EU Trade Defense Instruments Modernisation

1. Why is it so important to have Trade Defense Instruments (TDI) even at a time of trade liberalization?
2. Which are the EU TDI?
3. How can the businesses make use of them?
4. The new anti-dumping regulation

Why is it so important to have Trade Defense Instruments?

Import duties are losing their importance. **60% of EU imports of non-agricultural products are duty-free.** Weighted average tariff for non-ag. products imported in the EU is only **2.3%**

Part A1 — **Tariffs and imports: Summary and duty ranges**

Summary		Total	Ag	Non-Ag	WTO member since		1995
Simple average final bound		5,0	12,5	3,9	Binding coverage:	Total	100
Simple average MFN applied	2014	5,3	12,2	4,2		Non-Ag	100
Trade weighted average	2013	3,6	22,3	2,3	Ag: Tariff quotas (in %)		11.3
Imports in billion US$	2013	1 996,5	128,7	1 867,8	Ag: Special safeguards (in %)		23.9

Frequency distribution		Duty-free	0 <= 5	5 <= 10	10 <= 15	15 <= 25	25 <= 50	50 <= 100	> 100	NAV
		Tariff lines and import values (in %)								in %
Agricultural products										
Final bound		32.3	10.2	16.3	12.7	11.7	9.7	3.7	0.6	32.0
MFN applied	2014	31.7	10.1	17.5	13.5	11.4	8.7	3.4	0.8	31.2
Imports	2013	46.1	11.9	13.3	7.3	7.3	3.1	4.9	6.0	24.6
Non-agricultural products										
Final bound		28.4	37.1	26.6	6.9	0.9	0.0	0	0	0.6
MFN applied	2014	26.5	37.5	27.1	7.3	1.5	0.1	0	0	0.6
Imports	2013	60.7	22.1	10.6	5.5	1.0	0.0	0	0	0.5

http://stat.wto.org/TariffProfile/WSDBtariffPFExport.aspx?Language=E&Country=E28

But there are a number of possible dangers due to unfair international competition:

❖ International Dumping

Brussels, 12 February 2016, The EU now has 37 trade defense measures in place on imports of steel products, while nine investigations are still ongoing.

❖ Export Subsidies

The European Union imposed anti-subsidy measures on imports of solar cells and solar panels from China on 5 December 2013, for a period of two years.

❖ Non-Tariff Barriers to Trade

WT/DS114 case - Patent protection of pharmaceutical products. Complaint by the EU, against Canada.

Canada allows for start of commercial manufacture of patented medicines 6 months before the expiry of the patent and the manufacturing of the product for the purpose of securing the approval of generic medicines ("regulatory exception"). This violates the interests of European pharmaceutical companies, exporting drugs to Canada.

❖ International Cartels (for example OPEC), etc.

Therefore EU companies need to be defended !

2. Which are the EU TDI?

A. GATT Safeguard measure

Article XIX of the General Agreement on Tariffs and Trade (**GATT 1994) allows GATT members to take a "safeguard" action to protect a specific domestic industry** from an **unforeseen increase of imports** of any product which is **causing, or which is likely to cause, serious injury to the local industry.**

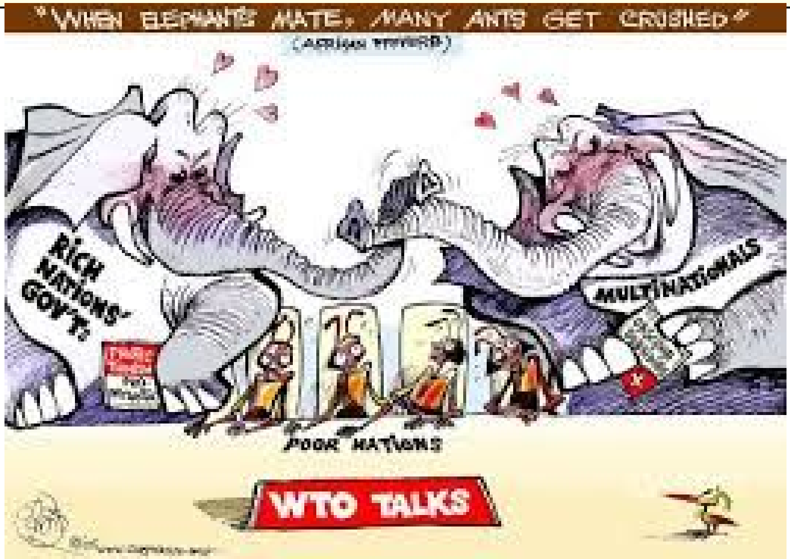
COUNCIL REGULATION (EC) No 260/2009

of 26 February 2009

on the common rules for imports

✓**Safeguard measures under GATT have to follow certain rules:**

- **Before introducing any restriction an investigation should be carried out.**
- **The restriction should be applied irrespective of source of imports (supplying country).**
- **Generally, the duration of a measure should not exceed four years .**
- **Where quantitative restrictions are imposed (quotas), they should not reduce the quantities of imports below the annual average for the last three representative years.**
- **Safeguard measures would not be applicable to a product from a developing country, if the share of the developing country in the imports of the product concerned does not exceed 3 per cent.**



The EU does not use the GATT safeguard measure because:

- **Initiation of investigation and implementation of sanctions are too slow.**
- **The procedure is not selective in nature and affects too many countries.**
- **In many cases it is necessary to give some compensations to the affected countries.**
- **There are often disputes about the meaning of the definition "serious injury to the local industry".**
- **It is not appropriate for a developed economy as the EU to apply a measure designed primarily for emerging economies.**

B. Special measure on imports from some non-GATT countries

COUNCIL REGULATION (EC) No 625/2009

of 7 July 2009

on common rules for imports from certain third countries

Armenia
Azerbaijan
Belarus
Kazakhstan
North Korea
Russia
Tajikistan
Turkmenistan
Uzbekistan
Vietnam

(China)

In the Cold War years these countries were called "State-trading countries”. EEC has introduced quantitative restrictions (quotas) on the imports of various goods from these countries, in particular on the imports of textiles, clothing, steel products, fertilizers, etc.

At that time the list included all member countries of CMEA and China. An exception was Cuba.

Today this special arrangement is explained by the increased risk of dumping of imports from those countries. Therefore the main EU defense instrument is the enhanced **surveillance** of the imports.

Procedure to initiate surveillance is, however, too complex

- **The Commission shall be informed by the Member States if trends in imports appear to call for surveillance.**
- **Consultations may be held either at the request of a Member State or on the initiative of the Commission. Consultations shall take place within an advisory committee, made up of representatives of each Member State with a representative of the Commission as chairman.**
- **Where it is apparent to the Commission that there is sufficient evidence to justify an investigation, the Commission shall initiate an investigation.**
- **At the end of the investigation, the Commission shall submit a report on the results to the advisory committee.**
- **If the Commission considers that Community surveillance measure is necessary, it shall take the necessary decision.**
- **Products under prior Community surveillance may be put into free circulation only with a surveillance document.**

C. Anti-dumping Measure

COUNCIL REGULATION (EC) No 1225/2009

of 30 November 2009

on protection against dumped imports from countries not members of the European Community

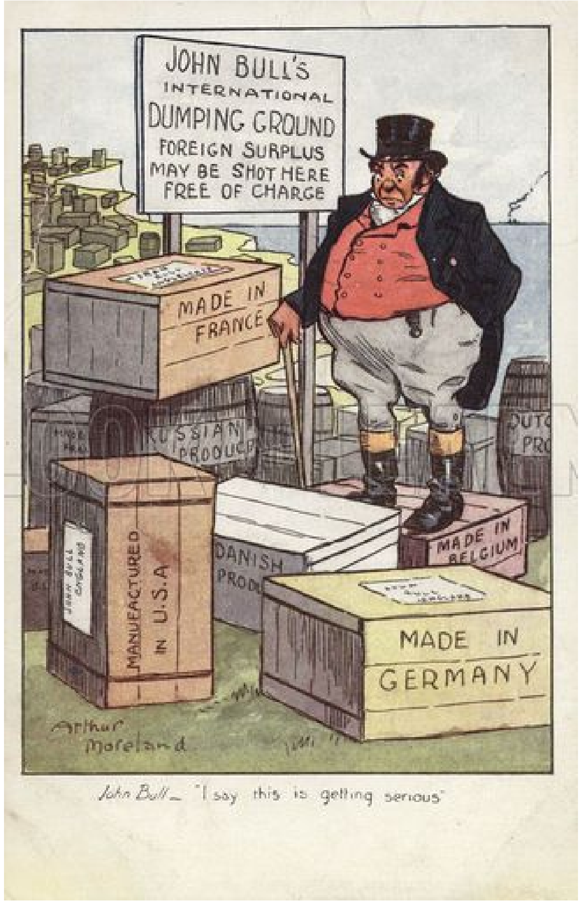
Definition of "International Dumping"

There is international dumping if the export price of some goods (P_x) is below its normal value (V_n).

But how is the normal value to be estimated?
Usually this is the domestic price (without taxes) paid for the goods by independent buyers.

But what would happen if the exporting country is to small, or the exported goods are not traded on the domestic market, or the exporting country is a non-market economy country, like China?

In this case the European Commission has to estimate the normal value itself!



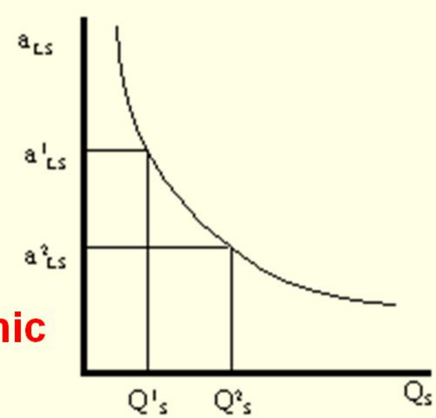
Link between international dumping and economy of scale

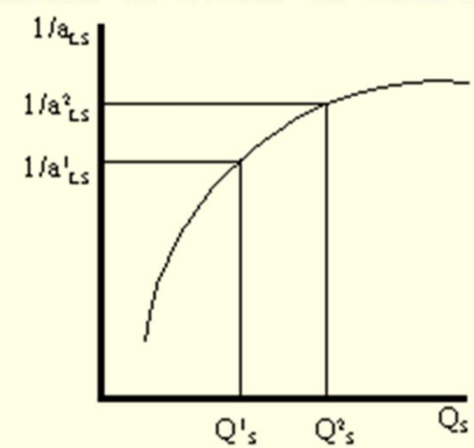
	Turnover			Variable costs			Fixed costs		Total costs per unit	Profit
	Units	Price per unit	Total sum	Units	per unit	Total sum	Total sum	per unit		
Only domestic sales	1000	400	400000	1000	200	200000	200000	200	400	0
Only exports	2000	300	600000	2000	200	400000	200000	100	300	0
Domestic sales and exports	3000	333	1000000	3000	200	600000	200000	67	267	198 000 = 3000 x (333-267)

Export price may fall below the domestic price in order to achieve additional economy of scale. Is this also unfair competition? There is no easy answer to this question.

China, India, Indonesia and other developing countries insist that selling internationally goods under their domestic price should not be considered always as dumping. These developing countries have a limited domestic market for some expensive products and have to export a large part of them in order to achieve economy of scale.

As quantity of production increases the average cost of each unit decreases. Accordingly increases economic efficiency.





D. Anti-subsidy measure

COUNCIL REGULATION (EC) No 597/2009

of 11 June 2009

on protection against subsidised imports from countries not members of the European Community

A subsidy may take different forms:

- a direct or potential transfer of funds (grants, equity injections, guarantees);
- government revenues (which are otherwise due) foregone or not collected (e.g. tax credits);
- government provision of goods and services (other than general infrastructure);
- government purchase of goods without tender, etc.

PROHIBITED SUBSIDIES (WTO "Red basket")

- Any subsidy aimed at increasing exports by reducing costs and increasing competitiveness of exports (so-called Export subsidies)
- Any specific subsidy which is limited to certain enterprise or enterprises of an industry.

AUTHORIZED SUBSIDIES (WTO "Green basket")

- **Assistance for research activities.** Allowed is to subsidize up to 75% in science and 50% in Development, not allowed is to subsidize marketing and compensation of employees.

AUTHORIZED SUBSIDIES (WTO "Green basket")

- **Assistance to disadvantaged regions.** GDP per capita in these regions must not be above 85 per cent of the average or unemployment rate must be at least 110 per cent of the average.
- **Assistance for SMEs** but limited to some amount, indicated in the national legislation.
- **Assistance for environmental protection.** Allowed are only lump-sum grants to partially cover specific new regulations.
- **Agricultural subsidies** are beyond the effects of the WTO Agreement on Subsidies and Countervailing Measures.

WTO "Yellow basket"

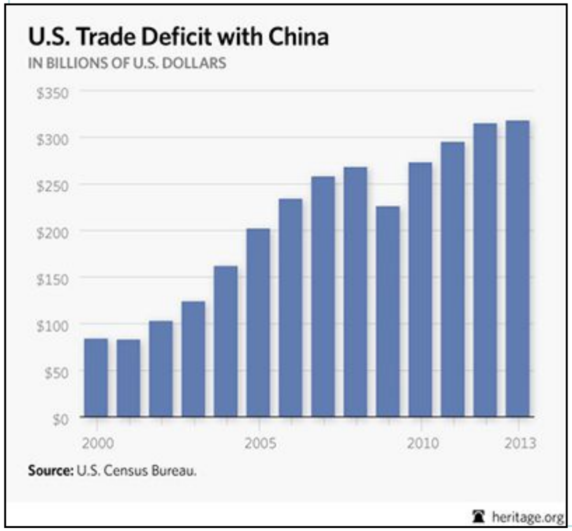
Neither explicitly prohibited nor explicitly authorized. For example state aid for shipbuilding industry or for the car industry.

These are non-specific subsidies to support sectors in transition or in crisis.

Large-scale subsidization of exports is done mostly from large emerging countries (China, India, Brazil, South Africa, etc.). These are also the countries with large state participation. Therefore the main EU trade defense efforts are currently focused mainly on these "global intruders."

China's Currency Manipulation

Central bank intervention in foreign exchange markets may, under some conditions, stimulate exports and retard imports. China has for example regularly intervened to prevent the local currency from appreciating relative to other currencies (undervaluation), and over the same period has developed large global and bilateral trade surpluses.



Numerous public officials and commentators argue that China has engaged in impermissible "currency manipulation," and various proposals for stiff action against China have been advanced.

Country	ADM	ASM	Voluntary commitments
Argentina	1		
Armenia	1		
Belarus	1		
Bosnia and Herzegovina	1		1
Brasilia	1		1
Canada	1	1	
China	57	2	3
India		5	2
Indonesia	8		
Iran	1		
Laos	1		
Malaysia	6		
Moldova	1		
Morocco	1		
UAE		1	
Pakistan		1	
Philippine	2		
Russia	5		5
South Africa	1		
Shri Lanka	2		
Taiwan	4		
Thailand	6		
Turkey	1		
Ukraine	3		
USA	2	1	
Vietnam	1		

The table shows the EU definitive ADM and ASM in force and the Voluntary commitments in force on the 1.1.2015

ADM – Anti-dumping measures

ASM – Anti-subsidy measures

Voluntary commitment – obligation to keep a minimum export price, which is not less than the normal value.

http://trade.ec.europa.eu/doclib/docs/2014/december/tradoc_152994.pdf

3. How can the business make use of the TDI?

Requirements to start proceedings:

- Written complaint, representing at least 25% of EU industry

- Establishing a link between the dumped imports and EU industry injury

- Estimated dumping margin (M) greater than 2%

$$\mathbf{M} = \frac{\mathbf{V_n} - \mathbf{P_x}}{\mathbf{P_x}}$$

V_n = Normal value **P_x = Export price**

- Dumped imports not less than 3% of the total EU imports of the same goods

- Dumped imports not less than 1% of domestic consumption of the same goods

Stages in the EU anti-dumping proceeding

Simultaneously with the beginning of the procedure a preliminary duty is imposed, which is equal to expected dumping margin.

Preliminary antidumping duties are imposed by the Commission. Their effect is up to 15 months.
Definitive antidumping duties are imposed by the Council of the EU. Their effect is up to 5 years.

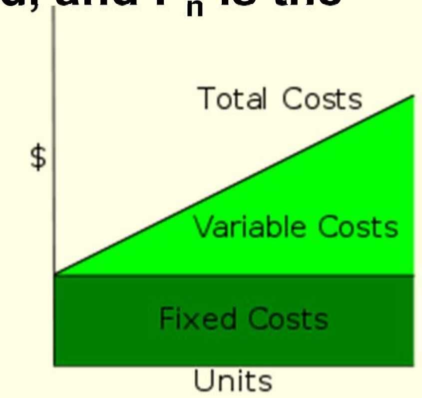
- **Investigation**

- **The investigation takes from 6 to 15 months.**
- **Most important is determination of the normal value. Investigated companies cooperate and complete a special questionnaire. If not, then the Commission determines the normal value by analogy. Usually this is not good for the investigated company.**

If the domestic price cannot be used as a normal value, the normal value should be estimated by the staff of the European Commission using statistical data collected from similar enterprises. The formula is as follows:

$$V_n = C_v + \frac{C_f}{n} + P_n$$

where C_v are the variable costs per unit of output, C_f are the fixed costs for all units produced, n is the number of units produced, and P_n is the average profit per unit (normal profit).



Important: Most important fixed costs are:

Fixed costs often include costs for rent, buildings, machinery, but also R&D, advertisement, distribution channels, etc.