Trade Defence Instruments and Switzerland: The Big Sleep

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Abstract Anti-dumping measures and countervailing duties are effective tools to combat trade practices which are considered unfair. Switzerland, however, has no track record of using these trade defence instruments. Since the coming into force of the WTO, no investigations have been initiated let alone measures imposed. The reasons for the abstinence of trade defence instruments in Switzerland are multifaceted. Central is Switzerland's approach to stick to an open trade regime and to refrain from pursuing an external trade policy which could be considered contentious by its trading partners. The Swiss industry is remarkably specialised and typically produces high-quality products which are less prone to take long lasting injurious blows from dumped or subsidised products as easily as industries abroad; moreover, Swiss consumers have a lower price sensibility than consumers abroad. The possibility to benefit from the use of trade defence instruments applied by the EU, i.e. to free-ride, might also play a role. Overall, it is decisive to observe that Switzerland has done well without taking recourse to trade defence instruments. At

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the same time, it might well be the case that there will be, in the near future, distress calls for the imposition of trade defence instruments against imported high-quality products also in this country. In particular, the prices of imports from emerging countries, such as China and India, are to be observed carefully. Against this background, it is conceivable that the Swiss government will have to reconsider its passive stance on the use of trade defence instruments in due course; the Swiss government is well advised to prepare the grounds for dealing with potential applications effectively and efficiently.

1 Introduction

Trade defence instruments, i.e. anti-dumping measures and countervailing duties, are effective tools to combat trade practices which are considered unfair. The basic rationale of trade defence instruments is to create a level playing field which has been distorted by practices like injurious dumping or the unlawful subsidisation of products. Anti-dumping measures aim at offsetting the negative effect of injurious dumping, i.e. when products are sold below their normal value. Countervailing duties are levied on imported products, whose manufacture, production or export has profited from prohibited or actionable subsidies, for the purpose of offsetting the subsidisation. The WTO Agreement on Implementation of Article VI of the GATT 1994 (AD Agreement) and the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement) lay down strict procedural and substantive rules which must be respected in imposing anti-dumping measures and countervailing duties. However, WTO members often take recourse to these instruments in an overhasty manner, knowing that it will then be up to the foreign companies and their countries to react and to challenge the legality of such instruments before their courts and the WTO Dispute Settlement Body (DSB). Moreover, as tariffs have been considerably lowered, or even abolished, over the last decades and non-tariff barriers to trade, such as technical regulations and standards, are more difficult to justify, the range of instruments on offer for domestic policy-makers to grant the domestic industry relief and to please domestic constituencies has gradually withered. Against this background, it is no surprise that trade defence instruments have moved centre stage as prime tools for the protection of domestic products and their producers on short notice.[1] The following figures are proof to the point: During the period of 1995–2016, the United States notified to the WTO 111 countervailing duties. The European Union (EU) imposed 37 countervailing duties. Other WTO members followed suit, such as Canada (28), Australia (12) and Mexico (11). The statistics are even more impressive with respect to anti-dumping measures. India ranks first, having imposed 609 anti-dumping measures during the

[1] See for these statistics www.wto.org (last accessed 30 April 2018) and link to anti-dumping and subsidies and countervailing measures; see also Matsushita et al. (2015), p. 301.

period of 1995–2016. The United States and the EU notified 395 and 314 anti-dumping measures, respectively. The Mercosur member states Brazil and Argentina imposed 241 anti-dumping measures each. Vice versa, China was the WTO member against which by far the most anti-dumping measures and countervailing duties were imposed (866, 74), followed by Korea (239, 12) and Taipei (194, 4). The United States (177, 8) and the EU (83, 12) were also often the targets of anti-dumping measures and countervailing duties.

By contrast, Switzerland has no track record of initiating and conducting anti-dumping or countervailing investigations within the meaning of the AD Agreement or the SCM Agreement. Under the GATT 1947, ad hoc and facilitated anti-dumping measures were taken occasionally against imports from non-market economies.[2] Since the coming into force of the WTO, no investigations have been initiated, let alone measures imposed.[3] Moreover, Switzerland notified to the WTO in 2009 that it has not established authorities competent to initiate and conduct investigations within the meaning of Article 16.5 of the AD Agreement and Article 25.12 of the SCM Agreement.[4] At the same occasion, Switzerland announced that it "*does not anticipate taking any anti-dumping [and countervailing] actions for the foreseeable future.*"[5] These notifications are valid until further notice. At first glance, the notification to refrain from using trade defence instruments within the framework of the WTO seems somewhat unorthodox. And even though this notification is based on a format adopted by the WTO Committee on Anti-Dumping Practices and the WTO Committee on Subsidies and Countervailing Measures for members that have not established investigating authorities, and accordingly have never used any trade defence instruments,[6] it is remarkable and calls for an explanation why Switzerland does not, and for the foreseeable future will not, make use of trade defence instruments.

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[2] Cottier and Oesch (2005), p. 1034.

[3] WTO Trade Policy Review Body, Report by the Secretariat on Switzerland and Liechtenstein, WT/TPR/S/355, 11 April 2017, para. 19, 3.50.

[4] WTO Committee on Anti-Dumping Practices, Notification of Switzerland under Articles 16.4 and 16.5 of the Agreement, G/ADP/N/193/CHE, 23 December 2009; WTO Committee on Subsidies and Countervailing Measures, Notification of Switzerland under Articles 25.11 and 25.12 of the Agreement, G/SCM/N/202/CHE, 23 December 2009.

[5] WTO Committee on Anti-Dumping Practices, Notification of Switzerland under Articles 16.4 and 16.5 of the Agreement, G/ADP/N/193/CHE, 23 December 2009; WTO Committee on Subsidies and Countervailing Measures, Notification of Switzerland under Articles 25.11 and 25.12 of the Agreement, G/SCM/N/202/CHE, 23 December 2009.

[6] WTO Committee on Anti-Dumping Practices, Format adopted by the Committee on 21 October 2009 on the Notification under Articles 16.4 and 16.5 of the Agreement, G/ADP/19, 3 November 2009; WTO Committee on Subsidies and Countervailing Measures, Format adopted by the Committee on 29 October 2009 on the Notification under Articles 25.11 and 25.12 of the Agreement, G/SCM/129, 29 October 2009. 46 WTO members submitted a similar notification to refrain from using anti-dumping measures; 39 WTO members submitted a similar notification to refrain from using countervailing duties. Switzerland and Liechtenstein are the only developed countries among those 34 WTO members which submitted both notifications.

This contribution recalls the legal framework based upon which it would be possible to impose trade defence instruments in Switzerland (Sect. 2). Thereafter, it discusses possible reasons for the abstinence of trade defence instruments in this country—the big sleep, so to speak (Sect. 3). An epilogue wraps up the contribution (Sect. 4).

2 Legal Framework

Swiss law only punctually lays down rules on the allocation of competences among the federal authorities and on the procedural and substantive requirements which must be observed when imposing trade defence instruments. Moreover, no formal mechanism exists to bring allegedly unfair trade practices of other countries and foreign companies to the attention of the government.

2.1 Legal Basis for the Imposition of Trade Defence Instruments

The Federal Act on External Economic Measures of 1982[7] and the Federal Act on Customs Tariffs of 1986[8] set out rules for the enactment of extraordinary measures in external economic matters. Article 1 of the Federal Act on External Economic Measures grants the Federal Council the competence to restrict the import and export of goods, trade in services and the movement of capital in extraordinary circumstances in general. Article 7 of the Federal Act on Customs Tariffs specifically deals with tariff measures[9]:

> Article 7 **Extraordinary circumstances in foreign relations**
>
> If, as a result of foreign measures or exceptional conditions abroad, Switzerland's foreign relations are influenced to such an extent that essential Swiss economic interests are prejudiced, the Federal Council may, for as long as the circumstances require, modify the relevant rates of duty, or, in the event of exemption from duty, introduce duties, or take other suitable measures.

Article 13 of the Federal Act on Customs Tariffs obliges the Federal Council to inform the Federal Assembly in its annual report after it has taken a measure pursuant to Article 7. The Federal Assembly then decides whether the measure should

[7] Federal Act on External Economic Measures of 25 June 1982, SR 946.201 [the "SR" is the official compilation of federal legislation in Switzerland; www.admin.ch (last accessed 30 April 2018) and link to Bundesrecht].

[8] Federal Act on Customs Tariffs of 9 October 1986, SR 632.10.

[9] Botschaft zu einem Bundesgesetz über aussenwirtschaftliche Massnahmen of 7 December 1981, BBl 1982 I 61, p. 70.

remain in force, be extended or modified. The involvement of the Federal Assembly is justified on the grounds that such measures might restrict economic freedom, which is guaranteed as a fundamental right pursuant to Article 27 of the Swiss Constitution,[10] to a considerable degree.

Article 7 of the Federal Act on Customs Tariffs provides the legal basis for the enactment of anti-dumping measures and countervailing duties in Switzerland.[11] Apart from this exceedingly open-textured provision, there are no laws specifically dealing with the imposition of anti-dumping measures or countervailing duties.[12] Switzerland deliberately refrained from introducing legislation to this effect in the aftermath of the Uruguay Round. Therefore, Switzerland has no legislation explicitly dealing with the procedural and substantive requirements relevant for the imposition of such measures, in stark contrast to, for instance, the EU and the United States which have in place elaborated legal frameworks on these matters.[13]

The lack of explicit legislation and practical cases means that various legal questions are left open. It is submitted that proper domestic legislation going beyond of what Article 7 of the Federal Act on Customs Tariffs regulates in Switzerland is not a cogent prerequisite for WTO members to impose anti-dumping measures or countervailing duties. Moreover, the fact that Switzerland has not notified to the WTO the competent authorities for initiating and conducting investigations does not hinder Switzerland to initiate and conduct an investigation either.[14] Of course, Switzerland would be obliged to duly notify its intention to initiate an investigation and, thereby, also to inform on the competent authority, which presumably is the State Secretariat for Economic Affairs (SECO).[15] Switzerland could inform the WTO upon the initiation of an investigation accordingly. The Federal Council takes the final decision to impose anti-dumping measures and countervailing duties, as explicitly provided for in Article 7 of the Federal Act on Customs Tariffs, insofar as

[10] Federal Constitution of the Swiss Confederation of 18 April 1999, SR 101.

[11] Weber (2007), p. 57; Diebold and Oesch (2008), p. 1538; Botschaft zu einem Bundesgesetz über aussenwirtschaftliche Massnahmen of 7 December 1981, BBl 1982 I 60, p. 70.

[12] Cottier and Oesch (2005), pp. 1007 and 1034.

[13] Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union; Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union; also Regulation (EU) 2017/2321 amending these regulations; U.S. Tariff Act of 1930, 19 U.S.C. §§ 1671–1677n (2012).

[14] See for these notifications: WTO Committee on Anti-Dumping Practices, Notification under Articles 16.4 and 16.5 of the Agreement, G/ADP/N/193/CHE, 23 December 2009; WTO Committee on Subsidies and Countervailing Measures, Notification under Articles 25.11 and 25.12 of the Agreement, G/SCM/N/202/CHE, 23 December 2009.

[15] Cf. WTO Trade Policy Review Body, Report by the Secretariat on Switzerland and Liechtenstein, WT/TPR/S/355, 11 April 2017, para. 3.50. In two notifications of 1995, Switzerland informed the WTO that the Federal Office for External Economic Affairs, the predecessor office of SECO, was competent to initiate and conduct investigations pursuant to the AD Agreement and the SCM Agreement at the time; WTO Committee on Anti-Dumping Practices, Notification of Switzerland of Laws and Regulations under Article 18.5 of the Agreement, G/ADP/N/1/CHE/1, 4 May 1995; WTO Committee on Anti-Subsidy Practices, Notification of Switzerland of Laws and Regulations under Article 32.6 of the Agreement, G/SCM/N/1/CHE/1, 4 May 1995.

the requirements laid down in Article 7 of the Federal Act on Customs Tariffs are met and such action is deemed appropriate. It goes without saying that anti-dumping measures and countervailing duties can only be applied if the procedural and substantive requirements as provided for in the AD Agreement and the SCM Agreement are met. This holds true, in particular, for the due process provisions, including the obligation to conduct investigations in a transparent manner, to grant all interested parties the opportunity to defend their interests and to ensure that the investigating authorities adequately explain the basis for their determinations and that administrative actions can be challenged before an independent tribunal.[16] These WTO agreements provide for a comprehensive set of rules which are directly applicable domestically.[17]

2.2 Lack of Formal Procedures to Approach the Government

In Swiss law, no formal mechanism exists for private companies and business associations to bring allegedly unfair trade practices of other countries and foreign companies to the attention of the government. The Federal Act on External Economic Measures does not lay down a procedure for dealing with illicit commercial practices notified by affected companies or their industry, nor does any other act provide for such a mechanism. In particular, there is no legal entitlement on the part of private companies and business associations that the Swiss government investigate a complaint and take action, e.g. by imposing anti-dumping measures or countervailing duties or by requesting the WTO Dispute Settlement Body to establish a panel to examine the matter. Such complaints are dealt with informally under the government's broad discretionary powers in foreign affairs pursuant to Article 184 of the Swiss Constitution.[18]

In practice, private companies notify allegations and complaints as to unfair trade practices by other countries and foreign companies to SECO or another federal office which is deemed competent to deal therewith, such as the Federal Customs Administration, the Federal Institute for Intellectual Property and the

[16] See for these procedural requirements Van den Bossche and Zdouc (2017), pp. 737–749 and 847–855; administrative decisions, including the final decision to impose trade defence instruments, could arguably be challenged before the Swiss Federal Administrative Court; Diebold and Oesch (2008), p. 1541.

[17] Arpagaus (2007), p. 652, fn. 2245; Diebold and Oesch (2008), p. 1541; see also the response of Federal Councillor Flavio Cotti to a request to introduce anti-dumping measures against the import of wood in 1988, Amtl. Bull. NR 1988, p. 695. It must be noted, however, that the Swiss Federal Supreme Court has traditionally been reluctant to grant WTO law direct effect, based on similar rationales as those relied upon by the ECJ; Cottier and Oesch (2005), pp. 223–226.

[18] Cottier and Oesch (2005), p. 151.

Federal Office for Agriculture, through informal channels.[19] It then lies within the discretion of the government to take up the case and initiate steps to remedy the illicit practices through diplomatic means, by officially notifying the dispute to the WTO Dispute Settlement Body or by imposing anti-dumping measures or countervailing duties. The government decides on the basis of an assessment of the circumstances of the case at hand, taking into account not only the economic interests of the companies hit by the allegedly unfair trade practices but also the interests of other companies (which indeed might depend on cheap imports in order to process them) and the consumers as well as general foreign policy considerations, in short: "the interests of the whole country".[20] At least, it is submitted that the applicants have a right to be duly informed on the decision to take action or to refrain from doing so and to be provided with an adequate reasoning.[21] This setup reflects classic diplomatic protection by nation states as developed under general public international law. It is based on close and informal ties between the authorities and industry associations in Switzerland and, with respect to dispute resolution on the international plane, on long-standing preferences for diplomatic means rather than for contentious meetings before judges.[22] In fact, the system generally works well. The authorities are ready to support private operators and intervene by diplomatic means when they deem such action appropriate. Whereas Switzerland has not imposed anti-dumping measures or countervailing duties to date, it has at least occasionally initiated formal dispute settlement proceedings under the auspices of the WTO by notifying consultations to the Dispute Settlement Body.[23] All of these disputes were settled through mutually acceptable solutions, with one exception: the *US – Steel Safeguards* case could only be resolved upon the adoption of the Appellate Body report by the Dispute Settlement Body.[24]

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[19] Cottier and Oesch (2005), p. 151; see also Article 5 of the Ordinance on the Organisation of the Federal Department of Economic Affairs, Education and Research of 14 June 1999, SR 172.216.1, according to which SECO is the centre of competence for external economic matters.

[20] Judgement of the Federal Supreme Court of 3 June 1955, *Schoenemann v Swiss Confederation*, BGE 81 I 159, p. 170 (own translation), with respect to interventions in favour of Swiss citizens abroad in general.

[21] Diebold and Oesch (2008), p. 1536.

[22] A notable exception was the intervention of Switzerland before the European Court of Justice in the so-called "airplane noise pollution dispute" concerning the conformity of the prohibition of flights over southern German territory during the night below a certain altitude imposed by Germany with the Agreement on Air Transport between Switzerland and the EU of 21 June 1999, SR 0.748.127.192.68; CJEU, Case C-547/10 P, *Swiss Confederation v Commission*, ECLI:EU:C:2013:139.

[23] Switzerland initiated three cases in 1997 (WT/DS94) and 1998 (WT/DS119, WT/DS133); moreover, it participated in several disputes as a third party [www.wto.org (last accessed 30 April 2018) and link to dispute settlement/disputes by members].

[24] Appellate Body Report, *United States – Definitive Safeguard Measures on Imports of Certain Steel Products*, WT/DS253/AB/R, adopted 10 November 2003, DSR 2003:III, and Panel Report, *United States – Definitive Safeguard Measures on Imports of Certain Steel Products*, WT/DS253/R, adopted 11 July 2003 (as modified by the former).

The Swiss tradition of sticking to the principle of classic diplomatic protection rather than to resolve disputes by taking recourse to dispute resolution by judges and unilateral counteractions contrasts to the law and practice developed in other legal systems of WTO members. Specific mechanisms exist, for instance, in the United States, the EU and China which allow private actors to bring alleged violations of international trade law to the attention of the authorities which then are obliged to examine the matter.[25] Section 301 of the US Trade Act introduced procedural rights of private operators as early as 1974.[26] The European Community followed suit in 1994 by setting up the Trade Barriers Regulation; moreover, the *EU market access database* informs on import conditions in third country markets in a transparent manner and ensures that operators can notify newly identified trade barriers efficiently and effectively.[27] China enacted the Investigation Rules of Foreign Trade Barriers in 2005.[28] It is within the discretion of the authorities also in these countries and entities as to whether they deem it necessary and to be in the interest of their country/entity to take action, i.e. to impose measures with a view to remove the injury or the adverse trade effects or to request the establishment of a WTO panel. In any case, the authorities are obliged to deal with the matter and to properly explain their action or inaction. It is no coincidence that these WTO members take recourse to trade defence instruments and to the WTO dispute settlement system remarkably frequently.

3 Reasons for the Big Sleep

The reasons for the abstinence of trade defence instruments in Switzerland are difficult to grasp. Official documents of the government do not shed light on the reasons for the big sleep. The same holds true for publications and statements of business representatives. It is submitted that the following five—partly overlapping—reasons are the relevant ones.

[25] In addition to these formal mechanisms, private operators and their lobby groups also continue, of course, to use informal channels to bring allegedly unfair trade practices to the attention of the authorities.

[26] Trade Act of 1974, § 301, 19 U.S.C. § 2411(a)(1) (2012); see for the procedures laid down by Section 301 Jackson et al. (2013), pp. 360–362.

[27] Trade Barriers Regulation (EU) No 2015/1843; International Trade Rules Enforcement Regulation (EU) No 654/2014; see for the procedures laid down by the Trade Barriers Regulation Van Bael and Bellis (2011), pp. 441–628 (for anti-dumping measures) and pp. 709–716 (for countervailing duties).

[28] The English translation is available on the website of the Ministry of Commerce of China, http://english.mofcom.gov.cn (last accessed 30 April 2018); Van den Bossche and Zdouc (2017), p. 184.

3.1 Open Trade Regime

Switzerland has a long tradition of maintaining an open trade regime, with the notable exception in agriculture where Switzerland continues to apply protective border measures (tariffs, quotas) and internal support measures (direct payments).[29] The policy to adhere to open borders in trade in industrial goods is not a means in itself. Rather, it is based on a deliberate choice to provide the internationally highly integrated Swiss economy with an ideal setup to prosper. The Swiss economy strongly depends on vivid and frictionless trading activities with other countries; it capitalises on the open trade regime for industrial products.[30] Against this background, it becomes obvious that the option to impose measures against unfair trading practices through trade defence instruments, safeguard measures and restrictions on the movement of capital has never been high on the agenda of policy makers in this country. A change of paradigm in this respect would send an unwelcomed signal to the trading community all over the globe. Arguably, the use of trade defence instruments by Switzerland would result in only marginal economic gains for the affected companies in Switzerland as the internal market in Switzerland is relatively small; in contrast, trade-restrictive measures applied by other trading partners against Swiss firms and products potentially have more damaging effects as access to much larger export markets is endangered and trade-related administrative procedures are unnecessarily complicated. Switzerland is doing well by taking recourse to trade defence instruments only in exceptional cases, if at all.

Moreover, economic studies suggest, based on strong circumstantial evidence, that the use of trade defence instruments can be linked to so-called "insurance policies" put in place by states when they agree to grand trade liberalisation projects, such as tariff reductions resulting from the GATT negotiation rounds, the trade reforms triggered by the creation of the European Single Market (with respect to the EU member states) and the accession of China to the WTO.[31] According to these studies, trade defence instruments constitute one of the elements by which the negative effects of trade liberalisation can be adjusted ex post.[32] In Switzerland, however,

[29] WTO Trade Policy Review Body, Report by the Secretariat on Switzerland and Liechtenstein, WT/TPR/S/355, 11 April 2017, para. 1.

[30] Cf. WTO Trade Policy Review, Report by the Secretariat on Switzerland and Liechtenstein, WT/TPR/S/13, 26 April 1996, p. xi.

[31] Bienen D, Ciuriak D and Picarello T (2012) Motives for using trade defense instruments in the European Union. BKP Development Trade and Development Discussion Paper No. 01/2012, March 2012, http://www.bkp-development.com/discussion-papers/BKP_DP_2012-01-Bienen-Ciuriak-Picarello-TDI-Motives.pdf (last accessed 30 April 2018), p. 39; see for further economic research in this area Mukunoki H (2017) Does trade liberalization promote antidumping protection? A theoretical analysis. RIETI Discussion Paper Series 17-E-031, March 2017, https://www.rieti.go.jp/jp/publications/dp/17e031.pdf (last accessed 30 April 2018); Bown and Crowley (2014); Feinberg and Reynolds (2007).

[32] Bienen D, Ciuriak D and Picarello T (2012) Motives for using trade defense instruments in the European Union. BKP Development Trade and Development Discussion Paper No. 01/2012,

trade defence instruments were never deemed necessary as "insurance policies" for the broader society. It has been argued that in this country social security policies developed alongside trade liberalisation projects and thus had an effect as "insurance policies" to mitigate the effects of an open trade regime.[33]

It is symptomatic that in Swiss law no formal mechanism exists for private companies and business associations to bring allegedly unfair trade practices of other countries and foreign companies to the attention of the government. The establishment of such a mechanism might be desirable from the perspective of individuals. At the same time, however, it might send out the unwelcomed signal that the authorities are well ready to initiate and conduct investigations which would contradict the official policy of restraint. Consequently, there have never been serious initiatives to formalise the process—according to the motto: Let sleeping dogs lie.

3.2 Cautious Approach in External Relations

Switzerland has traditionally applied, in external trade policy, a cautious approach with respect to actions which could be perceived as contentious by other trading partners. This cautious approach reflects the political maxim of neutrality, which has been a dominant instrument of Swiss external relations ever since the foundation of the modern Swiss federal state in 1848, and the deliberately applied passiveness in foreign relations which comes therewith. The fact that Switzerland has participated only once as complaining party in WTO panel and Appellate Body proceedings—and, then, in tandem with six other complaining parties, including the EU—is proof to the point.[34] The use of the WTO dispute settlement procedures might be considered, contrary to Article 3(10) of the Dispute Settlement Understanding (DSU), to be a "contentious act". The same argument holds arguably true with respect to the abstinence of trade defence instruments. The imposition of anti-dumping measures and countervailing duties might endanger, according to such an understanding, the good relations with the country whose products are targeted by such measures. Symptomatically, Switzerland has not only refrained from imposing trade defence instruments, but it has also refrained from adopting safeguard measures pursuant to Article XIX of the GATT 1994 and the Agreement on

March 2012, http://www.bkp-development.com/discussion-papers/BKP_DP_2012-01-Bienen-Ciuriak-Picarello-TDI-Motives.pdf (last accessed 30 April 2018), p. 39.

[33] Cottier and Naef (2014), pp. 185–187.

[34] See Appellate Body Report, *United States – Definitive Safeguard Measures on Imports of Certain Steel Products*, WT/DS253/AB/R, adopted 10 November 2003, DSR 2003:III, and Panel Report, *United States – Definitive Safeguard Measures on Imports of Certain Steel Products*, WT/DS253/R, adopted 11 July 2003 (as modified by the former).

Safeguards since the coming into force of the WTO.[35] These instruments are considered to be applied only as *ultima ratio*, if at all.

The reluctance to apply trade defence instruments seems to be particularly apparent vis-à-vis the EU. The EU is by far the most important trading partner of Switzerland.[36] Trade between Switzerland and the EU amounts to 1 billion Swiss Francs per day. 53% of Swiss exports go to the EU; 72% of the imports come from the EU. Most relevant are, of course, exports to and imports from the neighbouring countries Austria, France, Germany and Italy and, in particular, their regions with a common border with Switzerland. For instance, trade with Baden-Württemberg is almost as significant as trade with the United States. Switzerland and the EU are tied together by a tight network of bilateral treaties—some 20 main agreements and more than 100 secondary agreements—many of which need to be updated periodically. Consequently, there is a general perception in Switzerland that it does not behove to take measures by which trade is restricted (albeit on perfectly legitimate grounds) vis-à-vis the EU imprudently as such a move could derange the constructive atmosphere necessary for the maintenance and further development of smooth and frictionless bilateral relations.[37]

Several free trade agreements which Switzerland has concluded with trading partners all over the globe contain provisions explicitly mandating the parties to apply a cautious approach when referring to trade defence instruments. To name but a few, the Free Trade Agreement between Switzerland and Chile of 2003 obliges each party not to apply anti-dumping measures as provided for under the AD Agreement in relation to goods of the other party; it is recognised that the effective implementation of competition rules may address economic causes leading to dumping (Article 18).[38] The Free Trade Agreement between Switzerland and Canada of 2008 obliges the party which intends to initiate an investigation pursuant to the SCM Agreement to duly inform the other party whose goods would be subject to the investigation and to allow that party a period of 25 days for consultations with a view to finding a mutually acceptable solution (Article 17).[39] In contrast, the Free Trade Agreement between Switzerland and Mexico of 2000 obliges the party which intends to initiate an investigation pursuant to the SCM Agreement to grant the other party whose goods are allegedly being subsidised 2 days (*sic!*) to react with a view

[35] WTO Trade Policy Review Body, Report by the Secretariat on Switzerland and Liechtenstein, WT/TPR/S/355, 11 April 2017, para. 19, 3.50; exceptionally, in 1999, Switzerland notified the WTO the imposition of additional duties on swine meat, based on the special safeguard mechanism pursuant to Article 5 of the Agreement on Agriculture, see Cottier and Oesch (2005), p. 505.

[36] See for these figures https://www.eda.admin.ch/eda (last accessed 30 April 2018).

[37] Moreover, Article 27 of the Free Trade Agreement between Switzerland and the EEC of 22 July 1972 (SR 0.632.401) obliges the parties to supply the joint committee with all relevant information required for a thorough examination for the situation with a view to seeking a solution acceptable to the parties before a party imposes anti-dumping measures.

[38] Free Trade Agreement between the EFTA States and the Republic of Chile of 26 June 2003, SR 0.632.312.451.

[39] Free Trade Agreement between the EFTA States and Canada of 26 January 2008, SR 0.632.312.32.

to finding a mutually acceptable solution (Article 11).[40] With such "WTO-plus" provisions, Switzerland has deliberately tied its hands with respect to the use of trade defence instruments, of course on a reciprocal basis. It seems to be part of the negotiation strategy of Switzerland to convince free trade partners to make the use of trade defence instruments more cumbersome and thus to "export" its cautious approach to other countries.

Plausibly, the cautious approach which Switzerland adheres to in its external trade policy also applies to the emerging economies China and India, the two countries which have been most often the target of anti-dumping measures and countervailing duties by other WTO members over the last years. In 2013, Switzerland concluded a free trade agreement with China.[41] The agreement contains no "WTO-plus" provisions concerning anti-dumping measures and countervailing duties, with the subtle supplement that anti-dumping measures shall not be taken in an arbitrary or protectionist manner (Article 5.2) and that the party considering initiating an investigation to determine the existence, degree and effect of any alleged subsidy in the other party shall notify the other party and allow for a consultation with a view to finding a mutually acceptable solution in an amicable manner (Article 5.3). Switzerland is currently also negotiating a free trade agreement with India. Again, the frequent use of trade defence instruments against these countries by Switzerland arguably would result in only marginal economic gains for the affected companies in Switzerland; by contrast, restrictive trade policies by important trading partners such as China and India against Swiss firms and products could potentially severely affect the privileged trade relations that Switzerland maintains with China and intends to secure with India.

3.3 Structure of the Swiss Industry

The structure of the Swiss industry differs in various aspects from that of other WTO members which regularly take recourse to anti-dumping measures and countervailing duties. Products which are found to cause injury upon their importation into the EU and the United States, for instance, often do not reach the threshold of being found to cause injury to Swiss producers of like products.[42] In some cases, there are no Swiss producers of like products at all. In other cases, there are competing like products being produced in Switzerland; however, the impact of the dumped or subsidised imports does not reach the threshold for a determination of injury

[40] Free Trade Agreement between the EFTA States and the United Mexican States of 27 November 2000, SR 0.632.315.631.1.

[41] Free Trade Agreement between the Swiss Confederation and the People's Republic of China of 6 July 2013, SR 0.946.292.492.

[42] See Article 3 AD Agreement and Article 15 SCM Agreement for the requirement that the imposition of anti-dumping measures and countervailing duties requires a determination that the dumped or subsidised imports cause injury to the domestic industry.

because the competing Swiss products stand out for their quality and tradition and the producers do not need to drastically adjust their price policy.[43] Moreover, studies suggest that the label "Made in Switzerland" has a value on its own; Swiss products profit therefrom on the Swiss market and abroad.[44] Lastly, it is commonly held that Swiss consumers have a lower price sensibility than consumers abroad.[45] Thus, Swiss companies find themselves less often in a position in which market forces urge them to react instantaneously to cheaper imports than might be the case in other economies.

A side glance at anti-dumping measures and countervailing duties which the EU imposed over the last years seems to support this assumption.[46] Currently, the EU has in place several anti-dumping measures and countervailing duties directed against products which are not produced in Switzerland.[47] Some products against which the EU has taken action are also produced in Switzerland but only on a tiny scale.[48] In other cases, the Swiss industry does not seem to be injured (anymore) by the dumped products because of its specialisation and high-quality standards; bicycles and textile and clothing are examples to the point[49]:

– The EU imposed anti-dumping measures on imports of bicycles from China as early as in 1991. These measures have been applied until today, being the longest lasting anti-dumping measures currently in force in the EU. The EU extended them to bicycles from Indonesia, Malaysia, Sri Lanka and Tunisia in 2013 and to bicycles from Cambodia, Pakistan and the Philippines in 2014.[50] With these measures, the European bicycle industry has been granted ongoing relief against

[43] See for the main features of the Swiss economy—characterised by a large services sector but also possessing a strong, high-tech and export-oriented manufacturing base—WTO Trade Policy Review Body, Report by the Secretariat on Switzerland and Liechtenstein, WT/TPR/S/355, 11 April 2017, paras. 1.1 et seq.

[44] Müller (2015), para. 1, with further references.

[45] WTO Trade Policy Review Body, Report by the Secretariat on Switzerland and Liechtenstein, WT/TPR/S/355, 11 April 2017, para. 17.

[46] See for the sectoral distribution of anti-dumping measures and countervailing duties introduced by the EU www.wto.org (last accessed 30 April 2018) and link to trade topics, anti-dumping and www.wto.org (last accessed 30 April 2018) and link to trade topics, subsidies and countervailing measures; see for an overview on the current practice of the EU http://trade.ec.europa.eu/tdi (last accessed 30 April 2018).

[47] This holds true, for instance, for molybdenum wires; see the determination by the European Commission in European Commission, Proposal for a Council Regulation extending the definitive anti-dumping duty imposed by Regulation (EU) No 511/2010 on imports of certain molybdenum wires originating in the People's Republic of China to imports of certain molybdenum wires consigned from Malaysia, whether declared as originating in Malaysia or not, and terminating the investigation in respect of imports consigned from Switzerland, COM/2011/0867 final—2011/0422 (NLE), Explanatory Memorandum, Point 3.

[48] This holds true, for instance, for citrus fruits and rainbow trouts.

[49] Okoumé plywood, rebars, coated fine paper and aluminum foil are other examples.

[50] See for an overview on EU anti-dumping measures on bicycles http://trade.ec.europa.eu/tdi/case_history.cfm?init=1532 (last accessed 30 April 2018).

dumped imports. By contrast, Switzerland has never imposed anti-dumping measures against imported bicycles although the Swiss bicycle industry has also faced strong competition from Asia over the last 40 years. Some producers were even put out of the business. Irrespective of the abstinence of state action to protect the domestic industry, however, many Swiss bicycle producers have adjusted their business models to competition from abroad and have done well, mainly on the grounds of their policy to produce for consumers ready to purchase high-quality products. Imports from Asia do not substantially affect their successful course of business on the Swiss market.[51]

– The EU has a long history of protecting its textiles and clothing sector, dating back to the 1970s.[52] By 2005, however, the EU had to remove all quotas on textiles and clothing pursuant to the WTO Agreement on Textiles and Clothing (Article 9). Consequently, almost all product categories experienced a large increase in Chinese imports, as high as 500% and even more for some products.[53] After the application of safeguards, which were mutually agreed between the EU and China (2005–2007), and a follow-up joint surveillance system (2008),[54] the EU introduced anti-dumping measures on polyester yarn from China in 2009; these measures are still in force, set to expire in 2022.[55] By contrast, Switzerland has never protected its textiles and clothing sector beyond the use of tariffs.[56] Textiles and clothing are also covered by the free trade agreement between Switzerland and China. The Swiss textiles and clothing industry faced severe competition from Asia over the last 40 years and some producers were put out of the business. Driven by the necessary structural reforms, many Swiss textiles and clothing producers, however, are doing well today. Swiss textile industry is highly specialised, dependent on intellectual property protection (design) and focusing on specialties and luxury products.[57] Manufacturing is mechanised, whereby large parts of the production have been outsourced, having kept only the processes with the highest added value in Switzerland.[58]

[51] See for background information on the Swiss bicycle industry Brusa N, Der letzte Schweizer Velorahmen-Löter. Tagesanzeiger, 25 August 2014, https://www.tagesanzeiger.ch/wirtschaft/unternehmen-und-konjunktur/Auf-den-Felgen/story/23460006 (last accessed 30 April 2018).

[52] See Eckhardt (2010), pp. 158 et seq., for a comprehensive account of EU protectionist textile and clothing trade policy.

[53] Eckhardt (2010), pp. 158 et seq. and 169.

[54] Eckhardt (2010), pp. 158 et seq. and 171–173.

[55] See for an overview on EU anti-dumping measures on polyester yarn www.trade.ec.europa.eu/tdi/case_history.cfm?ref=com&init=1522 (last accessed 30 April 2018).

[56] Cottier and Oesch (2005), p. 748.

[57] Cottier and Oesch (2005), p. 748.

[58] See for background information on the Swiss textiles and clothing industry, Schmutz CG, Keine Angst vor chinesischer Billigware. Neue Zürcher Zeitung Online, 15 May 2014, https://www.nzz.ch/wirtschaft/keine-angst-vor-chinesischer-billigware-1.18302668 (last accessed 30 April 2018).

Overall, these examples imply that the Swiss industry has not been, generally speaking, prone to take long lasting injurious blows from dumped or subsidised products as easily as industries and products abroad. The resilience of the Swiss industry often lies in its capacity to adapt to competition by specialising the production; a process that is accelerated with the abstinence of public action to protect the domestic industry.

It is important to note that this situation might change in the future. In light of the ongoing development of high-tech industries in emerging economies, it might well be the case that there will be distress calls for the imposition of trade defence instruments against imported high-quality products also in Switzerland. Such imports could indeed cause injury to the Swiss industry which has been affected by dumped or subsidised products only marginally until now. Against this background, it is conceivable that the Swiss government will have to reconsider its passive stance on the use of trade defence instruments in due course.

3.4 Free Riding

The abstinence of trade defence instruments in Switzerland stands in stark contrast to the proactive use of such instruments by the EU. Legally, this is perfectly fine. Switzerland is not part of the EU. It pursues its own economic foreign policy and is not obliged to follow suit when the EU imposes anti-dumping measures and countervailing duties. At the same time, there are several scenarios where Switzerland benefits, directly or indirectly, when the EU imposes anti-dumping measures and countervailing duties against other countries and foreign companies. In such cases, Switzerland sits in the side-waggon and profits from the economic effects of the measures but does not engage in the formal decision-making process itself; it enjoys a free ride, so to speak.

With regard to subsidies, the EU regularly uses the two available tracks to remedy injurious effects, namely by challenging an unlawful subsidy directly before a WTO panel (multilateral track, *Track I*) or by offsetting the negative effects of a subsidy through the application of countervailing duties (unilateral track, *Track II*):

– If *Track I* is successful, the subsidy has to be withdrawn or its adverse effects have to be removed. In case the member concerned refuses to do so, the Dispute Settlement Body may authorise the EU to take appropriate countermeasures (Articles 4.10 and 7.9 SCM Agreement). WTO arbitration panel reports suggest that the purpose of such countermeasures is to induce compliance through the withdrawal of the unlawful subsidy.[59] Against this background, it becomes clear

[59] Decisions by the Arbitrators in *Canada – Measures Affecting the Export of Civilian Aircraft (Art. 22.6 – Canada)*, WT/DS222/ABR, adopted 17 February 2003, para. 3.59; *United States – Tax Treatment for "Foreign Sales Corporations" (Art. 22.6 – US)*, WT/DS108/AB/R, adopted 30 August 2002, para. 5.57; *Brazil – Export Financing Programme for Aircraft (Art. 22.6 – Brazil)*,

that Switzerland is indeed in position to profit as a free rider in such constellations, either from the withdrawal of the subsidy *eo ipso* or from the pressure on the subsidising member to do so through the application of countermeasures by the EU.

– If the EU chooses *Track II*, it has to initiate a formal investigation. With a preliminary affirmative determination of subsidisation and injury, the EU is in a position to negotiate voluntary undertakings where either the subsidising member agrees to withdraw the subsidy or to take other measures offsetting its negative effects, or the exporting firms agree to revise their price policies so that the injurious effect of the subsidy is eliminated (Article 18.1 SCM Agreement). If a voluntary undertaking is put into place, Switzerland would again profit as a free rider, particularly in case the subsidising member agrees to eliminate the subsidy or to take other measures offsetting its negative effects. The proper implementation of a voluntary undertaking by the subsidising member would most likely also offset the injurious effects on the Swiss economy. If the exporting firms agree to revise their price policies, the consequences for the Swiss economy are less obvious. The firms' new price policies might not automatically apply also to products exported to Switzerland. At least, it is conceivable that Switzerland would be able to negotiate the same outcome based on the terms granted to the EU. Without a voluntary undertaking being negotiated, the EU might impose countervailing duties. Contrary to countermeasures, such duties may not exceed the amount of the subsidy.[60] Moreover, if the amount of the injury caused is less than the amount of the subsidy, the definitive duties should preferably be limited to the amount necessary to counteract the injury caused (the "lesser duty" rule).[61] In such a case, Switzerland would profit as a free rider as long as the duties imposed by the EU lead the member concerned to revise its subsidising policy and this adjustment would also apply vis-à-vis Switzerland.

With regard to dumping, the notes on subsidies may largely be mirrored. A notable exception is, of course, the absence of a mechanism to challenge dumping practices directly before a WTO panel (multilateral track, *Track I*). The only means to remedy injurious effects of dumped products are to negotiate a price undertaking whereby the exporting firms agree to revise their price policies or cease to export the products at dumped prices (Article 8 AD Agreement) or to impose anti-dumping measures (unilateral track, *Track II*). If the EU accepts a price undertaking from the exporting firms, Switzerland would again be able to profit as a free rider insofar as

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WT/DS46/ABR, adopted 28 August 2000, para. 3.44; see Mitchell (2006), pp. 1003–1004; cf. also, however, Decision by the Arbitrator, *United States – Subsidies on Upland Cotton (Art. 22.6 – Brazil)*, WT/DS267/ABR/2, adopted 31 August 2009, para. 4.28, where the arbitrators were not convinced that the term "countermeasures" necessarily connotes an intention to refer to retaliatory action that goes beyond mere rebalancing of trade interests.

[60] Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China,* WT/DS379/AB/R, adopted 11 March 2011, DSR 2010:III, para. 554.

[61] Van den Bossche and Zdouc (2017), p. 858.

such price undertakings would also apply vis-à-vis Switzerland. If the EU imposes anti-dumping measures, Switzerland would profit as a free rider insofar as such measures lead the companies to adjust their price policies accordingly.

Furthermore, there is yet another scenario where some form of free riding on the part of Swiss firms might take place. Insofar as the application of trade defence instruments by the EU affects prices in the EU but not in Switzerland, Swiss firms could buy subsidised or dumped products at a lower price than their European counterparts. Swiss firms could then process such products and sell the processed products, by virtue of the Free Trade Agreement between Switzerland and the EEC of 1972,[62] on the European market potentially at a lower price than their European counterparts can do. However, the EU could qualify such action as an illicit circumvention of EU trade defence interventions.[63] In 2011, Switzerland was subject of a formal investigation which was initiated by the European Commission in order to determine whether imports of molybdenum wire consigned from Switzerland amounted to a circumvention of anti-dumping measures imposed by the EU on Chinese products.[64] The Commission terminated the investigation with respect to Switzerland as no change in the pattern of trade between China, Switzerland and the EU could be established with regard to imports of molybdenum wire.[65] In constellations like this, it is often not clear at first sight whether such business practices of Swiss firms indeed constitute an illicit circumvention or whether they are lawful, to the detriment of legal security. Exemplarily, in 2016, a Swiss solar firm challenged two implementing regulations of the Commission extending definitive anti-dumping measures on photovoltaic modules based on crystalline silicon from China to Malaysia and Taiwan before the General Court of the EU.[66] The Swiss firm was unsure whether this extension also applied to exports of such modules from Taiwan to Switzerland where the Swiss firm further processed these modules and then

[62] Free Trade Agreement between Switzerland and the EEC of 22 July 1972, SR 0.632.401.

[63] See Brunschweiler and Troller (2014), para. 21, for a description of the potential for circumvention of EU trade defence interventions by Switzerland and China based on the Free Trade Agreement between Switzerland and China of 6 July 2013 (SR 0.946.292.492).

[64] Commission Regulation (EU) No 477/2011 of 17 May 2011 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Implementing Regulation (EU) No 511/2010 on imports of certain molybdenum wires originating in the People's Republic of China by imports of certain molybdenum wires consigned from Malaysia and Switzerland, whether declared as originating in Malaysia and Switzerland or not, and making such imports subject to registration.

[65] Council Implementing Regulation (EU) No 14/2012 of 9 January 2012 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 511/2010 on imports of certain molybdenum wires originating in the People's Republic of China to imports of certain molybdenum wires consigned from Malaysia, whether declared as originating in Malaysia or not, and terminating the investigation in respect of imports consigned from Switzerland.

[66] GC, Case T-152/16, *Megasol Energie v Commission*, ECLI:EU:T:2017:446.

exported them to the EU. The General Court dismissed the claim as inadmissible.[67] In essence, cases like this boil down to determining whether the further processing of such imported products means that the product is considered of Swiss origin or not—which is often an art in itself.[68] Legal security can only be established by calling upon the EU courts to render an authoritative judgment *after* the EU has taken specific action against Swiss imports.

3.5 Lack of Expertise and Procedures in Domestic Legislation

The initiation and the conduct of an investigation leading to the imposition of anti-dumping measures and countervailing duties are complex. It requires enormous personnel resources. The civil servants need to possess the relevant knowledge and, ideally, experience in initiating and conducting investigations. Moreover, in many countries, the public authorities are routinely supported by external law firms and other specialists, e.g. in collecting economic data, conducting calculations and drafting legal and economic assessments. The United States (Department of Commerce, USDOC; International Trade Commission, USITC) and the EU (Directorate General for Trade, DG Trade) possess the relevant manpower and experience. Large teams deal with applications from companies and business associations to initiate and conduct investigations. Other WTO members which have also actively imposed anti-dumping measures and countervailing duties over the last two decades have followed suit in building up manpower and expertise.[69] Moreover, affected companies and their business associations actively contribute to the efforts made by the public authorities and the external specialists. These WTO members typically have mechanisms in place which allow private actors to bring alleged violations of international trade law to the attention of the authorities which then are obliged to examine the matter and to decide whether any action, such as anti-dumping measures or countervailing duties, shall be taken.[70]

In Switzerland, the State Secretariat for Economic Affairs (SECO) arguably is the authority in charge to deal with trade defence instruments. Due to the lack of any cases to date, it does not possess great expertise and experience in anti-dumping and

[67] The General Court denied a legitimate interest of the Swiss solar firm in the proceedings because the firm was, according to the General Court, looking for a declaratory judgment regarding a hypothetical situation, GC, Case T-152/16, *Megasol Energie v Commission*, ECLI:EU:T:2017:446, para. 23.

[68] See Bühlmann (2016), p. 20, concerning the difficulties of determining the origin of processed products according to the EU Customs Code in connection with potential circumventions of EU anti-dumping duties for Swiss online retailers.

[69] Cf. Thi Thu (2012), *passim*, for the limited management and investigation capacities in Vietnam, constituting, according to the author, a prime reason why a country such as Vietnam does not take recourse to trade defence instruments.

[70] Cf. supra Sect. 2.2.

countervailing matters.[71] Anyway, there is no doubt that SECO would be well positioned to catch up rapidly and indeed be ready to initiate and conduct an investigation if an application would be submitted. Realistically, SECO would probably need to outsource parts of an investigation to external specialists and thus to profit from their knowledge and expertise.[72] However, it is not to be taken as granted that the competent public bodies in the government will be ready to grant the necessary funding. In the *US – Steel Safeguards* case, SECO was not granted funding to mandate an external law firm.[73] Affected companies and business associations would possibly also need to contribute to the work undertaken by SECO and external specialists. Moreover, it might be helpful to coordinate an investigation with that undertaken by another WTO member, typically the EU, if such a parallel investigation makes sense, as has been the case in the *US – Steel Safeguards* dispute.[74]

Against this background, it becomes apparent that a more active attitude towards the use of anti-dumping measures and countervailing duties in Switzerland might also imply a change of paradigm with respect to the staffing policy in the government. It might be useful to build up expertise and experience in-house, with a view not to depend too much on external specialists. Moreover, it might be useful to reconsider the decision not to set up a formal mechanism by which affected Swiss firms and industries can approach the government and to request that it take appropriate measures.

4 Conclusion

The reasons for the abstinence of trade defence instruments in Switzerland are multifaceted. Each of the possible explanations discussed in this contribution adds to the picture. Central is Switzerland's approach to stick to an open trade regime and to refrain from pursuing an external trade policy which could be considered contentious by its trading partners. The Swiss industry is remarkably specialised and typically produces high-quality products which are less prone to take lasting injurious blows from dumped or subsidised products as easily as industries and products abroad. Swiss consumers have a lower price sensibility than consumers abroad and the label "Made in Switzerland" has a value on its own. The possibility to benefit from the use of trade defence instruments applied by the EU, i.e. to free-ride, might

[71] See for the presumed competence of SECO to initiate and conduct investigations supra Sect. 2.1.

[72] Luckily, Switzerland, as the host state of the WTO in Geneva, is in a position to swiftly acquire the relevant know-how from one of the many trade law firms, and other specialists, which are based, e.g., in Geneva.

[73] Diebold and Oesch (2008), p. 1536.

[74] Appellate Body Report, *United States – Definitive Safeguard Measures on Imports of Certain Steel Products*, WT/DS253/AB/R, adopted 10 November 2003, DSR 2003:III, and Panel Report, *United States – Definitive Safeguard Measures on Imports of Certain Steel Products*, WT/DS253/R, adopted 11 July 2003 (as modified by the former).

also play a role. Overall, it is decisive to observe that Switzerland has done well without taking recourse to trade defence instruments. Against this background, Switzerland is a good example that anti-dumping and countervailing duty legislation is not necessarily an essential part of external trade law.[75] Thus, the Swiss policy of refraining from taking recourse to trade defence instruments could arguably serve as a model for other economies which are similarly structured and are ready to apply a cautious approach towards the use of trade defence instruments.

However, trade defence instruments remain a useful tool to re-establish a level playing field *in exceptional cases*. It appears that to date Swiss companies and industries have not found themselves in a situation in which they would have urgently needed relief and such relief would have been considered to be in the public interest. This does not automatically mean that such a situation might never happen in Switzerland. It might well be the case that there will be, in the near future, distress calls for the imposition of trade defence instruments against imported high-quality products also in this country. In particular, the prices of products from emerging countries such as China and India, which are specialising their industries with remarkable speed and which are already today the targets of most anti-dumping measures and countervailing duties in place, are to be observed carefully. Against this background, it is conceivable that the Swiss government will have to reconsider its passive stance on the use of trade defence instruments in due course, and the Swiss government is well advised to prepare the grounds for dealing with potential applications effectively and efficiently.

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