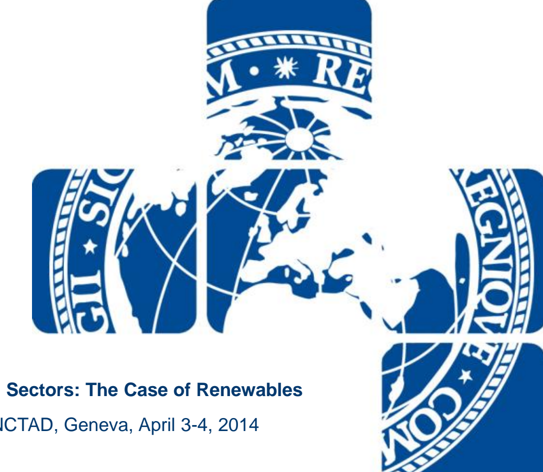
Trade Remedies on Renewables: Intermediate and Long-Term Solutions



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Trade Remedies in Green Sectors: The Case of Renewables

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National Board of Trade, Sweden

- Swedish Governmental Agency
- Provides the Swedish Government with **analyses and recommendations** on trade policy (focus on the Swedish position in the EU)
- Publishes **independent reports** to increase awareness on the importance of open and free trade with transparent rules
- The ideas presented by the National Board of Trade are not necessarily those of the Swedish Government

Focus on improving the trade remedy agreements

- The concerns with trade remedies are not limited to renewables - even though the effects are particularly visible and negative in this area
- The current trade remedy provisions in the WTO (i.e. the multilateral framework) and the domestic implementing regulations should, preferably, be addressed on a general level

Focus on improving the trade remedy agreements

Multilateral [long-term] solution:

- Improve the WTO agreements on trade remedies

Domestic [possibly intermediate] solution:

[WTO+ provisions on a voluntary basis]

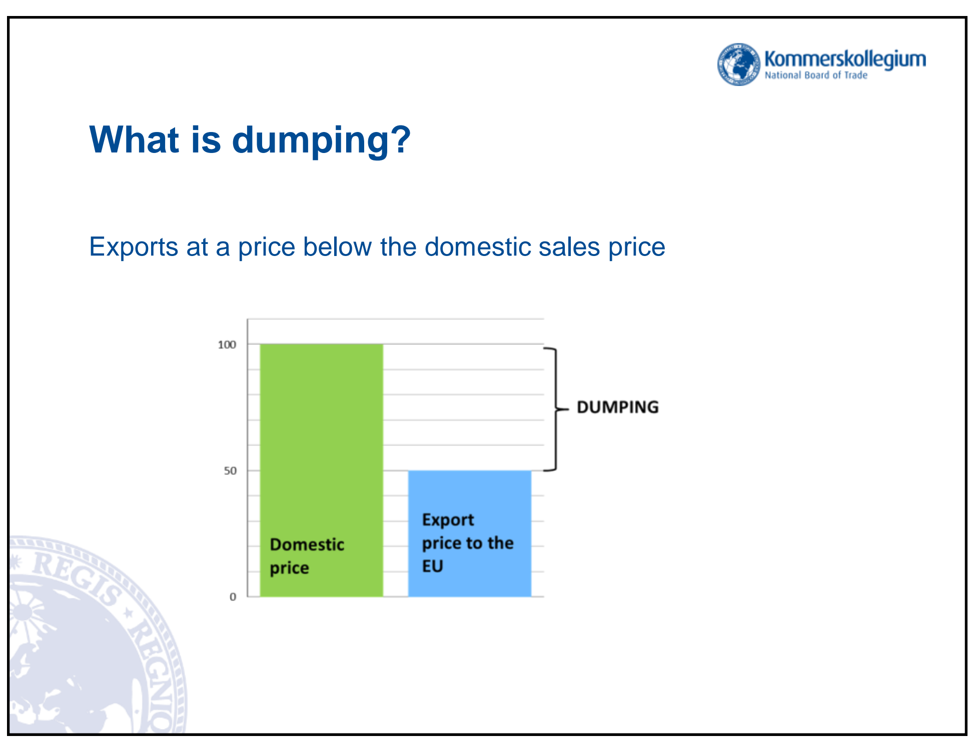
- Improve the domestic trade remedy regulations
- Include specific provisions on renewables in the domestic trade remedy regulations

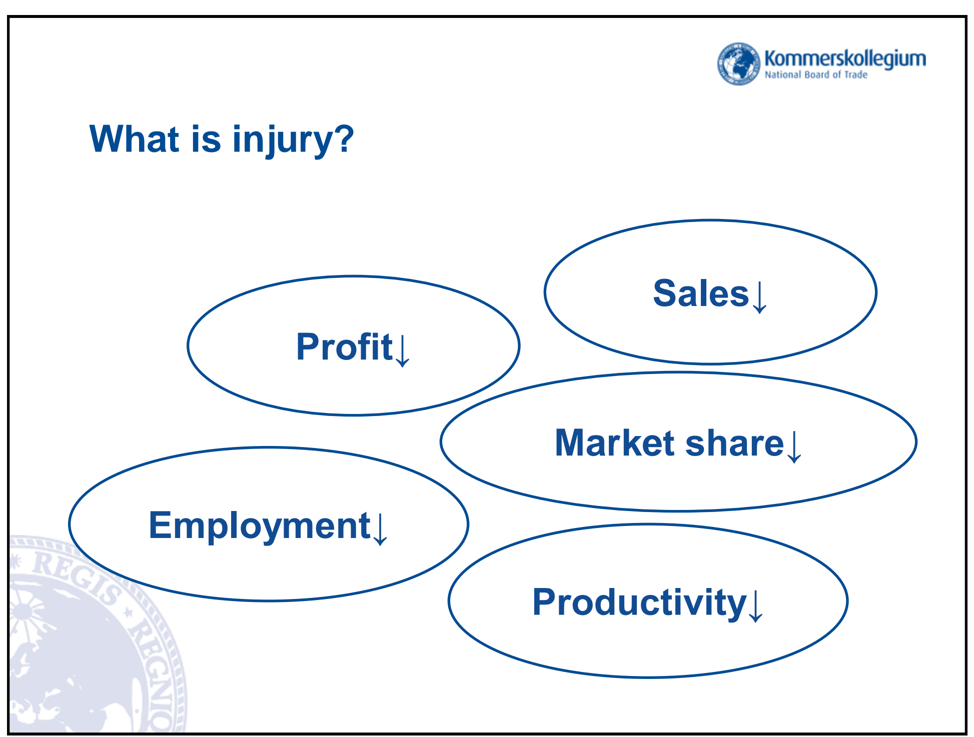
Criteria to impose trade remedies

- **Dumping / Subsidization**
- **Injury**
- **Causal link**
- Public interest test (= WTO+ provision)

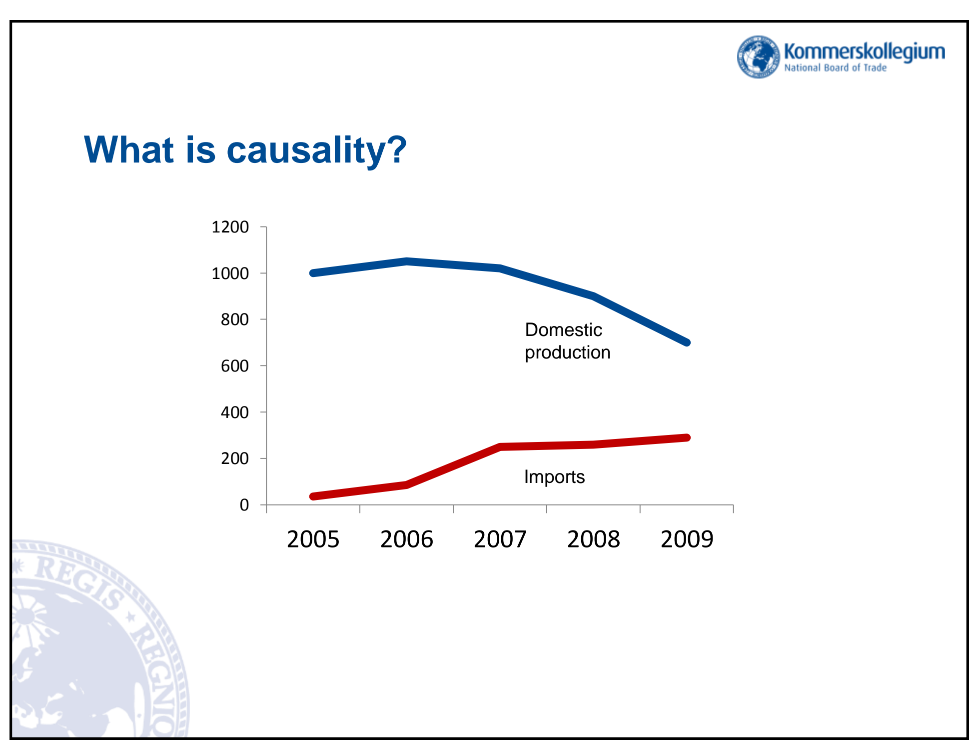
What is dumping?

Exports at a price below the domestic sales price





Kommerskollegium
National Board of Trade
What is injury?
Sales↓
Profit↓
Market share↓
Employment↓
Productivity↓



Kommerskollegium
National Board of Trade
What is causality?
1200
1000
800
600
400
200
0
Domestic production
Imports
2005
2006
2007
2008
2009

Procedural weaknesses in trade remedy investigations (= towards a biased outcome)

- Definition of dumping
- Definition of injury
- Definition of the causal link
- Definition of product
- Definition of industry
- Selection of sample companies (domestic producers, exporters and importers)
- Difficulties for importers, user industry and consumers to be heard
- Non-consideration of global production, supply and value chains
- Problems with transparency and predictability

Procedural weaknesses in trade remedy investigations (towards a biased outcome)

The trade remedy proceedings used by most countries make it fairly easy to impose trade remedies on imports from third countries, **including on renewables**…

Why are anti-dumping measures used?

"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."

EU Trade Commissioner, Karel De Gucht, in a speech ("Anti-dumping cases: State of play and perspectives") to the European Parliament, November 2010.

Why are anti-dumping measures used?

- Anti-dumping measures are legitimized in order to counter **'unfair competition'** and to create a **'level playing field'**
- These concepts are never considered in reality (as they are not mentioned in the WTO's trade remedy agreements)
- In reality, anti-dumping measures are imposed when different markets are priced differently. They are not necessarily associated with sales under the cost of production…

Comparison between anti-dumping rules and competition rules

Market share

Anti-dumping rules: 1% (one country)

Competition rules: 40% (one company)

Level of price undercutting

Anti-dumping rules: < average total cost + ”reasonable profit”

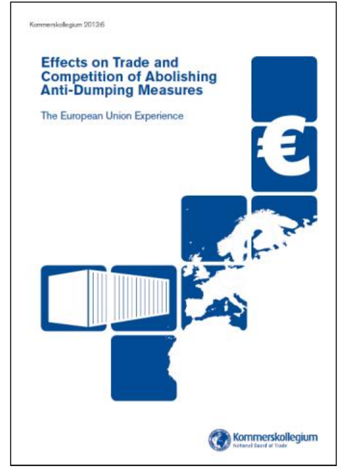
Competition rules: < average variable cost

The importance to align anti-dumping rules with competition rules

In order to limit the use of trade remedies on renewables, anti-dumping rules should be linked to competition rules in order to remedy only truly anti-competitive behaviour

The result: Higher thresholds on dominant position and price undercutting for initiating anti-dumping investigations

Replacing anti-dumping rules with competition rules is not an utopia



Replacing anti-dumping rules with competition rules is not an utopia

Table 1. Regional trade agreements currently in force that have eliminated anti-dumping measures on intra-regional trade

RTA	Type of agreement	Anti-dumping measures prohibited	Anti-subsidy measures prohibited	Safeguard measures prohibited	Competition Chapter	Date the elimination of anti-dumping measures came into force
European Union (EU)	CU	x	x	x	x	01/01/1958
Australia-New Zealand	FTA	x		x	x	01/07/1990
EU-Andorra	CU	x	x	x		01/07/1991
EU-San Marino	CU	x	x	x		01/04/2002
EU-EFTA, European Economic Area (EEA)	FTA	x	x		x	01/01/1994
Canada-Chile	FTA	x			x	05/07/1997
European Free Trade Association (EFTA)	FTA	x	x		x	01/06/2002
EFTA-Singapore	FTA	x			x	01/01/2003
EFTA-Chile	FTA	x	x		x	01/12/2004
China-Hong Kong	FTA	x	x			01/01/2004
China-Macau	FTA	x	x			01/01/2004

Note: Regional trade agreements that have eliminated safeguard measures, but not anti-dumping or anti-subsidy measures are: Australia-Singapore, Canada-Israel, New-Zealand-Singapore and MERCOSUR (Teh *et al.*, 2007). MERCOSUR has the intention to eliminate intra-regional anti-dumping measures once the national competition laws have been harmonised between the member countries (Hoekman 2002).

Source: Based Teh *et al.* (2007), Rey (2012) and data from the National Board of Trade, Sweden

Replacing anti-dumping rules with competition rules is not an utopia

The elimination of anti-dumping measures between the parties is specifically linked to provisions on competition:

- Australia-New Zealand
- EFTA-Chile
- EFTA-Singapore

Replacing anti-dumping rules with competition rules is not an utopia

The elimination of trade remedies among the member states have ”in practice” been replaced by competition rules:

- European Union (EU)
- European Free Trade Area (EFTA)
- European Economic Area (EEA)
- Canada-Chile

Using the EU as an example

The EU is the only 'regional trade agreement' where anti-dumping measures in place were abolished and replaced by competition rules.

At the **EU enlargement in 2004**, 10 Eastern and Central European accession countries were integrated into EU15 and the anti-dumping measures were terminated overnight.

The effect on trade

The abolition of anti-dumping measures within the EU did not cause injury to the EU15's industry in terms of price undercutting and loss of market share.

- The level of *price undercutting decreased* slightly when the measures were abolished.
- The abolition of anti-dumping measures *did not alter the market share* of the majority of products from the accession countries (i.e. an average increase of only 1 percentage point).

The effect on competition

EU competition rules would not be applicable to imports of the products from the accession countries following the abolition of anti-dumping measures.

- 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*.
- The number of companies and countries targeted, in combination with the EU market structure, are *not likely to be associated with price predation*.

In the literature

Different studies (*) estimate that only about 2-11% of all anti-dumping measures might be considered (i.e. predatory dumping) if competition rules were applied.

Using **higher thresholds** in line with competition rules would, accordingly, have an effect on the number of trade remedies on renewables.

(*) Bienen, D. *et al.*, 2013, "Does Antidumping Address 'Unfair' Trade?" and Bourgeois, J. H. J. and P. Messerlin, 1998. "The European Community's Experience"

The environmentally oriented solution

If a generic change in the trade remedy regulations are not viable a 'carve out' for renewables might be an option (i.e. WTO+ provisions):

- Trade remedies on renewables might be **limited in level**
- Trade remedies on renewables might be **limited in time**
- Trade remedies on renewables might be **limited in scope**
- Trade remedies on renewables might be **considered in the 'public interest test'**

A ’public interest test’ on renewables

In the EU, a ’Union interest test’ is made before trade remedies are imposed.

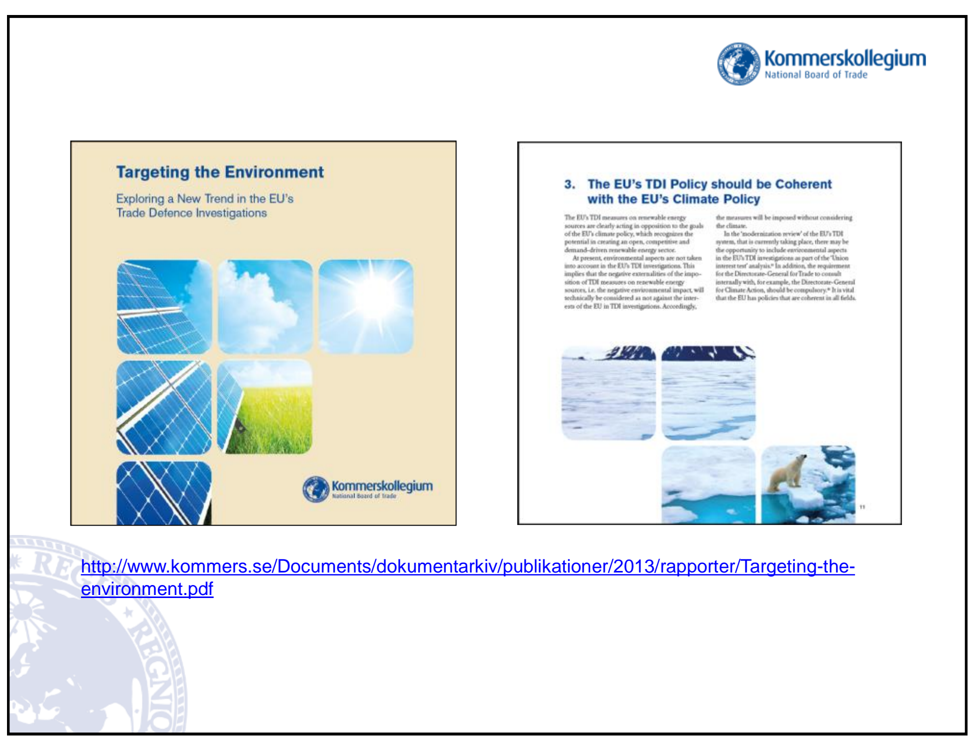
The regulation states that ***”[a] determination as to whether the [Union] interest calls for intervention shall be based on an appreciation of all the various interests taken as a whole”***

The EU’s environmental interests, i.e. effects of trade remedies on the EU’s climate policy, are currently not considered in the ’Union interest test’

The EU’s Climate Policy

“The European Council in 2007 adopted ambitious energy and climate change objectives for 2020 /…/ to increase the share of renewable energy to 20% /…/.”

In 2014, the European Commission proposed “an objective of increasing the share of renewable energy to at least 27% of the EU's energy consumption by 2030.”



It is not impossible…

Proposal on ’policy coherence’ by the European Commission in the Draft ’Modernization’ Guidelines:

”Therefore, the Comission seeks information on the following questions in order to conduct the Union interest analysis: /…/

- ***Is there a direct economic link between the product subject to investigation and other EU policies? Would the imposition or not of measures significantly undermine other established EU policy/policies in a verifiable way?”***

http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_150839.pdf

…but it might involve setbacks…

"A large number of Union producers and associations took issue with §III.8 that suggests to consider the existence of "a direct economic link between the product subject to investigation and other EU policies". Under usual circumstances and current practice the EC assesses AD in connection with tariff related-policies. Providing political consideration to broader policy areas (e.g. foreign policy, labour or environmental standards, energy policy) goes beyond current practice and would be extremely dangerous. As a result, they asked for the deletion of the reference."

http://trade.ec.europa.eu/doclib/docs/2013/december/tradoc_151968.pdf

The importance to consider global value chains in trade remedies

Trade remedies are not appropriate for the global economy of today with global production, supply and value chains as the definition of origin is more complicated

*"[I]t is a fact that a lot of our imports are inputs for manufacturing that takes place here and that a significant share of the value of the finished goods we import has its origin in Europe: we all know the difference between **Made in China** and **Made by China**."*

EU Trade Commissioner, Karel De Gucht, in the speech "A Trade Defence System for Today's Global Economy", May 2012

Difficulties in establishing the origin of solar panels

- In order to impose trade remedies on imports from certain countries, it has to be established that the imports originate from that particular country
- The origin of the solar panels imported from China has been unclear from the start of the EU's trade remedy investigations due to the existence of global value chains.
- *"[T]he complexity of the production and assembly operations /…/ might or might not confer origin" (Commission Regulation No 182/2013)*

Setback for green value chains in the trade remedies on solar panels

- In order to facilitate the imposition of trade remedies on imports of solar panels from China, the EU amended the definition of "origin" for solar panels
- As result, the *origin of the solar cells* (one of three key components in solar panels) will define the origin of solar panels imported from all countries, regardless of the level of value added in the process.
- In addition, the EU decided that the trade remedies would encompass solar panels *consigned from China* – regardless of the origin (i.e. the imposition of trade remedies have extended beyond the use of rules of origin for the first time ever).

WTO on rules of origin

”Members are required to ensure that /.../

- rules of origin are not used as a **trade policy instrument**” /…/
- rules of origin do not themselves **create restrictive, distorting or disruptive effects on international trade**”.

Thank you for your interest!

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