Trade Remedies on Renewables: Intermediate and Long-Term Solutions

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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
What is injury?

- Sales ↓
- Market share ↓
- Profit ↓
- Employment ↓
- Productivity ↓

What is causality?

[Chart showing Domestic production and Imports from 2005 to 2009]

- Domestic production
- Imports
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

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

<table>
<thead>
<tr>
<th>RTA</th>
<th>Type of agreement</th>
<th>Anti-dumping measures prohibited</th>
<th>Anti-subsidy measures prohibited</th>
<th>Safeguard measures prohibited</th>
<th>Competition Chapter</th>
<th>Date the elimination of anti-dumping measures came into force</th>
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</thead>
<tbody>
<tr>
<td>European Union (EU)</td>
<td>CU</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>01/01/1995</td>
</tr>
<tr>
<td>Australia-New Zealand</td>
<td>FTA</td>
<td>x</td>
<td></td>
<td>x</td>
<td></td>
<td>01/02/1990</td>
</tr>
<tr>
<td>EU-Andorra</td>
<td>CU</td>
<td>x</td>
<td></td>
<td>x</td>
<td></td>
<td>01/06/2001</td>
</tr>
<tr>
<td>EU-Canada</td>
<td>CU</td>
<td>x</td>
<td></td>
<td>x</td>
<td></td>
<td>01/06/2001</td>
</tr>
<tr>
<td>EU-EEA, European Economic Area (EEA)</td>
<td>FTA</td>
<td>x</td>
<td></td>
<td>x</td>
<td></td>
<td>01/01/1994</td>
</tr>
<tr>
<td>Canada-Chile</td>
<td>FTA</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td>06/01/1997</td>
</tr>
<tr>
<td>European Free Trade Association (EFTA)</td>
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<td>x</td>
<td></td>
<td></td>
<td></td>
<td>01/06/2003</td>
</tr>
<tr>
<td>EFTA-Singapore</td>
<td>FTA</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td>01/01/2003</td>
</tr>
<tr>
<td>EFTA-Chile</td>
<td>FTA</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td>01/13/2004</td>
</tr>
<tr>
<td>China-Hong Kong</td>
<td>FTA</td>
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<td></td>
<td></td>
<td></td>
<td>01/12/2004</td>
</tr>
<tr>
<td>China-Norway</td>
<td>FTA</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td>01/01/2001</td>
</tr>
</tbody>
</table>

Note: Regional trade agreements that have eliminated safeguard measures, but not anti-dumping or anti-subsidy measures are Australia-Singapore, Canada-United States, New Zealand-Singapore and Mercosur (Tak et al., 2003). Mercosur has the intent to eliminate intra-regional anti-dumping measures since the national competition laws have been harmonized between the member countries (Heukelum, 2002).

Based on Tak et al. (2007), Ray (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.

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?"

…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.”


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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