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A Brief Overview of the EU Trade Defence Instruments and Their Potential Implications on Chinese Businesses.

- *Maria Masdemont Fageda, ICES Research Assistant* -

On the annual State of the Union Speech (SOTEU), President of the Commission Ursula von der Leyen announced the launch of a new investigation on Chinese subsidies targeting low-cost electric vehicles entering the European market and undermining the EU's automotive sector. The announcement was initiated formally on 4 October 2023, and it came in a context where the bloc is working to de-risk and reduce its dependencies on China while striving to implement its green and digital transitions. The declaration showcased, through the deployment of the EU trade defence instruments, a set of tools that, together with a de-risking strategy, have made a recurrent appearance in the discourses delivered throughout the last year. Not unexpectedly, the decision was received with rejection and criticism from Beijing. But beyond the Chinese government, doubts have emerged around the motivation that pushed for such a decision, questioning whether it came as the result of a political agenda or an actual unfair trade practice and the protectionist character of the policy.

About the European Union's Trade Defence Instruments

The WTO Agreement, signed in 1994, contained, inter alia, the Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade (GATT) (OJ L 188, 18.7.2009, 93), also known as the Anti-Dumping Agreement, and the Agreement on Subsidies and Countervailing Measures (OJ L 188, 18.7.2009, 93), also known as the Subsidies Agreement. Hence, as a member of the WTO, the European Union counted on the outlined tools to ensure free and fair trade. Nevertheless, the passing of time and the increase in complexities have pushed the bloc to keep "modifying, improving, and modernising" (BDI, 2021) its defence instruments to adapt to the current demands. After a set of amendments, the latest version of Regulation (EU) 2015/755 on safeguards entered into force in 2017 (*EUR-LEX - 02015R0755-20170519,* 2017), and Regulation (EU) 2016/1036 against dumped imports (*EUR-LEX -*

02016R1036-20200811, 2020) and Regulation (EU) 2016/1037 against subsidies in 2020 (*EUR-LEX - 02016R1037-20200811, 2020)*.

Moving onto the EU's trade defence instruments (hereinafter referred to as TDIs), the bloc defines the former as the ways to protect European manufacturing from international trade distortions (*Trade Defence*, 2023). To ensure the bloc's steadfast opposition to unfair trade practices and a dedication to free markets and trade (*Trade Defence*, 2023), the EU identifies three types of TDIs: the anti-dumping policy, the anti-subsidy policy, and safeguards. The European Commission is the responsible body for carrying out investigations to confirm the existence of "an unfair trade practice" and to impose duties or other measures via "implementing regulations" (European Court of Auditors, 2020, 4). However, taking the most relevant decisions, such as "imposition, amendment, or termination of definitive measures" (European Commission*,* 2022, 2) requires the Commission to consult the Trade Defence Instruments Committee (C44100)[1]. The body delivers its opinion through two sets of procedures: advisory, or examination (European Commission, 2023, 1). The first concerns the imposition of provisional measures and the initiation of expiry reviews, and under said procedure, the committee's opinion is not binding on the Commission (European Commission, 2023, 1). Following the examination procedure, the Trade Defence Instruments Committee can impose definitive measures, amendments or the extension of existing measures. However, Member States can block the adoption of a draft implementing act by a qualified majority of all votes (European Commission, 2023, 1).

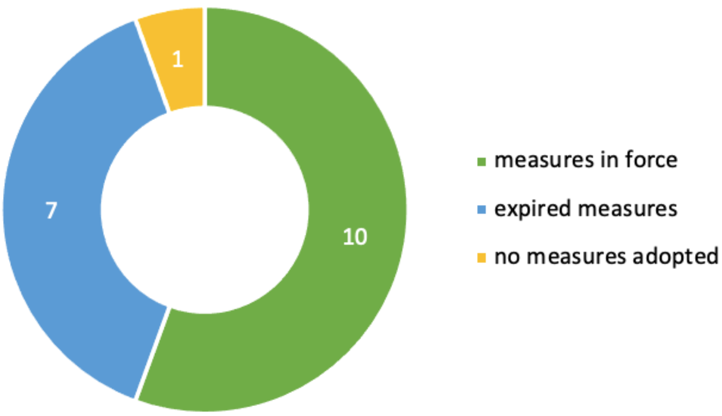
Anti-Subsidy Policy

The EU defines subsidies as a "financial contribution made by (or on behalf of) a government or a public body that gives the recipient a benefit" (*Anti-Subsidy Measures,* 2023)*.* Hence, if the subsidies are found to constitute an unfair practice bearing trade-distorting effects on the Single Market, the policy allows the Commission to react. The body can then counteract these activities by imposing duties on the imports of the subsidised product under investigation, which can last up to 4 months or five years (European Commission, 2022). Figure 1 gathers the data provided by the European Commission's website on trade defence investigations on anti-subsidy investigations conducted by the institution[2]. Between January 2003 and November 2023, the bloc launched 51 investigations, 18 of which were targeting China. Out of the 18 investigations, at the time of the analysis 10 present measures[3] in force, 7 have

[1] Check the committee information here. In terms of composition, each Member State is considered to be one member, and each member decides on the composition of its delegation. The chair is composed by a representative of the Commission. As long as the chair grants its permission, a delegation can also be accompanied by experts. Concerning the representation, each Member State delegation can represent a maximum of one other Member State, and the decision is to be notified to the chair, who shall, again, grant its permission. (European Commission, 2023)
[2] Check out the Trade Defence Investigations website here.
[3] The term 'measures' used on the Trade Defence Investigations website includes ad valorem duties, multiple types of measures, quotas, specific duties and variable duties.

expired measures[4]. As of November 30, a total of 2 ongoing investigations were registered (*Trade defence investigations,* n.d.).

Figure 1. Anti-subsidy Investigations Targeting China

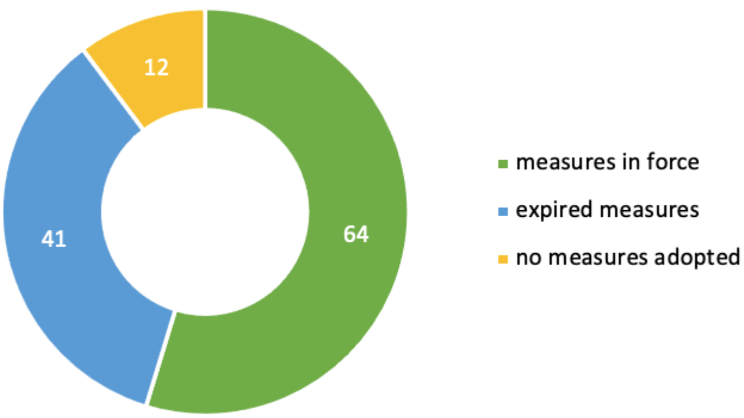


Author: ICES. Data retrieved from the EU Trade Defence Invetigations

Anti-Dumping Policy

The Commission conceives dumping as the “selling of goods by manufacturers from non-EU countries in the EU below the sales prices in their domestic market or the production cost” (European Commission, 2022, 1). Thus, the policy determines that if the former is proven to have taken place through an investigation, the Commission is allowed to correct the damages by imposing anti-dumping measures. Such measures generally come in the form of duties on imports of the product from the country in question that can last up to 6 months or five years (European Commission, 2022, 1). Diverging from the anti-subsidy instrument, anti-dumping measures constitute the “most frequently used trade defence instrument” (Johem et al., 2021, 31) globally and historically despite its setbacks. For the EU, particularly targeting China,

Figure 2. Anti-dumping Investigations Targeting China



Author: ICES. Data retrieved from the EU Trade Defence Invetigations

[4] The data was last reviewed on November 30, 2023.

Vermulst and Gatta (2012) found that, up to 2012, anti-dumping actions accounted for the largest share of the bloc's post-2001 trade defence practices. Figure 2 gathers the data on anti-dumping investigations conducted by the EU, provided by the previously mentioned website. Between January 2003 and November 2023, the bloc launched 235 investigations, 117 of which were targeting China. Out of the 117 investigations, at the time of the analysis 64 present measures in force, 41 have expired measures and 12 have no measure adopted[5]. As of November 30, a total of 21 ongoing investigations were registered (*Trade defence investigations,* n.d.).

Safeguards

Diverging from anti-subsidy and anti-dumping, safeguards are not implemented to "address unfair trade practices" (European Commission, 2022, 1). Instead, the former focuses on the sudden and sharp increase in the imports of a particular product not allowing EU producers to immediately adapt to the changed trade conditions (European Commission, 2022). In this context, EU rules allow for short-term measures to regulate imports and give EU companies time to adapt to the unforeseen surge. In turn, the "affected EU industry is required to restructure" (European Commission, 2022, 1). Provisional measures can last up to 200 days and definitive ones up to four years (European Commission, 2022). If exceeding three years, safeguard measures must be reviewed at mid-term, with the possibility of being extended for up to eight years in total (European Commission, 2022). An essential characteristic of safeguards is their *erga omnes* feature, meaning that they apply to all such imports from all countries (*Safeguards,* 2023). In this case, between January 2003 and November 2023, the EU applied safeguards only on 11 cases, all of which had expired by the last time of revision (November 30, 2023) and none accounted to be targeting China (*Trade defence investigations,* n.d.).

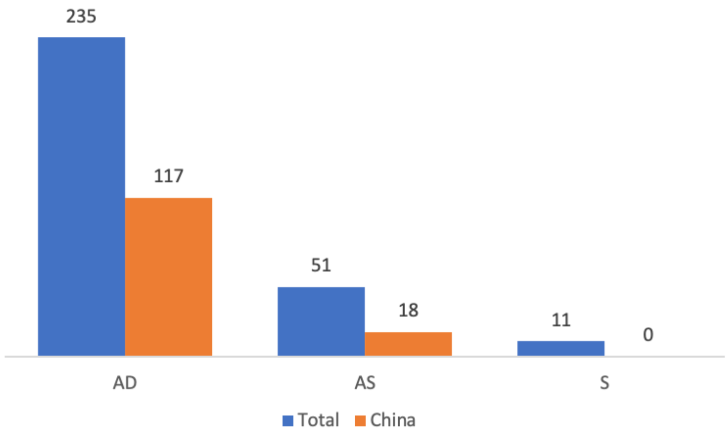
Overall, the data analysed shows that the most frequently used instrument by the EU during the selected timeframe has been anti-dumping. Figure 3 illustrates the comparison on the total of investigations launched by the EU and the ones specifically targeting China between the previously established timeframe.

Given that the EU abides by the WTO's decisions and rules, in the three cases the bloc must prove that the measures are justified and fair. Thus, the Commission can only proceed with the imposition of measures after conducting an investigation that confirms the allegations. Nonetheless, the former are adhered to a certain flexibility, as they can be reviewed after their imposition if the parties involved request an interim review arguing a change in the circumstances, if EU producers request an expiry review, and if these are reviewed by the WTO Dispute Settlement Body and the European Court of Justice (European Commission, 2022). Moreover, if importers believe their exporting producer is not dumping or subsidized,

[5] The data was last reviewed on November 30, 2023.

or that its dumping/subsidy margin is less than the duties paid by the importers, they can demand a refund (European Commission, 2022).

Figure 3. Comparison of EU Trade Defence Instruments



Author: ICES. Data retrieved from the EU Trade Defence Invetigations website.

Despite having set the focus on TDIs, the EU counts with a broader set of tools, mechanisms, and instruments set to protect its trading activities and the Single Market, such as the Anti-Coercion Instrument (ACI) and the Foreign Subsidies Regulation, to name a few. These have been developed and perfected throughout the years in the bloc's efforts to strengthen its economic security and strategic autonomy while answering to a global trend of politicisation of trade (Weiß, 2022). The phenomenon is not exclusive to the EU. However, seeing the inclusion of geopolitical considerations at the decision-making spheres, it is inevitable for more initiatives to be developed to match the increase on tensions and potential actions (Weiß, 2022). In this way, political considerations and decisions are likely to become increasingly embedded in the adoption of TDIs. Whether governments decide to prioritise their citizen's welfare, or the respect of internationally agreed standards (Sacerdoti 2021) is not the point of discussion in this case. What constitutes a matter of concern is the importance of ensuring that the stemming policies take into consideration the already existing commitments to international institutions and obligations. Otherwise, the "benefits for reciprocal trade" (Sacerdoti 2021, 338) risk from getting lost.

Impacts of EU TDIs

Concerning anti-dumping, despite the safeguards provided by the international rules under the WTO mandate and the EU legislation, concern has been expressed about the potential for these measures to turn into the extension of a political agenda (Trimarchi et al., 2021) rather than the result of actual economic demands. In fact, several authors have developed on the rather reduced benefits that derive from the adoption of anti-dumping measures.
The findings of Johem at al. (2021)'s report encountered that the adoption of trade defence measures, on average, accomplishes a decrease in imports from the targeting countries.

However, it does not necessarily achieve the objective of fighting against the unfair competition hurting EU producers nor ensuring that these regain market share after resorting to TDIs. The authors suggest that in fact, the threat of being targeted in an anti-dumping investigation can motivate some exporters to “hold back their exports and raise their prices” (Johem et al., 2021, 29).

In terms of the impact on Chinese businesses, the companies targeted by anti-dumping duties generally reduce, if not halt, their exports in the European market. As observed by Silberger et al. (2022), the former, together with the trend of adopting anti-dumping and anti-subsidies measures building uncertainty and unpredictability, incentivises Chinese companies to diversify their trading partners and increase and deepen the trading relations with secondary markets (determined as such accordingly with the trading and export intensity shared with China). In turn, the sudden halt of activities identified by the previous authors holds the potential to reduce the industrial profits obtained from said companies, particularly in the number of firms employed and the total of industrial exports, a trend observed in Li and Whalley’s (2010) analysis (for the period of 1997-2007). Chandra and Long (2013) identified another consequence of the US anti-dumping duties imposed between 2000-2006. In this case, the authors determined that US anti-dumping measures had led to a significant decline in the productivity of Chinese enterprises at the firm level. Even though the impact derives from a particular context, time, and characteristics, the results could be extrapolated, to a certain extent, to the EU case.

When it comes to anti-subsidies, a study by Norton Rose Fullbright (*The EU Anti-Subsidy Regulation: Implications for M&A*, n.d.) pointed out that the adoption of these measures generally entails an increase in administrative burdens and bureaucratic procedures. Companies must adapt to the “new” need of creating new compliance systems to identify and quantify all governmental “financial contributions” received outside the EU over three-year periods, as well as revising the transaction processes and documentation.

Safeguards bring a strong impact per se that can lead to potential global disruptions given its *erga omnes* feature (*Safeguards,* 2023). In this sense, the most immediate effect on Chinese exporters and businesses lies in a reduction of the volume of their imports (of the affected products) to the European market. Yet, beyond the short-term implications, safeguards can likewise bear long-term implications, translating into a potential impact on the willingness of Chinese businesses to invest or trade with the EU.

Despite the intrinsic consequences that lay in the adoption of anti-dumping or anti-subsidies policies, Wanwan et al. (2022) observed that, in recent years, Chinese exporters have become more flexible and can quickly adapt to new markets to respond to the changes in trade policies. Nevertheless, the phenomenon is not observed by all Chinese companies, as it is likely to be conditional to the resilience of the company. In this context, Jabbour et al. (2019) point out that duties can lead to the exit of some Chinese exporters unable to face the rise in the trade costs induced by the measures. The ones that survive, however, appear to experience an increase in productivity, employment, and the total of exports, seemingly driven by investments in R&D. The provided context allows exporters to improve productivity and overcome the rise in trade costs that leads, overall, to an improvement in the performance.

Withal, the implications deriving from implementing TDIs can easily extend beyond businesses and trigger retaliation from the targeted countries, getting closer to the danger of a spiral of sanctions, as warned by Weiß and Furculita (2020). If that were the case with China, the country could respond to the EU decisions with countermeasures, deepening the already existing tensions and shifting the balance closer to a fully-fledged trade war. Moreover, it has been pointed out that anti-dumping measures against China have the possibility of hurting downstream industries due to the existing fragmentation in the processes of production (Trimarchi et al., 2021), potentially increasing the "risk of collusion" (Johem et al., 2021, 5) among third-country producers.

Conclusion

The findings suggest that while anti-dumping measures can succeed in reducing imports from targeted countries, they may fall short of achieving their primary objective of combating unfair competition and restoring market share for EU producers. In some cases, the mere threat of anti-dumping investigations can lead to exporters withholding exports and raising prices, impacting Chinese businesses by forcing them to diversify trading partners, reducing industrial profits, and affecting employment. Adopting anti-subsidy measures increases administrative burdens, and safeguards can reduce import volumes, affecting Chinese exporters' willingness to invest or trade with the EU.

The EU and China remain bound by a recurrent interaction driven by their trading relationship. This interplay underscores the complexity of the discussion on TDIs' effectiveness and consequences, where economic and geopolitical factors intertwine. While these measures are designed to address unfair trade practices, there is a rising concern on the politicisation of trade issues serving as extensions of certain political agendas rather than purely addressing economic needs.

Overall, the use of TDIs by the European Union is a multifaceted issue with economic, political, and global ramifications. While they intend to rectify unfair trade practices, the outcomes are influenced by a variety of factors, including the adaptability of affected businesses, potential retaliatory actions, and unintended consequences for various sectors of the economy. Hence, the application of TDIs should be pondered carefully, considering both their short-term and long-term effects on trade relationships and the global economic landscape.

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