

# MTRA BRIEFING: IMPORTANCE OF TRADE REMEDIES



**The role of trade remedies** - trade remedies are sometimes considered by academic economists as protectionist and working to the disadvantage of importing industries/consumers. It is possible that, in the past, especially prior to the WTO, trade remedies were used in a protectionist manner. Today, trade remedies are a critical part of the rules based global trading system created by the WTO in 1995. They support free trade by providing mechanisms to deal with dysfunction and distortions in global trade. There is no global competition policy and trade remedies are the only mechanism that exists to deal with distortions to world trade and markets. In an integrated market such as the EU, with robust and binding competition and state aid rules, trade remedies between the EU member states are not necessary. It can be argued that if trade remedies work well, in principle, they should correct market distortions so that the market can be closer to the 'free trade' outcome i.e. they support free trade, through the creation of a 'level playing field', rather than providing protection to domestic industry. In addition, trade remedies also have a function of providing a safety valve facilitating domestic constituency 'buy-in' to trade liberalisation. The great success of the WTO would not have been possible without the possibility to use trade remedies. As the UK goes forward into multiple FTA negotiations, the existence of such a safety valve will be critical.

**The types of trade remedy** - there are three types of trade remedy permitted by the WTO agreements:

- **Anti-dumping (AD)** is by far the most common trade remedy. It is regularly used by all major economics, including countries traditionally seen as export oriented such as Japan, South Korea and China. Dumping is defined as the situation where the export price is below the domestic price (the latter must fully cover cost of production so a price below COP is always dumped). In order to adopt measures, the dumped imports must cause injury to domestic industry.
- **Countervailing duty (CVD/anti-subsidy)** investigations have been much less common, though their use has dramatically increased in recent years. In order to be a subsidy there must a financial contribution from government, a benefit, and the subsidy must be specific (i.e. to a particular industry or a region). In order to adopt measures, subsidised imports must cause injury to domestic industry.
- **Safeguard** investigations do not involve 'unfair trade' and consequently the WTO requirements for safeguard measures are more stringent (e.g. sudden, sharp, and significant increase in imports, unforeseen developments, serious injury, more time limited etc). Unlike AD/CVD measures, which are adopted on a country/company specific basis, safeguards can only be imposed against all sources of imports.

**Why AD is important alongside CVD in dealing with state distortions**– the WTO agreement on subsidies and countervailing measures (SCM) can, to some extent, be used to counter state subsidies that affect export prices. However, the SCM agreement does not permit all subsidies to be countervailed. For example, a subsidy that is generally available (i.e. non-specific to an industry or a region) cannot be addressed under this agreement. If such a subsidy has a distorting impact on export prices, such practices can legitimately be addressed under the anti-dumping agreement (as long as the export price is below the 'normal value'). Also, there may be other state behaviours that do not constitute subsidies as such but do have the effect of distorting export prices and markets.

**Normal value adjustments where costs are distorted** – Dumping is assessed by comparing the export price to the normal value (usually the domestic price as long as that covers cost of production). When prices in the domestic market are abnormally low due to an alleged distortion this can result in a lower dumping margin which masks the level of unfair trade. A common practice amongst WTO members when calculating dumping margins in such situations has been to make adjustments to domestic price and cost of production information. This has the impact of ensuring that the dumping margin fully reflects the extent of the state subsidy or distortion. Regulation 13 of the UK dumping and subsidy regulations includes such a provision. The WTO panel in *Australia – A4 Copy Paper (DS529)* has recently confirmed that making this kind of adjustment is WTO consistent, provided certain conditions are met. There is still some ambiguity around whether investigating authorities can make adjustments for a subsidy that affects both domestic and export price. The WTO jurisprudence will have to evolve for there to be clarity but in the meantime there are good arguments that the TRA does have the discretion to do this in a WTO consistent way.

**Treatment of China and Vietnam in AD investigations** – During the negotiation of China's accession to the WTO (and subsequently the same for Vietnam and Tajikistan), there was a recognition that China did not meet the requirements of a fully functioning market economy. Thus, a special provision was included in the Chinese accession protocol that allowed the continued use of alternative methods to establish dumping, unless it can be established that the Chinese producers concerned are operating in a market economy environment. Certain parts of this provision have expired but the remaining parts still authorize the use of an alternative methodology in certain circumstances. China has challenged this in the WTO. Leaked press reports suggest that a WTO panel was going to confirm that the remaining provisions do still allow a different methodology to be used in the case of China. China has prevented this from being published through its request to suspend the proceedings but the UK would certainly be within its rights to use regulation 14(1)(b) of the UK dumping and subsidy regulations. This provides extra flexibility in addition to that provided by regulation 13(1) (particular market situation) to reject all Chinese prices and costs where there is evidence of widespread state distortions unless any individual exporter can provide evidence that they operate in market economy conditions.

**Transition Reviews** – The EU currently has in excess of 100 anti-dumping and countervailing duties. The UK has determined that the UK has an interest in more than 40 of these measures and these measures will be transitioned when the UK has an independent trade policy (during the implementation period all current EU measures continue to apply in the UK). The TRA will conduct transition reviews to consider whether injurious dumping or subsidy would recur if the measure was removed. The transition reviews also will consider whether the level and form of the measure is appropriate. The first transition review has now been initiated on welded tubes from Belarus, China and Russia.

**Weaker than EU trade remedies** - The MTRA position has always been that the UK should mirror the EU trade remedy provisions immediately following Brexit and only consider adopting a different approach once this initial phase has passed. Instead, the UK has adopted legislation which is considerably weaker than the EU system. This includes a stricter lesser duty rule which will result in lower UK trade remedies. It also includes compulsory economic interest and public interest tests which are much more far-reaching than the EU's 'sanity-check' of the Union interest test. An EU provision on using a minimum EU industry profit of 6% in the calculation of a non-injurious price for dumped/subsidised imports has not been adopted. Finally, EU consideration of ILO conventions and environmental regulations in various aspects of the EU trade remedy investigations have been rejected by the UK.

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