

Administered Protection in the EU: Implications for the TTIP

Paper prepared for the conference

Challenges Facing the World Trade System

Columbia University, September 29-30, 2014

John Hopkins University, October 1-2, 2014

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Abstract

This paper analyses the effects on trade of anti-dumping measures in the European Union (EU), in particular the effects of imposing anti-dumping measures and the effects of abolishing anti-dumping measures. It also analyses experiences with eliminating anti-dumping measures in the EU and the European Economic Area (EEA), something that could be used as a source of inspiration in the Transatlantic Trade and Investment Partnership (TTIP) negotiations.

The effects of *imposing* anti-dumping measures in the EU suggest that they provide some protection for EU producers but that the benefits are moderate. The market share of countries subject to anti-dumping measures decreased by 9 percentage points on average. The market share of EU producers increased, but only by 1 percentage point on average. Third countries not subject to the anti-dumping measures benefited considerably more, as their market share increased by 8 percentage points on average. Furthermore, anti-dumping protection comes at a rather high cost for the user industry and consumers in the EU. The calculations suggest that, with every 1 euro gained in the protected sector, the user industry and consumers pay, on average, 4.5 euro in higher prices.

The effects of *abolishing* anti-dumping measures in the EU at the enlargement in 2004 suggest that the market share of the accession countries increased by an average of only 1 percentage point. The decrease in market share of EU producers by 9 percentage points was mainly due to the increase by 8 percentage points in the market share of third countries, and not as a result of the abolition of anti-dumping measures. This paper also notes that the abolition of anti-dumping measures within the EU did not increase the number of anti-dumping measures against third countries. Accordingly, what were once considered third-country imports that caused injury to EU domestic industry and triggered the use of anti-dumping measures have, following the expansion, been considered normal business practices in the line with the requirements for 'fair competition'.

The effects on trade of imposing anti-dumping measures between the EU and the US are in line with the experiences from the EU. The effects on trade of abolishing anti-dumping measures in the TTIP will most likely be in line with the experiences of the EU due to a similar development in import values, import prices and import shares between the parties. The EEA proves that anti-dumping measures can be eliminated in a free trade agreement between 32 countries where the share of imports and exports between the trading partners is about 70 percent of their total world trade. This paper argues, accordingly, that the experiences of the EU and the EEA might be used as an example in and inspiration for the TTIP negotiations.

This paper suggests that a greater degree of harmonisation in different fields, such as production standards, labour rights, health standards, environmental standards, consumer quality standards, for example – accompanied by an enforcement mechanism – would provide a 'level playing field' between the TTIP parties and eliminate the need for the use of anti-dumping measures. In a similar way, harmonised competition rules and an enforcement mechanism would provide conditions for 'fair competition' between the TTIP parties. In this way, the TTIP could also serve as an example for future regional trade agreements and as a 'stepping stone' for a new multilateral regime in this field.

Introduction

In recent years, there has been a proliferation of regional trade agreements. This could be a consequence of and/or a contributing factor to the lack of progress in the World Trade Organization (WTO) negotiations. Regional trade agreements require the elimination of trade barriers between the parties. However, the use of anti-dumping measures is normally not considered in this regard; most parties to regional trade agreements, accordingly, maintain the right to use anti-dumping measures against each other.

There are a number of regional trade agreements that have eliminated the use of anti-dumping measures – and some of them have replaced the use of the anti-dumping instrument with competition rules. The European Union (EU) and the European Economic Area (EEA) might be the most successful examples of regional trade agreements that have eliminated the use of anti-dumping measures between the integrating parties. The EU is unique as a regional trade agreement in abolishing anti-dumping measures currently in force. The EU is also an example of a regional trade agreement that remains open to parties joining later. In the EEA, 32 countries have eliminated anti-dumping measures against their main trading partners. This paper analyses the effects on trade of imposing, as well as abolishing, anti-dumping measures in the EU. It also analyses the experiences of the EU and the EEA in eliminating anti-dumping measures, something that might be of relevance to the Transatlantic Trade and Investment Partnership (TTIP) negotiations.

Part I focuses on the effects on trade of imposing and abolishing anti-dumping measures in the EU based on empirical evidence. The imposition of anti-dumping measures in the EU is analysed from the points of (i) effectiveness, i.e. if the protection is effective as regards EU producers, the exporters of allegedly dumped products and third country exporters; and (ii) efficiency, i.e. the cost of protection for EU user industry and consumers. The abolition of anti-dumping measures in the EU is analysed from the point of (i) injury to EU producers when it comes to price undercutting and loss of market shares; and (ii) possible changes in the use of the anti-dumping instrument against third countries.

Part II focuses on anti-dumping measures between the EU and the US, as well as the experiences with abolishing anti-dumping measures in the EU and the EEA as an inspiration for the TTIP negotiations. This paper provides an overview of regional trade agreements that have eliminated anti-dumping measures. It also provides an overview of the use of anti-dumping measures in regional trade agreements negotiated by the EU and the US. By way of conclusion, the paper provides an analysis of the anti-dumping measures currently in effect between the EU and the US, as well as the experiences of the EU and the EEA in eliminating anti-dumping measures, as a source for inspiration for the TTIP negotiations.

If major regional trade agreements – sometimes referred to as ‘mega-regionals’ – such as the TTIP follow the examples of the EU and the EEA and eliminate anti-dumping measures, regional trade agreements might serve as a ‘stepping stone’ for a new multilateral regime in this field, i.e. as a way of ‘multilateralising regionalism’.

[The focus of this paper is limited to the use of the anti-dumping instrument. The use of anti-subsidy measures and safeguard measures are, accordingly, not considered for the purpose of this analysis. The focus is on the EU, but comparisons with the US are made where the implications are relevant. The paper aims to be explorative and not exhaustive as regards the initiative to abolish anti-dumping measures in the TTIP. The paper is mainly based on previous research by Sweden’s National Board of Trade in the field of anti-dumping policy.]

Part I: The Effects on Trade of Imposing and Abolishing Anti-Dumping Measures: The Experience of the EU

1. The Effects on Trade of Imposing Anti-Dumping Measures in the EU

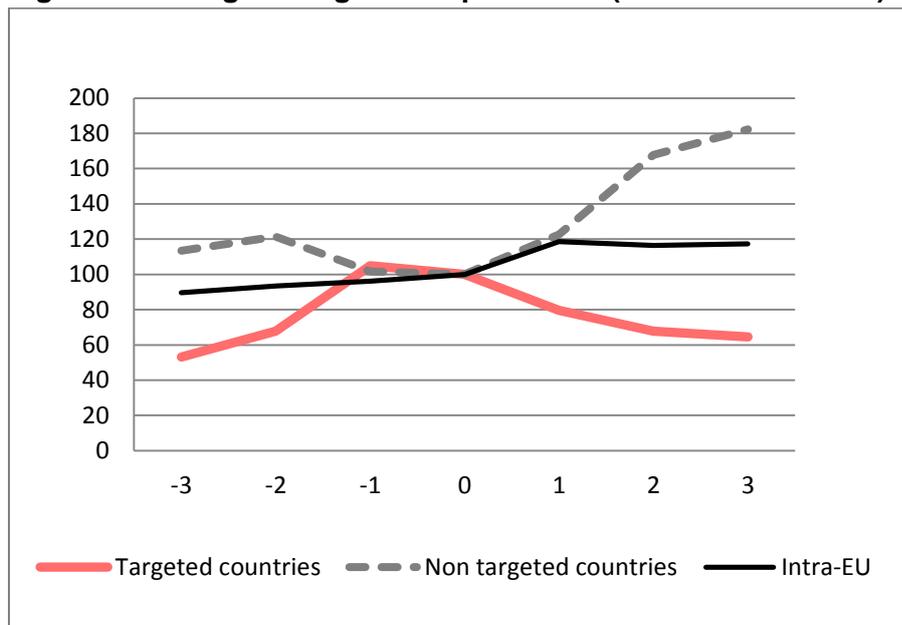
The European Union (EU) currently has some 122 anti-dumping measures in force (on average during 2008-2012). The EU is currently the world's fifth largest user of the anti-dumping instrument (European Commission, 2014). These measures aim to protect EU producers from alleged price-dumped imports; i.e. products that are believed to cause economic injury to EU producers through being exported at prices below their domestic sales prices. The measures are expected to reduce imports from countries that export at allegedly dumped prices and to increase EU producers' sales volumes and prices on the EU market.

[The chapter is based on the report *“Do EU Producers and the EU Economy Really Benefit from Anti-Dumping Policy?”* by the National Board of Trade, Sweden.]

1.1 Are EU anti-dumping measures effective?

The economic effects on EU trade (in terms of import value, import volume and import unit price) of imposing anti-dumping measures are analysed by examining data from anti-dumping cases investigated from 2000 until 2008. [See Annex 1 for a detailed description of the methodology used in the analysis.]

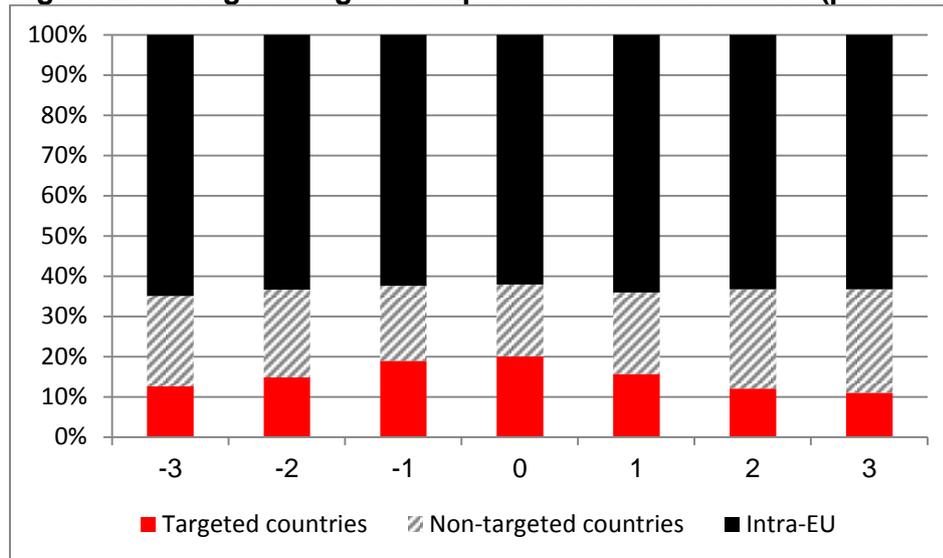
Figure 1. Average changes in import value (Index 100 = Year 0)



Source: Based on Comext/Eurostat and the National Board of Trade, Sweden (2012a)

The effects on **import values** of imposing anti-dumping measures seem to be immediate (see Figure 1). The effect on imports from targeted countries can already be seen in the year the anti-dumping investigations are initiated (year “0”), which indicates that the market interprets that an anti-dumping investigation will result in measures being imposed. The year the provisional anti-dumping measures are imposed (year “1”), the imports from targeted countries decrease by 20 percent on average compared to the previous year. Imports from intra-EU trade increase by 19 percent on average, and imports from non-targeted countries increase by 23 percent on average. In the following two years, imports from targeted countries continue to decrease, albeit at a slower pace. Imports from intra-EU trade remain stable at the higher level, while imports from non-targeted countries continue to increase sharply.

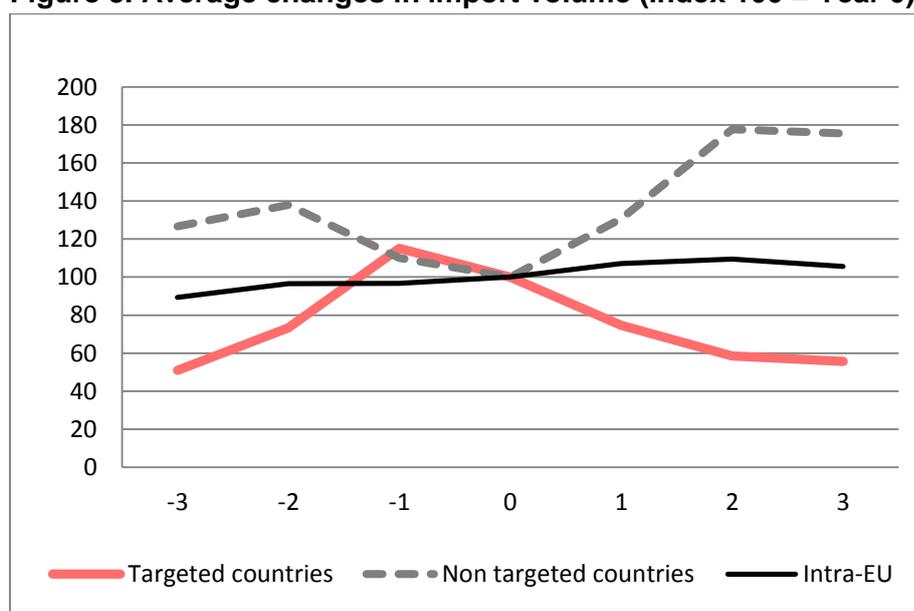
Figure 2. Average changes in import value market shares (percentage)



Source: Based on Comext/Eurostat and the National Board of Trade, Sweden (2012a)

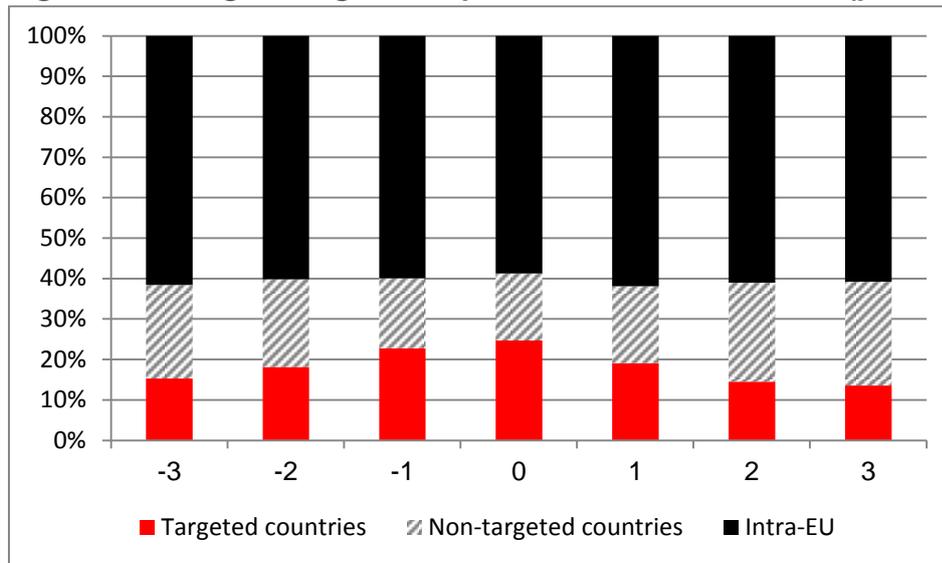
The effects of imposing anti-dumping measures are also presented as the average changes in EU import market shares based on the import value (see Figure 2). In this case, it provides an immediate picture of the level of competition in the EU import market. To a great extent, the figure for market shares is consistent with the figure for import values; it indicates that the anti-dumping action has an immediate effect on trade, reducing the import shares from targeted countries by 9 percentage points on average, and increasing import shares from non-targeted countries by an average of 8 percentage points. The market share of intra-EU imports also increases after the initiation of the anti-dumping investigation, indicating that EU producers benefit from the action. However, this increase is quite modest and considerably lower than the increases of the intra-EU import value. Three years after the initiation of the investigation, the intra-EU market shares have only increased by an average of 1 percentage point.

Figure 3. Average changes in import volume (Index 100 = Year 0)



Source: Based on Comext/Eurostat and the National Board of Trade, Sweden (2012a)

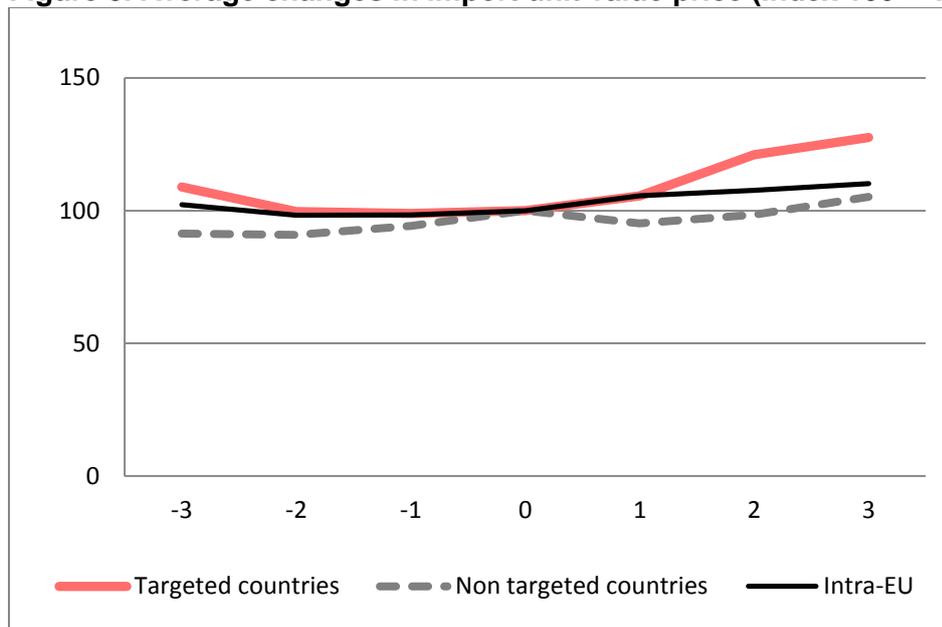
Figure 4. Average changes in import volume market shares (percentage)



Source: Based on Comext/Eurostat and the National Board of Trade, Sweden (2012a)

The average effects on **import volumes** of imposing anti-dumping measures – the average changes of import volume and the average changes in market shares of import volume – are almost identical to those for import values (see Figure 3 and Figure 4).

Figure 5. Average changes in import unit value price (Index 100 = Year 0)



Source: Based on Comext/Eurostat and the National Board of Trade, Sweden (2012a)

Three years after the initiation of the anti-dumping investigation, the unit value **import prices** from both extra-EU trade and intra-EU trade increased. Import prices from non-targeted countries increased by 5 percent on average; import prices for intra-EU trade increased by, an average of 10 percent; and import prices from targeted countries increased by 28 percent on average (see Figure 5).

The large increase in the unit value price of imports from targeted countries may seem counter-intuitive, especially considering that the anti-dumping duty is not included in this price; i.e. the actual price the EU consumers pay for imports increases even more since the

average anti-dumping duty is 30 percent. In the case of a normal customs duty, the prices of imports will not normally increase. However, there are special features of anti-dumping measures that might provide companies targeted by anti-dumping duties with incentives to export at increased prices (see Box 1).

Box 1: Effects on import prices of imposing anti-dumping measures

The effect of anti-dumping duties on prices is different compared to normal customs duties. When anti-dumping duties are imposed, it appears that the (deflated) import prices – excluding the anti-dumping duties – tend to increase. This is contrary to the theoretical foundations of economics when it comes to normal duties. According to these theories, the import price (excluding duties) should decrease in order to ensure that the price (including duties) will not increase for the final consumer (see Table A).

Table A. Price effect at the imposition of anti-dumping duties

Imposition of duties	Import prices		Prices in the domestic market
	Excluding duties	Including duties	
Normal duties	Decreases	Constant (or slight increase)	Constant or increases (due to limited competition)
Anti-dumping duties	Increases	Increases (due to price increase and imposed anti-dumping duties)	Constant or increases (due to limited competition)

Source: National Board of Trade, Sweden (2013a)

There may be different explanations behind the price increases of products targeted for anti-dumping duties. One explanation could be that exporters increase their prices in order to counter the allegations of dumping. Another explanation could be that only products of a higher segment are exported when anti-dumping duties are imposed.

[For the effects on import prices of abolishing anti-dumping measures, see Box 2.]

The results of the statistical analysis suggest that the EU’s anti-dumping actions, in general, have a restraining effect on imports from targeted countries and a positive effect on imports from non-targeted countries. The anti-dumping policy seems also to have some positive effects for EU producers. The increase of the shares of intra-EU imports is modest, particularly in relation to the large increase in imports from non-targeted countries, but it should be seen in the light of the initially very high level of intra-EU imports. Moreover, it is important to bear in mind that there is no information on counter-factual scenarios. In the absence of anti-dumping measures, it is possible that the intra-EU share of the market, on average, would have decreased rather than increased slightly, as has been the case.

1.2 Are EU anti-dumping measures efficient?

The analysis above suggests that the imposition of anti-dumping measures seems to have some beneficial impact on EU producers when it comes to import volumes and prices; in that sense, the measures are effective. In this context, analysing if anti-dumping measures are *efficient*, i.e. the costs that anti-dumping measures bring to the EU user industry and consumers, is relevant. This question can be addressed by using an economic welfare approach to compare the losses with the gains of the anti-dumping policy for the EU as a whole.

Observations regarding the *price effects*:

Intra-EU prices increase after the initiation of the anti-dumping investigation (see Figure 5). This implies an economic gain for EU producers as they receive higher revenue for their products. For EU user industry and consumers, a higher price implies an economic loss.

The total increase in consumer costs as a result of the price increase is, however, somewhat smaller as consumers tend to substitute products that are relatively less expensive when prices increase. Consumers reduce their import volume from the targeted countries and increase their import volume from EU countries and, especially, from the non-targeted countries (Figure 3). Upon imposing anti-dumping measures, however, import prices increased from all sources.

For the EU as a whole, the increase of import prices is a net economic cost. The benefit for EU producers that results from the price increase for consumers buying EU products equals EU consumers' loss in buying EU products. The cost of duty for the consumers is equal to a revenue for national customs authorities and the EU budget. The cost for consumers that arises from the price increase for extra-EU trade, however, constitutes only a cost for the EU as a whole. This cost can be interpreted as a negative terms-of-trade effect. In this case, the effect is quite strong as the unit value price from countries subject to anti-dumping measures increases sharply after the initiation of the anti-dumping investigation.

Observations regarding the *volume effects*:

EU producers gain when they are selling more products. If the anti-dumping policy results in a diversion from imports from targeted countries towards EU products, this would imply a large profit for EU producers, especially considering that prices have increased. For the sample used, the average increase in intra-EU import volume is 9 percent during the three-year period after the initiation of the investigation (see Figure 3). EU import volume market shares also increase, albeit only by 1 percentage point, indicating that the diversion to imports from non-targeted countries does not completely mitigate the protective effect of the anti-dumping measure on EU producers.

The approach employed in this paper allows for the calculation of average relative changes in imports and prices due to the imposition of anti-dumping measures. Consequently, the average relation between the EU producers' benefit and the EU consumers' loss is identified by analysing the average change in producer surplus and the average change in consumer surplus for each of the anti-dumping cases. Such a welfare analysis suggests that the unweighted ratio between consumers' loss and producers' benefit is, on average, 4.5:1, i.e. for every euro the producers gain, consumers lose 4.5 euro.

The results suggest that the anti-dumping measures come with rather high costs. Although estimates of this kind should be interpreted with caution, they are likely to provide a fair indication of the cost of imposing anti-dumping measures in the EU.

2 The Effects on Trade of Abolishing Anti-Dumping Measures in the EU

The EU and its member states have traditionally been intensive users of anti-dumping measures against one another, but the successive enlargements have significantly changed this pattern. When the EU was enlarged in May 2004 with ten new member states (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia), the anti-dumping measures that EU15 had in place against the new member states were immediately abolished. These anti-dumping measures fulfilled the criteria of (i) dumping, (ii) injury, (iii) causality, and (iv) the Union interest test as required by the EU anti-dumping regulation, but they were nevertheless terminated overnight. The EU is, accordingly, an example of a regional trade agreement that abolished anti-dumping measures previously in place.

[The chapter is based on the report “*Effects on Trade and Competition of Abolishing Anti-Dumping Measures: The European Union Experience*” by the National Board of Trade, Sweden.]

2.1 Did abolition of EU anti-dumping measures cause injury to domestic industry?

The economic effects on EU trade (in terms of import value, import volume and import unit price) of abolishing the anti-dumping measures in force at the EU enlargement in 2004 are analysed by examining data from anti-dumping measures on the products concerned between 1998 and 2008 (see Table 1). The data are also used to analyse whether the abolition of anti-dumping measures has caused injury to EU producers when it comes to price undercutting and lost market shares. [See Annex 2 for a detailed description of the methodology used in the analysis.]

Table 1. Anti-dumping measures against accession countries, abolished as a result of the EU enlargement in 2004 (in alphabetical order)

Product	Targeted country	Initiation of anti-dumping investigation	Imposition of definitive anti-dumping measures	Countrywide duty level
Ammonium nitrate	Poland	1999	2001	26.91 EUR/ton
Malleable tube or pipe fittings	Czech Republic	1999	2000	26.1 %
Seamless pipes and tubes	Czech Republic	1996	1997	28.6 %
	Poland	1991	1993	30.1 %
	Slovakia	1996	1997	7.5 %
Steel ropes and cables	Czech Republic	2000	2001	47.1 %
	Hungary	1998	1999	28.1 %
	Poland	1998	1999	48.3 %

Urea	Estonia	2000	2002	11.43 EUR/ton
	Lithuania	2000	2002	10.05 EUR/ton
Urea ammonium nitrate solutions	Lithuania	1999	2000	3.98 EUR/ton
	Poland	1993	1994	22.00 EUR/ton
Tube and pipe fitting, of iron or steel	Czech Republic	2001	2002	22.4 %
	Slovakia	2001	2002	15.0 %
Welded tubes and pipes of iron or non-alloy steel	Czech Republic	2001	2002	52.6 %

Source: National Board of Trade, Sweden (2013a)

A comparison between 2004, the year when the anti-dumping measures from the EU accession countries were abolished, and 2008, the year when the economic crisis started, shows that the average **import values** increased from all sources (see Figure 6).

Figure 6. Average change in import value (Index 100 =Year 2004)

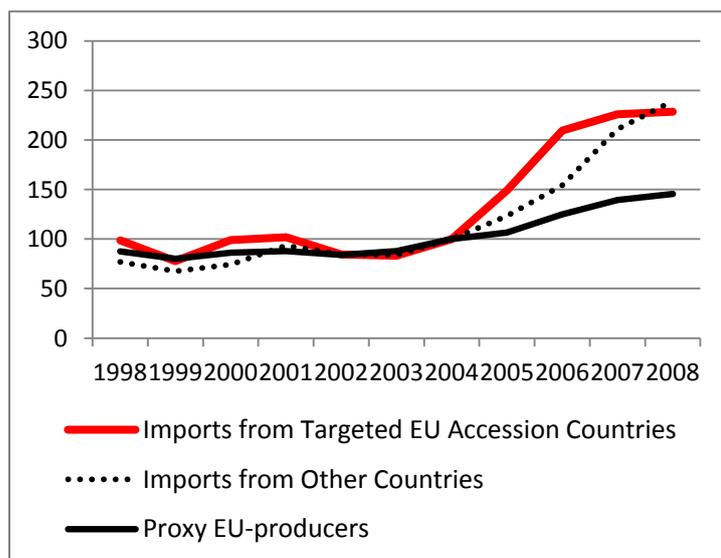
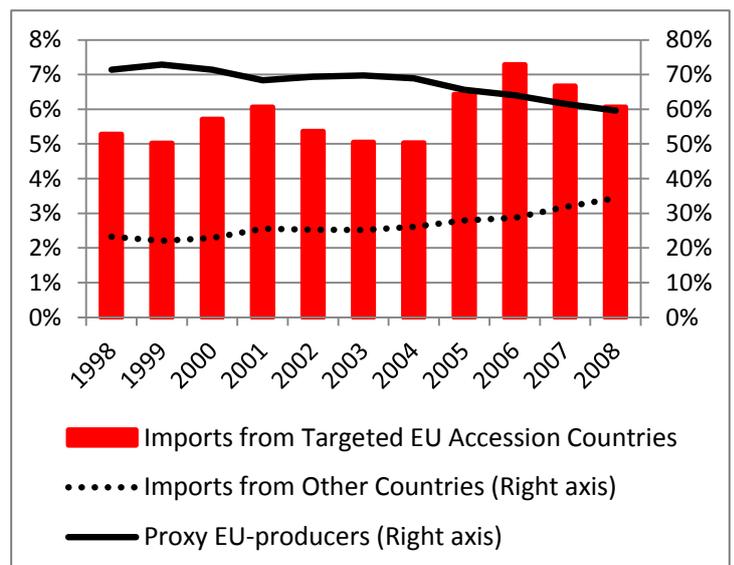


Figure 7. Average change in market share (import value), percentage



Source: Eurostat/Comext and the National Board of Trade, Sweden (2013a)

In the years following the abolition of anti-dumping measures, intra-EU15 imports decreased in terms of market share by 9 percentage points. However, the drop in market share of EU producers was primarily due to the increase in market share of third countries other than the targeted accession countries (see Figure 7). In 2008, the targeted accession countries gained a market share of only 1 percentage point on average, but the market share of the third countries increased by an average of 8 percentage points.

Figure 8. Average change in import volume (Index = Year 2004)

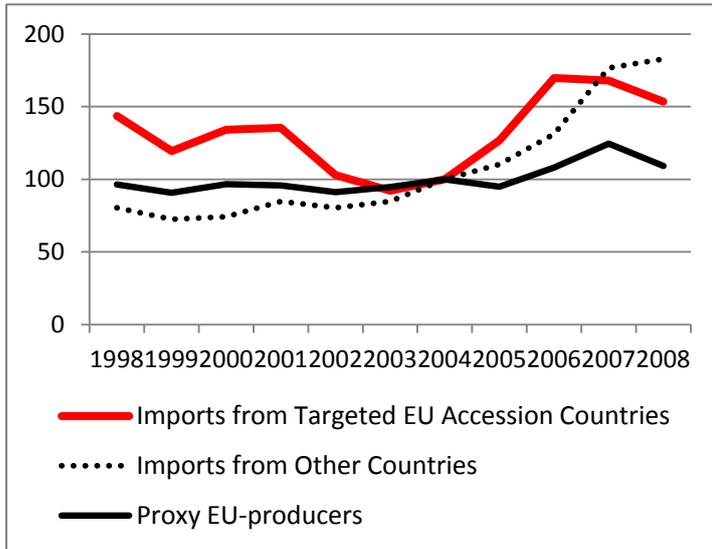
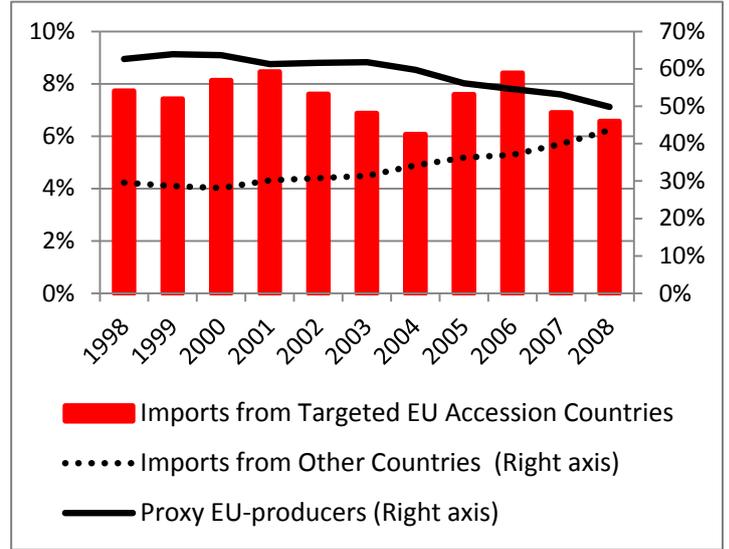


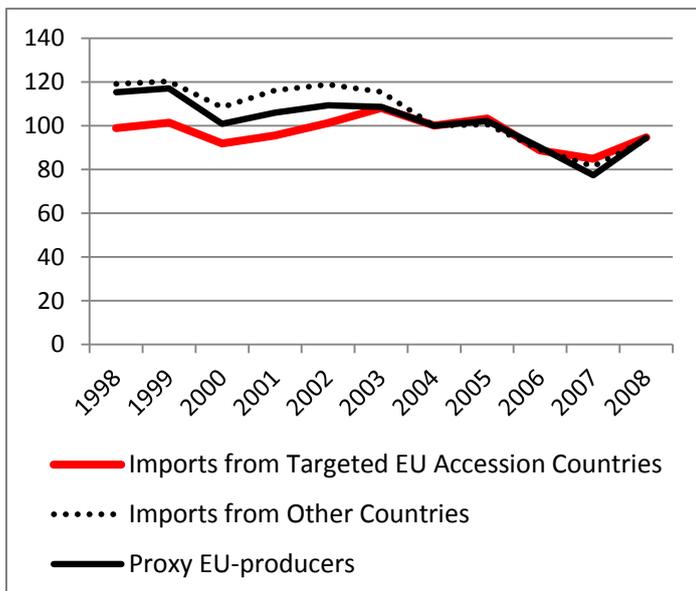
Figure 9. Average change in market share (import volume), percentage



Source: Eurostat/Comext and the National Board of Trade, Sweden (2013a)

The average effects of abolishing anti-dumping measures on **import volumes**, in terms of total volume and in terms of share of total volume, are similar to the effects with regard to value (see Figure 8 and Figure 9).

Figure 10. Average change in import prices (Index 100 = Year 2004)



Source: Eurostat/Comext and the National Board of Trade, Sweden (2013a)

Prior to the EU enlargement in 2004, the average (deflated) unit value **import price** levels from the accession countries were generally lower than the average (deflated) unit value price levels for intra-EU15 trade for most products (see Figure 10). Subsequent to 2004 the

import prices of the accession countries and the intra-EU15 import prices decreased slightly. In general, the import prices from the accession countries decreased less than the prices of intra-EU15 products.

Box 2: Effects on import prices of abolishing anti-dumping measures

The findings of this paper indicate that abolishing anti-dumping duties produces effects that are reversed compared to the abolition of normal customs duties. The (deflated) import prices tend to decrease when anti-dumping duties are abolished. The explanations for the decrease in prices are likely to be the opposite of those at the imposition of anti-dumping measures.

Table B. Price effect at the abolition of anti-dumping duties

Abolition of duties	Import prices		Prices in the domestic market
	Excluding duties	Including duties	
Normal duties	Increases	Constant (or slight decrease)	Constant or decreases (due to increased competition)
Anti-dumping duties	Decreases	Decreases (due to price decrease and abolished anti-dumping duties)	Constant or decreases (due to increased competition)

Source: National Board of Trade, Sweden (2013a)

[For the effects on import prices of imposing anti-dumping measures, see Box 1.]

In the EU's anti-dumping investigations, *price undercutting* is defined as the difference between the EU producer's price and the price of imported products. Price undercutting could, accordingly, be used as a proxy for injury to EU producers, i.e. the *price effect* of the abolition of the anti-dumping measures.

Figure 11. Malleable tube or pipe fitting
Prices in Euro (weighted average)

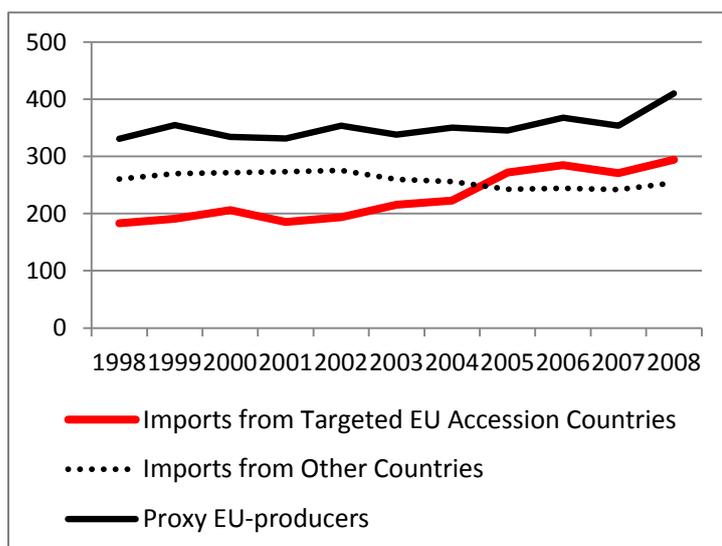
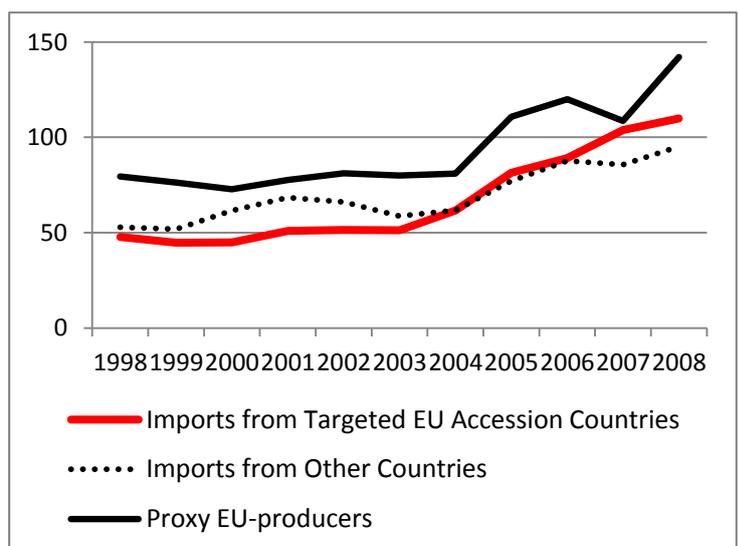
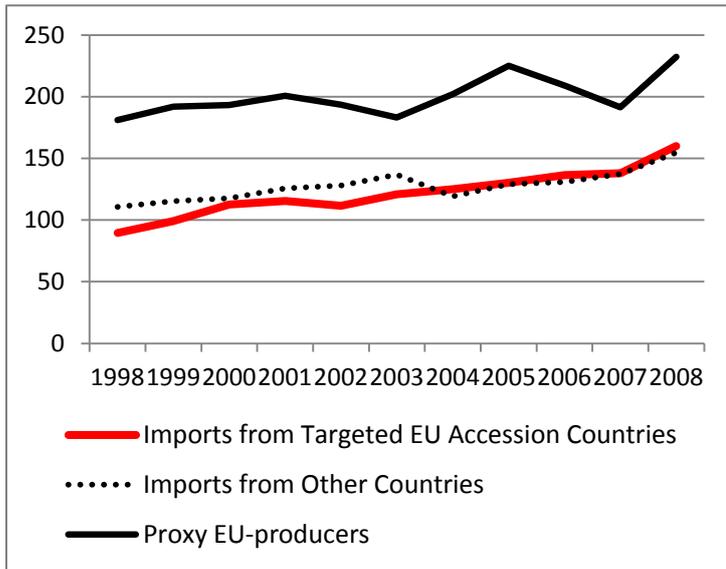


Figure 12. Seamless pipes and tubes
Prices in Euro (weighted average)



**Figure 13. Steel ropes and cables
Prices in Euro (weighted average)**



**Figure 14. Tube and pipe fitting, of iron or steel
Prices in Euro (weighted average)**

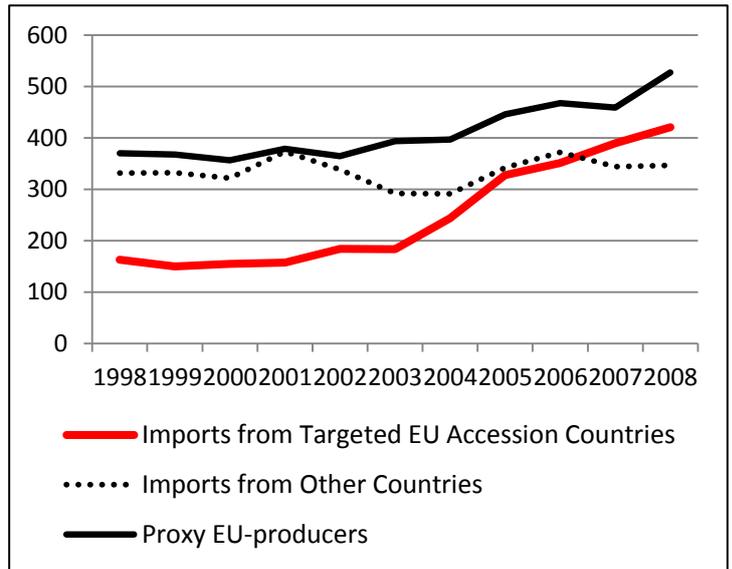
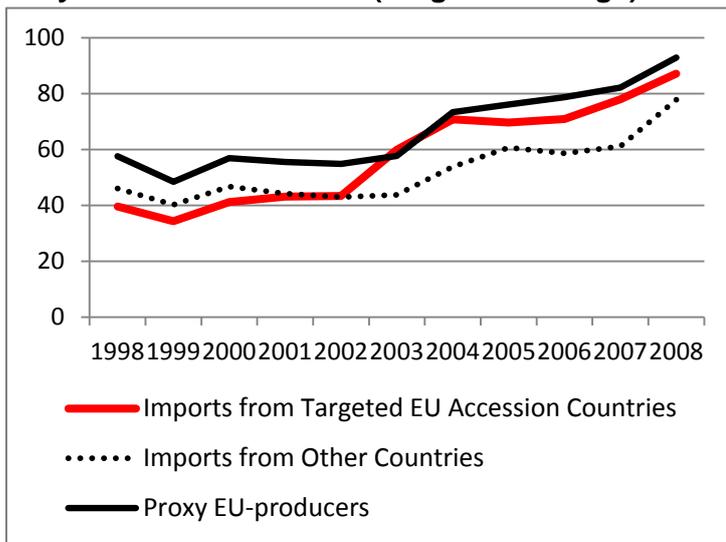


Figure 15. Welded tubes and pipes, iron or non-alloy steel. Prices in Euro (weighted average)



Source: Eurostat/Comext and the National Board of Trade, Sweden (2013a)

According to the trade statistics, the average unit price level of the allegedly dumped exports from the accession countries remained below the average EU15 unit price level throughout the period studied (see Figures 11-15). Trade statistics also indicate that the abolition of anti-dumping measures did not accelerate the alleged dumping practices of the accession countries. On the contrary, the level of price undercutting decreased in most cases when the anti-dumping measures were abolished upon accession (see Table 2). Accordingly, abolishing anti-dumping measures on imports from the accession countries does not seem to have affected EU15 industry negatively in terms of price undercutting.

Table 2. The development in price undercutting between 2003 and 2008 (in alphabetical order)

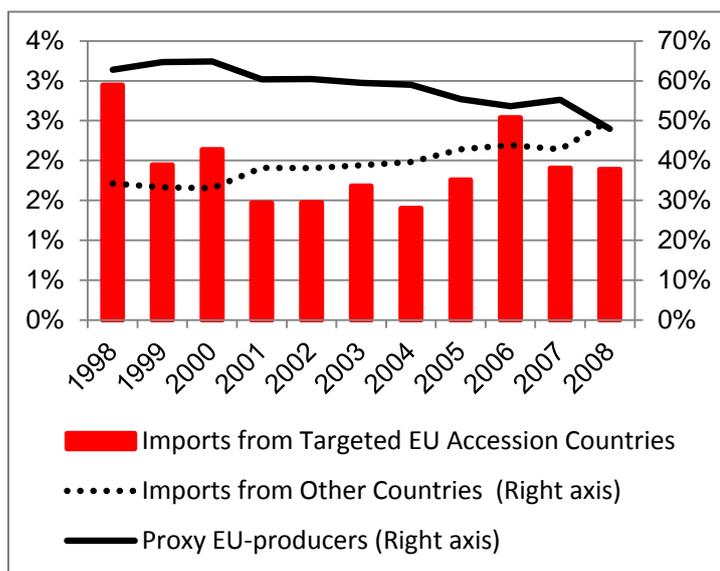
Product	Price in 2003		Price in 2008		Price undercutting (in percentage of the EU price)		Change in price undercutting between 2004-2008
	EU10	EU15	EU10	EU15	2003	2008	
Malleable tube or pipe fittings	215	338	294	410	36 %	28 %	-8 %
Seamless pipes and tubes	51	80	110	142	36 %	23 %	-13 %
Steel ropes and cables	121	183	160	232	34 %	31 %	-3 %
Tube and pipe fitting, of iron or steel	183	393	421	527	53 %	20 %	-33 %
Welded tubes and pipes	60	58	87	93	-4 %	6 %	10 %

Note: The decrease in price undercutting was mainly due to the fact that the average (non-deflated) unit price levels of imports from the accession countries increased more than the average (non-deflated) EU15 unit price levels.

Source: National Board of Trade, Sweden (2013a)

In order to analyse whether abolishing anti-dumping measures against the accession countries has caused injury to EU producers, the change in *market share* of the allegedly dumped imports, i.e. the *volume effect* of the abolition of anti-dumping measures, could be used as an indicator of injury to EU producers.

**Figure 16. Malleable tube or pipe fittings
Market share (import value), percentage**



**Figure 17. Seamless pipes and tubes
Market share (import value), percentage**

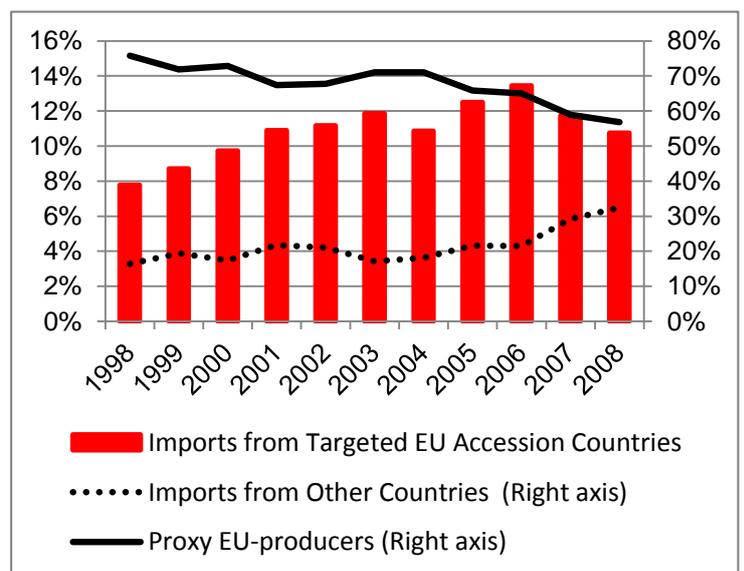


Figure 18. Steel ropes and cables
Market share (import value), percentage

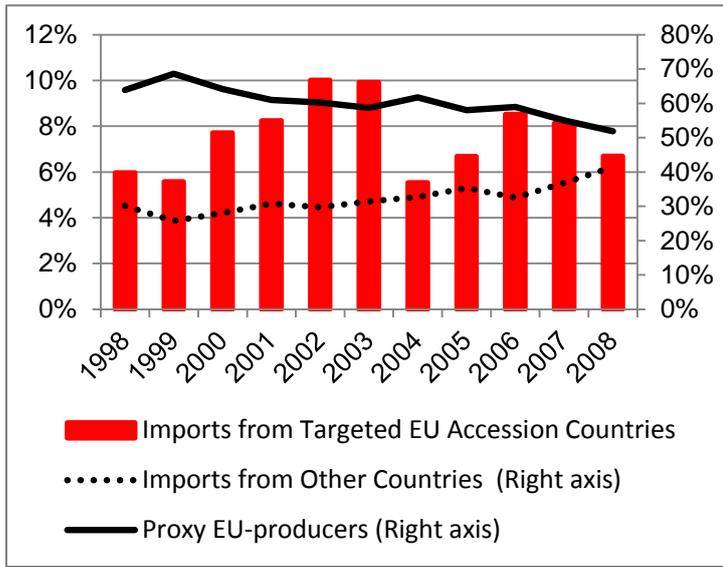


Figure 19. Tube and pipe fitting, iron or steel.
Market share (import value), percentage

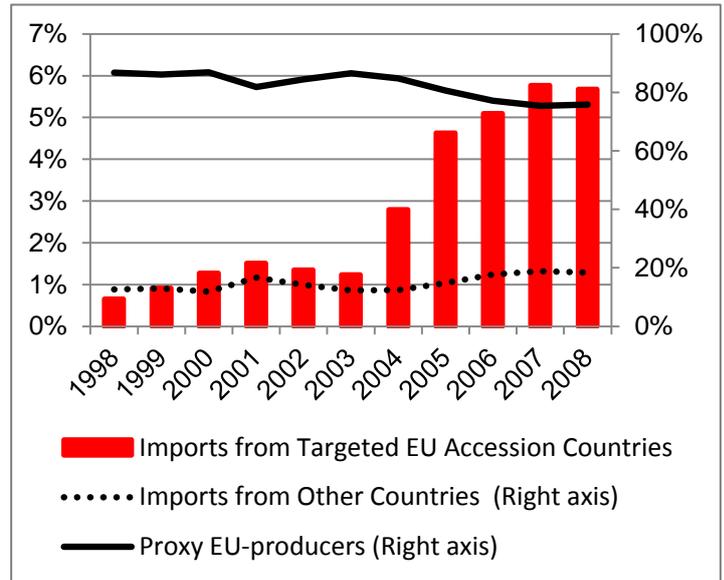
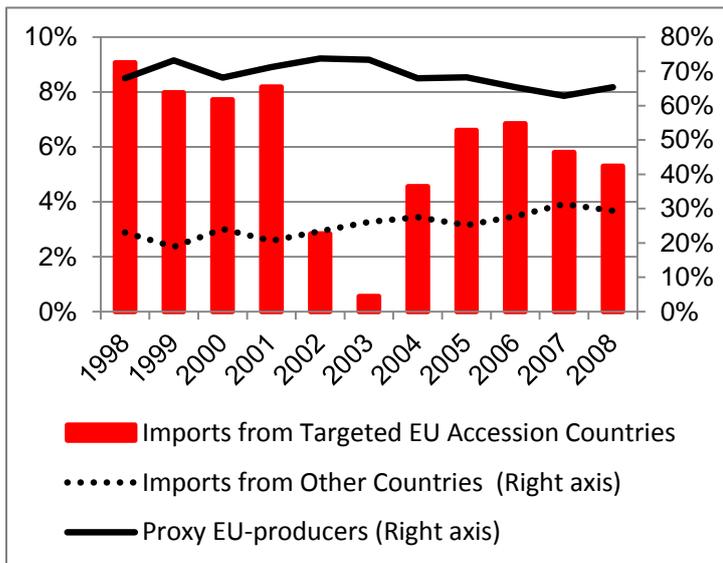


Figure 20. Welded tubes and pipes, iron or non-alloy steel. Market share (import value), percentage



Source: Eurostat/Comext and the National Board of Trade, Sweden (2013a)

In general, abolishing anti-dumping measures did not affect the accession countries' market share, in terms of import value, on the EU15 market (see Figures 16-20). Immediately following the EU enlargement, the accession countries' market share increased, but then decreased to the pre-accession level after about two years. Accordingly, the market share of the accession countries remained constant or increased only marginally after the EU enlargement.

This development following the abolition of anti-dumping measures implies that the imports from the accession countries did not cause injury to the EU producers as regards lost market share. On the contrary, the statistics indicate that the market share of EU producers

decreased to an extent that corresponds to non-targeted third countries' increased share of the market, not because of the abolition of anti-dumping measures against the accession countries. The increase in third-country imports is not necessarily related to the abolition of anti-dumping measures, but might indicate a limited competitiveness of the EU producers.

2.2 Did abolishing EU anti-dumping measures increase anti-dumping action against third countries?

A number of academic studies have examined the relationship between the establishment of regional trade agreements and possible changes in anti-dumping patterns. It has been argued (Bhagawati and Panagariya, 1996; Prusa and Teh, 2010) that the establishment of regional trade agreements give partner countries the incentive to increase the number of anti-dumping measures targeting third countries. The WTO's *World Trade Report 2011* has also stated that the abolition of anti-dumping measures could result in *“an increase in anti-dumping protection directed towards non-[regional trade agreement] members when in fact the injury to domestic industry mostly stems from imports from other [regional trade agreement] members”* (WTO, 2011).

The EU is one of the few regional trade agreements where there is empirical evidence – albeit limited – of the abolition of anti-dumping measures. According to the number of new anti-dumping measures of the products concerned following the EU enlargement in 2004, there is no clear evidence of such a development even though the imports from third countries – and their market shares on the EU market – increased. Between 1998 and 2008, the EU had large number of anti-dumping measures against imports of the products concerned from third countries, but most of these measures were imposed several years before the EU enlargement in 2004 (see Table 3).

Table 3. Exhaustive list of all countries targeted by anti-dumping measures for the products concerned (in alphabetical order)

Product	Targeted country	Initiation of anti-dumping investigation	Imposition of definitive anti-dumping duty	Termination of anti-dumping duty	Countrywide duty level
Ammonium nitrate	Russia	1994	1995	[2013]	47.07 EUR/ton
	Poland	1999	2001	2004	26.91 EUR/ton
	Ukraine	1999	2001	2012	33.25 EUR/ton
Malleable tube or pipe fittings	Czech Republic	1999	2000	2004	26.1 %
	Brazil, China, Japan, Korea, Thailand	1999	2000	2005	22.1-49.4 %
	Argentina	2002	2003	2008	34.8 %
Seamless pipes and tubes	Poland	1991	1993	2004	30.1 %
	Czech Republic, Slovakia	1996	1997	2004	7.5-28.6 %
	Hungary	1996	1997	2002	36.5 %
	Romania, Russia	1996	1997	2006	26.8-38.2 %

Steel ropes and cables	Hungary, Poland	1998	1999	2004	28.1-48.3 %
	China, India, Mexico, South Africa, Ukraine	1998	1999	[2017]	30.8-60.4 %
	Czech Republic	2000	2001	2004	47.1 %
	Russia	2000	2001	2012	50.7 %
	Turkey, Thailand	2000	2001	2007	31-42.8 %
	Moldova (*)	2003	2004	[2017]	51.8 %
Morocco (*)	2004	2004	[2017]	60.4 %	
South Korea (*)	2009	2010	[2017]	60.4 %	
Tube and pipe fitting, of iron or steel	China, Thailand	1994	1996	[2014]	58.6-58.9 %
	Taiwan	1999	2000	[2014]	58.6 %
	Czech Republic, Slovakia	2001	2002	2004	15-22.4 %
	Russia	2001	2002	2007	43.3 %
	Korea, Malaysia	2001	2002	[2013]	44-75 %
	Indonesia, Sri Lanka (*)	2004	2004	[2014]	58.6 %
	Philippines (*)	2005	2006	[2014]	58.6 %
Russia, Turkey	2011	2013	[2018]	16.7-23.8 %	
Urea	Russia (USSR)	1986	1987	2007	45.9 %
	Estonia, Lithuania	2000	2002	2004	10.05-11.43 EUR/ton
	Bulgaria, Romania	2000	2002	2007	8.01-21.43 EUR/ton
	Belarus, Croatia, Libya, Ukraine	2000	2002	2008	7.81-16.84 EUR/ton
Urea ammonium nitrate solutions	Poland	1993	1994	2004	22 EUR/ton
	Bulgaria	1993	1994	2007	22 EUR/ton
	Lithuania	1999	2000	2004	3.98 EUR/ton
	Algeria, Belarus, Russia, Ukraine	1999	2000	2011	6.88-26.17 EUR/ton
Welded tubes and pipes of iron or non-alloy steel	Czech Republic, Poland	2001	2002	2004	23-52.6 %
	Turkey	2001	2002	2008	6 %
	Thailand, Ukraine	2001	2002	2013	35.2-44.1 %
	Belarus, China, Russia	2007	2008	[2013]	20.5-90.6 %

Note: The anti-dumping measures that were imposed after the abolition of anti-dumping measures against the accession countries are marked in red. The anti-circumvention investigations are marked with (*).

Source: National Board of Trade, Sweden (2013a)

Anti-dumping measures were only imposed on three of the products concerned subsequent to the EU enlargement. The three products are *steel ropes and cables* (from Moldova, Morocco and South Korea), *tube and pipe fitting, iron or steel* (from Indonesia, Sri Lanka, the Philippines, Russia and Turkey), and *welded tubes and pipes, iron or non-alloy steel* (from

Belarus, China and Russia). These anti-dumping measures were, however, mainly anti-circumvention measures against third countries that were targeted with anti-dumping measures prior to the abolition of the anti-dumping measures from the accession countries. As many as five of the seven anti-dumping investigations were initiated as anti-circumvention investigations of measures already in force. The two new anti-dumping investigations, *tube and pipe fitting, iron or steel* (from Russia and Turkey) and *welded tubes and pipes, iron or non-alloy steel* (from Belarus, China and Russia) were initiated several years after the EU enlargement in 2004.

Part II: The Opportunity to Abolish Anti-Dumping Measures in Regional Trade Agreements: The TTIP as an Example

3. Use of Anti-Dumping Measures by the EU and the US in Regional Trade Agreements

According to World Trade Organization (WTO) rules, it is possible to eliminate anti-dumping measures in regional trade agreements. In general, however, most regional trade agreements maintain the right to use anti-dumping measures against their partner countries. This is the case even though the measures were not frequently used either before the regional trade agreement entered into force or afterwards. There are, however, 17 regional trade agreements that have explicitly eliminated anti-dumping measures against partner countries. The EU has eliminated all three trade remedies (anti-dumping measures, anti-subsidy measures and safeguard measures) among its member states, and has also used WTO-plus provisions against certain free trade partners. The US, on the other hand, has tended to maintain its right to use anti-dumping measures in all its free trade agreements.

[The chapter is partly based on the report “*Eliminating Anti-Dumping Measures in Regional Trade Agreements: The European Union Example*” by the National Board of Trade, Sweden.]

3.1 WTO member use of anti-dumping measures in regional trade agreements

The primary economic objective of regional trade agreements (i.e. free trade agreements and customs unions) is to eliminate barriers to intra-regional trade between members. In this regard, it is reasonable to expect that partner countries eliminate anti-dumping measures in intra-regional trade. It is sometimes claimed that eliminating anti-dumping measures is a requirement according to Article XXIV of the General Agreement on Tariffs and Trade (GATT) (Teh *et al*, 2007).

In Article XXIV: 8(a) and (b) of the GATT, parties to regional trade agreement are required to eliminate duties and other regulations restricting trade. However, Article XXIV allows parties in regional trade agreements to exclude certain GATT articles from the general requirement to eliminate all trade barriers. The article states that “[a] free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories” (WTO, 1994).

The article covering anti-dumping measures (Article VI) is not explicitly included among the articles that may be excluded from elimination in the regional trade agreements. If the intention was to permit the exclusion of anti-dumping measures from elimination in regional trade agreements, a reference to Article VI should have been made in the paragraph (Teh *et al*, 2007). The absence of Article VI from the list of excludable articles could be interpreted to mean that the use of anti-dumping measures in regional trade agreements may be inconsistent with GATT rules. It has not been legally established, however, whether the list of excludable articles is exhaustive or only illustrative as there is no consensus or dispute settlement understanding in the WTO with regard to its interpretation (Teh *et al*, 2007). If the list were exhaustive, which is likely to be the case, the anti-dumping measures – which are not on the list – should be eliminated upon the formation of regional trade agreements.

There are currently about 400 notified regional trade agreements in force. These agreements can be grouped into three broad categories according to how they treat anti-dumping measures. There may be differences, however, between the *de jure* and the *de facto* application of anti-dumping provisions in the regional trade agreements.

A vast majority of the regional trade agreements – about 90 percent – have established regional anti-dumping regimes which keep the **WTO provisions** essentially unchanged (Rey, 2012). These regional trade agreements make reference to the WTO rights and obligations or contain established rules that are in all material respects similar to the WTO rights and obligations. In cases where regional trade agreements make no reference at all to any anti-dumping provisions, the multilateral regime remains valid. This category of regional trade agreements does not differentiate between partner countries and third countries in anti-dumping proceedings. Most EU and all US regional trade agreements fall within this category.

A limited number of regional trade agreements contain specific **WTO-plus provisions** for initiating anti-dumping investigations and/or imposing anti-dumping measures that are more restrictive than the WTO rules as compared to the rules for anti-dumping measures on imports from third countries. The EU has included certain WTO-plus provisions in some of its recent free trade agreements, whereas the US has not included any WTO-plus provisions in its free trade agreements.

About 17 regional trade agreements have explicitly **eliminated the use of anti-dumping measures** between the partner countries (see Table 4). In a most cases, these regional trade agreements have prohibited the use of anti-dumping measures from the outset. The progressive deepening or extension of certain regional integration processes has sometimes also resulted in a renunciation of the right to use anti-dumping measures. The elimination of anti-dumping measures is explicitly linked to provisions on competitions in some regional trade agreements (Australia-New Zealand, EFTA-Singapore, EFTA-Chile, EFTA-Serbia, EFTA-Albania and EFTA-Bosnia and Herzegovina).

Table 4. Regional trade agreements currently in force that have eliminated anti-dumping measures on intra-regional trade (in chronological order)

Regional Trade Agreement	Type of agreement	Anti-dumping measures eliminated	Anti-subsidy measures eliminated	Safeguard measures eliminated	Contains Chapter on Competition	Date of the elimination of anti-dumping measures
European Union	Customs Union	X	X	X	X	01-01-1958
Australia-New Zealand	Free Trade Agreement	X		X	X	01-07-1990
EU-Andorra	Customs Union	X	X	X		01-07-1991
EU-San Marino	Customs Union	X	X	X		01-04-2002
European Economic Area	Free Trade Agreement	X	X		X	01-01-1994
Canada-Chile	Free Trade Agreement	X			X	05-07-1997
European Free Trade Area	Free Trade Agreement	X	X		X	01-06-2002

EFTA-Singapore	Free Trade Agreement	X			X	01-01-2003
EFTA-Chile	Free Trade Agreement	X	X		X	01-12-2004
China-Hong Kong	Free Trade Agreement	X	X			01-01-2004
China-Macau	Free Trade Agreement	X	X			01-01-2004
EFTA- Serbia	Free Trade Agreement	X		[X]	X	01-10-2011
EFTA- Albania	Free Trade Agreement	X		[X]	X	01-10-2011
EFTA- Ukraine	Free Trade Agreement	X		[X]	X	01-06-2012
EFTA- Montenegro	Free Trade Agreement	X		[X]	X	01-11-2012
EFTA-Hong Kong	Free Trade Agreement	X	X	X	X	01-11-2012
EFTA-Bosnia and Herzegovina	Free Trade Agreement	X		[X]	X	Pending [Signed: 24-06-2013]

Note: The “[X]” indicates that the parties have included a ‘best endeavour’ clause instead of a complete ban on the use of safeguard measures, provided that this is in line with the WTO rules and practice.

Source: *National Board of Trade, Sweden (2013b) and the EFTA free trade agreements*

The parties to most of the regional trade agreements that have eliminated the anti-dumping instrument have never used anti-dumping measures against their partner countries. Only the EU and Australia-New Zealand have abolished anti-dumping measures that were previously in force (Rey, 2012).

In general, the vast majority of the regional trade agreements – about 77 percent – have been concluded between parties that have never reported the use of any anti-dumping measures against products originating in their partner countries prior to the establishment of the regional trade agreement. Accordingly, a large percentage of regional trade agreements incorporate regional legal frameworks that maintain the right to use a trade remedy that the parties have never before used in their previous bilateral relationships. This is supported by the fact that in about 81 percent of the regional trade agreements, the parties have not reported the use of any anti-dumping measure against products originating in their partner countries following the establishment of the regional trade agreement, even though they are entitled to use this provision (Rey, 2012).

3.2 EU use of anti-dumping measures in regional trade agreements

The EU was the first regional trade agreement to abolish the application of all three trade remedies between its member states; this includes the use of safeguard measures, which are normally allowed between parties that eliminate the use of anti-dumping measures. The

EU is also one of two existing regional trade agreements that have abolished anti-dumping measures that were previously in place (National Board of Trade, Sweden, 2013b).

The Treaty of Rome (Article 91) prohibited the use of anti-dumping measures on intra-EU trade once the transition period for the full implementation of the treaty had expired. It stated that “[i]f, during the transitional period, the Commission /.../ finds that dumping is being practiced within the common market, it shall address recommendations to the person or persons with whom such practices originate for the purpose of putting an end to them. Should the practices continue, the Commission shall authorise the injured Member State to take protective measures. /.../ As soon as this Treaty enters into force, products which originate in or are in free circulation in one Member State and which have been exported to another Member State shall, on reimportation, be admitted into the territory of the first-mentioned State free of all customs duties, quantitative restrictions or measures having equivalent effect” (Treaty of Rome, 1957). The anti-dumping measures have, accordingly, been abolished in all successive EU enlargements in 1973, 1981, 1986, 1995, 2004, 2007 and 2013 as the EU gradually expanded from 6 to 28 member states.

The Treaty on the Functioning of the European Union, which details the current rules for the internal market, also contains a number of prohibitions which make it impossible for the member states to adopt anti-dumping measures against each other. In particular, member states are prohibited from imposing unjustified quantitative restrictions on the import of goods from other EU member states such as quotas, technical requirements or minimum prices. The same prohibition applies to fiscal restrictions in the form of customs duties or charges having equivalent effect or discriminatory taxes (National Board of Trade, Sweden, 2013a).

The EU has also eliminated the anti-dumping instrument, with the exception of agricultural and fish products, in the European Economic Area (EEA) – its free trade agreements with European Free Trade Association (EFTA) member states Iceland, Liechtenstein and Norway – in 1994. The EEA states (Article 26) that “[a]nti-dumping measures /.../ attributable to third countries shall not be applied in relations between the Contracting parties, unless otherwise specified in this Agreement” (EEA Agreement, 1994). Switzerland and the EU have negotiated a number of bilateral agreements, due to the fact that Switzerland could not ratify the agreement as it was rejected by a national referendum. The legal framework for anti-dumping measures between the EU and Switzerland has not been substantially affected by these bilateral agreements (Rey, 2012).

The EU has also abolished anti-dumping measures in its customs unions with Andorra, with the exception of agricultural products, and San Marino. The EU Customs Unions with Andorra and San Marino (Article 7) require the countries to “apply /.../ the laws, regulations and administrative provisions applicable to customs matters in the Community and necessary for the proper functioning of the Customs Union [as well as] the common commercial policy of the [Union]” (European Commission 1990 and 2002). As a consequence, the EU, Andorra and San Marino have a common anti-dumping regime against third countries (Rey, 2012).

The EU has opted, however, to include anti-dumping provisions in most of its current 24 free trade agreements in force (Albania, Algeria, Bosnia and Herzegovina, EEA, Central America, CARIFORUM, Chile, Colombia/Peru, Eastern and Southern Africa States, Egypt, the Faroe Islands, Israel, Jordan, Lebanon, Macedonia, Mexico, Montenegro, Morocco, the Palestinian Authority, Pacific States, Serbia, South Africa, South Korea and Tunisia), as well as in its customs union with Turkey. In general, the EU does not differentiate in the use of anti-

dumping measures against its free trade partner countries and other third countries; in practice, the EU has used anti-dumping measures against half of its free trade partners, but only to a limited extent (National Board of Trade, Sweden, 2013b).

Table 5. Anti-dumping measures currently in force in EU regional trade agreements (in chronological order)

Country	Regional trade agreement	Anti-dumping measures
Algeria	Association Agreement [01-09-1995]	Urea ammonium nitrate solutions [22-09-2000]
Turkey	Customs Union [31-12-1995]	Polyester staple fibres [17-12-1988] Polyester yarn [14-06-1996] Steel ropes and cables [14-08-2001] Welded tubes and pipes of iron or non-iron steel [27-09-2002] Tube and pipe fittings, of iron or steel 29-01-2013]
Morocco	Association Agreement [01-03-2000]	Steel ropes and cables (anti-circumvention) [30-10-2004]
Israel	Association Agreement [01-06-2000]	PET film (anti-circumvention) [18-11-2004]
Mexico	Economic Partnership and Economic Cooperation Agreement [01-07-2000]	Magnetic discs [13-04-1996] Lighters [06-03-1997] Steel ropes and cables [17-08-1999]
South Africa	Trade, Development and Cooperation Agreement [01-07-2000]	Steel ropes and cables [17-02-1999] Hot rolled coils [05-02-2000] Manganese dioxides [13-03-2008]
FYR Macedonia	Stabilisation and Association Agreement [01-05-2004]	Ferro-silicon [28-02-2008]
Egypt	Association Agreement [01-06-2004]	Ferro-silicon [28-02-2008]
Bosnia and Herzegovina	Interim Agreement on Trade and Trade Related Matters [01-07-2008]	Zeolite A powder [14-05-2011]
South Korea	New Generation Free Trade Agreement [01-07-2011]	Tube and pipe fittings, of iron or steel [24-08-2002] Silicon metals [19-01-2007] Steel ropes and cables [11-05-2010] PET [30-11-2010]

Source: National Board of Trade, Sweden (2013b)

Currently, the EU has anti-dumping measures in place against ten of its free trade and customs union partners (Algeria, Bosnia and Herzegovina, Egypt, Israel, FYR Macedonia, Mexico, Morocco, South Africa, South Korea and Turkey, see Table 5). When Croatia became an EU member state in 2013, its free trade agreement with the EU ceased to exist. While the free trade agreement was in force, the EU imposed anti-dumping measures on

imports of *seamless pipes and tubes, iron or steel* from Croatia. These measures were, accordingly abolished overnight upon accession to the EU (National Board of Trade, Sweden, 2013b).

Box 3: The WTO-plus provisions in the EU's free trade agreements

The Union interest test in the EU's anti-dumping regulation should be based on an appreciation of all various interests taken as a whole (i.e. including EU importers, EU user industry and EU consumers). The EU's anti-dumping regulation states that anti-dumping measures may not be applied if it can be clearly demonstrated that applying such measures is not in the Union's interest. Anti-dumping measures would normally be against Union interest if it can be established that the EU's industry would not be able to benefit from such measures.

The lesser duty rule in the EU's anti-dumping regulation obliges the EU to impose an anti-dumping duty that is not higher than the lesser of the *dumping margin* (i.e. the difference between the domestic price in the exporting country and the export price to the EU) and the *injury margin* (i.e. the difference between the 'non-injurious' EU sales price and the export price to the EU). The lesser duty rule ensures, accordingly, that the anti-dumping measures imposed are not higher than necessary to remove the injury inflicted on EU producers.

Source: National Board of Trade, Sweden (2013d and 2013e)

In some free trade agreements, the EU has opted to include WTO-plus provisions. WTO-plus provisions, i.e. the *Union interest test* and the *lesser duty rule*, are only included in the recent free trade agreements with Colombia/Peru, South Korea and the Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama) (see Box 3). The WTO-plus provisions are also considered in a number of ongoing free trade negotiations.

European Partnership Agreements currently in force state that before imposing definitive anti-dumping measures on products imported from EPA States, the EU "*shall consider the possibility of constructive remedies as provided for in the relevant WTO agreements*" (EPA CARIFORUM, 2008). This might be considered as a 'best endeavor' provision.

3.3 US use of anti-dumping measures in regional trade agreements

The US has maintained the right to use anti-dumping measures in all its free trade agreements. The US has currently 14 free trade agreements with 20 countries; in seven (Australia, Bahrain, Israel, Jordan, Morocco, Oman and Singapore), the parties are entitled to the WTO provisions on anti-dumping even though they have not included a specific chapter on the anti-dumping instrument.

These free trade agreements state that "[t]he Parties understand that the GATT 1994 rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, export price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, import price requirements".

In five free trade agreements – Chile, Colombia, Panama, Peru and Dominican Republic-Central America (CAFTA-DR, including Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and the Dominican Republic) – the parties have included a section on anti-dumping measures in the chapter on trade remedies. These provisions are, however, also in line with the general WTO provisions on anti-dumping measures.

The agreements state that “[e]ach Party retains its rights and obligations under the WTO Agreement with regard to the application of antidumping and countervailing duties”. In addition, the agreements state that “[n]o provision of this Agreement /.../ shall be construed as imposing any rights or obligations on the Parties with respect to antidumping or countervailing duty measures”. The parties of CAFTA-DR are, however, entitled to special rules on cumulation in the determination of material injury.

In the free trade agreement with South Korea, the chapter on trade remedies is more detailed concerning the proceedings, but the general WTO provisions on anti-dumping measures remain unchanged. The parties have also decided to establish a Committee on Trade Remedies to serve as a forum for cooperation and increased understanding among the parties.

In the North American Free Trade Agreement (NAFTA) negotiations, Canada and Mexico bargained with the US in order to replace anti-dumping rules with competition rules, but the US argued for maintaining the anti-dumping instrument as well as other available trade remedies. The agreement states that “[e]ach Party reserves the right to apply its antidumping law and countervailing duty law to goods imported from the territory of any other Party” (NAFTA, 1994). However, the negotiations resulted in a compromise to create a bi-national panel charged with reviewing domestic anti-dumping determinations. The NAFTA has also established a Working Group on Trade and Competition (Farha, 2013).

The US has not included any WTO-plus provisions in any of its free trade agreements. With the exception of NAFTA and South Korea, and to a certain extent CAFTA-DR, where the provisions on anti-dumping are slightly different as compared to the general WTO provisions, the US does not differentiate between its free trade partners and other third countries. In practice, however, the US is not a frequent user of the anti-dumping instrument against its free trade partners – with the exception of NAFTA and South Korea.

Table 6. Anti-dumping measures currently in force in the US’s regional trade agreements (in chronological order)

Country	Regional trade agreement	Anti-dumping measures
Canada	North American Free Trade Agreement [Fmr. US-Canada Free Trade Agreement] 01-01-1989	Iron construction castings [03-05-1986] Citric acid and certain citrate [29-05-2009]
Mexico	North American Free Trade Agreement 01-01-1994	Circular welded non-alloy steel pipe [02-11-1992] Fresh tomatoes (suspended) [01-11-1996] Carbon steel wire rod [29-10-2002] Pre-stressed concrete steel wire strand [28-01-2004] Light-walled rectangular pipe and tube [05-08-2008] Certain Magnesia Carbon Bricks [20-09-2010] Seamless Refined Copper Pipe and Tube [22-11-2010] Large Residential Washers [15-02-2013]
Chile	Free Trade Agreement 01-01-2004	Preserved mushrooms [02-12-1998]

Australia	Free Trade Agreement 01-01-2005	Electrolytic manganese dioxide [08-10-2008]
South Korea	Free Trade Agreement 15-03-2012	Circular welded non-alloy steel pipe [02-11-1992] Welded ASTM A-312 stainless steel pipe [30-12-1992] Stainless steel wire rod [15-09-1998] Stainless steel plate in coils [21-05-1999] Stainless steel sheet & strip [27-07-1999] Carbon steel plate [10-02-2000] Polyester staple fiber [25-05-2000] Polyvinyl alcohol [01-10-2003] Pre-stressed concrete steel wire strand [28-01-2004] Light-walled rectangular pipe and tube [05-08-2008] Large Power Transformers [31-08-2012] Large Residential Washers [15-02-2013]

Source: Based on USITC (2014a)

Currently, the US has anti-dumping measures in place against five of its free trade partners (Australia, Canada, Chile, Mexico and South Korea, see Table 6). The most frequently targeted countries are South Korea, Mexico and Canada.

In line with the EU, the US does not use anti-dumping measures or other quantitative restrictions between individual states. The doctrine of the “dormant” Commerce Clause prohibits states to act in ways that impede interstate commerce. The “dormant” Commerce Clause, also known as the “negative” Commerce Clause, is a legal doctrine that is inferred from the Commerce Clause in Article I of the United States Constitution (Williams, 2005). The Commerce Clause explicitly grants Congress the power to regulate commerce among the states. The idea behind the “dormant” Commerce Clause is that this grant of power implies a restriction prohibiting a state from passing legislation that improperly burdens or discriminates against interstate commerce (Williams, 2005). The US Constitution (Article I, Paragraph 8) reserves for Congress at least some degree of exclusive power “to regulate Commerce with foreign Nations, and among the several States” (US Constitution, 1789). Accordingly, individual states are limited in their ability to legislate on such matters. The central rationale for the rule against discrimination is to prohibit state or municipal laws whose object is local economic protectionism (Williams, 2005).

4. The Initiative to Abolish Anti-Dumping Measures in the TTIP

The analysis of the initiative to abolish anti-dumping measures in the Transatlantic Trade and Investment Partnership (TTIP) should be viewed in the context of the empirical findings concerning the imposition and abolition of anti-dumping measures in the EU. The current anti-dumping measures between the EU and the US are analysed in this context. The mere fact that the EU and the US are currently entitled to use anti-dumping measures on the imports of the other trading party creates uncertainty in their bilateral relations. The experiences of eliminating anti-dumping measures in the EEA – one of the largest free trade areas in the world – could be used as a source of inspiration for the TTIP negotiations.

4.1 The use of anti-dumping measures between the EU and the US

The EU and the US are among the main users of the anti-dumping instrument at the global level. In 2012, the US was the world's largest user of the anti-dumping instrument with 230 anti-dumping measures in force; the EU was the world's fifth largest user with 102 anti-dumping measures in force (European Commission, 2014). However, the EU and the US use the anti-dumping instrument against each other in different ways. [See Annex 3 for a detailed description of the methodology used in the analysis.]

The US has 22 anti-dumping measures on 17 products against different EU member states, i.e. not against the EU as a whole (USITC, 2014a). In general, the import values affected are of moderate size but some of the measures have been in force for several decades. The US is the main user of anti-dumping measures against the EU, i.e. about 25 percent of the total number of anti-dumping measures against the EU in 2012 (European Commission, 2014). The EU, on the other hand, has only two anti-dumping measures against the US, but the import values affected are among the largest of all the EU's anti-dumping measures currently in force (National Board of Trade, Sweden, 2013c).

Table 7. EU anti-dumping measures in force against the US and other countries targeted by the measures (in chronological order)

Product	Targeted country	Imposition of anti-dumping duty	Expiry of anti-dumping duty	Countrywide duty level	Import value (EUR millions)
Biodiesel	US	2009	[2014]	172.2 EUR/ton	700
	Canada (anti-circumvention)	2011	[2014]	172.2 EUR/ton	122
	Argentina Indonesia	2013	[2018]	104.92 EUR/ton 83.84 EUR/ton	2 081
Bioethanol	US	2013	[2018]	9.5 %	430

Source: National Board of Trade, Sweden (2013c)

An analysis of EU anti-dumping measures against the US shows that only renewable energy products, such as *biodiesel* and *bioethanol*, are targeted (see Table 7). The anti-dumping measure on *biodiesel* from the US is the EU's fourth largest anti-dumping measure with regard to the import value affected; the anti-dumping measure on *bioethanol* from the US is among the EU's fifth- to tenth-largest anti-dumping measures with regard to import value. This implies that EU-US relations are affected by the recent trend in imposing anti-dumping measures on renewable energy (National Board of Trade, Sweden, 2013c; ICTSD, 2013).

Figure 21. Average changes in EU import value market shares of biodiesel (percentage)

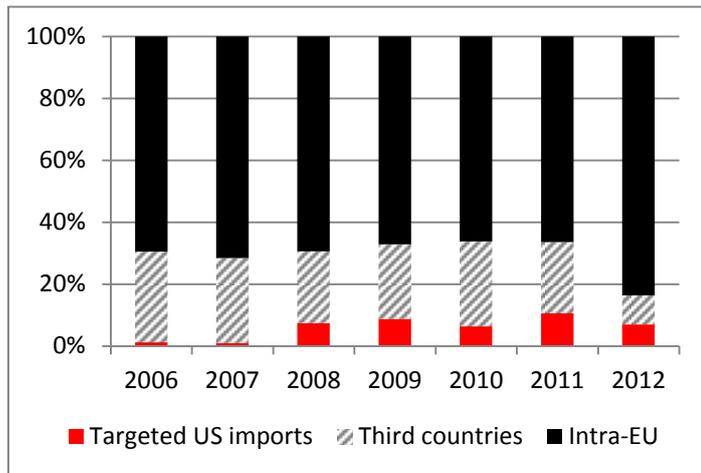
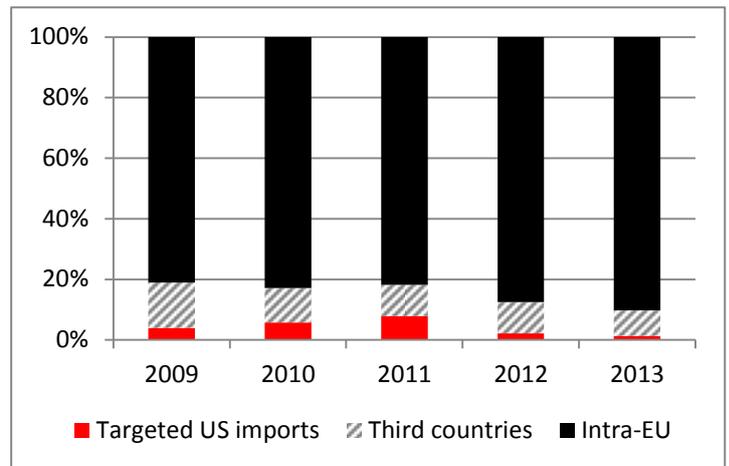


Figure 22. Average changes in EU import value market shares of bioethanol (percentage)



Note: Due to the limited number of EU anti-dumping measures against the US and the fact that one of the anti-dumping measures was imposed as recently as 2013, a meaningful aggregate analysis of the effects of import values and prices is not possible at this moment in time.

Source: Based on USA Trade Online database

The market shares of *biodiesel* in the EU indicates that the EU producers have a dominant market position of about 80 percent, and that EU producers' market share has increased slightly at the expense of the market share of third countries and the US (see Figure 21). The US market share of biodiesel in the EU seems to be fluctuating at around 10 percent. The imposition of anti-dumping measures does not seem to have had an immediate impact on the market situation for US imports. The market shares of *bioethanol* show that the EU producers also have a dominant position on the EU market (about 90 percent), and that US market share is fluctuating around 2-5 percent (see Figure 22).

Based on the limited analysis above, the effectiveness of the anti-dumping measures on US imports seems limited. The efficiency of the measures, i.e. the cost of using the anti-dumping instrument on renewable energy – is likely to be much higher for EU user industry and consumers than the benefits for the EU producers due to the high import values affected and the limited impact on US market shares (National Board of Trade, Sweden, 2013c; ICTSD, 2013).

The seemingly limited effectiveness and efficiency of the EU's anti-dumping measures in force against the US might indicate that abolishing the measures would leave the EU's dominant market shares largely unaffected. At the same time, the cost for EU user industry and consumers is likely to decrease if the anti-dumping measures were abolished.

Table 8. US anti-dumping measures in force against EU member states and other countries targeted by the measures (in chronological order)

Product	Targeted country	Imposition of anti-dumping duty	Expiry of anti-dumping duty	Countrywide duty level	Import value (1 000 dollars)
Plastic tape	Italy	1977	-	10 %	N/A
Brass sheet and strip	Italy	1987	-	5.44 %	9 463
	Germany	1987	-	7.30 %	45 313
	France	1987	-	42.24 %	9 147
	Brazil	1987	2006	40.62 %	6 204
	Canada	1987	2006	8.10 %	7 403
	Japan	1998	-	45.72 %	22 128
Chlorinated isocyanurate	Spain	2005	-	24.83 %	***
	China	2005		285.63 %	***
Granular resin	Italy	1988	-	46.46 %	***
	Japan	1988	2005	91.74 %	***
Ball bearings	United Kingdom	1989	-	54.27 %	N/A
	France	1989	2006	64.13 %	
	Germany	1989	2006	68.89 %	
	Italy	1989	2006	155.57 %	
	Japan	1989	-	45.83 %	
	Singapore	1989	2006	25.08 %	
Stainless steel bars	Spain	1995	-	25.77 %	13 939
	Brazil	1995	-	19.43 %	9 697
	India	1995	-	12.45 %	5 220
	Japan	1995	-	61.47 %	37 791
	France	2002	2007	35.92 %	11 969
	Germany	2002	2007	15.57 %	24 984
	Italy	2002	2007	6.60 %	45 543
	United Kingdom	2002	2007	83.85 %	15 048
	South Korea	2002	2007	11.30 %	18 145
		Japan	1988	2010	49.31 %
Stainless steel butt-welded fittings	South Korea	1993	2010	21.20 %	1 519
	Taiwan	1993	2010	51.01 %	10 598
	Italy	2001	-	26.59 %	***
	Malaysia	2001	-	7.51 %	***
	Philippines	2001	-	7.59 %	***
Stainless steel plate in coils	Belgium	1999	-	8.54 %	***
	Italy	1999	2011	36.69 %	***
	Canada	1999	2005	11.10 %	***
	South Africa	1999	-	41.63 %	***
	South Korea	1999	-	16.26 %	***
	Taiwan	1999	-	7.39 %	***

Pasta	Italy	1996	-	16.51 %	124 233
	Turkey	1996	-	60.87 %	14 957
Seamless pipes	Germany	1995	-	57.72 %	***
	Argentina	1995	2007	108.13 %	***
	Brazil	1995	2007	124.94 %	***
Stainless steel wire rod	India	1993	-	48.80 %	3 490
	France	1993	2006	24.51 %	18 034
	Brazil	1993	2006	25.88 %	3 599
	Italy	1998	-	11.25 %	22 829
	Spain	1998	-	2.71 %	6 474
	Sweden	1998	2007	5.71 %	29 931
	Japan	1998	-	25.26 %	25 919
	South Korea	1998	-	5.77 %	22 287
	Taiwan	1998	-	8.29 %	28 151
	Steel concrete reinforcement bars	Poland	2001	-	47.13 %
Latvia		2001	-	16.99 %	60 153
Belarus		2001	-	114.53 %	14 662
China		2001	-	133.00 %	3 330
Indonesia		2001	-	60.46 %	16 185
Moldova		2001	-	232.86 %	40 228
Ukraine		2001	-	41.69 %	18 412
South Korea		2001	2007	22.89 %	59 202
Thermal paper		Germany	2008	-	6.49 %
	China	2008	-	132.95 %	***
Low enriched uranium	Russia	1992	(2012)	115.82 %	123 223
	France	2002	-	19.95 %	***
Carboxymethyl-cellulose	Finland	2005	-	6.65 %	***
	Netherlands	2005	-	14.57 %	***
	Sweden	2005	2010	25.29 %	***
	Mexico	2005	2010	12.61 %	***
Seamless pipe small diameter	Romania	2000	-	13.06 %	18 332
	Czech Republic	2000	2006	32.26 %	2 682
	Japan	2000	-	70.43 %	91 263
	South Africa	2000	2006	40.17 %	5 680
Sodium nitrate	Germany	2008	-	150.82 %	2 680
	China	2008	-	190.74 %	476

Note: The anti-dumping measures are presented in the order that anti-dumping investigations were initiated, even though the definitive measures were imposed at a later date. Current anti-dumping measures against EU member states are marked in **bold**. Expired anti-dumping measures against EU member states are marked in ~~bold~~. Measures against third countries on the same products are presented correspondingly. Only anti-dumping measures on the products concerned during the last decade are considered, even though measures on the products might have been in place earlier.

Source: Based on USITC (2014a and 2014b)

In general, the US uses anti-dumping instruments against EU member states on products that are traditionally targeted by anti-dumping measures, such as iron and steel products (see Table 8). For many products, the EU member states constitute, either currently or at the time anti-dumping measures were imposed, only a small fraction of the countries targeted by the product-specific measures, which indicates that EU member states are targeted in spite of small import values. Furthermore, in a great number of cases, anti-dumping measures against certain EU member states have expired on the products concerned, such as *stainless steel bars* (France, Germany, Italy and the UK), *ball bearings* (France, Germany and Italy), *stainless steel wire rod* (France and Sweden), *seamless pipes, small diameter* (Czech Republic), *stainless steel plate in coils* (Italy) and *carboxymethylcellulose* (Sweden).

Figure 23. Average changes in US import value of targeted products (Index 100 =Year 0)

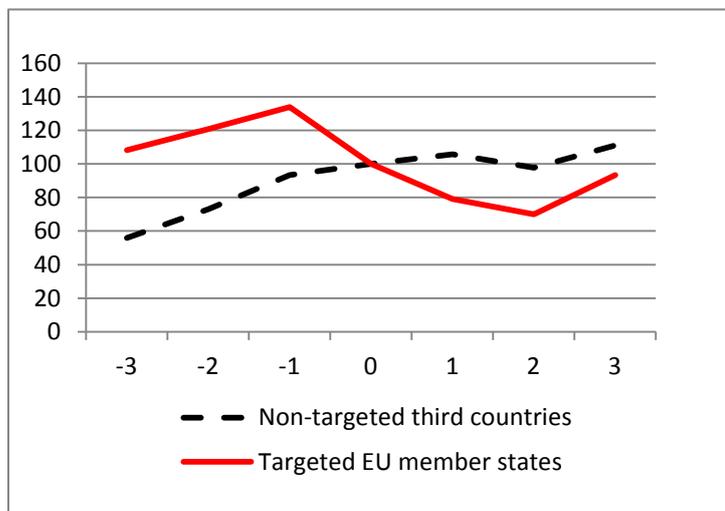
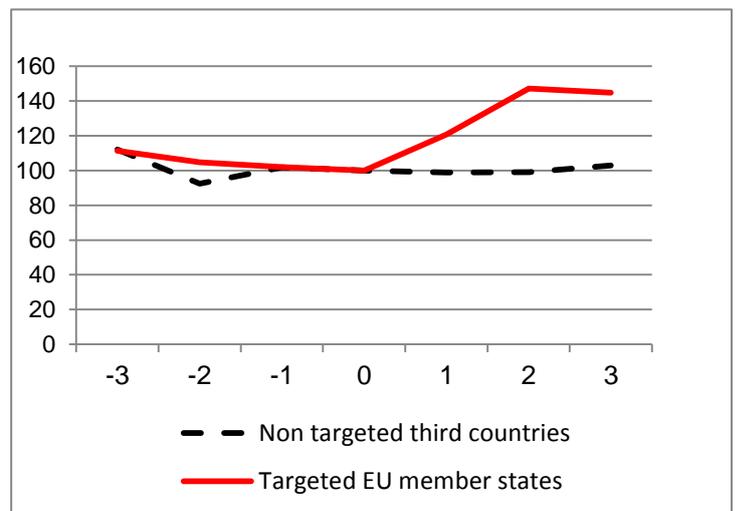


Figure 24. Average changes in US import unit value price of targeted products (Index 100 =Year 0)

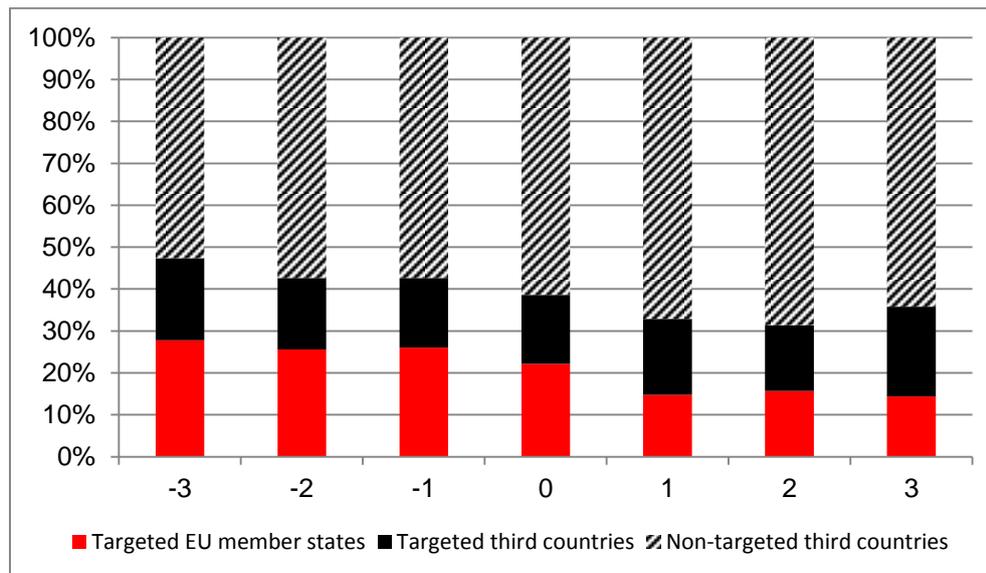


Note: Due to the lack of intra-US trade statistics, it is not possible to present the intra-US import value and/or the intra-US import value price in the graphs.

Source: Based on USA Trade Online database

The average effects of imposing the anti-dumping measures on EU imports seem to be immediate and in line with the general effects of imposing anti-dumping measures (see Figure 23). Import values decreased 34 percent on average the year before the definitive anti-dumping measures were imposed (year “0”), and an additional 30 percent over the first two years of anti-dumping measures being in force (year “2”). At the same time, the import unit value price increased 47 percent (see Figure 24). The effects of anti-dumping measures seem to change, on average, after two years, as the average import value of targeted EU imports increases 23 percent while the average import unit value price remains constant. Third countries not targeted by anti-dumping measures seem largely unaffected by the use of the anti-dumping instrument even though there is a slight increase in import value and unit value price.

Figure 25. Average changes in US import value shares (percentage)



Note: Due to lack of intra-US trade statistics, it is not possible to present the changes in market shares of the EU imports on the US market.

Source: Based on USA Trade Online database

The share of imports from the targeted EU member states, as a percentage of total US imports of the targeted products, decreased by 8 percentage points in three years from the year the anti-dumping measures were imposed (see Figure 25). Other targeted countries, however, increased their import share by 5 percentage points. At the same time, the import share of non-targeted third countries increased by 3 percentage points.

The limited import shares of EU member states in the total import value (in particular, since the intra-US market share is not considered), as well as the increasing unit value price, might indicate that the effects on US producers’ market share and price levels would remain largely unaffected by an abolition of anti-dumping measures. This is also supported by the fact that a large number of US anti-dumping measures against EU members on the products concerned have expired naturally in recent years. Accordingly, there is reason to believe that the trade effects of a possible abolition of the US anti-dumping measures against EU member states would be in line with the analysis of abolishing anti-dumping measures in the EU.

4.2 EU and EEA experience as an inspiration for TTIP negotiations

It is sometimes argued that the elimination of anti-dumping measures is only possible in regional trade agreements with limited levels of trade and competition between the parties. The 32 EEA parties, however, have managed to eliminate anti-dumping measures among their main trading partners. The EEA parties trade on average about 70 percent of their total value of goods with other EEA parties (see Table 9). The US, however, accounts for only about 4 percent on average of the total value of trade in goods of the EEA parties, and anti-dumping measures are currently used between the parties.

Table 9. Trade levels among EEA member states and between EEA member states and the US (value in average 2009-2012)

Imports from EEA (percentage)		Exports to EEA (percentage)		Imports from the US (percentage)		Exports to the US (percentage)	
Liechtenstein	89	Luxembourg	87	Ireland	14	Ireland	22
Austria	84	Slovakia	86	Iceland	9	United Kingdom	12
Estonia	80	Czech Republic	86	United Kingdom	8	Liechtenstein	12
Luxembourg	79	Iceland	83	Netherlands	7	Switzerland	9
Latvia	79	Norway	81	Belgium	6	Germany	7
Denmark	77	Poland	81	Norway	6	Sweden	7
Malta	77	Hungary	79	Luxembourg	5	Finland	6
Sweden	77	Netherlands	79	Switzerland	5	Denmark	6
Czech Republic	77	Slovenia	78	France	5	Italy	6
Portugal	76	Austria	77	Germany	4	Malta	6
Romania	74	Portugal	75	Sweden	3	France	6
Slovakia	74	Belgium	74	Spain	3	Belgium	6
Slovenia	74	Romania	74	Italy	3	Norway	5
Poland	72	Denmark	73	Denmark	3	Estonia	5
France	72	Estonia	71	Liechtenstein	3	Austria	5
Cyprus	71	Spain	69	Malta	3	Greece	4
Ireland	71	Latvia	69	Croatia	2	Iceland	4
Belgium	71	Sweden	68	Finland	2	Netherlands	4
Switzerland	71	Cyprus	66	Greece	2	Portugal	4
Hungary	70	Germany	65	Austria	2	Spain	4
Germany	70	France	64	Portugal	2	Croatia	3
Finland	67	Lithuania	64	Hungary	2	Lithuania	2
Norway	67	Ireland	64	Cyprus	2	Hungary	2
Iceland	65	Bulgaria	63	Poland	2	Luxembourg	2
Croatia	64	Italy	62	Slovenia	2	Czech Republic	2
Bulgaria	60	Croatia	62	Czech Republic	1	Cyprus	2
Spain	60	Finland	59	Romania	1	Poland	2
Italy	58	Liechtenstein	58	Lithuania	1	Romania	2
Lithuania	58	United Kingdom	57	Estonia	1	Slovakia	2
United Kingdom	56	Greece	52	Bulgaria	1	Bulgaria	2
Greece	54	Switzerland	52	Latvia	1	Slovenia	1
Netherlands	51	Malta	41	Slovakia	0	Latvia	1

Note I: For the purpose of this analysis, Switzerland is included among the EEA parties.

Note II: EU member states are highlighted in **bold**. A level of trade over 50 percent of the world trade is highlighted in dark colour.

Source: Based on Eurostat/Comext

How was it possible for EEA parties to eliminate anti-dumping measures among themselves, and what aspects should be considered if the EEA were to be used as an inspiration for the TTIP?

The EU abolished anti-dumping measures among its original member states, something that has also been the case in the subsequent EU enlargements. The EFTA member states have also eliminated anti-dumping measures among its members. The EU has eliminated the possibility of using any of the three trade remedies (anti-dumping measures, anti-subsidy measures and safeguard measures) that are available according to the WTO rules. In the EFTA it is possible for the member states to use safeguard measures, but this provision has never been used. This is also the case for the EEA where safeguard measures are allowed according to strict requirements (EEA Agreement, 1994).

It is frequently argued that anti-dumping measures are used to provide a 'level playing field' and 'fair competition' in trade relations among countries (National Board of Trade, Sweden, 2012b and 2013a). The EU – and by extension the EEA – have proved, however, that it is possible to replace anti-dumping measures among major trading partners in regional trade agreements and still benefit from 'fair competition'. It is relevant to note that not a single competition case took over when anti-dumping measures were abolished in the EU at the enlargement in 2004 (National Board of Trade, Sweden, 2013a).

At the **EU** enlargements, the accession countries are required to adapt their legislation in relevant areas to the EU's *acquis communautaire*, i.e. harmonise their national regulatory frameworks with EU law. These harmonisation requirements involve stringent conditions with regard to production standards, labour rights, health standards, environmental standards, and consumer quality standards, for example, and create the conditions for a 'level playing field' (National Board of Trade, Sweden, 2013a). This provides for the free movement of goods, persons, services and capital, usually referred to as the 'four freedoms'. The harmonisation requirements, in combination with a common mechanism for enforcing the rules, make 'unfair' competitive advantages less likely on these grounds and decrease the need to resort to contingency protection measures such as the use of the anti-dumping instrument (National Board of Trade, Sweden, 2013a).

In line with the harmonisation requirements, the EU has established common competition rules that aim to guarantee 'fair competition'. The EU's competition law contains, for example, rules on cartels, market dominance, mergers, and state aid. Even though no formal link has been established between the elimination of anti-dumping measures and the application of common competition rules, the rules were established to guarantee 'fair competition' in the EU's internal market (National Board of Trade, Sweden, 2013a).

The same is true as regards the **EEA** where anti-dumping measures also have been eliminated with the only exception of agricultural and fishery products. The EEA might be seen as an extension of the EU's internal market with the exception of common agricultural policy and the common fisheries policy. During the EEA negotiations, the EFTA states agreed to harmonise their domestic law in relevant fields to the EU's *acquis communautaire*. The elimination of anti-dumping measures was made conditional on the full enforcement of EU competition rules in the EFTA member states (Rey, 2012). In the EEA, two supranational bodies – the European Commission and the EFTA Surveillance Authority – are responsible for enforcing the competition rules.

The situations looks different, however, in the **EU's other free trade agreements**. In general, the EU favours the inclusion of competition rules in its free trade agreements with third countries (National Board of Trade, Sweden, 2013b). The free trade agreements negotiated by the EU normally contain strong language regarding anti-competitive agreements and the abuse of a dominant position in line with the common competition rules. However, they contain only limited provisions when it comes to coordination and cooperation with regard to the exchange of information (Solano and Sennekamp, 2006). In addition, they do not establish a common authority for the enforcement of the competition rules. This implies that the provisions for competition are not as easily enforceable in the free trade agreements as they are within the EU or in the EEA. In addition, a general harmonisation of the relevant domestic policies and rules does not take place in the EU's free trade agreements (National Board of Trade, Sweden, 2013a).

It is therefore evident from experience from the EU – and by extension the EEA – that in comparison with the EU's other free trade agreements, it is not only the introduction of competition rules that creates the preconditions for eliminating anti-dumping measures. It is apparent that the provisions for competition, where included in the free trade agreement, must also be enforceable. It has also been proven by the EU and the EEA that harmonisation of relevant policies and rules among the parties is particularly important for the possible elimination of anti-dumping measures. In order to make it possible for the EU and the US to eliminate anti-dumping measures in TTIP, the negotiations should preferably focus on the harmonisation of different policies and rules to a greater extent than is normally the case in free trade agreements.

In the case of **TTIP negotiations** between the EU and the US, the normal customs duties between the countries are low. The greatest potential benefits from a future free trade agreement between the EU and the US would therefore stem from the harmonisation, simplification and mutual recognition of rules and regulations. Tariff liberalisations would also have positive effects, but these would be more marginal due to the low level of the customs duties (even though the removal of administrative procedures would still be needed). The harmonisation, simplification and mutual recognition of rules and regulations between the EU and the US is thus a core issue in TTIP negotiations, as well as one of the main preconditions for the success of TTIP (National Board of Trade, Sweden, 2012c and 2014).

A consequence of this harmonisation exercise would be that anti-dumping measures might be unnecessary if conditions for a 'level playing field' are created. The parties might also advocate harmonising the competition rules and establishing relevant enforcement authorities in line with the EEA in order to render the provisions for competition meaningful. This would create the necessary preconditions for 'fair competition'.

The experiences of deeper integration in major regional trade agreements – sometimes referred to as 'mega-regionals' – such as the TTIP might serve as a model for other free trade agreements and/or as a 'stepping stone' for multilateral rules. The TTIP might also open up to later joiners who will benefit from the negotiated outcome.

Conclusions

This paper indicates that the benefits of anti-dumping measures in regional trade agreements are limited and come at a high cost. In the case of the EU, the anti-dumping measures might have contributed to help EU producers increase their market share by 1 percentage point. However, for every euro EU producers gained from the anti-dumping protection, EU user industry and consumers lost, on average, 4.5 euro.

This paper also indicates that abolishing anti-dumping measures does not necessarily cause injury to the protected industry. About ten years ago, the EU abolished a large number of anti-dumping measures overnight due to the EU enlargement. Some of the anti-dumping measures had been in force for well over a decade, and some were as high as 50 percent; they met the criteria of dumping, injury and causality. Abolishing the anti-dumping measures, however, did not cause injury in terms of price undercutting and/or lost market shares for EU producers. There was not a single anti-dumping case where a competition case took over. In addition, the producers from the new members did not increase their market shares as was previously feared. Thus, what were once considered third-country imports that caused injury to domestic industry and triggered the use of anti-dumping measures in the EU have – following the enlargement – been considered normal business practices in line with the requirements of ‘fair competition’. It has also been empirically established that the abolition of anti-dumping measures did not increase anti-dumping action against third countries.

The empirical findings from the abolition of anti-dumping measures in the EU indicates that parties to regional trade agreements, as well as third countries, have little to fear from eliminating the use of anti-dumping measures in regional trade agreements altogether. The experiences of abolishing anti-dumping measures in the EU and the EEA might therefore be useful in initiatives to eliminate anti-dumping measures in the TTIP negotiations. The inclusion of competition rules and other forms of policy harmonisation and/or harmonisation of relevant conditions and standards within the EU and the EEA has proved to be a successful substitute for the use of anti-dumping measures when certain institutional prerequisites, such as a successful enforcement mechanism, are fulfilled. This implies that when conditions for a ‘level playing field’ and ‘fair competition’ are created in regional trade agreements, there is no need to recur to anti-dumping measures.

If major regional trade agreements – sometimes referred to as ‘mega-regionals’ – such as the TTIP follow the examples of the EU and the EEA and eliminate anti-dumping measures, regional trade agreements might serve as a ‘stepping stone’ for a new multilateral regime in this field, i.e. as a way of ‘multilateralising regionalism’.

Annexes

Annex 1: Methodology used for calculating the effects of imposing anti-dumping measures in the EU

The dataset consists of all anti-dumping investigations initiated by the EU during the periods 2000–2001 and 2006–2008 that resulted in both provisional and definitive anti-dumping measures where the measure is expressed as an *ad valorem* duty. The average definitive countrywide anti-dumping duty is around 30 percent. The anti-dumping duty level varies significantly, however, with the lowest being around 5 percent and the highest being around 70 percent. In this paper, the countrywide definitive anti-dumping duty has been used for each country. The time period was selected to avoid the effects of the EU enlargement in 2004.

The selected sample consists of 22 anti-dumping cases counted on a case-by-product basis. The types of products that are targeted are both intermediate products (chemical and iron and steel products, approximately two-thirds) and consumer products (approximately one-third). Counted on a case-by-country basis, the selected sample consists of 39 cases (see National Board of Trade, Sweden, 2012a). A total of 16 countries are targeted by the anti-dumping measures; by far the most frequently targeted is China (13 anti-dumping measures), followed by India (4 anti-dumping measures) and Russia and Thailand (3 anti-dumping measures each).

The calculations of effectiveness

Data on trade between EU members (intra-EU imports) and trade between the EU and the rest of the world (extra-EU imports) were collected for all products listed in the anti-dumping cases. For the cases initiated between 2000 and 2001, data for the EU15 are used; for the cases initiated between 2006 and 2008, data for the EU25 are used. The data were retrieved from the Eurostat COMEXT database.

Due to the fact that data on EU domestic sales for the products concerned are not available, data for sales within the EU (intra-EU trade) has been used as an approximation. The presumption is that the elasticity of substitution between intra-EU imports and extra-EU imports closely resembles the elasticity between EU domestic sales and extra-EU trade.

For each case, trade data for intra-EU imports and extra-EU imports from three years before and three years after the anti-dumping investigation was initiated are analysed. The year the anti-dumping investigation was initiated is indicated by the year “0”. For the selected cases in this paper, the provisional duty was generally imposed the year after the anti-dumping investigation was initiated (year “1”); the definitive duty was generally imposed the following year (year “2”).

The import statistics dataset contains information on the *value* (in euro) of the imported products and information on the corresponding *volume* (in tons) of imported products. A *unit value price*, which is used as a proxy for the import price, is calculated as the total value of imports divided by the total volume of imports. In order to construct a unit value price that reflects the transaction price as much as possible, the division of value by volume was made on the most disaggregated data, i.e. the unit value price of each CN product (8-digit level) from each targeted country has been calculated separately.

Figures 1 to 5 provide graphical representations of the effects of imposing EU anti-dumping measures on intra-EU trade, EU imports from targeted countries and EU imports from non-targeted countries. Figures 1, 3 and 5 show the unweighted average changes in imports for each case relative to the year in which the investigation was initiated (year “0”). By using an

unweighted average, each case has the same impact on the relative average change, regardless of the value of the total trade in the particular product. Figures 2 and 4 show the average changes in import market shares (in terms of value and volume) of the EU internal market.

In the context of the analysis, it is important to emphasise that the focus is on the average effects of the anti-dumping policy on import flows of several different anti-dumping cases. Naturally, there is a lot of variation among the different cases. Underlying trends that affect imports from different geographical sources in different ways are not controlled for in the analysis.

The calculations of efficiency

The estimated average ratio between EU producers’ benefit and EU user industry and consumers’ loss is based on an analysis of changes of producer surplus and user industry/consumer surplus for each of the anti-dumping cases in the selected sample.

The changes of surpluses were calculated using the following equations:

	PRODUCER GAIN	USER INDUSTRY / CONSUMER LOSS
“First-order effects” (effects of price changes at given volumes)	$dP_{iEU} Q_{iEU,t-1}$	$\sum_{j = AD, NAD, EU} dP_{ij} Q_{ijt-1};$
“Second-order effects” (effects of changes in volume arising from price changes)	$(1/2) dP_{iEU} dQ_{iEU}$	$(1/2) \sum_{j = AD, NAD, EU} dP_{ij} dQ_{ij};$
Total effects	$dP_{iEU} Q_{iEU,t-1}$ $+ (1/2) dP_{iEU} dQ_{iEU}$	$\sum_{j = AD, NAD, EU} dP_{ij} Q_{ijt-1}$ $+ (1/2) \sum_{j = AD, NAD, EU} dP_{ij} dQ_{ij};$

Aggregate effects during a three-year period after the initiation of the investigation were calculated using a Carli index (the unweighted mean of the price or volume ratios). The effects are calculated for each product from the year before the initiation of the anti-dumping investigation (year “-1”). This reference year was chosen because it is assumed to show the *ex ante* levels of volume and price.

Annex 2: Methodology used for calculating the effects of abolishing anti-dumping measures in the EU

The dataset consists of the anti-dumping measures that were *in force* in EU15 and thus were abolished at the EU enlargement with 10 accession countries in May 2004. The analysis ends in the year 2008 as the economic crisis, which began that year, may blur the analysis of the economic effects in the years that follow.

The analysis does not include the anti-dumping measures that expired normally before the enlargement. The effect of abolishing EU25 anti-dumping measures on imports from Bulgaria and Romania as a consequence of the enlargement in 2007 is not included in this analysis. These countries are therefore counted as third countries for the purpose of this analysis, which only considers the effects of abolishing anti-dumping measures in EU15, and not anti-dumping measures that were abolished in the accession countries.

In total, 16 anti-dumping measures were abolished as a direct consequence of the EU enlargement in 2004 (see Table 1); these measures covered 8 products originating in 6 accession countries. The Czech Republic and Poland were the two most targeted accession countries, as EU15 had five anti-dumping measures in place against each of these countries. The measures had been in force for different lengths of time, the shortest for two years and the longest for 11 years. The targeted products were all intermediate products: five iron and steel products (four different types of pipes and tubes) and three chemical products (all used as fertilizers). The average countrywide *ad valorem* duty applicable to the iron and steel products was around 30 percent, and the average countrywide specific duty applicable to the chemical products was around 15 EUR/tonne.

Note: In this paper, the three chemical products (*ammonium nitrate*, *urea* and *urea ammonium nitrate solutions*) are excluded from the aggregate and product-specific analyses since the average unit prices are due to factors other than the abolition of anti-dumping measures that took place at the same time and contributed to a reduction in exports and higher world market prices: (i) the exclusion from subsidized Russian gas prices to producers in EU accession countries following their accession to the EU; (ii) an increase in the international price of oil; and (iii) an increased demand for urea and ammonium nitrate in China and India.

The calculations of injury to the EU producers

Data on trade between EU members (intra-EU imports) and trade between the EU and the rest of the world (extra-EU imports) were collected for all products listed in the anti-dumping cases. The data were retrieved from the Eurostat COMEXT database.

Due to the fact that data on EU domestic sales for the products concerned are not available, data for sales within the EU (intra-EU trade) has been used as an approximation. The presumption is that the elasticity of substitution between intra-EU imports and extra-EU imports is very similar to the elasticity between EU domestic sales and extra-EU trade.

The import statistics dataset contains information on the *value* (in euro) of the imported products and information on the corresponding *volume* (in tons) of imported products. A *unit value price*, which is used as a proxy for the import price, is calculated as the total value of imports divided by the total volume of imports. In order to construct a unit value price that reflects the transaction price as much as possible, the division of value by volume was made on the most disaggregated data, i.e. the unit value price of each CN product (8-digit level) from each targeted country has been calculated separately.

Figures 6 to 10 provide graphical representations of the average effects of abolishing anti-dumping measures against the accession countries on EU15 imports from the accession countries, intra-EU15 trade, and EU15 imports from all other countries, both those targeted and those not targeted by anti-dumping measures, between 1998 and 2008. Figures 6, 8 and 10 show the unweighted average changes in imports (in terms of value, volume and unit prices) for each case, relative to the year in which anti-dumping measures were abolished, e.g. 2004. By using an unweighted average, each case has the same impact on the relative average change, regardless of the value of the trade in the corresponding product. Figures 7 and 9 show the average changes in import market shares (in terms of value and volume) of the EU internal market.

Limitations of the analysis

At the time the accession countries became EU member states, *all* EU duties against them ceased. It is not possible to distinguish between the effects of terminating anti-dumping duties and terminating these other customs duties, where relevant. Furthermore, it is not possible to distinguish between the effects of abolishing anti-dumping measures and other possible effects on competition and pricing associated with EU membership – for example, the effects of harmonising with the EU's *acquis communautaire* and the free movement of goods, capital, services and people. The harmonisation process might lead to restructuring of industry and higher production costs, and the 'four freedoms' on the EU's internal market might increase competition. These aspects merit further analyses.

The anti-dumping measures were, in most cases, subject to price undertakings. The exceptions were *ammonium nitrate* and *urea ammonium nitrate solutions* from Poland and *welded tubes and pipes, iron or non-alloy steel* from the Czech Republic and Poland. Price undertakings imply that certain exporters commit themselves to increasing their prices to minimums designed to eliminate the injurious effects of dumping. Minimum prices prevent import prices from falling below a certain price floor. In this paper, the possible effects of price undertakings have not been analysed. However, it is reasonable to believe that the findings in this paper on the effects of abolishing anti-dumping measures would have been more pronounced in the absence of price undertakings.

This paper does not analyse the reasons behind the increase in third-country imports when anti-dumping measures against the accession countries were abolished. However, it is apparent that EU producers did not request additional anti-dumping measures against this increase in imports from third countries. These aspects also merit further analyses.

It is important to consider the limited number of anti-dumping cases that are being analysed in the paper. However, these are the only empirical cases available for the analysis of effects of abolishing anti-dumping measures in any regional trade agreements during the last few decades.

Annex 3: Methodology used for analysing anti-dumping measures between the EU and the US

The dataset consists of all products currently faced with anti-dumping measures between the EU28 and the US (as of May 2014). The possible existence of anti-circumvention measures on certain products are not considered in the analysis.

In the EU, anti-dumping measures targeting two products, *biodiesel* and *bioethanol* – products are not traditionally targeted by anti-dumping measures – are currently in place. The anti-dumping measures on *biodiesel* have been in place for about five years, while the anti-dumping measures on *bioethanol* have recently been imposed, i.e. about one year.

In the US, anti-dumping measures are currently imposed on 16 products – mainly traditionally targeted iron and steel products – against 22 EU member states. The currently most frequently targeted EU member states are Italy (6 anti-dumping measures) and Germany (4 anti-dumping measures). Some of the measures have been in place for almost forty years (*plastic tape*) and some of the measures for almost thirty years (*brass sheet and strip*, *chlorinated isocyanurate*, *granular resin* and *ball bearings*).

Note: In the analysis of US anti-dumping measures against EU member states, only the EU member states targeted at the imposition of the anti-dumping measures are covered. In addition, only anti-dumping measures with data on the unit price level (*stainless steel butt-welded fittings*, *chlorinated isocyanurate*, *thermal paper*, *carboxymethylcellulose*, *seamless pipes*, *stainless steel plate in coils* and *sodium nitrate*) were included in the sample. The paper does not consider previous anti-dumping measures between the EU and the US or the effects of their expiration. This is an area that merits further and more detailed analyses.

EU: Data on trade between EU member states (intra-EU imports) and trade between the EU and the rest of the world (extra-EU imports) have been collected for all products listed in the anti-dumping cases. The data were retrieved from the Eurostat COMEXT database.

Due to the fact that data on EU domestic sales for the products concerned are not available, data for sales within the EU, intra-EU trade has been used as an approximation. The presumption is that the elasticity of substitution between intra-EU imports and extra-EU imports is very similar to the elasticity between EU domestic sales and extra-EU trade.

Due to the limited number of current EU anti-dumping measures against the US and the fact that one of the anti-dumping measures was imposed as recently as 2013, a meaningful aggregate analysis on the effects of import values and prices is not possible at this moment in time. The market shares of the products are therefore also analysed separately.

Figure 21 provides a graphical representation of the effects on market shares (intra-EU trade, EU imports from the US and EU imports from non-targeted third countries) of imposing definitive anti-dumping measures on biodiesel from the US. Figure 22 provides a graphical representation of the effects on market shares (intra-EU trade, EU imports from the US and EU imports from non-targeted third countries) of the initiation of the anti-dumping investigation on bioethanol from the US. Due to the recent imposition of anti-dumping measures on bioethanol, trade statistics are currently not available to analyse the effects on trade of imposing the measures.

The analysis of the possible effects of abolishing the EU anti-dumping measures against the US is limited in scope and mainly qualitative. This is an area that merits further and more detailed analyses.

US: Data on US imports from the rest of the world have been collected for all products listed in the anti-dumping cases. The data were retrieved from the US Trade Online database.

Due to the fact that data on US domestic sales for the products concerned are not available, and intra-US trade cannot be used as an approximation, an analysis of intra-US average changes in import value, intra-US average changes in import value market share and intra US average changes in import unit value price has been omitted in the paper. As a consequence, the focus in analysing the average changes in import value and the average changes in import unit value price is on the targeted EU member states and third countries not targeted by anti-dumping measures for the products concerned (Figure 23 and 24). For the simplicity of the analysis, third countries targeted with anti-dumping measures for the products concerned are also omitted in when presenting the effects of average changes in import value and price.

Due to the limits in data availability, the focus of the analysis is on average changes in the import value shares and not on the average changes in import value market shares (Figure 25). For the simplicity of the analysis, only the average changes in import values have been considered and not the average changes in import volumes.

For each case, the trade data for US imports three years before and three years after the imposition of definitive anti-dumping measures are analysed instead of the time of the initiation of the anti-dumping investigation. This is due to the fact that the anti-dumping investigations in some cases were initiated several years before the anti-dumping measures were imposed. This fact might, however, have influenced the import levels in the analysis. The year that definitive anti-dumping measures were imposed is marked by the year "0".

Figures 23 to 25 provide graphical representations of the effects of imposing US anti-dumping measures on imports from targeted EU member states and US imports from non-targeted third countries (as the trade flows from third countries targeted with the measures are excluded in the presentation). The figures show the unweighted average changes in imports for each case relative to the year in which the anti-dumping measures were imposed (year "0"). By using an unweighted average, each case has the same impact on the relative average change, regardless of the value of the total trade in the particular product.

The analysis of the possible effects of abolishing the US anti-dumping measures against the EU is limited in scope and mainly qualitative. This is an area that merits further and more detailed analyses.

In the context of the analysis, it is important to emphasise that the focus is on the average effects of the anti-dumping policy on import flows of several different anti-dumping cases. Naturally, there is a lot of variation among the different cases. Underlying trends that affect imports from different geographical sources in different ways are not controlled for in the analysis.

The analysis of the efficiency of the anti-dumping measures between the EU and the US is limited in scope and mainly qualitative. The conclusions are mainly based on the experience of imposing anti-dumping measures in the EU (see Annex 1).

References

- Bhagwati, J. and Panagariya, A, 1996, *Preferential Trading Areas and Multilateralism: Strangers, Friends or Foes?*, Discussion Paper Series No. 9596-04, Department of Economics, Columbia University.
- EEA Agreement, 1994, *Agreement on the European Economic Area*, Official Journal No L1, 3/1/1994
- EPA CARIFORUM, 2008, *ECONOMIC PARTNERSHIP AGREEMENT between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part*, Official Journal L 289, 30/10/2008
- European Commission, 1990, *Agreement between the European Economic Community and the Principality of Andorra*, Official Journal L 374, 31/12/1990
- European Commission, 2002, *Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino*, Official Journal L 084 , 28/03/2002
- European Commission, 2014, *WTO Member's TDI Activity up to 30 June 2013*, Paper based on WTO Members' semi-annual report prepared by the European Commission
- Farha, R, 2013, *A Right Unexercised is a Right Lost?: Abolishing Antidumping in Regional Trade Agreements*. Georgetown Journal of International Law
- ICTSD, *Trade Remedies on Clean Energy: A New Trend in Need of Multilateral Initiatives*, Think piece by Jonas Kasteng for the ICTSD E15 Expert Group on Clean Energy.
- NAFTA, 1994, *North American Free Trade Agreement*, NAFTA website
- National Board of Trade, Sweden, 2012a, *Do EU Producers and the EU Economy Really Benefit from Anti-Dumping Policy?* [Prawitz, C.]
- National Board of Trade, Sweden, 2012a, *Paving the Way for Unfair Competition: The Imposition of EU Anti-Dumping Duties on Ceramic Tiles from China*. [Kasteng, J.]
- National Board of Trade, Sweden, 2012c, *Potential Effects from an EU-US Free Trade Agreement: Sweden in Focus*. [Kinnman, S. and Hagberg, T.]
- National Board of Trade, Sweden, 2013a, *Effects on Trade and Competition of Abolishing Anti-Dumping Measures: The European Union Experience*. Report 2013:6. [Prawitz, C. and Kasteng, J.]
- National Board of Trade, Sweden, 2013b, *Eliminating Anti-Dumping Measures in Regional Trade Agreements: The European Union Example*. Report 2013:5. [Kasteng, J. and Prawitz, C.]
- National Board of Trade, Sweden, 2013c, *Targeting the Environment: Exploring a New Trend in the EU's Trade Defence Investigations*. [Kasteng, J.]
- National Board of Trade, Sweden, 2013d, *The Lesser Duty Rule in Trade Defence Investigations*, Review of EU Trade Defence Instruments in Brief, Number 3, 2013
- National Board of Trade, Sweden, 2013e, *The Union Interest Test in Trade Defence Investigations*, Review of EU Trade Defence Instruments in Brief, Number 4, 2013

National Board of Trade, Sweden, 2014, *Regulatory Co-operation and Technical Barriers to Trade within Transatlantic Trade and Investment Partnership*. [Lund, H.]

Prusa T, and Teh, R, 2010, *Protection Reduction and Diversion: PTAs and Incidence of Antidumping Disputes*, NBER Working Paper No. 16276, National Bureau of Economic Research

Rey, J-D, 2012, *Antidumping Regional regimes and the Multilateral Trading System: Do Regional Antidumping Regimes Make a Difference?*, Staff Working Paper ERSD-2012-22, World Trade Organization Economic Research and Statistics Division.

Solano, O and A Sennekamp, 2006, *Competition Provisions in Regional Trade Agreements*, OECD Trade Policy Working Papers No. 31, OECD Publishing, France.

Teh, R, 2009, *Competition Provisions in Regional Trade Agreements*, in A. Estevadeordal et al. (ed.) *Regional Rules in the Global Trading System*, Cambridge University Press.

Teh, R. et al, 2007, *Trade Remedy Provisions in Regional Trade Agreements*, Staff Working Paper ERSD-2007-03, World Trade Organization Economic Research and Statistics Division.

Treaty of Rome, 1957, *The Treaty of Rome*, 25 March 1957, European Commission website

US Constitution, 1787, *Constitution of the United States of America*, National Archives website

USITC, 2014a, *AD/CVD Orders*, Excel file on AD/CVD Orders and Revocations January 1, 2006-April 7, 2014 prepared by the United States Trade Commission

USITC, 2014b, *Import Injury Case Statistics (FY 190-2008)*, Office of Investigations, United States Trade Commission

Williams, N, 2005, *Why Congress May Not Overrule the Dormant Commerce Clause*, UCLA Law Review, Volume 53, October 2005

WTO, 1994, *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts*, WTO.

WTO, 2011, *The WTO and Preferential Trade Agreements: From Co-existence to Coherence*, World Trade Report 2011.