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TRADE DEFENCE IN EUROPEAN UNION

Abstract. *As well as the most other importing countries of the world, the European Union applies a system of trade defence instruments. These instruments empower the European Union to defend its traders against unfair trade of imported products or subsidized imports as well as against change in clear trade flows, if they are harmful to the EU economy. Economical legitimacy of anti-dumping and anti-subsidy trade defence actions is generally based on the fact that the international trade has no mechanism for correcting anti-competitive practice similar to the competition authorities that operate in almost all national economies. The European Union applies trade defence instruments following the rules prepared by WTO agreements, which determine trade defence instruments and principles of application thereof as the legal tools of multi-country free trade system. The article discusses the principles of application of the EU trade defence instruments and analyses the statistics of applicable trade defence instruments.*

Keywords: *Trade policy, Trade defence, Anti-dumping instruments, Anti-subsidy instruments.*

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ТОРГОВЕЛЬНИЙ ЗАХИСТ В ЄВРОПЕЙСЬКОМУ СОЮЗІ

Анотація. *Європейський Союз, як багато інших світових країн-імпортерів, застосовує систему заходів для торговельного захисту. Ці заходи дозволяють Європейському Союзу захищати своїх виробників від недобрсовісної торгівлі продукцією, що імпортується або від субсидованого імпорту та від відчутних змін торгового потоку, якщо вони завдають шкоди економіці Європейського Союзу. Мотивація стосовно економічних антидемпінгових та антисубсидійних заходів торговельного захисту в основному спирається на те, що для обмеження конкурентної діяльності та виправлення її хиб міжнародна торгівля не має жодного механізму, подібного до конкурентних відомств, які діють майже у кожній національній економіці. Європейський Союз застосовує заходи торговельного захисту, запроваджує правила, розроблені на підставі угод СОТ, котрі регулюють заходи торговельного захисту, та використовує їхні принципи як законні*

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знаряддя для багатосторонньої системи вільної торгівлі. У даній статті обговорюються способи застосування принципів торговельного захисту в Європейському Союзі, а також розглянуто прикладну статистику заходів торговельного захисту.

Ключові слова: торговельна політика, торговельний захист, антидемпінгові заходи, антисубсидійні заходи.

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ЗАЩИТА ТОРГОВЛИ В ЕВРОПЕЙСКОМ СОЮЗЕ

Аннотация. Как и множество других импортирующих стран мира, Европейский Союз применяет систему средств охраны торговли. Эти средства предоставляют Европейскому Союзу возможности защищать своих производителей от нечестной торговли импортными товарами или субсидируемого импорта, а также от ярко выраженных изменений потоков торговли, если они вредны для экономики ЕС. Экономическая обоснованность средств защиты торговли – антидемпинга и антисубсидий, в сущности, основывается на том, что у международной торговли нет ни одного механизма для исправления последствий деятельности, ограничивающей конкуренцию, похожего на институты надзора за конкуренцией, которые действуют практически в каждой национальной экономике. Европейский Союз применяет меры охраны торговли, основываясь на правилах, разработанных на основании договоров ВТО, устанавливающих меры охраны торговли и принципы их применения как законные инструменты многосторонней свободной торговли. В статье рассматриваются принципы применения мер охраны торговли ЕС, статистика средств охраны торговли.

Ключевые слова: торговая политика, защита торговли, антидемпинговые меры, антисубсидийные меры.

Statement of the problem. Trade defence instruments are triple: anti-dumping, anti-subsidy, and safeguards. The purpose of the two first instruments is to prevent unfair trade. They are applicable in such cases as when products are imported under conditions contradicting the principles of fair competition in the international trade. The purpose of the third one is to give time to the industry of an importing country to adjust to highly increased imports. The important point is that these instruments should be applied in an effective and strict way trying to ensure respect for the rules of international trade and to shield the Europe's interests from unfair trade. Article is to discuss the EU's trade defence policy principles and analysis of EU trade defence measures in practice. The European Union applies trade defence instruments following the rules prepared by WTO agreements, which determine trade defence instruments and principles of application thereof as the legal tools of multi-country free trade system. Defence against unfair trade is the most politically and economically important instrument, which helps to defend the free trade. It helps to support the interests of European employees and the European competitive ability and is an important part of help to Europe when fighting the results of globalization.

Task formulation. The subject of the article is to discuss some aspects of the EU trade defense policy, to review the WTO and EU system of legal deeds in trade defense as well as to discuss the tendencies and structure of the trade defense measures applied.

Main material exposition. The EU's anti-dumping and anti-subsidy legislation was first enacted in 1968 and has since been modified several times. The current basic texts, which form the legal basis of antidumping and anti-subsidy investigations in the EU, entered into force in March 1996 and October 1997 respectively. These are in line with the Anti-Dumping and Anti-Subsidy Agreements adopted during the GATT/WTO negotiations. The basic texts are:

– Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Union – Codified Version [1];

– Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidized imports from countries not members of the European Union – Codified Version [2].

The principle of liberalisation of imports was set under the GATT 1947 and strengthened under the 1994 WTO Agreements. As safeguard measures consist of the unilateral withdrawal or suspension of a tariff concession or of other trade liberalisation obligations formerly agreed, they have to be considered as an exception to this principle. Under WTO rules, safeguard action has to be viewed as a temporary defence measure that applies to all imports of the product covered by a measure, irrespective of origin. As regards non-WTO members, safeguard measures may be selective and apply to products originating in a specific country.

The above-mentioned principles are all reflected in the relevant EU regulations. Additionally, the adoption of measures in the EU requires an analysis of all interests concerned, i.e. the impact of the measures on producers, users and consumers. In other words, safeguard action can only be taken when it is in the EU's interest to do so. The current EU safeguard instruments are covered by the following regulations:

– Council Regulation (EC) No 260/2009 on the common rules of imports – Codified Version [3];

– Council Regulation (EC) No 519/94 on common rules for imports from certain third countries and repealing Regulations (EEC) No 1765/82, 1766/82 and 3420/83 [4]. This Regulation was amended in 2003 when a Transitional Product-Specific Safeguard Mechanism for imports originating in the People's Republic of China was adopted. This Regulation ensures that Council Regulation (EC) No 519/94 is no longer applicable to the People's Republic of China;

– Council Regulation (EC) No 517/94 on common rules for imports of textile products from certain third countries not covered by bilateral agreements, protocols or other arrangements, or by other specific EU import rules [5].

The trade defence instruments were created in the international law as an instrument to correct the results caused by an activity restricting competition on a world scale. The European Union improves the WTO rules concerning application of more strict trade defence instruments and more precise use thereof in the internal market. Economical legitimacy of anti-dumping and anti-subsidy trade defence instruments is generally based on the fact that the international trade has no mechanism for correcting anti-competitive practice similar to the competition authorities that operate in almost all national economies. Moreover, at least a few jurisdictions have accepted the official rules of subsidy control or have created institutes similar to the national ad rules of the European Union. Anti-dumping instruments are the only instrument foreseen by the international law to defend against effect of unfair trade with products being imported from such markets at dumping prices affecting the EU industry. Similar compensation actions are directed against unfair subsidies of producers in third countries, as far as there are no certified international instruments to restrict such interventions. Defence actions are directed against imports, which increases at a scale causing big damage or which can cause it to the EU industry.

On an international level, unfair trading practices such as dumping and the granting of subsidies were identified as a threat to open markets as early as 1947, when the first GATT agreement was signed. This is a part of general agreement establishing that open markets provide new opportunities, if the rules are complied which ensure the performance of trade under equal conditions for everyone. Duly complied rules ensure the opportunity for all the trade partners to compete with their advantages, and the biggest benefit is provided to citizens and society. This means that all the countries should be able to resist unfair trade. However, this should be tried to achieve when following clear and transparent legal acts, which would ensure that the rules wouldn't create any conditions for occurrence of protectionist pressure or political influence.

Trade defence instruments are often the only means that companies have in order to react to unfair international trading practices. At the same time, the application of trade defence instruments can have an impact on users and consumers. There are disagreements about economical legitimacy of application of trade defence instruments. Some economists argue that the trade defence instruments are necessary when there are no rules on competition agreed on a world scale. Some of

them think that the trade defence instruments cannot be economically legitimate from the point of general wellness of a country. Others think that they can be abused in order to protect against competitive import on the grounds of sectors' interests. However, there are persons trying to prove that the anti-dumping actions are legitimate in that case only when an exporter from a third country benefits from the fact that there are no rules on competition at all in the country or the existing ones aren't implemented effectively enough. From the point of view of the EU trade policy, it is necessary to try for general EU interests with respect to interests of producers, employees and consumers, by applying trade defence instruments. The EU trade rules are applicable when prices are lower not due to competitive advantages of third countries in regard to labour force and production prices, but due to the fact that such advantages are related to some conditions of unfair competition, for example, subsidies or any other distortions caused by intervention of a country [11].

Globalization promotes international distribution of labour force because of significant reduction in outlay for transport and communication. Economical interests of the EU do develop dynamically as the world and the EU relations with third countries change. European companies use production bases outside the European Union more often, at the same time preserving significant activity and occupation in Europe. Talking of trade defence instruments, it is important to understand that the EU rules have well evaluated the condition when European companies sell their production potential and start competing with production companies operating in the EU, which can be negatively affected by trade defence instruments.

Table 1

New investigations initiated by country of export during the period 2007-2013

Country of origin	2007	2008	2009	2010	2011	2012	2013	Total
Argentina	-	-	-	-	-	2	-	2
Armenia	-	1	-	-	-	-	-	1
Belarus	1	1	-	-	1	-	-	3
Bosnia & Herzegovina	1	-	-	1	-	-	-	2
Brazil	-	1	-	-	-	-	-	1
China (People's Republic of)	6	6	7	10	8	7	6	50
India	-	-	2	3	3	2	1	11
Indonesia	-	-	-	1	-	3	1	5
Iran	-	-	2	-	-	-	-	2
Kazakhstan	-	-	-	-	1	-	-	1
Korea (Rep. of)	-	1	1	-	-	-	-	2
F.Y.R.O.M.	-	-	-	-	-	1	-	1
Malaysia	-	-	2	1	-	-	-	3
Moldova (Rep. of)	-	1	-	-	-	-	-	1
Oman	-	-	-	-	2	-	-	2
Pakistan	-	-	2	-	-	-	-	2
Russia	1	-	-	-	1	-	-	2
Saudi Arabia	-	-	-	-	2	-	-	2
Taiwan	-	1	1	-	-	1	-	3
Thailand	-	1	2	1	-	1	-	5
Turkey	-	2	-	-	1	1	-	4
Ukraine	-	1	-	-	-	1	-	2
UAE	-	-	2	-	-	-	-	2
USA	-	4	-	1	2	-	-	7
Vietnam	-	-	-	-	-	-	1	1
Total investigations	9	20	21	18	21	19	9	117
Of which anti-dumping	9	18	15	15	17	13	4	91
Anti-subsidy	0	2	6	3	4	6	5	26

Source: The Directorate General for Trade of the European Commission.

In the European Union, on 1 January 2014 86 anti-dumping and 12 anti-subsidy instruments were in force for third countries, in the beginning of 2013 – 102 anti-dumping and 10 anti-subsidy instruments, in the beginning of 2012 – 117 anti-dumping and 10 anti-subsidy instruments, in the beginning of 2011 – 124 anti-dumping and 11 anti-subsidy instruments, in the beginning 2010 – 135 anti-dumping and 8 anti-subsidy instruments, in the beginning of 2008 – 127 anti-dumping and 9 anti-subsidy instruments, and in the beginning of 2007 – 134 anti-dumping and 12 anti-subsidy instruments. There were no defence actions in force. There are no clearly expressed trends in the dynamics of applicable trade defence instruments. The most trade defence instruments were applied within the discussed period in 2007 and in the beginning of 2010 [9].

Less than 1 per cent of the EU's imports are affected by trade defence instruments. The measures used have targeted unfair practices by trading partners, while limiting any trade distortions [10, p.22].

Table 1 provides data concerning EU trade defence investigations initiated during the period 2007-2013. Only one investigation was initiated in the European Union within the explored period – an investigation on introduction of defence instruments, it is the investigation on modems from China, which was initiated in 2010 (OJ C 171, 30.06.2010, p. 9). Statistical data of trade defence investigations which have been initiated show that there are no clearly expressed trends. Number of investigations which have been initiated is instable. The most investigations were initiated in 2009 and 2010. Anti-dumping to anti-subsidy investigations ratio tends to vary as well. Anti-dumping investigations are carried out more often than anti-subsidy ones. It is a universal trend as far as anti-subsidy investigations are much more difficult to carry out. It is difficult to prove the fact of subsidizing of production or exports of goods on the grounds of information provided by another country, these investigations are more expensive than anti-dumping ones. There are no clear trends in the anti-dumping and anti-subsidy ratio, and this ratio is instable. In the total number of investigations within the explored period, the anti-dumping investigations made 77,8 per cent. The EU's initiation activity expressed in average initiations per year in the period 2009 to 2011 has decreased when compared to the periods 1996-2008. In the period 2009-2011 and average of 51 cases initiated per year 67 for the previous 13 years. The economic crisis has not led to an increase in the cases initiated. [7].

Table 2

New investigations initiated by product sector during the period 2007 – 2013

Product	2007	2008	2009	2010	2011	2012	2013	Total
Chemical and allied	2	-	9	7	11	-	1	30
Textiles and allied	-	-	3	-	-	-	3	6
Wood and paper	-	-	-	2	-	-	-	2
Electronics	-	-	1	2	-	2	-	5
Other mechanical engineering	-	1	1	1	1	1	-	5
Iron and Steel	6	11	4	3	6	11	1	42
Others metal	-	5	1	-	1	-	-	7
Other	1	3	2	3	2	5	4	20
Total investigations	9	20	21	18	21	19	9	117

Source: The Directorate General for Trade of the European Commission.

Analyzing the structure of anti-dumping and anti-subsidy investigations which have been initiated in the EU in 2007 – 2013 according to kinds of goods (Table 2), it should be noticed that the bigger part thereof is related to metals – 41,9 per cent of total number of investigations. The next groups of goods according to number of investigations which have initiated is chemical goods – 25,6 per cent, textile products and electronics.

Initiations of anti-dumping investigations by the 20 principal users of the anti-dumping instrument between 1995 and 2012 account for around 92% of all initiations by WTO members (Table 3). In absolute terms India has overtaken the United States in the number of initiations, while this order is reversed when definitive measures are concerned. The EU ranks third on both counts.

Table 3

Initiations of anti-dumping investigations by the 20 principal users of the anti-dumping instrument between 1995 and 2012

No	Initiator	Investigations	No	Initiator	Investigations
1	India	673	11	Korea, Republic of	113
2	United States	469	12	Mexico	109
3	European Union	450	13	Indonesia	96
4	Argentina	293	14	Pakistan	76
5	Brazil	280	15	Egypt	71
6	Australia	247	16	Peru	71
7	South Africa	217	17	Thailand	61
8	China	200	18	Colombia	56
9	Canada	166	19	New Zealand	56
10	Turkey	162	20	Malaysia	54

Source: World Trade Organisation

Third countries use the trade defence instruments against the EU quite intense. There were 146 measures in force at the end of 2011, which represents an increase of 23 measures as compared to last year's. This is the highest figure since 2008. The vast majority of these measures are from the area of anti-dumping (94 in 2011 as compared to 89 in 2010), but the proportion of safeguards is ever increasing (46 as compared to 30). This is the main reason for the high number of measures this year. Countervailing measures only represent a minor portion. There were 6 countervailing measures in force at the end of 2011, at the end of 2010 – 4 measures. In total, 36 new measures have been imposed in 2011. This is much more than the 15 impositions in 2010. While the number of anti-dumping measures imposed was not insignificant (13 in 2011 as compared to 8 previously), the development in terms of safeguards was remarkable. Indeed, not less than 22 safeguard measures were imposed in 2011. This figure should however be nuanced with the fact that 8 of these measures only consisted of the extension of Russian measures to the territory of Belarus and Kazakhstan following their newly constituted Customs Union. In addition, this figure also includes 6 measures which were imposed by Indonesia but concern products which are hardly exported from the EU. The impact of this expansion of safeguard measures is thus relatively limited for EU firms [9].

The third country activity in application of trade defence instruments also shows the number of new investigations. Not all of investigations being initiated end with trade defence instruments, but they show the countries' activity and position on application of trade defence instruments. In 2007, 19 investigations on trade defence were initiated against EU goods, in 2008 – 33, in 2009 – 45, in 2010 – 40, and in 2011 – 33 [9]. Presented statistics on trade defence investigations against EU goods clearly shows that the number of investigation has increased since 2008. This is related to the global financial crisis started in 2008 and aspirations of some countries for improvement of positions of their producer countries in the market with the help of trade defence instruments. It isn't easy to distinguish negative effect of crisis from the effect of increased scale of the imports or dumping imports during the crisis. This suggests to abuse trade defence instruments. It seems that

since the end of 2008 the economic situation has caused that the WTO rules have been interpreted especially broadly. In the analysis of causality, companies try to attribute the negative effect of the financial crisis to imports at dumping prices, subsidized or increased imports, in this way enjoying an opportunity not to indicate any other reasons not related to imports, which have had negative effect on their situation. The bigger part of investigations initiated in 2009 – 2011 against EU goods deals with safeguards instruments. They make 60,2 per cent of total number of the investigations which have been initiated. Anti-dumping investigations make 30,0 per cent. [9].

Trade defence actions shall help to ensure fair international trade. From the other side, some efforts are possible to use when any trade defence instruments are used to escalate protectionism.

Conclusions. The EU applies trade defence instruments following the rules prepared by WTO agreements, which determine trade defence instruments and principles of application thereof as the legal tools of multi-country free trade system. Application of trade defence instruments is reasoned by the fact that the international trade has no international mechanism for correcting anti-competitive practice similar to the competition authorities that operate in almost all national economies. Trade defence instruments have developed in international law as a means of correcting the trade distorting effects of uncompetitive practice.

Data of trade defence investigations which have been initiated by EU show that there are no clearly expressed trends. Number of investigations which have been initiated is instable. The most investigations were initiated in 2009 and 2010. Anti-dumping to anti-subsidy investigations ratio tends to vary as well. Anti-dumping investigations are carried out more often than anti-subsidy ones. This trend has formed as far as anti-subsidy investigations are much more difficult to carry out. Anti-dumping instruments are the most often applied defence instrument in the European Union. Anti-dumping instruments are applicable to imports of goods into European Union at lower prices than normal value of such goods in the internal market of exporting country. In the beginning of 2014, anti-dumping instruments made 87,8 per cent of total number of all the trade defence instruments applied in the EU. The EU's initiation activity expressed in average initiations per year in the period 2009 to 2011 has decreased when compared to the periods 1996-2008. The economic crisis has not led to an increase in the cases initiated.

Third countries use the trade defence instruments against the EU quite intense. Presented statistics on trade defence investigations against EU goods clearly shows that the number of investigation has increased since 2008. This is related to the global financial crisis started in 2008 and aspirations of some countries for improvement of positions of their producer countries in the market with the help of trade defence instruments.

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