

EU and WTO Protection of Trade

In accordance with WTO regulations, the EU has three protective instruments at its disposal for trade policy, namely anti-dumping (AD), anti-subsidy (AS) and investigations for protective measures (SM), with which it can proceed against abruptly swelling floods of non-EU imports that are unfair or caused by unfair trade practices. The protective instruments for trade policy should protect European companies against impediments to trade. All WTO members have the right to initiate investigations and to take measures according to established criteria.

If, for example, a branch of EU industry reaches the conclusion that the import of goods from a non-EU country is being subsidised, or prices are being demanded that lie below market value, and that that branch of EU industry which manufactures the same good is thereby harmed, then it can request that the EU Commission apply protective measures, whereby the branch of EU industry, however, must present evidence of the unfair practices and the economic difficulties caused by them.

Dumping is to be distinguished from simple underselling, which is facilitated by lower costs or higher productivity. What is decisive is not the relationship between the export price of the goods and their market price in the importing country, but rather the relation between the export price of the goods and their normal value. Thus, goods are deemed to have been dumped when their price upon export into the EU is lower than the comparable price of similar types of goods upon sale in the normal course of commerce in the exporting country.

In anti-subsidy proceedings, offset duties can be levied in order to compensate for a subsidy granted indirectly or directly for the manufacture, production, export or transport of a good originating in a country not belonging to the EU, the conveyance of which into the customs-free EU stream of commerce causes harm. The WTO Convention on Subsidies and Countervailing Measures (SCM) prohibits certain categories of subsidies (export and import subsidies) and defines the rest as contestable, if they have negative effects on the interest of a WTO member and are specific, in that they target certain companies or sectors.

That means:

- The EU can lodge a complaint with the WTO against a foreign subsidy. If the complaint is successful, the contested subsidy will be abolished within the context of proceedings to settle the dispute, or its disadvantageous effects will be removed.
- On the basis of trade barrier regulation, a harmful subsidy can be brought to the **notice of the EU Commission. The term "trade barriers" designates all trade prac-**

tices, imported from a third country, which are forbidden by international trade regulations.

- Countervailing charges of subsidised imports into the EU can be imposed.

The SCM Agreement, however, does not cover state aid for services.

SM proceedings concern all trade restrictions which could negatively affect the Community's exports to the markets of third countries; this applies not only for goods, but also for certain services, especially for those transcending national boundaries.

We advise you concerning

- anti-dumping measures, anti-subsidy measures, and protection proceedings against trade restrictions,
- protection proceedings against harmful subsidies and unfair pricing in the air traffic sector,
- the exercising of rights based on multilateral trade agreements,
 - the General Agreement on Tariffs and Trade (GATT 1994)
 - the Agreement on Agriculture
 - the Agreement on the Application of Sanitary and Phytosanitary Measures
 - the Agreement on Textiles and Clothing
 - the Agreement on Technical Barriers to Trade
 - the Agreement on Trade-Related Investment Measures
 - the Agreement on Anti-Dumping Measures
 - the Agreement on Pre-shipment Inspection
 - the Agreement on Rules of Origin
 - the Agreement on Import Licensing Procedures
 - the Agreement on Subsidies and Countervailing Measures
 - the Agreement on Safeguards
 - the General Agreement on Trade in Services (GATS)
 - the Agreement on Intellectual Property Rights in Trade (TRIPS)

as well as from plurilateral treaties,

- the Agreement on Trade in Civil Aircraft and
- the Government Procurement Agreement.

We represent you in all litigated matters, especially before the EU Commission and the EU courts, as well as in arbitration proceedings pursuant to the WTO agreements governing rules and proceedings for settlement of disputes.

For further information, please contact your legal advisor at BSU Legal.