

Effects on Trade and Competition of Abolishing Anti-Dumping Measures

The European Union Experience



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Executive Summary

The European Union (EU) is one of the few regional trade agreements where the anti-dumping measures that were in place have been abolished between the member states as they are integrated. In addition, the EU is one of the few regional trade agreements that have established common competition rules. EU integration is, accordingly, the most relevant case to study in order to gain an understanding of the effects of abolishing anti-dumping measures and of whether 'unfair competition' is still taking place.

The report observes that **the abolition of anti-dumping measures within the EU at its enlargement in 2004 did not cause injury to the EU15's industry in terms of price undercutting and loss of market share** (in a comparison between the years 2004 and 2008). The abolition of anti-dumping measures did not accelerate the alleged dumping practices of the accession countries. The level of price undercutting decreased slightly when the measures were abolished. This was mainly due to the fact that the unit price level of imports from the accession countries increased more than the EU15 price level. In addition, the abolition of anti-dumping measures did not alter the market share of the majority of products from the accession countries.

The market share of the accession countries increased by an average of only *one percentage point* when the anti-dumping measures were abolished. The decrease in the market share of EU industry, by *9 percentage points*, was mainly due to the increase in the market share of non-targeted third countries, by *8 percentage points*, not as a result of the abolition of anti-dumping measures.

The report also observes that **the abolition of anti-dumping measures within the EU did not increase the number of anti-dumping measures against third countries**. Anti-dumping measures against third countries after the EU enlargement were mainly the result of anti-circumvention investigations of measures on products that were in force prior to the abolition of the anti-dumping measures of the accession countries.

Finally, the report observes that **EU competition rules would not be applicable to imports of the products from the accession countries following the abolition of anti-dumping measures**. This is due to the fact that the exporters in the accession countries continue to have a very small share (of about 2-11 %) of the EU market, i.e. not a dominant position, and that the number of companies and countries targeted, in combination with the EU market structure, are not likely to be associated with price predation.

What were once considered as third country imports that caused injury to the EU domestic industry, as well as triggering the use of anti-dumping measures, have, following the enlargement, been considered normal business practices in the line with the requirements of 'fair competition'.

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Introduction

In recent years, the number of regional trade agreements has proliferated. In the great majority of regional trade agreements, the rules allow partner countries to use anti-dumping measures against one another.

[The report “Eliminating Anti-Dumping Measures in Regional Trade Agreements”, by the National Board of Trade, Sweden, 2013, provides an overview of those regional trade agreements that have eliminated the use of anti-dumping measures, as well as the legal foundations for this provision.]

In order to identify the effects of eliminating anti-dumping measures within a regional trade agreement, European Union (EU) integration can be selected as a case study. The EU is one of the few regional trade agreements where anti-dumping measures that were in place have been abolished between the member states as they are integrated. In addition, the EU is one of the few regional trade agreements that have established common competition rules.

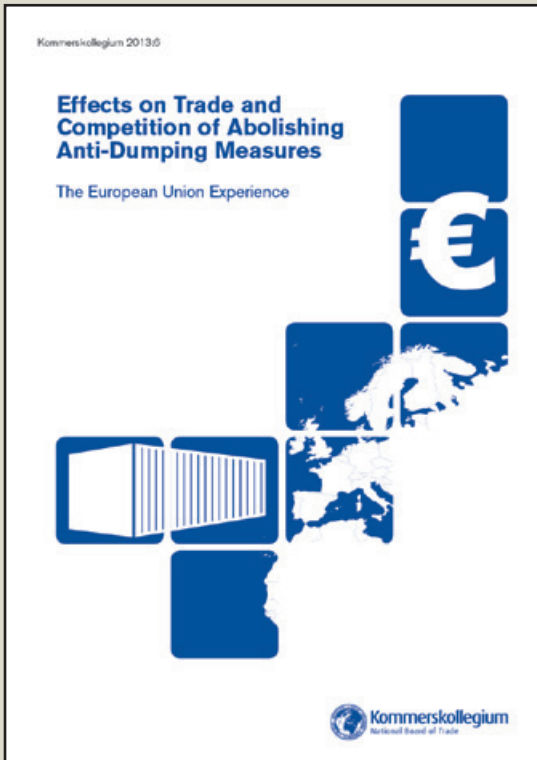
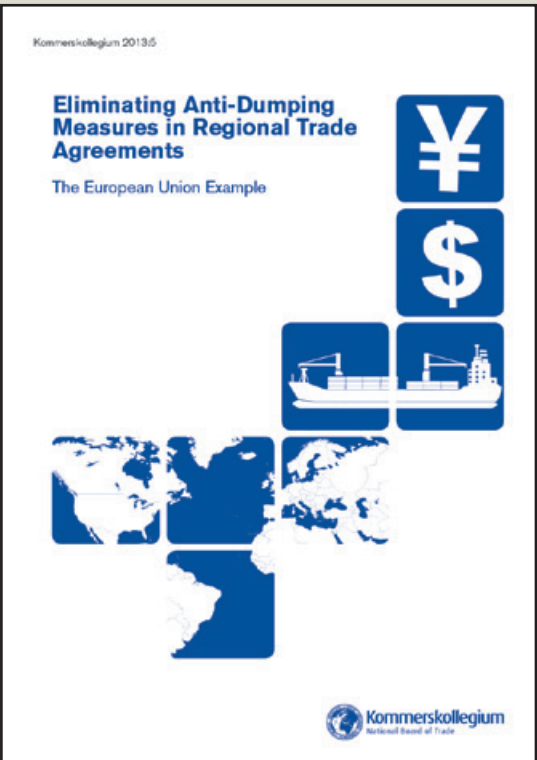
The report analyses the effects on imports (value, volume and price) in EU15 of abolishing

anti-dumping measures, following the EU enlargement in 2004, on allegedly dumped products originating from the accession countries (“EU10”) in order to estimate the level of injury to EU industry. It also provides an estimate of whether the EU’s anti-dumping measures against third countries have increased as a consequence of the intra-regional abolition of the measures.

The report also analyses the effects on competition of the allegedly dumped imports from the accession countries, with regard to changes in price undercutting and market share, following the abolition of the anti-dumping measures at the EU enlargement, in order to identify whether EU competition rules would be applicable.

The empirical findings of this report, when it comes to the effects of abolishing anti-dumping measures, may be useful in the EU’s negotiations of regional trade agreements. The experiences of the EU may also be useful for regional trade negotiations among other countries that are considering abolishing the use anti-dumping measures.

Reports



1. What was the Effect on Trade of Abolishing Anti-Dumping Measures within the EU?

When the European Union (EU) was enlarged in May 2004 with the addition of ten new member states (“EU10”), the anti-dumping measures that EU15 had in place against the new member states were immediately abolished.¹ This chapter addresses the economic effects on EU trade (in terms of import value, import volume and import unit price) of the abolition of these anti-dumping measures at an aggregate level (see Annex 1).² It also analyses whether the abolition of anti-dumping measures has caused harm to EU industry and whether anti-dumping measures against third countries at a product-specific level have increased as a result. This analysis only considers the effects of the abolition of anti-dumping measures in the EU15 and not the anti-dumping measures that were abolished in the accession countries.³ The analysis ends in the year 2008 as the economic crisis, which began that year, may blur the analysis of the economic effects in the years that follow.

1.1 The abolition of anti-dumping measures within the EU

The EU is the only regional trade agreement (RTA) in the world that has abolished the application of all three trade defence instruments, including the anti-dumping instrument, between its members (National Board of Trade, Sweden, 2013). This implies, for instance, that anti-dumping measures are reserved for dumping that originates from outside of the EU. The Treaty of Rome prohibited the use of anti-dumping measures on intra-EU trade once the transition period for the full implementation of the treaty had expired.

The Treaty of Rome states that “[i]f, during the transitional period, the Commission /.../ finds that dumping is being practiced within the common market, it shall address recommendations to the person or persons with whom such practices originate for the purpose of putting an end to them. Should the practices continue, the Commission

Facts

Provisions in the Treaty on the Functioning of the European Union on quantitative and fiscal restrictions

The Treaty on the Functioning of the European Union contains a number of prohibitions (so-called ‘negative integration rules’) which makes it impossible for the member states to adopt anti-dumping measures against one another. The most relevant articles with regard to quantitative and fiscal restrictions are presented below:

Article 30

“Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.”

Article 34

“Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.”

Article 36

“The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.”

Article 110

“No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products. Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.”

Source: Treaty on the Functioning of the European Union (TFEU)

shall authorise the injured Member State to take protective measures. /.../ As soon as this Treaty enters into force, products which originate in or are in free circulation in one Member State and which have been exported to another Member State shall, on reimportation, be admitted into the territory of the first-mentioned State free of all customs duties, quantitative restrictions or measures having equivalent effect.” The anti-dumping measures have been abolished in all successive EU enlargements in 1973, 1981, 1986, 1995, 2004, 2007 and 2013 as the EU gradually expanded from 6 to 28 member states.

The current EU rules on the internal market, the Treaty on the Functioning of the European Union (TFEU), contain a number of prohibitions (what are called ‘negative integration rules’) which make it impossible for the member states to adopt anti-dumping measures against each other. In particular, member states are prohibited from imposing unjustified quantitative restrictions on the import of goods from other EU member states, such as quotas, technical requirements or minimum prices (Articles 34 and 36). The same prohibition applies to fiscal restrictions in the form of customs duties or charges having equivalent effect (Article 30) or discriminatory taxes (Article 110) (see Facts).

The EU and its new member states have traditionally been intensive users of anti-dumping measures against one another, but the successive enlargements have significantly changed this pattern. The EU is, accordingly, one of the very few RTAs that have abolished anti-dumping measures that were previously in place (National Board of Trade, Sweden, 2013). The anti-dumping measures against imports from the accession countries, which were abolished at the EU enlargements, fulfilled, according to the European Commission, the criteria of (i) dumping, (ii) injury, (iii) causality, and (iv) the Union interest test, as required by the EU anti-dumping investigations. According to the EU15, the imports of these allegedly dumped products caused injury to EU industry.

In total, 16 anti-dumping measures were abolished as a direct consequence of the EU enlargement in 2004 (see Table 1).⁴ The anti-dumping measures covered eight products originating in six accession countries. The anti-dumping measures were, in most cases, also subject to price undertakings.⁵ The exceptions were *ammonium nitrate* and *urea ammonium nitrate solutions* from Poland and *welded tubes and pipes of iron or non-alloy steel* from the Czech Republic and Poland.

Table 1: Anti-dumping measures against the accession countries that were abolished as a result of the EU enlargement in 2004 (on 1 May 2004)

Product	Targeted country	Initiation of anti-dumping investigation	Imposition of definitive anti-dumping measures	Countrywide duty level
Ammonium nitrate	Poland	1999	2001	26.91 EUR/t
Urea	Estonia	2000	2002	11.43 EUR/t
	Lithuania	2000	2002	10.05 EUR/t
Urea ammonium nitrate solutions	Lithuania	1999	2000	3.98 EUR/t
	Poland	1993	1994	22.00 EUR/t
Malleable tube or pipe fittings	Czech Republic	1999	2000	26.1%
Seamless pipes and tubes	Czech Republic	1996	1997	28.6%
	Poland	1991	1993	30.1%
	Slovakia	1996	1997	7.5%
Steel ropes and cables	Czech Republic	2000	2001	47.1%
	Hungary	1998	1999	28.1%
	Poland	1998	1999	48.3%
Tube and pipe fitting, of iron or steel	Czech Republic	2001	2002	22.4%
	Slovakia	2001	2002	15.0%
Welded tubes and pipes of iron or non-alloy steel	Czech Republic	2001	2002	52.6%
	Poland	2001	2002	23%

Note: See Annex 2 for a list of all countries, including third countries, that were targeted in each case.

Source: Based on data from the National Board of Trade, Sweden

The Czech Republic and Poland were the two most targeted accession countries, as EU15 had five anti-dumping measures in place against each of these countries. The measures had been in force for different lengths of time, the shortest for two years and the longest for 11 years. The targeted products were all input goods. They comprised five manufactured metal products (thereof four different types of pipes and tubes) and three chemical products (all used as fertilizers). The average countrywide *ad valorem* duty applicable to the metal products was around 30 per cent and the average countrywide specific duty applicable to the chemical products was around 15 EUR/tonne.

1.2 The aggregate effects on value, volume and price of abolishing anti-dumping measures against the accession countries

A comparison between the 2004, the year when the anti-dumping measures from the EU accession countries were abolished, and 2008, the year when the economic crisis started, the average import values have increased from all sources (see Figure 1).⁶ However, the average increase in import value of intra-EU15 imports, the proxy used for EU producers' sales, has been smaller than the average increase in import value from the accession countries and other third countries.

The EU producers have subsequently lost some market share (see Figure 2). A comparison between the years 2004 and 2008 shows that the intra-EU15 imports decreased, in terms of market share by value, by *nine percentage points* (from 69 % to 60 %). In any case, the drop in market share of EU pro-

ducers is primarily due to the increase in market share of third countries other than the targeted accession countries (see Annex 2).⁷ The market share of these third countries increased by, on average, *eight percentage points* (from 26 % to 34 %). The targeted accession countries had, in 2008, gained, on average, a market share of only *one percentage point* (from 5 % to 6 %).

Immediately following the EU enlargement, the market share of the accession countries initially increased, but their market share decreased to the pre-accession level, in general, after about two years. For most products, the market share of the accession countries is basically constant in 2008 compared to 2004. [See section 1.3. for a more detailed and product-specific analysis.]

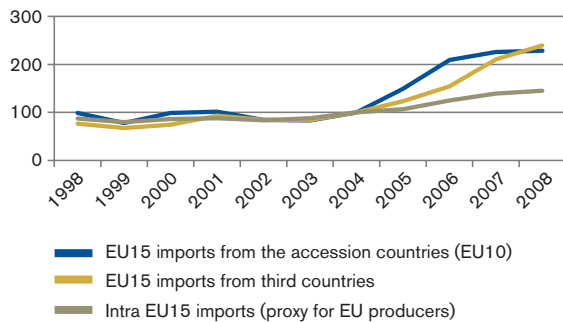
Figures 3 and 4 depict the average effect of removing the anti-dumping duties on import volume, in terms of total volume and in terms of share of total volume. In terms of market shares, the figure on volume tells on the whole a similar story as the figure on value.

Prior to the EU enlargement in 2004, the average deflated unit value price levels for imports from the accession countries were generally lower than the average deflated unit value price levels for intra-EU15 trade for most products. Subsequent to 2004, the prices of iron and steel products from the accession countries and the intra-EU15 imports decreased slightly; however, the prices of chemical products increased greatly (see Figures 5a and 5b). In general, the prices of imports from the accession countries decreased less than the prices of intra-EU15 products. [See section 1.3. for a more detailed and product-specific analysis.] [See Annex 3 for a theoretical analysis of the effects on the economy of abolishing anti-dumping measures.]



**Figure 1. Average import values
(Index 100 = Year 2004)**

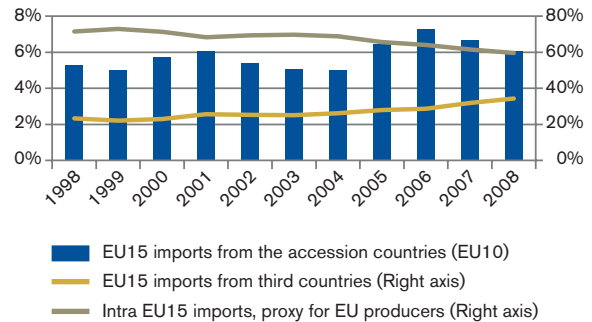
Iron and steel products



Source: Based on data from Eurostat (Comext)

**Figure 2. Average market shares
(import value), percentage**

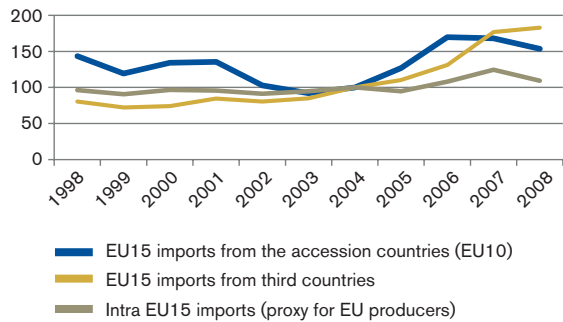
Iron and steel products



Source: Based on data from Eurostat (Comext)

**Figure 3. Average import volumes
(Index 100 = Year 2004)**

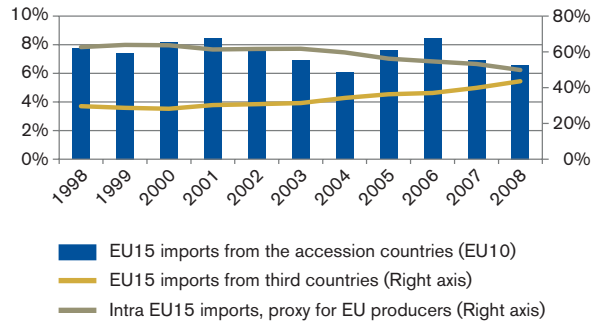
Iron and steel products



Source: Based on data from Eurostat (Comext)

**Figure 4. Average market shares
(import volume), percentage**

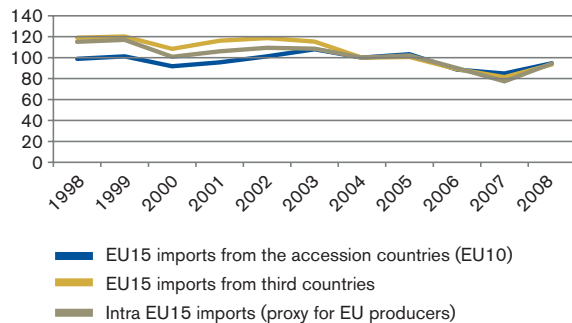
Iron and steel products



Source: Based on data from Eurostat (Comext)

**Figure 5a. Average changes in import prices
(Index 100 = Year 2004)**

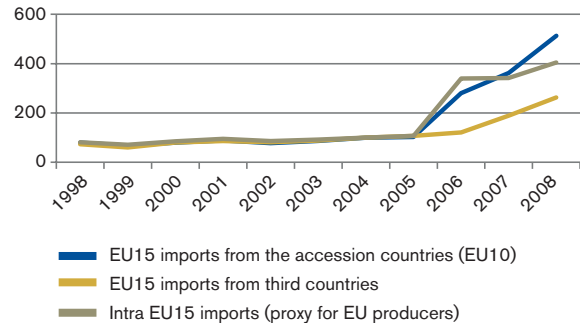
Iron and steel products



Source: Based on data from Eurostat (Comext)

**Figure 5b. Average changes in import prices
(Index 100 = Year 2004)**

Chemical products



Source: Based on data from Eurostat (Comext)

Note: Figure 1 to 5 provide graphical representations of the average effects of abolishing anti-dumping measures against the accession countries on EU15 imports from the accession countries, intra-EU15 trade, as a proxy for EU producer sales, and EU15 imports from all other countries, both those targeted and those not targeted by anti-dumping measures between 1998 and 2008. The analysis ends in 2008 as the severe economic crisis, which began in 2008, blurs the analysis for the subsequent years. Figures 1, 3 and 5 show the unweighted average changes in imports (in terms of value, volume and unit prices) for each case, relative to the year in which anti-dumping measures were abolished, e.g. 2004. By using an unweighted average, each case has the same impact on the relative average change, regardless of the value of the trade in the corresponding product. Figures 2 and 4 show the average changes in import market shares (in terms of value and volume) of the EU internal market. The effects of imposing anti-dumping measures on the imported products cannot be deduced from the figures for average change, as the different measures were imposed in different years.

1.3 Did the abolition of anti-dumping measures cause injury to the EU industry?

In the EU's anti-dumping investigations, price undercutting is defined as the difference between the EU producer's price and the price of imported products. Price undercutting could, accordingly, be used as a proxy for injurious dumping. The level of price undercutting could also be used as an indicator of injury to EU industry, i.e. the "price effect" of the abolition of the anti-dumping measures. The price undercutting could indicate the extent to which the allegedly dumped imports are causing price depression or preventing price increases for the goods, which would otherwise have occurred.

According to the trade statistics, the average unit price level of the allegedly dumped exports from the accession countries remained below the average EU15 unit price level throughout the period that was studied (see Figures 6-13).⁸ Price undercutting was apparent for most products from the accession countries before the anti-dumping measures were introduced.

In general, the introduction of anti-dumping measures did not affect price undercutting to a large extent as the gap between imports from the accession countries and the EU15 price levels continued to be significant.

Trade statistics also indicate that the abolition of anti-dumping measures did not accelerate the alleged dumping practices of the accession countries. On the contrary, the level of price undercut-

ting decreased in most cases when the anti-dumping measures were abolished at the accession to the EU (see Table 2). The import prices of *ammonium nitrate* and *urea ammonium nitrate solutions* became higher than the average EU15 price following the accession, but this was mainly due to external product-specific circumstances.⁹

The decrease in price undercutting was mainly due to the fact that the average (non-deflated) unit price levels of imports from the accession countries increased more than the average (non-deflated) EU15 unit price levels. Accordingly, the abolition of anti-dumping measures on imports from the accession countries does not seem to have affected EU15 industry negatively in terms of price undercutting.

In any case, it is apparent that there is differentiation in the price of specific products in the EU's internal market, and this phenomenon would most likely be defined as dumping, according to anti-dumping rules, if the products were being imported from third countries (National Board of Trade, Sweden, 2012b).

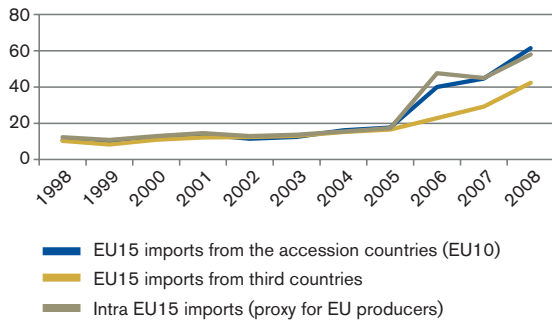
In order to analyse whether the abolition of anti-dumping measures against the accession countries has caused injury to EU producers, the market share of the allegedly dumped imports – including the extent to which there has been or is likely to be a significant increase in the volume of allegedly dumped imports, either in absolute terms or in relation to production or consumption – could be used as an indicator of injury to the EU industry, i.e. the "volume effect" of the abolition of anti-dumping measures.

Table 2. The development in price undercutting between 2003 and 2008

Product	Price in 2003		Price in 2008		Price undercutting (in percentage of the EU price)		Change in price undercutting between 2003-2008
	EU10	EU15	EU10	EU15	2003	2008	
Ammonium nitrate	13	14	61	58	8%	-6%	-14%
Malleable tube or pipe fittings	215	338	294	410	36%	28%	-8%
Seamless pipes and tubes	51	80	110	142	36%	23%	-13%
Steel ropes and cables	121	183	160	232	34%	31%	-3%
Tube and pipe fitting, of iron or steel	183	393	421	527	53%	20%	-33%
Urea	14	16	45	76	9%	41%	32%
Urea ammonium nitrate solutions	9.6	10.3	137	76	7%	-80%	-87%
Welded tubes and pipes	60	58	87	93	-4%	6%	10%

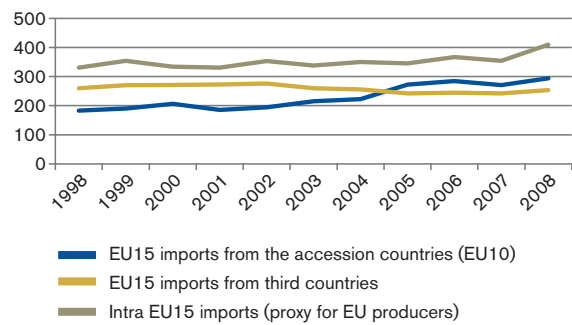
Source: Based on data from Eurostat (Comext)

Figure 6. Ammoniumnitrate
Prices in Euro (weighted average)



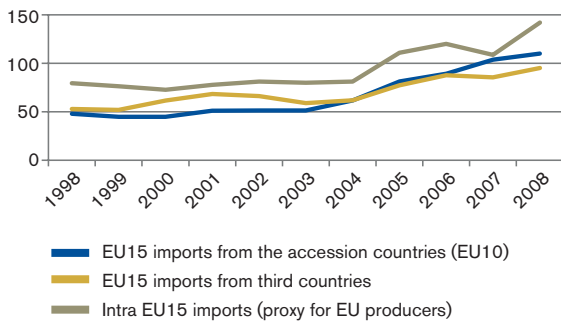
Source: Based on data from Eurostat (Comext)

Figure 7. Malleable tube or pipe fitting
Prices in Euro (weighted average)



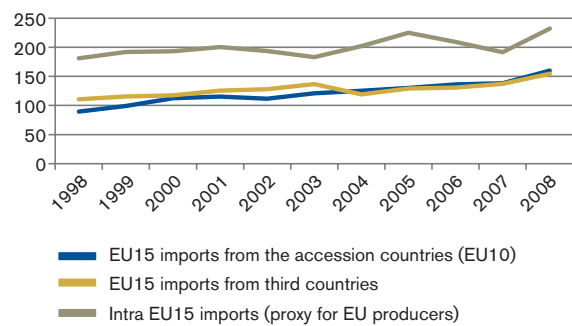
Source: Based on data from Eurostat (Comext)

Figure 8. Seamless pipes and tubes
Prices in Euro (weighted average)



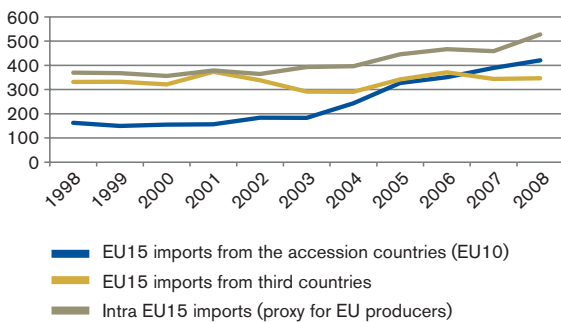
Source: Based on data from Eurostat (Comext)

Figure 9. Steel ropes and cables
Prices in Euro (weighted average)



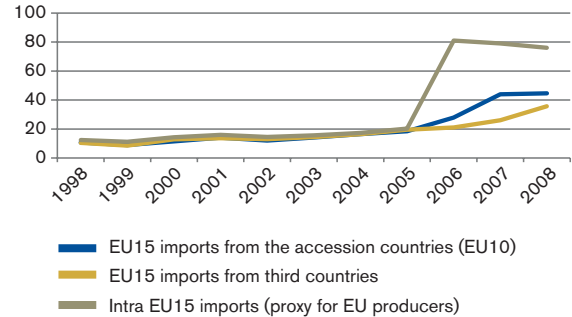
Source: Based on data from Eurostat (Comext)

Figure 10. Tube and pipe fitting, of iron or steel
Prices in Euro (weighted average)



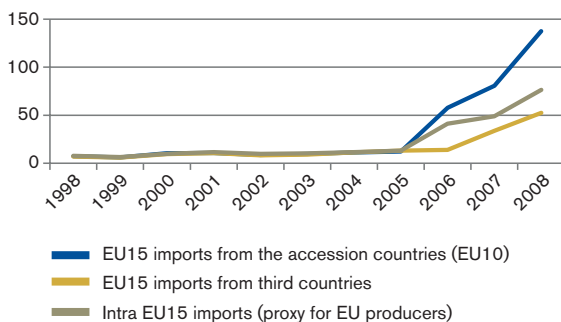
Source: Based on data from Eurostat (Comext)

Figure 11. Urea
Prices in Euro (weighted average)



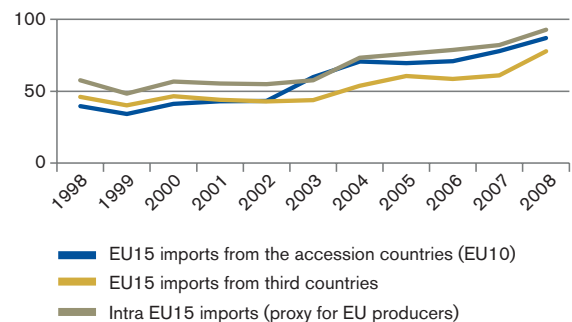
Source: Based on data from Eurostat (Comext)

Figure 12. Urea ammoniumnitrate solutions
Prices in Euro (weighted average)



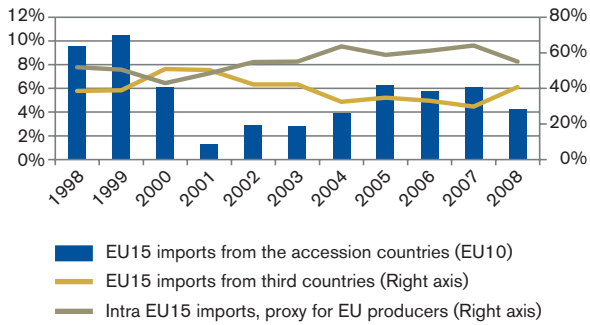
Source: Based on data from Eurostat (Comext)

Figure 13. Welded tubes and pipes of iron or non-alloy steel
Prices in Euro (weighted average)



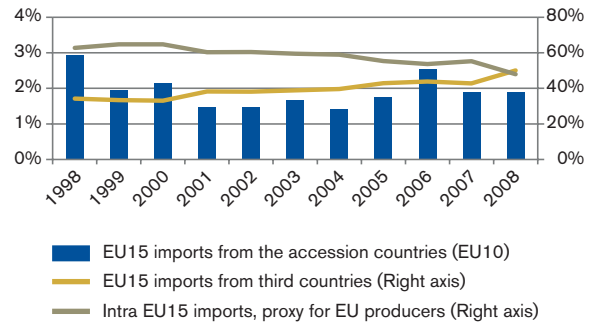
Source: Based on data from Eurostat (Comext)

Figure 14. Ammoniumnitrate
Market shares (import value), percentage



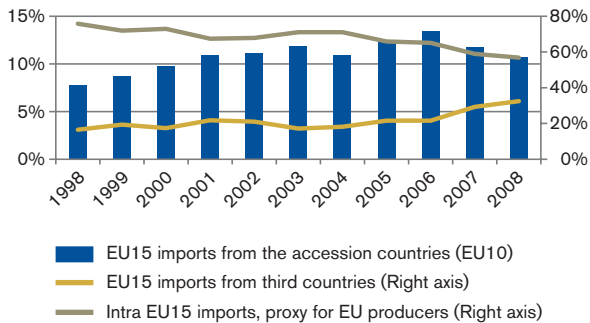
Source: Based on data from Eurostat (Comext)

Figure 15. Malleable tube or pipe fittings
Market shares (import value), percentage



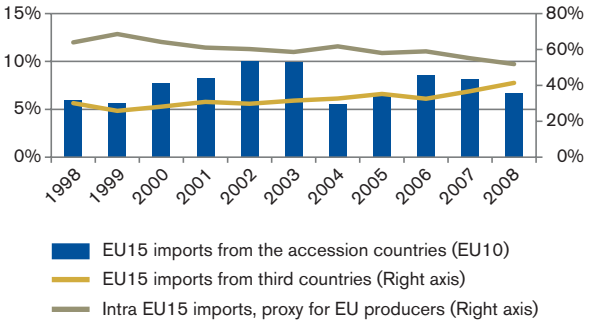
Source: Based on data from Eurostat (Comext)

Figure 16. Seamless pipes and tubes
Market shares (import value), percentage



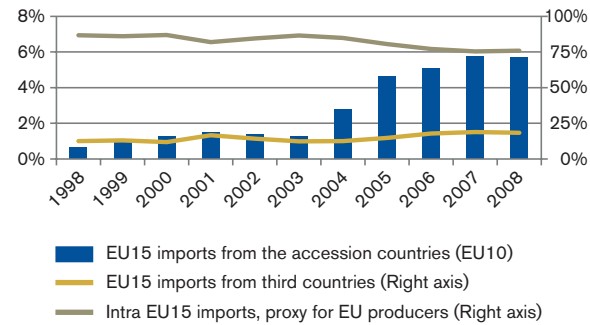
Source: Based on data from Eurostat (Comext)

Figure 17. Steel ropes and cables
Market shares (import value), percentage



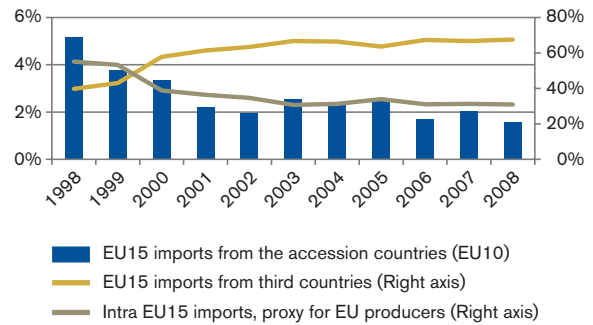
Source: Based on data from Eurostat (Comext)

Figure 18. Tube and pipe fitting, of iron or steel
Market shares (import value), percentage



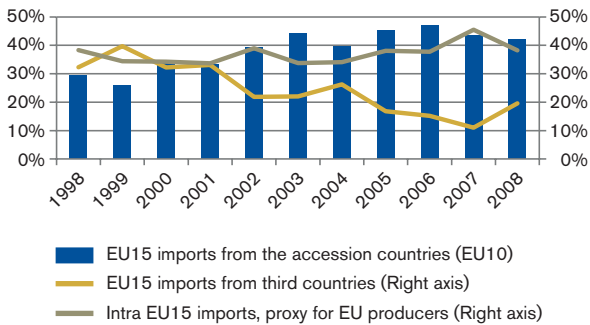
Source: Based on data from Eurostat (Comext)

Figure 19. Urea
Market shares (import value), percentage



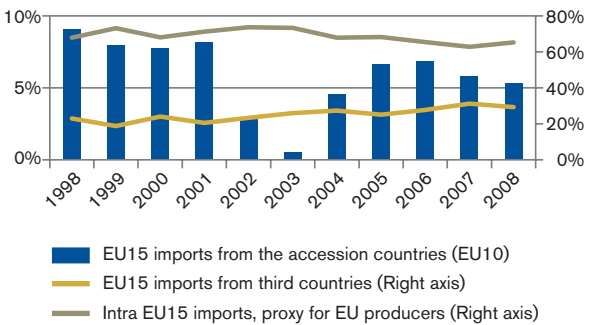
Source: Based on data from Eurostat (Comext)

Figure 20. Urea ammoniumnitrate solutions
Market shares (import value), percentage



Source: Based on data from Eurostat (Comext)

Figure 21. Welded tubes and pipes of iron or non-alloy steel
Market shares (import value), percentage



Source: Based on data from Eurostat (Comext)

In general, the abolition of anti-dumping measures did not change the accession countries' share, in terms of import value, of the EU15 market (see Figures 14-21). The market share of most products imported from the accession countries remained constant or increased only marginally, with the exception of *tube and pipe fittings of iron or steel* and *urea ammonium nitrate solutions*, which increased by three and two percentage points, respectively. On the other hand, the market share of *urea* decreased by one percentage point.

This development following the abolition of anti-dumping measures implies that the imports from the accession countries did not cause injury to the EU producers when it comes to lost market share. On the contrary, the trade statistics indicate that EU industry's market share decreased to an extent that corresponds to third countries' increased share of the market, not because of the abolition of anti-dumping measures against the accession countries. Accordingly, the abolition of anti-dumping measures on imports from the accession countries does not seem to have affected EU15 industry negatively in terms of lost market share.¹⁰

1.4 Did the abolition of anti-dumping measures increase anti-dumping action against third countries?

A number of academic studies have examined the relationship between the establishment of RTAs and possible changes in anti-dumping patterns. It

has been argued (Bhagawati and Panagariya (1996) and Prusa and Teh (2010)) that the establishment of RTAs leads to an increase in the number of anti-dumping measures targeted at countries not party to the RTA. The WTO's World Trade Report 2011 also stated that the abolition of anti-dumping measures could result in "an increase in anti-dumping protection directed towards non-[RTA] members when in fact the injury to domestic industry mostly stems from imports from other [RTA] members" (WTO, 2011).

According to the number of new anti-dumping investigations of the products concerned, there is no clear evidence of such a development following the EU enlargement in 2004, even though the imports from third countries increased. Between 1998 and 2008, the EU had large number of anti-dumping measures against imports of the products concerned from third countries (see Annex 2), but most of these measures were imposed several years before the EU enlargement in 2004.

In only three cases were anti-dumping measures imposed on the products concerned subsequent to the EU enlargement. The three products are *steel ropes and cables* (from Korea, Morocco and Moldova), *tube and pipe fitting, of iron or steel* (from Turkey, the Philippines, Indonesia and Sri Lanka), and *welded tubes and pipes of iron or non-alloy steel* (from Belarus, China and Russia). These measures are, however, mainly anti-circumvention measures against third countries that were targeted with anti-dumping measures prior to the abolition of the anti-dumping measures from the accession countries.



2. What was the Effect on Competition within the EU of the Abolition of Anti-Dumping Measures?

This chapter provides an overview of the relationship between the EU’s anti-dumping measures (towards third countries) and its competition rules (towards its member states). The two instruments are used to guarantee ‘fair competition’ and to provide ‘a level playing field’, even though they are based on different criteria.¹¹ In this context, the foundations of competition rules are used to estimate whether the imports from the accession countries would still be actionable following the EU enlargement.

2.1 EU policies for fair competition and a level playing field

According to the European Commission, the most frequently cited reason for advocating anti-dumping measures is to guarantee ‘fair competition’ and ‘a level playing field’ (Bienen *et al.*, 2013). In accordance with this argument, it might be claimed that the EU would be restrained in its efforts to guarantee ‘fair competition’ in its internal market if anti-dumping measures are suddenly abolished between parties that are frequent users of these instrument.¹²

However, the abolition of anti-dumping measures does not imply that the member states cannot take action against unfair pricing, but rather that they cannot implement anti-dumping measures (National Board of Trade, Sweden, 2009). In the preamble of the Treaty of Rome it is stated that “the removal of existing obstacles calls for concerted action in order to guarantee steady expansion, balanced trade and fair competition”. It also states that the EU shall institutionalize “a system ensuring that competition in the common market is not distorted”. The EU’s current competition law contains, for example, rules on cartels, market dominance, mergers, and state aid. Even though no formal link has been established between the elimination of anti-dumping measures and the application of common competition rules, the competition rules are established to guarantee ‘fair competition’ in the EU internal market.¹³

The current rules on the internal market also provide for a harmonisation of the national regulatory frameworks (what are called ‘positive integration rules’). At the time of the EU enlargement, the accession countries are also required to adjust their legislation in all fields to the EU’s *acquis communautaire*. These harmonisation rules imply stringent conditions with regard to production, labour rights,

health standards, environmental standards, consumer quality standards etc., as well as they are creating the conditions for ‘a level playing field’. The harmonisation requirements, in combination with a common mechanism for enforcing the rules, make “competitive advantages” less likely on these grounds and decrease the need to resort to other measures such as the use of the anti-dumping instrument.

2.2 Comparison between EU’s anti-dumping rules and competition rules

The EU’s competition rules are very different from the criteria applied in the EU’s anti-dumping investigations (see Table 3). Anti-dumping rules address, in theory, only a narrow segment of current competition law, i.e. predatory pricing practices.¹⁴ Predatory pricing is one extreme form of price discrimination, in which a dominant company lowers its prices in order to put competitors out of business (Bienen *et al.*, 2013).

However, in practice, anti-dumping investigations cover a wide range of pricing practices that are not predatory in nature or intent (Bienen *et al.*, 2013). This is mainly due to the fact that the criterion of dominant position is not considered in anti-dumping investigations and because the export price need not be below the average variable cost of production in order to be actionable (National Board of Trade, Sweden, 2012b).

In order for the EU competition rules to apply, a company would need to have a *dominant position* in the market, i.e. a market share of at least 40 % (European Commission, 2009), and it must abuse its dominant position in some way, for example, “unfair purchase or selling prices or other unfair trading conditions”, in order to fall under scrutiny according to Article 102 of the Treaty of the Functioning of the

Table 3: Comparison between anti-dumping rules and competition rules

	Competition rules	Anti-dumping rules
Market share	>40% (one company)	> 1% (one country)
Price undercutting	< average variable cost	< average variable sales price (i.e. average variable costs + average fixed costs + profit)

Source: Based on data from the National Board of Trade, Sweden (2012b).

European Union.¹⁵ An anti-dumping investigation might, on the other hand, be initiated if a whole country has a share of the EU market of above 1 %. In expiry reviews, in order to prolong the anti-dumping measures, the issue of market share is not even considered.

Price undercutting is, according to competition rules, only condemned if the alleged offender – apart from having a dominant position – sets a price below its average variable cost of production in an effort to squeeze out the competitors from the market and/or to pre-empt new firms entering the market (National Board of Trade, Sweden, 2012b). This “unfair selling price” may be compared to the definition of dumping in anti-dumping investigations. In anti-dumping investigations, on the other hand, dumping can be established even if the selling price covers both fixed and variable costs and a ‘reasonable’ profit due to the fact that anti-dumping investigations only consider that a country exports a product for a price that is lower than the price in its domestic market (National Board of Trade, Sweden, 2012b). Price discrimination between different markets and pricing under the average variable cost that is not necessarily predatory are frequently defined as ‘unfair competition’ in anti-dumping investigations (Bienen *et al.*, 2013).

2.3 Would EU competition rules be applicable to imports from the accession countries?

In order to determine whether anti-dumping cases meet competition policy requirements, as established and practiced in the EU internal market, it is necessary to establish the likelihood of predatory pricing. Due to information constraints in anti-dumping investigations, a number of academic studies have identified a series of criteria that identify anti-dumping cases which involve circumstances and market characteristics that are likely to be associated with predation (Bienen *et al.*, 2012 and Bienen *et al.*, 2013).

The first step would be to **assess the dominance of the likely predator**, i.e. the targeted exporters, in the importing country’s domestic market. Based on competition law standards, the targeted exporters combined share of the import-



ing country’s domestic market must be 40 % or higher. The anti-dumping investigations do not provide information on company-specific market shares.

If the threshold of 40 % or higher is reached, the second step would be to **exclude situations where predatory practice is unlikely** due to coordination problems, for example: (i) to exclude situations where four or more countries are targeted, and/or (ii) to exclude situations where eight or more exporters are targeted. Predatory practice is unlikely in these situations since it would imply an implausible level of coordination across firms (Bienen *et al.*, 2013). In addition, the bar a predatory pricing strategy must clear to succeed in an international setting is higher than in a domestic setting (Bienen *et al.*, 2013).

Finally, the third step would be to assess the **market structure** of the domestic market, as a proxy for the level of entry barriers. The domestic market is competitive when there is a relatively high number of domestic companies (>4), and the domestic companies have a dominant market share. This situation would make predatory behaviour difficult.

The use of this methodology on the anti-dumping measures that were abolished at the EU enlargement in 2004, indicates that EU competition rules would not be applicable to any of the cases, even if interpreted extensively (see Table 4). Even though price undercutting¹⁶ can be established, the market shares of the accession countries are found to be at an aggregate level below the threshold for dominant position. The accession countries have a market share of far below 40 % in all cases (of about 2 %–11 %) except for *urea ammonium nitrate solutions* (>40 %). However, the EU has an almost equally

Table 4. Application of competition rules on anti-dumping cases after the abolition of measures

Product	Accession countries market share (in 2004 and 2008)	Number of countries targeted (definitive anti-dumping measures)	Number of exporters targeted (definitive anti-dumping measures)	EU15 market share (in 2004 and 2008)	Number of EU15 producers (definitive anti-dumping measures)
Ammonium nitrate	(4%) 4%	2	8	(64%) 55%	10
Malleable tube or pipe fittings	(1%) 2%	6	9	(59%) 48%	6
Seamless pipes and tubes	(11%) 11%	6	17	(71%) 57%	10
Steel ropes and cables	(6%) 7%	11	9	(33%) 41%	5
Tube and pipe fittings of iron or steel	(3%) 6%	5	5	(85%) 76%	4
Urea	(2%) 2%	8	12	(31%) 31%	6
Urea ammonium nitrate solutions	(40%) 42%	7	7	(34%) 38%	10
Welded tubes and pipes of iron or non-alloy steel	(5%) 5%	4	10	(68%) 65%	9

Note: The EU market shares are based on the situation in 2004 and 2008. Due to the lack of information on the current number of exporters and EU producers, the situation at the imposition of anti-dumping measures is used as a proxy. The number of exporters in the accession countries and the number of EU15 producers is based on the companies that were cooperating with the European Commission in the investigations (exporters that made themselves known and/or were verified by the Commission, as well as EU15 producers that presented and supported the complaint). In any case, these companies are considered to be the most representative for the purpose of this analysis.

Source: Based on data from the National Board of Trade, Sweden

high share of 38 % in *urea ammonium nitrate solutions*. EU has a dominant market share (38 %–76 %) in all cases except urea (31 %), but the accession countries have a particularly low market share (2 %) in this case.

It is also apparent that the accession countries' share of the EU internal market have remained constant and/or diminished following the abolition of anti-dumping measures in most cases. Only in the cases of *tube and pipe fittings of iron or steel* and *urea ammonium nitrate solutions* is it possible to identify a significant increase in the market shares of the accession countries, from 3 % to 6 %, and from 40 % to 42 %, respectively. Only in the first case is it possible to identify a decrease in the EU's market share, from 85 % to 76 %, where market share has been taken by the accession countries (not simply by third countries). In the second case, the EU's market share increased by two percentage points more than the increase in the accession countries' market share.

Due to the fact that the criterion on dominant position makes it possible to disregard the application of competition rules in most of the cases, the

analysis of the possible exclusion of cases only leaves the product *urea ammonium nitrate solution* for further consideration. In this case, the number of exporters was estimated to be close to eight. In addition, more than four countries were considered in each case. The competitive situation in the EU market is also considered to be high, which would make predatory behaviour difficult. These findings make it possible to disregard all cases, when it comes to a theoretical consideration of the application of EU competition rules, as none of the cases fulfil all the criteria.

Following this approach, it is apparent that EU competition rules would, most likely, not be applicable on imports of any of the products from the accession countries following the abolition of anti-dumping measures. It is also important to note that the EU competition rules have not actually been applied in any of these cases. What were once considered as third country imports that caused injury to the EU's domestic industry, as well as triggering the use of anti-dumping measures, have, subsequent to the enlargement, been considered normal business practices in-line with the requirements for 'fair competition'.

Conclusions

The report observes that the abolition of anti-dumping measures within the EU at the time of the enlargement in 2004 did not cause injury to EU15 industry in terms of price undercutting and lost market share (in a comparison between the years 2004 and 2008). The abolition of anti-dumping measures did not accelerate the alleged dumping practices from the accession countries (“EU10”). The level of price undercutting decreased slightly when the measures were abolished. This was mainly due to the fact that the unit price level of imports from the accession countries increased more than the EU15 price level. In addition, the abolition of anti-dumping measures did not change the market share of the majority of products from the accession countries.

The market share of the accession countries increased by an average of only one percentage point when the anti-dumping measures were abolished. The decrease in the market share of EU industry, by 9 percentage points, was mainly due to the increase in the non-targeted third countries’ share of the market by 8 percentage points, not as a result of the abolition of anti-dumping measures.

The report also observes that the abolition of anti-dumping measures within the EU did not

increase the number of anti-dumping measures against third countries. Anti-dumping measures against third countries after the EU enlargement were mainly the result of anti-circumvention investigations of measures on products in force prior the abolition of the anti-dumping measures against the accession countries.

Finally, the report observes that EU competition rules would not be applicable to imports of the products from the accession countries following the abolition of anti-dumping measures. This is due to the fact that the exporters in the accession countries mainly continue to have a very small share (of about 2–11 %) of the EU market, i.e. not a dominant position, and that the number of companies and countries targeted, in combination with the EU market structure, are not likely to be associated with price predation.

The empirical findings of this report, when it comes to the effects of abolishing anti-dumping measures, may be useful in the EU’s negotiation of regional trade agreements. The experiences of the EU may also be useful for regional trade negotiations among other countries that are considering abolishing the use anti-dumping measures.



Annex

Annex 1: Methodology used for the calculation of effects on value, volume and price

The data used in the report consist of import data retrieved from the Eurostat (COMEXT) database based on the Combined Nomenclature (CN).

Changes to imports between EU15 members (intra-EU15 imports) have been used as a proxy for changes to total domestic sales in all EU15 countries as it is likely that movements in intra-EU trade relative to imports from non-EU members are representative of the competitiveness of EU firms.

The import statistics contains information on the value of the imported products (expressed in Euro) and information on the corresponding volume of imported products (expressed in tonnes).

A unit value price, which is used as a proxy for the import price, is calculated as the total value of imports divided by the total volume of imports. Changes in a unit value index may depend on changes in quantities, i.e. an increase in unit value might imply a decrease in quantity. The unit value prices are *exclusive* of anti-dumping duties.

When an anti-dumping product case consists of several CN products¹⁷ the value has been divided by volume for each CN product, and also, in case there were several accession countries, for each country.

The price indices are constructed from the changes in the different CN products' prices (and the different accession countries), each weighted by the quantity¹⁸ of the specific CN products (for each accession country).

These price indices have been deflated into real values using industry import price indices for the two different product categories (e.g. manufacture of chemicals and chemical products and manufacture of iron and steel products) received from Eurostat.

In some cases the development of the unit value price is extreme. This indicates that the statistics probably do not fully measure the same product over time and/or certain product-specific circumstances.¹⁹ This concerns, in particular, the products *urea*, *urea ammonium nitrate solution* and *steel ropes and cables* between 2006 and 2008.

Annex 2: Exhaustive list of all countries targeted by anti-dumping measures on the products concerned

Product	Targeted country	Initiation of anti-dumping investigation	Imposition of definitive anti-dumping duty	Termination of anti-dumping duty	Countrywide anti-dumping duty level
Ammonium nitrate	Russia	1994	1995	[2013]	47.07 EUR/t
	Poland	1999	2001	2004	26.91 EUR/t
	Ukraine	1999	2001	2012	33.25 EUR/t
Malleable tube or pipe fittings	Czech Republic	1999	2000	2004	26.1%
	Brazil, China, Japan, Korea, Thailand	1999	2000	2005	22.1-49.4%
	Argentina	2002	2003	2008	34.8%
Seamless pipes and tubes	Poland	1991	1993	2004	30.1%
	Czech Republic, Slovakia	1996	1997	2004	7.5-28.6%
	Hungary	1996	1997	2002	36.5%
	Romania, Russia	1996	1997	2006	26.8-38.2%
Steel ropes and cables	Hungary, Poland	1998	1999	2004	28.1-48.3%
	China, India, Mexico, South Africa, Ukraine	1998	1999	[2017]	30.8-60.4%
	Czech Republic	2000	2001	2004	47.1%
	Russia	2000	2001	2012	50.7%
	Turkey, Thailand	2000	2001	2007	31-42.8%
	Moldova	2003	2004	[2017]	51.8%
	Morocco	2004	2004	[2017]	60.4%
	South Korea	2009	2010	[2017]	60.4%
Tube and pipe fitting, of iron or steel	China, Thailand	1994	1996	[2014]	58.6-58.9%
	Taiwan	1999	2000	[2014]	58.6%
	Czech Republic, Slovakia	2001	2002	2004	15-22.4%
	Russia	2001	2002	2007	43.3%
	Korea, Malaysia	2001	2002	[2013]	44-75%
	Indonesia, Sri Lanka	2004	2004	[2014]	58.6%
	Philippines	2005	2006	[2014]	58.6%
	Russia, Turkey	2011	2013	[2018]	16.7-23.8%
Urea	Russia (USSR)	1986	1987	2007	45.9%
	Estonia, Lithuania	2000	2002	2004	10.05-11.43 EUR/t
	Bulgaria, Romania	2000	2002	2007	8.01-21.43 EUR/t
	Belarus, Croatia, Libya, Ukraine	2000	2002	2008	7.81-16.84 EUR/t
Urea ammonium nitrate solutions	Poland	1993	1994	2004	22 EUR/t
	Bulgaria	1993	1994	2007	22 EUR/t
	Lithuania	1999	2000	2004	3.98 EUR/t
	Algeria, Belarus, Russia, Ukraine	1999	2000	2011	6.88-26.17 EUR/t
Welded tubes and pipes of iron or non-alloy steel	Czech Republic, Poland	2001	2002	2004	23-52.6%
	Turkey	2001	2002	2008	6%
	Thailand, Ukraine	2001	2002	[2013]	35.2-44.1%
	Belarus, China, Russia	2007	2008	[2013]	20.5-90.6%

Note: The anti-dumping measures imposed at the same time are grouped together in the table even though the measures might have lapsed at different points in time. The anti-dumping measures against the accession countries are marked in **bold**. The anti-dumping measures that were imposed following the abolition of anti-dumping measures against the accession countries are marked in **red**.

Source: Based on data from the National Board of Trade, Sweden

Annex 3: Theory on the effects on the economy of imposing and/or abolishing anti-dumping measures

The effect of anti-dumping duties on prices is different compared to normal duties. When anti-dumping duties are imposed, it seems that import prices (excluding the anti-dumping duty) tend to increase (National Board of Trade, Sweden, 2012a). This is contrary to the theoretical foundations of economics when it comes to normal duties. According to these theories, the import price (excluding duties) should decrease in order to ensure that the price (including duties) will not increase for the final consumer (see Table A).

There may be different explanations behind the price increases of products targeted with anti-dumping duties. One explanation could be that exporters increase their prices in order to counter

the allegations of dumping. Another explanation could be that only products of a higher segment are exported when anti-dumping duties are imposed.

The findings of this study indicate that the abolition of anti-dumping duties also produces effects that are reversed, compared to the abolition of normal duties.²⁰ The deflated average prices tend to decrease when anti-dumping duties are abolished. The explanations for the decrease in prices might be the opposite of those at the imposition of measures (see Table B).

The empirical findings that support the theory that the abolition of anti-dumping duties produces effects that are reversed, compared to the abolition of normal duties are also presented (see Table C).

Table A. Price effect at the imposition of anti-dumping duties

Imposition of duties	Import prices		Prices in the domestic market
	Excluding duties	Including duties	
Normal duties	Decreases	Constant (or slight increase)	Constant or increases (due to limited competition)
Anti-dumping duties	Increases	Increases (due to price increase and imposed anti-dumping duties)	Constant or increases (due to limited competition)

Source: Based on data from the National Board of Trade, Sweden

Table B. Price effect at the abolition of anti-dumping duties

Abolishment of duties	Import prices		Prices in the domestic market
	Excluding duties	Including duties	
Normal duties	Increases	Constant (or slight decrease)	Constant or decreases (due to increased competition)
Anti-dumping duties	Decreases	Decreases (due to price decrease and abolished anti-dumping duties)	Constant or decreases (due to increased competition)

Source: Based on data from the National Board of Trade, Sweden

**Table C. Empirical findings in the of price effects at the abolition of anti-dumping duties
(Index 100 = Year 2004)**

Abolition of anti-dumping measures at the EU enlargement in 2004	Price effect on imports from the accession countries		Price effect on EU producers
	Excluding duties	Including duties	
Malleable tube or pipe fittings	Decrease (92)	Decrease (92)	Decrease (82)
Seamless pipes and tubes	Increase (123)	Increase (123)	Increase (120)
Steel ropes and cables	Decrease (65)	Decrease (65)	Decrease (84)
Tube and pipe fittings, iron or steel	Constant (99)	Constant (103)	Constant (97)
Welded tubes and pipes	Decrease (93)	Decreases (90)	Decrease (88)
Ammonium nitrate (*)	Increases (316)	Increases (316)	Increases (311)
Urea (*)	Increases (174)	Increases (174)	Increases (364)
Urea ammonium nitrate solutions (*)	Increases (1050)	Increases (1050)	Increases (539)

Note 1: The analysis is based on the average deflated unit price level. If the analysis was based on the year 2003, the year before the abolition of anti-dumping measures, the above trend would be even stronger when it comes to seamless pipes and tubes and tube and pipe fittings of iron or steel.

Note 2: The chemical products (*) are omitted from the analysis as the prices increases are due to factors other than the abolition of anti-dumping measures that took place at the same time, i.e. (i) the exclusion from subsidized Russian gas prices to producers in EU accession countries following their accession to the EU, (ii) an increase in the international oil price, and (iii) an increased demand for urea and ammonium nitrate in China and India contributed to reduced exports and higher world market prices (Fertilizers Europe).

Source: Based on data from the National Board of Trade, Sweden

Notes

- 1 Before the enlargement, the EU15 had bilateral regional trade agreements (RTAs), what are called association agreements, with the individual accession countries in order to prepare them for the enlargement, but the use of anti-dumping measures was still permitted between the parties (Hoekman, 2002).
- 2 When the accession countries became EU member states, all EU duties against them ceased. It is not possible to distinguish between the effects of termination of the anti-dumping duties and the termination of these other duties, where relevant. Furthermore, it is not possible to distinguish between the effects of the abolition of duties and other possible effects associated with an EU membership, for example, the effects of the harmonisation to the EU's *acquis communautaire* and the 'four freedoms' (i.e. the free movement of goods, capital, services and people), and its effects on competition and pricing. The harmonisation process might lead to restructuring of the industry and higher production costs. The four movements on the EU's internal market might increase the level of competition. These aspects merit further analyses in this field.
- 3 The effect of the abolition of EU25 anti-dumping measures on imports from Bulgaria and Romania, as a consequence of the enlargement in 2007, is not included in this analysis. This is also the case with the enlargement with Croatia in 2013. These countries are, accordingly, counted as third countries for the purpose of this analysis.
- 4 Only those anti-dumping measures that were *in force* and were abolished at the enlargement in 2004 are considered in this analysis, not measures that lapsed before the enlargement. For example, the EU had anti-dumping measures on the products *hardboard* and *polypropylene* against imports from several of the new member states at the beginning of 2004. These measures are not included in the analysis as they expired naturally before the enlargement in May, having been in force for the usual five years. If the enlargement had not occurred, it is possible that these measures would have been extended.
- 5 Price undertakings imply that certain exporters commit themselves to increase their prices to, what are known as, minimum import prices; these should eliminate the injurious effect of any dumping that has been found. The minimum import prices prevent the import prices from falling below a certain price floor. Price undertakings can be combined with quotas. Normal anti-dumping duties are applied if the minimum prices are not respected or if the imports exceed the quota. In this study, the effects of the price undertakings have not been specifically studied. However, it is reasonable to believe that the findings in this analysis of the effects of abolishing anti-dumping measures would have been more pronounced in the absence of price undertakings.
- 6 The average deflated unit price increases of the chemical products are due to factors other than the abolition of anti-dumping measures that took place at the same time, i.e. (i) the exclusion from subsidized Russian gas prices to producers in EU accession countries following their accession to the EU, (ii) an increase in the international oil price and (iii) an increased demand for urea and ammonium nitrate in China and India that contributed to a reduction in exports and higher world market prices (Fertilizers Europe). The chemical products are accordingly excluded from the aggregate average analysis in this report.
- 7 Some of these third countries were also targeted by EU anti-dumping measures, while others were not. All the countries targeted by EU anti-dumping measures are presented in Annex 2.
- 8 The Figures 6-13 show the import prices and not the sales prices. The analysis of price undercutting is based on EU import prices from the accession countries and intra-EU15 import prices. The import prices do not necessarily provide information about the effects on markets and consumers as administrative costs and profit levels are not included. From the statistics, it is not possible to conclude whether importers, retailers, user industries or consumers will absorb the higher prices. In any case, the price levels of imports from the accession countries and the intra-15 imports are comparable in this regard, as they are presented at the same level of trade. The anti-dumping duties are not included in the unit price level at the border unless this is explicitly mentioned in the analysis.
- 9 The average deflated unit price increases of the chemical products are due to factors other than the abolition of anti-dumping measures that took place at the same time, i.e. (i) the exclusion from subsidized Russian gas prices to producers in EU accession countries following their accession to the EU, (ii) an increase in the international oil price, and (iii) an increased demand for urea and ammonium nitrate in China and India that contributed to a reduction in exports and higher world market prices (Fertilizers Europe).
- 10 This report does not analyse the reasons behind the increase in third countries' share of the EU market or any relationship with the abolition of anti-dumping measures against the accession countries. In any case, it is apparent that EU industry did not request anti-dumping measures against this increase in imports from third countries (see Section 1.4).
- 11 Anti-dumping measures are often referred to as the international trade analogue of the use of competition rules on domestic markets (Bienen *et al.*, 2013). The EU Commissioner for Trade has stated that "*in the absence of international competition rules and of other rules associated with well-functioning markets, trade defence instruments are the only possible means of protecting our industry against unfairly traded goods*" (De Gucht, 2010).
- 12 In the European Commission document "*Enlargement: Impact of EU Trade Defence*" as of 20 March 2013, considering the forthcoming EU enlargement with Croatia, it is stated that "*[s]ome goods imported into the EU are dumped or subsidised. These practices are considered unfair by international trade law. Imports of such goods may harm EU producers, because they face unfair competition in the EU market. .../ If you are a producer, enlargement may directly affect you and your business interests*" (European Commission, 2013).
- 13 The section on the abolition of anti-dumping measures between EU member states (Article 91, Section 2) is found

in the chapter on competition in the Treaty of Rome (Chapter 1, Part III).

- 14 The first anti-dumping laws that were introduced in Canada in 1904 and in New Zealand in 1905 were motivated by concerns about predation. The US Anti-Dumping Act of 1916 was a material extension of its anti-trust law. However, as early as in 1921, the scope of US anti-dumping law widened to provide relief against any instances of dumping regardless of intent. This latter standard has prevailed in World Trade Organization (WTO) law and general practice ever since (Bienen *et al.*, 2013). While anti-dumping measures aim to protect domestic competitors, competition policy aims to protect domestic competition.
- 15 According to US competition law, predation is unreasonable at market shares below 60 % (Tor, 2010). This implies that the US definition of dominant position is 20 percentage points above the EU definition of dominant position.
- 16 This is not necessarily a level of price undercutting that would be actionable according to competition rules, as it only indicates that the average import unit price from the accession countries is below the average unit price level of the EU15.
- 17 The products in the anti-dumping cases are defined by the 8-digit Combined Nomenclature (CN) system.
- 18 The weights have been based on import quantity, instead of the import values, since this resulted in more stable and reliable price developments.
- 19 Within the 8-digit CN product category, there may be several subcategories of products that differ in various ways, for instance, in terms of quality.
- 20 In this context, the pricing behaviour of the chemical products (*ammonium nitrate*, *urea* and *urea ammonium nitrate solutions*) is not included as their prices depend on other external, product-specific circumstances.

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