbitration.
- ❑ **The GMO dispute** – Same result as in Growth Hormones dispute.

They are no EU cases in WTO against EEA Member States, Switzerland, associated and ACP Countries.

With regard to these countries, the EU's usual approach is to negotiate the problems in the corresponding bilateral bodies (councils).



Presentations:

1. **EU new trade defence investigations 2009 – 2014**
http://trade.ec.europa.eu/doclib/docs/2013/august/tradoc_151694.pdf
(Annex B)
2. **Definitive anti-subsidy measures in force on 30 September 2014**
(Annex P)
http://trade.ec.europa.eu/doclib/docs/2013/august/tradoc_151694.pdf
3. **EU anti-subsidy investigation on solar panel imports from China**
<http://trade.ec.europa.eu/doclib/press/index.cfm?id=841>
4. **End of the 20 years old “banana dispute”**
http://www.wto.org/english/news_e/news12_e/disp_08nov12_e.htm
5. **EU as complainant in WTO in 2010 - 2014**
http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm
6. **EU as respondent in WTO in 2010 - 2014**
http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm