

The Antidumping Policy of the European Union in 2002

An overview of 2002

Like an unwelcome constant, the trend toward intensive use of protective Antidumping measures in the European Union was confirmed in 2002.

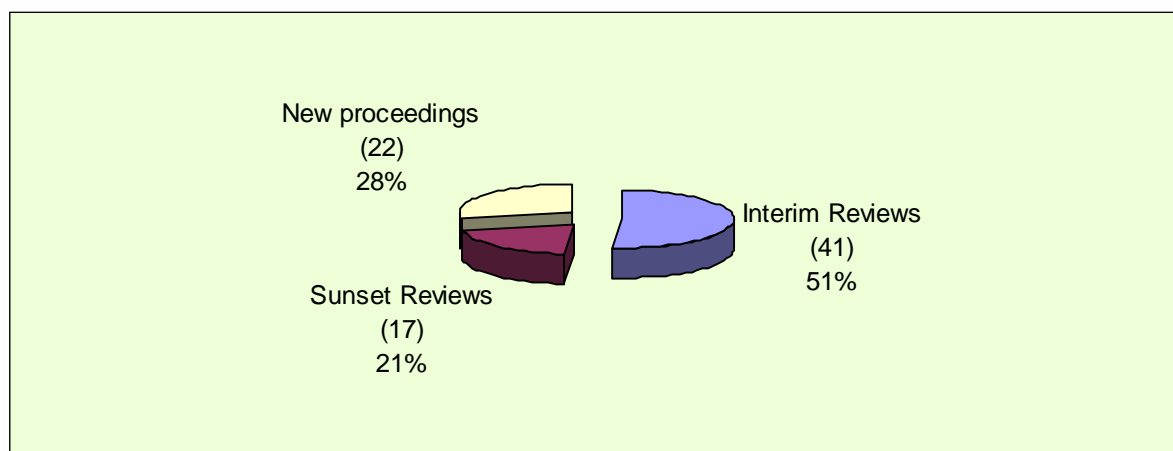
As already underlined in our previous reports, the European Commission has not ceased to bring into play Antidumping proceedings against imports of consumer products; on the contrary, 2002 was characterized by several new proceedings against finished goods, such as CDs or lighters, not to say about the never-ending story concerning imports of bedlinen.

All these activities have seriously disturbed trade, harming the natural competitive advantages held by the exporting developing countries, and, as a logical consequence, contributed to augment EU consumer prices.

2002 was the year of the opening of the WTO negotiations in Doha. International business representatives were consequently expecting a solemn engagement by Member State Governments to fight against any abuse of the antidumping instrument and to promote a more free-trade oriented interpretation. Reality shows that these opportunities were not taken.

The general trends

In 2002, the Commission initiated 80 antidumping investigations, split up as:



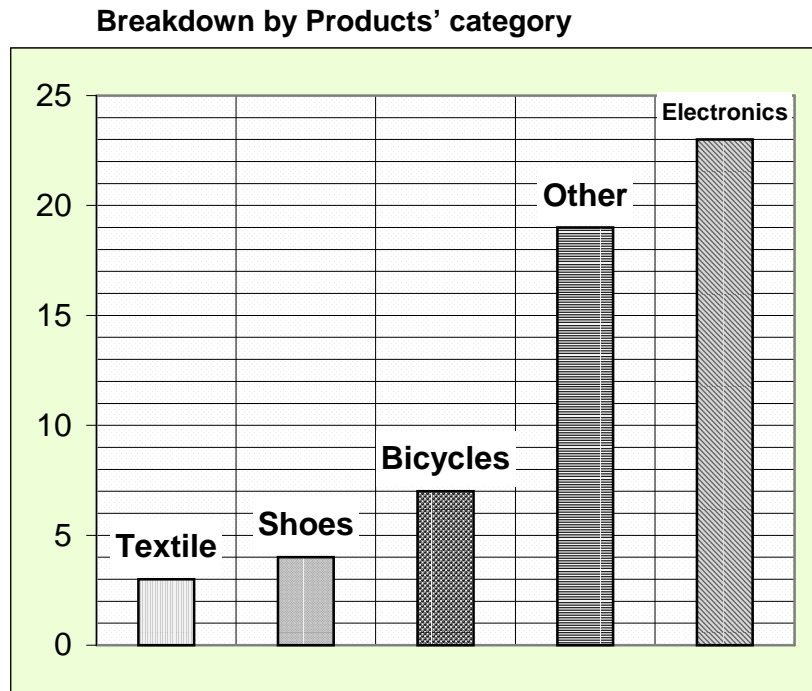
- 33 definitive (and 16 provisional) measures were imposed;
- 7 investigations were terminated.

The impact on FTA Members

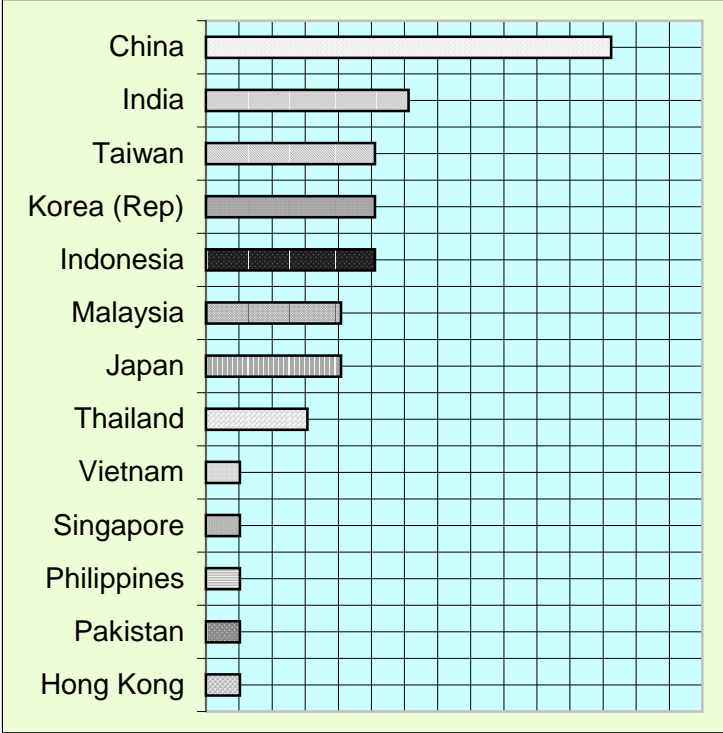
During 2002, 24 different products (imported from 20 nations), which are relevant for FTA members, were affected by Antidumping duties.

56 definitive duties were imposed on goods which are FTA-relevant.

The majority of Antidumping regulations affected electronics (more than 20 cases).



Breakdown by exporting Country



The totality of the proceedings concerned goods imported from Asian countries (100%), with China leading the list, followed by India; Taiwan, Korea and Indonesia sharing the third place.

The Bedlinen case: a never-ending story.

In November 1997 the EC Council imposed definitive duties on imports of bedlinen from India, Pakistan and Egypt.

India believed that the definitive duties were inconsistent with some provisions of the Antidumping Agreement and decided to challenge the Regulation before the WTO. In March 2001, also further to the efforts of FTA and its members, the WTO ruled against the EU, deciding that the 1997 measures were partially incompatible with the WTO’s Antidumping agreement.

On the basis of the above-mentioned rule, the Council decided, in August 2001, to suspend the duties on goods imported from India. Some months later, in January 2002, the Council terminated the case against Pakistan and suspended the duties against Egypt, which expired later that year.

Unfortunately, the Commission considered that the recommendations of the DSB only had prospective effect, and, therefore, did not provide the basis for the reimbursement of the duties collected prior to that date. The FTA thus decided to coordinate a European campaign to officially ask for the reimbursement of the duties paid from 1997 to 2001. This issue will be examined in detail herebelow.

Less than 9 months went by, and Eurocoton filed a new complaint against Pakistan and India. The outcomes of these complaints were a brand new case (the third in a row) against Pakistan and the opening of an Expiry review (while an interim review was still pending) against India.

The Bedlinen case: the action for reimbursement.

As mentioned above, the EU Regulations, which are said to implement the WTO findings, did not provide for the reimbursement of antidumping duties levied since 1997.

The FTA found the position of the European Institutions unacceptable. We believe that as the duties on bedlinen have been imposed on a basis that has been found by the WTO to be incorrect, the amounts paid shall be refunded.

A repayment of duties means the reimbursement of the difference between the duties actually paid on the basis of the original Regulation of 1997 and the duties as recalculated in the new Regulations.

Thus, while as far as India is concerned the differences vary on a company-by-company basis, the amount of duties paid on imports of bedlinen from Pakistan is, on the contrary, quite important and easily determinable. Following a rough estimation based on an average duty of 6.5%, the magnitude of the duties paid on imports of bedlinen from Pakistan from 1997 to 2001 amounts to +/- 58.000.000 Euros. As mentioned above, due to the specific characteristics of the duties imposed on imports from India, it is impossible to imagine even a rough estimation of the figures involved.

The FTA, therefore, considered of utmost importance to proceed with an action for reimbursement, whose purpose is twofold:

1. On the one hand, the companies, which have actually paid antidumping duties, shall be entitled to obtain their money back;
2. On the other hand, a clear signal had to be conveyed to the European Institutions: *traders are not ready to accept the market to be affected by illegal duties, without any kind of compensation.*

On this basis, the FTA started to coordinate an action that involves companies established in several Member States. These companies have asked the local customs authorities, pursuant to a principle contained in the EC Customs Code, the repayment of the antidumping duties paid, without any legal basis, in the framework of the bedlinen proceedings.

The companies argued that the duties imposed under Regulation 2398/97 were unlawfully calculated (e.g. through the use of “zeroing”) and therefore were not legally due. Moreover, it is a fundamental principle of Community law that amounts unlawfully levied by the authorities must be refunded.

In view of the legal impossibility to directly challenge this issue before the European Courts (according to the constant jurisprudence of the European Court of First Instance the so-called unrelated importers have no standing), an appeal before a national court, against the expected negative decisions of the local Customs

Authorities, was the sole legal option available to importers. To avoid a delay in the process, a “test country”, where the appeal has been filed, has been chosen.

Since the case is the very first proceeding of this kind ever filed in the history of antidumping, the national court is expected to refer the case to the European Court of Justice (ECJ) pursuant to Art. 234 of the EC-Treaty (preliminary ruling).

The final decision will thus be taken by the European Judges. The European Importers are confident that the positive outcomes of the case will not only become a milestone in the development of a correct approach to the use of the antidumping instrument, but also that this example of choral participation of companies established in various Member States will remain an historic step in the route towards a real European Single Market.

The Follow-up of the WTO Round in Doha

2002 was also the year of the follow-up to the Fourth WTO Ministerial Conference, hosted in Doha, Qatar, from 9 to 13 November 2001.

The FTA longstanding experience in this field played an important role, which was performed in multiple ways:

1. Suggesting the European Commission to be prepared to discuss antidumping issues in Doha, with the aim of better and further liberalize international trade and with a special regard to a procedural simplification and a wider attention to the needs of trade;
2. Issuing a position paper on the matter, and taking every occasion to discuss its points of view with the relevant institutions.

In its Position paper on the Priorities for the “After – Doha” Agenda, issued in April 2002, the FTA underlined how the success of the new Round will be determined by the positive attitude of all participants and by their readiness to take into account all voices. In this context, the FTA values the major role that the EU must play.

While forced to draw the public attention to the undeniable fact that, in the last years, the number of antidumping cases has risen sharply, the FTA also rebutted strongly the acceptability of antidumping as a tool “for all seasons”.

In the Paper it was additionally highlighted how the new Round had to be seen as the suitable moment to finally stop the protectionist use of antidumping legislation within the WTO members. In the path of all previous papers on this subject, the FTA called for a reform of the Antidumping Agreement, which should result in a restriction of the use of antidumping measures.