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REPORT

on the Nineteenth annual report from the Commission to the European Parliament on the Community's anti-dumping and anti-subsidy activities – Overview of the monitoring of third country anti-dumping, anti-subsidy and safeguard cases (2002/2020(INI))

Committee on Industry, External Trade, Research and Energy

Rapporteur: Michel Hansenne

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PROCEDURAL PAGE

At the sitting of 16 January 2002 the President of Parliament announced that the Committee on Industry, External Trade, Research and Energy had been authorised to draw up an own-initiative report, pursuant to Rule 47 of the Rules of Procedure, on the Nineteenth annual report from the Commission to the European Parliament on the Community's anti-dumping and anti-subsidy activities – Overview of the monitoring of third country anti-dumping, anti-subsidy and safeguard cases and the Committee on Development and Cooperation had been asked for its opinion.

The Committee on Industry, External Trade, Research and Energy had appointed Michel Hansenne rapporteur at its meeting of 22 November 2001.

The committee considered the draft report at its meetings of 8 July 2002, 10 July 2002, 11 September 2002 and 1 October 2002.

At the last meeting it adopted the motion for a resolution by 47 votes with 1 abstention.

The following were present for the vote: Carlos Westendorp y Cabeza chairman; Peter Michael Mombaur, Yves Piétrasanta and Jaime Valdivielso de Cuévice chairmen; Michel Hansenne rapporteur; Gordon J. Adam, Konstantinos Alyssandrakis, Sir Robert Atkins, Danielle Auroi, María del Pilar Ayuso González, Luis Berenguer Fuster, Ward Beysen, Felipe Camisón Asensio, Gérard Caudron, Giles Bryan Chichester, Nicholas Clegg, Willy C.E.H. De Clercq, Marie-Hélène Descamp, Harlem Désir, Concepció Ferrer, Francesco Fiori, Christos Folias, Norbert Glante, Roger Helmer, Hans Karlsson, Dimitrios Koulourianos, Peter Liese, Rolf Linkohr, Caroline Lucas, Erika Mann, Marjo Matikainen-Kallström, Eryl Margaret McNally, Elizabeth Montfort, Giuseppe Nisticò, Reino Paasilinna, Paolo Pastorelli, Elly Plooij-van Gorsel, John Purvis, Godelieve Quisthoudt-Rowohl, Bernhard Rapkay, Ilka Schröder, Konrad K. Schwaiger, Esko Olavi Seppänen, Claude Turmes, W.G. van Velzen, Alejo Vidal-Quadras Roca, Myrsini Zorba, and Olga Zrihen Zaari.

The Committee on Development and Cooperation decided on 23 January 2002 not to deliver an opinion.

The report was tabled on 3 October 2002.

MOTION FOR A RESOLUTION

European Parliament resolution on the Nineteenth annual report from the Commission to the European Parliament on the Community's anti-dumping and anti-subsidy activities – Overview of the monitoring of third country anti-dumping, anti-subsidy and safeguard cases (2002/2020(INI))

The European Parliament,

- having regard to the Nineteenth annual report from the Commission to the European Parliament on the Community's anti-dumping and anti-subsidy activities – Overview of the monitoring of third country anti-dumping, anti-subsidy and safeguard cases (COM(2002) 571)¹,
 - having regard to its resolutions of 14 December 1990 on the anti-dumping policy of the European Community² and of 25 October 2001 on openness and democracy in international trade³,
 - having regard to the last GATT round (the Uruguay Round) that led to the creation of the World Trade Organisation (WTO) and to the revision of Articles VI, XVI and XXIII of GATT, concluding a Code on Subsidies and Countervailing Duties while specifying the procedural and material conditions to be fulfilled before protective measures could be adopted,
 - having regard to the EC international obligations arising from two GATT/WTO agreements of 1994 on anti-dumping and on anti-subsidy measures, which led to the revision of EC regulations, namely Regulations Nos 384/96/EC on protection against dumped imports⁴ and 2026/97/EC on protection against subsidised imports⁵, that form the legal basis of anti-dumping and anti-subsidy investigations in and measures by the European Community (EC),
 - having regard to the Declaration of the 4th WTO Ministerial Conference held in Doha, Qatar, which, in paragraph 28, provided for negotiations on the reform of the Agreement on Implementation of Article VI of GATT 1994 by clarifying and improving disciplines under the Agreement,
 - having regard to the recent steel dispute between the EU and the United States of America,
 - having regard to Rule 47 and 163 of its Rules of Procedure ,
 - having regard to the report of the Committee on Industry, External Trade, Research and Energy (A5-0323/2002),
- A. whereas unfair trading practices such as dumping and the granting of subsidies were identified as a threat to open markets as early as 1947, when the first General Agreement

¹ OJ not yet published .

² OJ C 19, 28.1.1991, pp. 633-637.

³ OJ C not yet published

⁴ OJ L 56, 6.3.1996, pp. 1.

⁵ OJ L 288, 21.10.1997, pp. 1.

on Tariffs and Trade (GATT) was signed, and as potentially harmful to a rules-based multilateral system,

- B. whereas the evolving structure of the world economy owing to the forces of globalisation (trade, investment, technology and finance), its players (multinational enterprises and conglomerate corporations) and the increasing number of anti-dumping measures taken by new entrants into the world trading system have created a new situation for the conduct of EU anti-dumping policy,
 - C. whereas, while the principle of anti-dumping measures can be contested from a strictly economic standpoint, it has nonetheless served to enable a whole range of countries to embark upon the process of liberalisation,
 - D. whereas in a rules-based multilateral trade system discipline is an essential element without which the rights and obligations of trading partners and fair trade would be seriously circumvented and protectionism encouraged,
 - E. recognising that a strong increase of the use of trade defence instruments in third countries may have led to the increase in trade disputes, with a negative impact on industries in the EU and the third countries,
 - F. whereas dumping of any kind is an unfair trade practice that may have serious effects on the Community industry and that predatory pricing and strategic pricing are effective but injurious forms of dumping - with the former taking the form of lower export prices than domestic prices in order to undermine positions of competitors in an importing market and the latter occurring when a foreign firm uses its home market cross-subsidising its foreign sales,
 - G. whereas predatory and strategic pricing are made easier by exporters whose activities are not subject to a competition control authority,
 - H. whereas ill-used anti-dumping or safeguard measures or countervailing duties may be highly costly because they could deeply distort competition, allow discriminatory pricing and institutionalise protection while in some instances third countries have practised them contrary to WTO's rules,
 - I. whereas as long as there are no competition rules existing at a multilateral level, covering the entire world trade, anti-dumping will be a necessary mechanism to counter unfair and protective practices, possibly contributing to a freer trade regime,
1. Welcomes the Nineteenth annual report from the Commission on the Community's anti-dumping and anti-subsidy activities, which could act as a forefront of assessing the EU anti-dumping policy in the context of its commitments undertaken at the 4th WTO Ministerial Conference at Doha, the possible revision of the two basic Council regulations on the subject and eventual trade instruments seeking to promote fair trade while consolidating a rules-based multilateral trading system;
 2. Is of the view that the current EC methodology may need adjustments as to:
 - a) shortening the time delay for enforcing provisional measures;

- b) facilitating prompt interim reviews in the event of absorption, circumvention and other blatant inefficiency;
 - c) granting to the European Commission the means commensurate to the needs deriving from (a) and (b),
3. Underlines the importance of present practices of informing the Competition Directorate-General whenever matters of uncompetitive behaviour arise;
 4. Believes that an active anti-dumping policy should not induce expectations leading domestic firms to consider them as a protective measure rather than a temporary instrument seeking to restore fair competition;
 5. Believes that the EC anti-dumping policy should examine the use of possible practices such as:
 - a) simultaneous use of measures such as anti-dumping and quantitative restrictions;
 - b) avoidance of selective export transactions for launching an investigation without recourse to all export practices and transactions;
 6. Favours an EU anti-dumping policy that would entail the following features:
 - i) recognition that anti-dumping measures are temporary protection measures but may be prolonged if material or serious injury is found to be the case under the review procedure;
 - ii) facilitate easy and affordable access for domestic SMEs to complaints procedures and assistance for injury investigations;
 - iii) the *unrelated EC customer* condition should be treated with caution because it may be blurred under the forces of MNCs, which may split its production between several countries and thus technically create unrelated EC customers via affiliated EC companies or via inter-group transfer pricing;
 7. Calls upon the Commission to re-examine the question of transparency concerning all stages in arriving at a decision or review of a measure and, in particular access to information and the right to be heard;
 8. Considers the public interest test necessary for all decisions related to anti-dumping measures and insists on its long-held view that all parties concerned should be heard in the course of investigations and the results considered by the Advisory Committee;
 9. Requests the Commission to clarify if it would be necessary to restructure its current handling of issues related to anti-dumping, anti-subsidy and safeguard cases and redistribute its resource in the light of an anticipated increase of workload related to the review and monitoring of measures due to enlargement;
 10. Encourages the implementation of training programmes for candidate countries dealing with the issue of anti-dumping and anti-subsidy;

Improvements to Article VI of GATT

11. Urges the Commission to submit proposals that would clarify or harmonise the scope of information required, the aim of investigation, the transparency of findings and equal treatment of all stakeholders;
12. Asks the Commission to ensure the necessary follow-up to counteract the increase of anti-dumping and anti-subsidy actions taken against EU industries and to seek, where possible, co-operation at the WTO-level, including the provision of technical assistance to the third countries;
13. Urges the Commission to submit its contribution to the WTO negotiating group on rules while taking account, inter alia, of the following issues:
 - a) the obligation of disclosure and access to non-confidential documents should be improved;
 - b) the mechanisms of discipline should be strengthened, possibly by recourse to a mandatory lesser duty rule and the provisions on circumvention;
 - c) a public interest test would provide a fair base for comparison of interests, material injury (in the case of dumping) and serious injury (in the case of safeguard cases);
 - d) a considerable reduction of costs which firms incur when they wish to co-operate by minimising costs associated with proceedings when they are not properly defined and by avoiding launching investigations where they are initiated without properly substantiated requests;
 - e) standardising information collection and simplifying the three stages procedure (bilateral consultation, Panel Group and the Dispute Settlement Body);
 - f) whether invitations of investigations could be subject to a swift dispute settlement mechanism;
 - g) Recommends that the Commission and the Member States examine the possibility of introducing deadlines into the review clauses in Article 11.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994; this should however take into consideration the need to be flexible in setting these deadlines, since various industries and sectors may need to be treated differently;
 - h) safeguard clauses be added to the agenda while clarification and harmonisation of the safeguard provisions be the object of such negotiation;
 - i) Invites the Commission to apply trade defence instruments under consideration of WTO-rules in such a way that situations do not occur in which EU-industry is put at a competitive disadvantage;
14. Supports the Commission's view that following the mandate given by the Declaration of the 4th Ministerial Conference (para 30.) the understanding of Rules and Procedures governing the settlement of disputes within WTO should be improved on a number of issues, inter alia:
 - a) moving from ad hoc to a fixed but renewable term panellists;

- b) trade compensation be preferred to trade-restricting suspension or other obligations, allowing also for an independent decision by a WTO arbitrator;
 - c) the submission of amicus curiae briefs on specific cases be encouraged provided that they are factual and relevant to the legal issues under consideration and do not lead to delays or to additional cost;
 - d) technical issues such as purpose of consultation intended or not establishing of a panel, making early settlements more attractive, the status of the members of the Appellate Body and the time for the completion of an arbitration on suspension of concessions;
15. Urges Member States to pursue solidarity on trade issues that are better addressed at the EU-level, and not to take unilateral action without prior consultation with their partners, as was evident in the US steel case;
16. Instructs its President to forward this resolution to the Council and Commission.

Explanatory statement

The Nineteenth annual report from the Commission on the Community's anti-dumping and anti-subsidy activities gives the European Parliament an opportunity to express its views on the future of these trade policies, taking into account three factors, namely, the WTO negotiations following the undertakings given at the Fourth Ministerial Conference, the problems of transparency and, lastly, the importance of this instrument in an economy in the throes of globalisation.

At present, there are three criteria that should be met before the European Community can take measures against any instances of dumping or subsidies by a third country:

1. dumping and/or subsidies *take place* beyond doubt;
2. dumping and/or subsidies cause or threaten to cause *injury*;
3. It is in the *interests of the EU* to take action against the dumped and/or subsidised imports.

1. The WTO agenda

The European Commission is expected to submit proposals and thus to conform to the WTO Declaration Rules, para 28, and aiming 'at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 ... , while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives, and taking into account the needs of developing and least-developed participants'. A new Group on Rules, to be chaired by the New Zealand Ambassador to the WTO, has been created. The deadline for the conclusion of the negotiations is 1 January 2005.

The EP has already suggested improvements to the Dispute Settlement Understanding in its resolution of 25 October 2001¹. The present report concentrates specifically on the European Union's anti-dumping policy, with a view also to the WTO negotiations.

2. Transparency

The basic Regulations are detailed in specifying the procedural rules. They concern complaints from Community industry, the questionnaires prepared by the Commission and sent to producers of the exporting countries, the hearing if requested, the investigations and possible imposition of provisional measures. All these stages are accomplished by the Commission, and its findings are made available in a provisional working document, and after further consultation with representatives of Member States a second, definitive, working document will be drafted by the Commission.

However, it is the Council which decides on the imposition of definitive duties. The European Parliament plays no role.

The question of transparency, which both sides in a dispute are entitled to demand has prompted a number of concerns as regards access to information and the right to be heard.

3. The relevance of anti-dumping and anti-subsidies legislation

¹ See A5-0331/2001

Many analysts have certain reservations regarding the usefulness of an anti-dumping policy, or at least the way in which it is implemented. There are those who maintain that the anti-dumping procedure benefits producers' interests in a given sector, without taking sufficient account of the benefits which might accrue to other sectors and, ultimately, consumers, if cheaper imported products were available.

Furthermore, the forces of globalisation may prompt a re-think of the way normal value is calculated (a) and the conditions for lodging complaints (b).

- (a) In fact, in calculating the normal value, that is the price charged by the exporting country in its own market in the course of ordinary trade, the price charged should in no way be affected by special relations between the parties concerned. This unrelated EC customer condition may be side-stepped by the forces of globalisation because a multinational company may split its production between several countries and thus technically create unrelated EC customers via an affiliated company in the EC.
- (b) For an anti-dumping complaint to be admissible it must be made by or on behalf of a national production sector and must be supported by national producers whose combined output represents 50% of total production of the like product. Under no circumstances can it be admissible if these producers represent less than 25% of total output. As economic globalisation proceeds, it may be that a great many of these national producers refuse to support the complaint because they are benefiting from the system.

Nevertheless, anti-dumping and anti-subsidy law remains an essential tool at the current stage in trade liberalisation.