

STATEMENT

Free trade. Sustainable trade.



FTA
Foreign Trade Association

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RETROACTIVE ANTI-DUMPING DUTIES: A STEP BACKWARDS

ANTI-DUMPING DUTIES: BACKGROUND

APPLIED PROSPECTIVELY

Anti-dumping duties, when imposed by the EU, have always been applied prospectively. After an initial nine month investigation if provisional duties are imposed, via Regulation published in the Official Journal, the importer pays those duties (actually in the form of a guarantee) from that point forward. After a further six months, if definitive duties are imposed the provisional duties are collected and definitive duties are then payable by the importer from that point forward – normally for the maximum five years.

ECONOMIC GROUND FOR DUTIES DEBATABLE

The rationale for imposing anti-dumping duties has been challenged by more than one economist. The general consensus is that, apart from ‘predatory dumping’, duties have little positive effect. Indeed, they have a negative effect on companies that use intermediate goods, on downstream users, and of course on consumers. It can cause trade diversion – with cheap imports simply being sourced from elsewhere. Finally, it can be argued that producers use anti-dumping as a means of targeting competition from overseas. However, it is also generally accepted that it remains the only viable method of combatting unfair trade.

THE PROBLEM WITH RETROACTIVE APPLICATION

THE REQUIREMENTS

Article 10(4) of the EU’s Anti-Dumping Regulation allows duties to be retroactively imposed up to three months before provisional duties. There are three conditions for this: a history of dumping, or that the importer was aware of the dumping; a substantial rise in imports; that imports are registered. **The principle has existed since 1979 but has never been applied** – even investigations containing the possibility that duties may be applied retroactively have rarely occurred.

THE INJURIOUS EFFECT

When an anti-dumping investigation is opened, importers already face the uncertainty of knowing if duties will be imposed, the level of those duties, and when duties will be imposed. The latter has some slight predictability since there is a nine month deadline for provisional duties – also, though not widely known, 94% are imposed within one week of that deadline. **The possibility of retroactivity removes even that slight certainty.** The application of retroactivity adds unavoidable expense to importers and users.

MUST BE THE EXCEPTION AND NOT THE NORM

The introduction of retroactive duties against cold rolled flat steel from China (and possibly also ‘rebars’) sets a dangerous precedent. Such action does not benefit the EU producers who have called for duties to any greater extent than prospective duties. It only serves to cause greater uncertainty and financial damage to companies who are importing the product.

Therefore, **FTA seeks assurances from the EU Commission that such cases are isolated, exceptional examples and that retroactive application, or the threat of such, will not become the norm.**

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