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**ANTI-DUMPING AND COUNTERVAILING PROCEDURES –
USE OR ABUSE?
IMPLICATIONS FOR DEVELOPING COUNTRIES**

by

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ABSTRACT

Antidumping (AD) and countervailing (CV) measures have become popular substitutes for traditional trade barriers, which are gradually being reduced in the course of regional and multilateral trade liberalization. As WTO legal, judicial instrument for private parties looking for government-enforced restrictions on competition, resort to AD and CV actions became a frequent tool to tackle problems arising in the context of free trade. Designed as a corrective mechanism, particularly antidumping has been hijacked for protectionist purposes. Gradually replacing conventional tariff-based trade barriers, the advancement of these practices jeopardizes the benefits of tariff reduction and growing economic integration.

This paper analyses distribution, duration and final outcomes of AD and CV investigations. It concludes that anti-dumping and countervailing actions have resulted in significant reductions in trade volumes and market shares. Developing countries establish their position as new players on the AD and CV field, but also continue to be a main target of those practices.

The paper also analyses the WTO Agreements themselves and finds that many of the negative effects of AD and CV measures are not adequately addressed. Loopholes and ambiguities in their provisions open doors for practices constituting abuse rather than use of those instruments. Reforms of the Agreements are urgently required. They should focus on clarifying certain provisions and on the introduction of effective substantial and differential treatment for developing countries.

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I. INTRODUCTION

In the course of the gradual dismantling of tariffs and increased economic integration, non-tariff barriers to trade and competition have become relatively more important. Antidumping and countervailing duty actions turned into a preferred¹ means to impose restrictions on international trade, replacing existing limitations and/or creating additional obstacles. Contrary to their design as temporary means to offset unfair competition, these trade defence measures are in practice used as a long-term remedy for various economic difficulties. (Ab)used as a substitute for positive adjustment measures, AD and CV actions are also utilized to deal with structural problems.

Applied as an instrument for tackling the negative consequences of trade liberalization, anti-dumping and countervailing duty actions became a common tool to protect domestic producers from foreign competition. Faced with the need to protect sensitive domestic industries from increased imports or price slumps, countries often decide to use AD/CV duties instead of (the more “costly”²) safeguard measures provided for in the GATT 94.

Antidumping is, in practice, frequently utilized as a safeguard mechanism, which blurs the conceptual differences between these two instruments. The importance of this development has been demonstrated by the fact that 95 per cent of all antidumping cases are related to safeguard aspects with only 5 per cent being linked with anti-competitive practices.³

The economic rationale behind AD/CV action has been heavily disputed. Many economists consider the economic basis for these measures to be rather thin, stressing the fact that focusing on injury for certain sectors of the domestic industry, would neglect positive

effects on national and consumer welfare.⁴ In ignoring consumer benefits resulting from lower prices and the creation of more competitive market conditions, antidumping laws would protect competitors rather than competition. In fact, AD/CV legislation often reflects political rather than economic considerations. Arguments of *fair competition* are used by domestic industries to campaign against low-price imports. Antidumping action also ignores the fact that dumping might sometimes constitute a legitimate market strategy and may be necessary to meet (rather than hinder) competition.⁵

In discussing the justification of those measures, one has to keep in mind however, that the actual (ab)use of AD and CV provisions is sometimes not in tune with their genuine economic rationale. Antidumping actions are intended to (temporarily) counter unfair competition⁶ arising from price discrimination between different geographical markets. They aim to remedy injury by foreign competitors to an importing country's industry from international price discrimination. Similarly, countervailing duties intend to offset unfair competition by subsidized (and therefore artificially low) export prices. Negative effects of antidumping and countervailing measures will therefore partly have to be attributed to deficiencies of the current legislation rather than the underlying concepts of the antidumping/countervailing regimes themselves. It also has to be noticed that by serving as an “escape valve” for trade protection⁷, the AD and CV regime helped international trade agreements attain a degree of acceptance they otherwise might not have enjoyed.

It should also be noted that the complete dismantling of the antidumping system might result in negative economic conse-

quences. Unrestricted price-undercutting risks driving enterprises out of their domestic market, even if they are not inefficient producers. If market segregation or product differentiation allows an exporting company to cover its fixed costs fully on the domestic market, it can export at marginal (variable) costs abroad and still improve profitability. Such competition may seriously jeopardize domestic companies in the importing country, even if they produce efficiently, as they have to recover their full costs and profit margins on their domestic market (and not just the variable costs plus any margin as the third country exporters). Similarly, marginal pricing may also prejudice competing third country exporters, which depend more heavily on the same import market. In such a case, efficiency is not enhanced: this kind of price competition does not lead to the elimination of inefficient enterprises, but simply favours companies, which pursue those types of pricing policies (and are able to do so in terms of economic conditions).⁸ By preserving the ability of domestic producers to stay in business and offer domestic consumers steady sources for supply, antidumping action can in such cases ensure beneficial competition.⁹

The complete dismantling of the antidumping and countervailing systems is not necessarily in the public's interest. Therefore, reforms proposed in this paper do not campaign for the complete dismantling of the antidumping and countervailing systems but focus on their improvement and reform.

Section II of this paper will look at the use of AD and CV measures in the WTO era (which is post 1 January 1995). Distribution and duration of investigations, their final outcome, petitioners and targeted sectors will be scrutinized with a special focus on the situation of developing countries. Their particular vulnerability and the severe impact of AD and CV measures on their economies will be the subject of section III. Section IV focuses on deficiencies of the respective WTO Agreements as one of the sources of the existing problems. Proposals on how to overcome some of those shortcomings will be presented in section V.

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