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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Delegations will find attached document COM(2018) 701 final.

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Brussels, 18.10.2018  
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**REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN  
PARLIAMENT**

**FIFTEENTH REPORT**

**OVERVIEW OF THIRD COUNTRY TRADE DEFENCE ACTIONS  
AGAINST THE EUROPEAN UNION FOR THE YEAR 2017**

{SWD(2018) 442 final}

## 1. INTRODUCTION

Trade defence instruments (TDI) are important tools for industries to defend themselves when faced with unfair trade practices.

The three instruments are anti-dumping, anti-subsidy and safeguards. Anti-dumping (AD) and anti-subsidy (AS) measures aim at counteracting the negative effects of unfair trade practices such as dumped/subsidised imports, while the purpose of safeguards (SFG) is to temporarily shield industries from the negative effect of unforeseen and significant increases of imports. Safeguard measures also differ from the other two instruments, as they are applied on imports from all origins, while anti-dumping and anti-subsidy measures are country (and even company) specific.

One of the pillars of the EU trade policy is to ensure a level playing field for EU businesses on export markets. Unwarranted trade defence measures unfairly block EU exporters' free access to the world's markets, and their negative impact should be minimised whenever possible.

As the world's leading exporter, the EU is increasingly subject to trade defence investigations initiated by third countries. Actually, by number of TDI measures in force, the EU and its Member States are the second most targeted exporter in the world after China.

The European Commission monitors and assists affected EU industries when non-EU countries take trade defence measures against EU exporters. The Commission also plays a more direct role by replying to questionnaires in AS investigations when EU subsidies are involved and in SFG investigations when the EU as a whole is targeted.

When a third country opens a trade defence investigation against EU exports, the role of the Commission is to actively intervene, whenever necessary, in order to rebut undue allegations and findings raised in the proceeding that are at odds with WTO rules. This is for instance done through written submissions to the investigating authority in third countries, as well as through regular participation in hearings, in order to ensure that EU exporters' rights and interests are respected. The Commission also intervenes in the framework of bilateral agreements (e.g. regular bilateral high level meetings with the trade partner in question) and in the multilateral context (e.g. regular WTO committee meetings in Geneva).

This report describes: the overall trends in trade defence activities by third countries, which adversely impact or may impact EU exports; the main problems identified; and the results achieved in 2017<sup>1</sup>. The Commission staff working document annexed to this report contains a detailed country-by-country analysis of third countries' TDI investigations and measures, including the interventions made by the Commission, together with a complete set of data by country and by type of TDI instrument.

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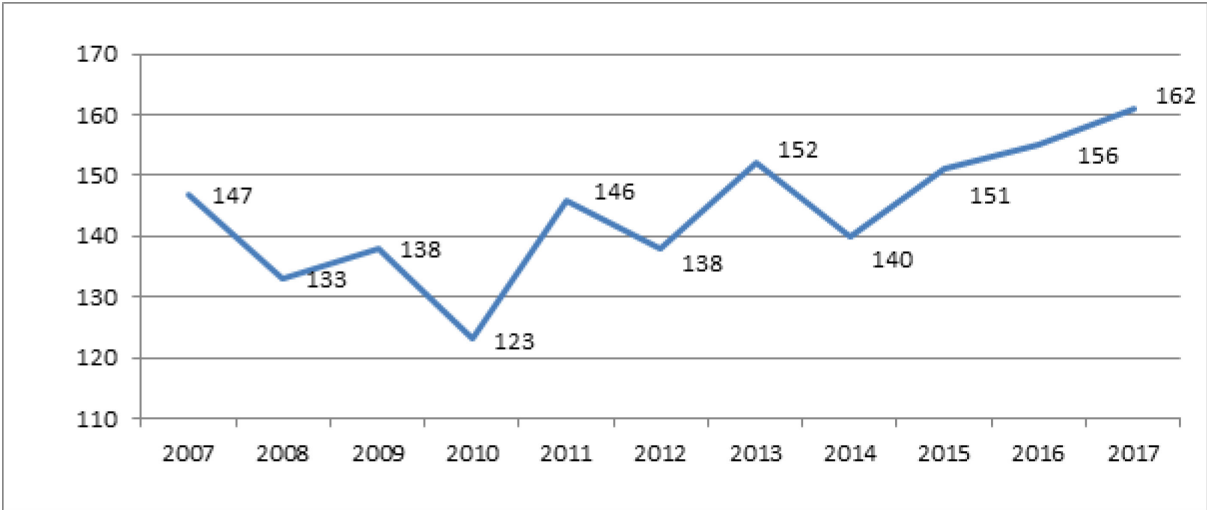
<sup>1</sup> Statistical data covers trends up to the end of 2017, the narrative also includes developments during the first quarter of 2018.

**2. STATISTICS**

**2.1. Measures in force at the end of 2017**

At the end of 2017, there were 162 TDI measures in force affecting EU exports, which represents a slight increase when compared to the 156 measures in force at the end of 2016. As shown in the graph below, there is nevertheless a clear upward trend in the number of measures in force affecting EU exports since 2010.

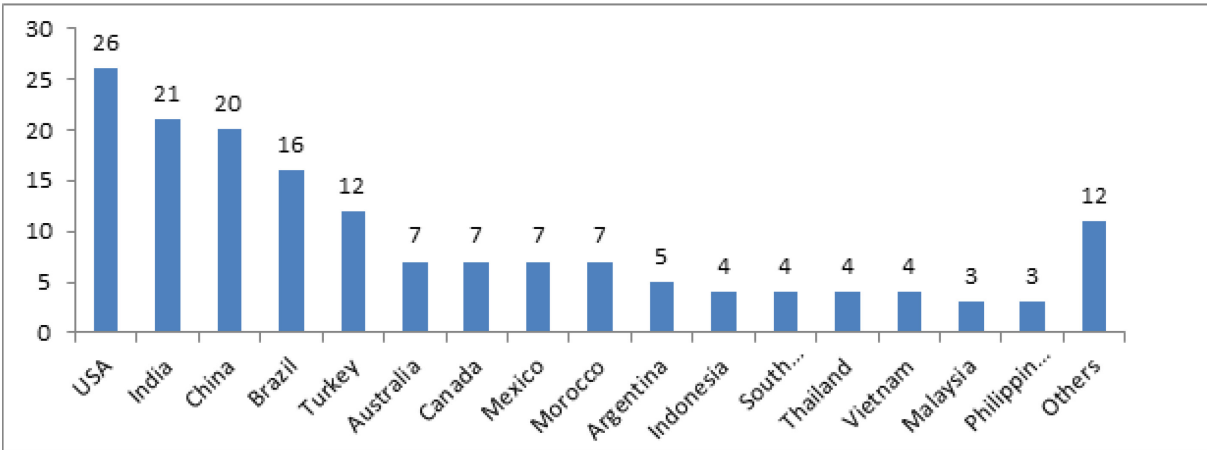
*Total number of measures in force at the end of 2017*



Source: WTO and EU statistics

Just four EU trade partners continue to account for more than 50% of all TDI measures in force against the EU (namely, the US, China, India and Brazil). However, the order of these countries changed in 2017 compared with 2016. In 2017, the **United States** became the most active user of TDI against the EU with 26 measures in force, 22 of which are AD and four are AS (the US had no SFG measure in place in 2017). **India** follows with 21 measures (19 AD, two SFG). **China** stands in third position with 20 measures in force at the end of 2017 (17 AD, two AS and one SFG), **Brazil** being the fourth with 16 measures (all AD).

*Measures in force at the end of 2017 by country*



*Source: WTO and EU statistics*

By type of instrument, out of the 162 measures in force<sup>2</sup>, 125 are AD, seven are AS and 30 are SFG. Very few trade partners have AS measures in place against the EU: only the US (four), China (two) and Canada (one). For their part, SFG measures are maintained predominantly by East-Asian countries, namely Indonesia and Vietnam (four each), and Thailand, Morocco, Malaysia and the Philippines (three each).

## **2.2. New investigations initiated in 2017**

In terms of new investigations against the EU or its Member States, the situation is stable in 2017 compared with 2016, with a total of 31 new investigations initiated in 2017.

However, the composition by type of instrument changed slightly in 2017. Whereas initiations of AD and AS investigations increased in 2017 when compared to 2016 from 18 to 22 and from zero to two, respectively, SFG investigations initiations decreased from twelve to seven.

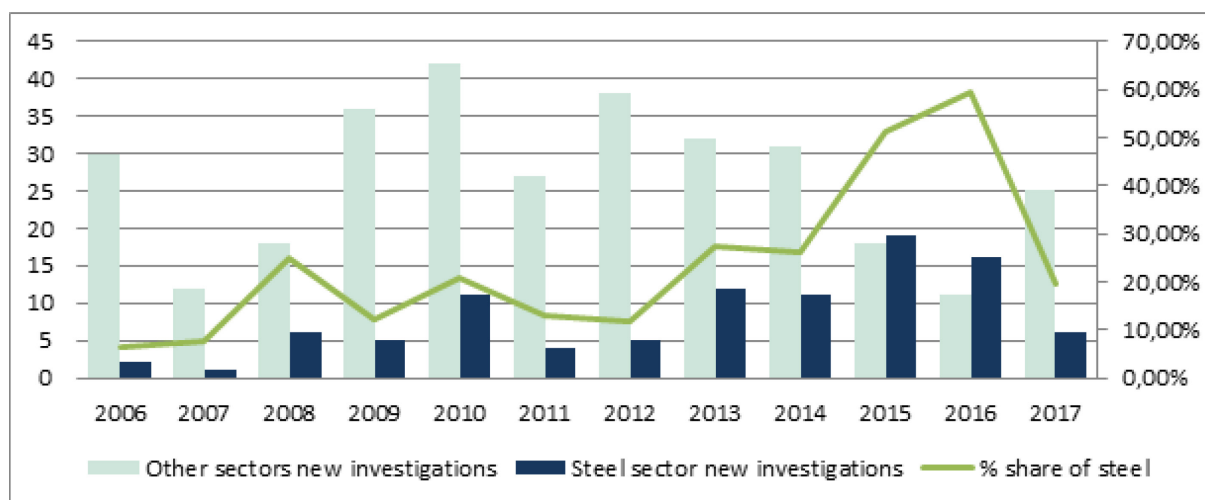
It is worth noting that, among all countries, the US stands out as the country which opened the highest number of new investigations: ten proceedings, of which six were AD. India and Turkey come second with four new investigations each.

Sectorwise, out of a total of 31 new investigations initiated in 2017 against EU exports, six new investigations were initiated in the steel sector (four of which by the US). This contrasts sharply with the years 2015 and 2016, during which, respectively, 19 and 17 new steel investigations accounted for more than 50% of the total new investigations. Conversely, it is worth noting that 13 new investigations were opened against EU exports of chemicals, which now stands out as the single most targeted sector.

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<sup>2</sup> The details of measures imposed by third countries against the EU are available on DG TRADE's webpage: <http://trade.ec.europa.eu/actions-against-eu-exporters/cases/index.cfm>.

## *New investigations against the EU in steel and other sectors*



Source: WTO and EU statistics

### **2.3. Measures imposed in 2017**

A total of 26 new measures were imposed in 2017 on EU exports. This represents, a **decrease** as compared to 2016 (30) and 2015 (37). The drop was particularly marked in AD measures (19 in 2016 and 15 in 2017). Two AS measures were imposed in 2017 (against just one in 2016), while nine SFG measures were imposed in 2017 (against 10 in 2016). Countrywise, the US have imposed six new measures followed by India which have imposed four measures against the EU in 2017 (eight of them being AD measures and two AS measures), followed with two measures each by Canada (AD measures only), Malaysia (SFG measures only), Turkey (AD only) and Vietnam (SFG measures only) .

Sectorwise, the steel sector represents 16 measures out of the total 26 new measures imposed upon EU exports. In other words, in 2017, the new steel measures outnumbered those in any other sector. Measures imposed in 2017 are the direct consequence of the steep rise in steel investigations observed in the recent past. In fact, in 2015 and 2016 excess capacity and overproduction in China triggered a global wave of TDI investigations, very often causing collateral damage to EU steel interests (*erga omnes* nature of SFG, overly broad geographical scope of AD).

## **3. ISSUES OF CONCERN IN 2017**

### **3.1. A more aggressive use of TDIs by the US across the board**

Undeniably, the hallmark of 2017 has been the rise of the US TDI activity. Although this offensive was not primarily and specifically targeted at EU exports, it did not leave EU interests unscathed , as statistics in Section 2 above show.

The US, normally not a user of the SFG instrument, opened two SFG investigations in 2017, respectively on **large residential washers** (June 2017) and **crystalline silicon photovoltaic cells and modules** (May 2017)<sup>3</sup>. Even though there are no EU exports of the former, and exports of the latter are relatively limited as compared to Asian exporting countries, these measures may, beyond their direct effect, cause collateral damage to EU producers, due to trade diversion.<sup>4</sup> The Commission underlined that imports from the EU were not causing any injury due to their low volume and higher prices. The Commission raised doubts on the compatibility of the measure with WTO rules, and on the appropriateness of the SFG instrument when the actual aim is to address circumvention of US AD measures imposed on China. The Commission suggested a form of measure that would be less penalising for EU imports such as a quota allocated by country or a minimum import price. The United States rejected both suggestions and also rejected providing any compensation for the adverse effects of the safeguard measure.

In April 2017, the US initiated an investigation on imports of **steel and aluminium** on the basis of **Section 232** of the US 1962 Trade Expansion Act<sup>5</sup>. Strictly speaking, Section 232 of the US 1962 Trade Expansion Act is not a Trade Defence Instrument (AD, AS, SFG). Measures under Section 232 are meant to "adjust the imports" in case there is a threat to national security. However, the consequences of Section 232 measures are very similar to those of SFG and therefore the Commission considers Section 232 measures as SFG in disguise.

In July 2017, the United States initiated an AD and an AS investigation concerning imports of **Spanish ripe olives** (Spanish exports represent around 60 million EUR). Due to the Commission's numerous technical and political interventions, in close coordination with the Spanish authorities and industry, the number of investigated alleged subsidy schemes was reduced from ten to six. However, several support schemes granted by Spain and the EU, including the Basic Payment Scheme (BPS) which is a cornerstone of the reformed Common Agricultural Policy (CAP), remained targeted. The Commission has strongly emphasised in the course of the proceedings that the targeted EU CAP schemes are non-distortive, non-specific and thus non-countervailable under WTO law. According to WTO rules, these support schemes are considered "green box". The Commission has been very actively intervening throughout all phases of these investigations and has provided the necessary assistance to the Spanish authorities, both central and regional, as well as to the exporters

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<sup>3</sup> SFG measures in the form of a 30% tariff rate quota for crystalline silicon photovoltaic cells and modules and a 20% tariff rate quota for large residential washers of have been imposed in January 2018.

<sup>4</sup> Therefore, the Commission requested consultations under Article 12.3 of the WTO Agreement on Safeguards in February 2018.

<sup>5</sup> In March 2018, the US imposed tariffs on imports of steel and aluminium (respectively of 25% and 10%).

concerned, and will continue to do so in order to dissuade the US authorities from imposing unjustified measures. Final injury determination was expected by July 2018<sup>6</sup>.

Evidence also shows that the US is adopting a tougher stance in the enforcement of AD rules, not only in terms of number of investigations but also in terms of the **methodology** used.

In cases where an exporter subject to an AD/AS investigation does not provide necessary information, WTO rules allow the investigating authority to replace this missing information with “best facts available”, i.e. information from a secondary source. The US however usually takes a stricter approach by frequently dismissing all information provided by the respondents, often on weak grounds, and applying "**adverse facts available**" (AFA). This always results in much higher duties than if the company's data or alternative best facts available were used. This approach is used by the US in many of its investigations and has recently been brought to a WTO dispute by Korea (*anti-dumping and countervailing duty determinations on certain products from Korea, WT/DS 539/1*), which will be followed up actively by the Commission.

In 2017, the United States, continued to apply the controversial **zeroing methodology** in AD investigations. Dumping occurs when the export prices are lower than the normal value. Both are determined on the basis of a number of transactions that were effected during a defined period. When applying zeroing, the investigating authority compares the price of the product on the export market with the price of the product on the home market, but disregards all transactions in which the price of the product on the export market is higher than the price on the home market by setting them at zero. The result of this methodology is that dumping margins are inflated. Zeroing has been subjected to WTO dispute settlement since 2001, and the WTO Appellate Body has consistently condemned this practice since then. More recently, in 2016 (*DS464: US – AD and AS measures on large residential washers from Korea, confirmed in DS471: US – Anti-dumping Methodologies (China)*), the WTO Appellate Body has shut the door to the last remaining zeroing option used by the US, by ruling that even in case of "*targeted dumping*", the zeroing methodology was inconsistent with WTO rules. The Commission is closely following up this matter, and will take necessary action to ensure that the US eventually complies with WTO obligations.

### **3.2. Different users, but still the same questionable use of the SFG instrument**

As explained before, SFG is the most trade-restrictive instrument, as it applies to all imports regardless of their origin. This is why it should only be used in strictly defined and very exceptional circumstances, in order to temporarily protect the domestic industry from a sudden and sharp increase of imports. Although, the number of initiations of SFG investigations has substantially decreased in 2017, the Commission continues to intervene systematically in all SFG investigations, as many investigating authorities do not seem to

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<sup>6</sup> On 10 July 2018 the US International Trade Commission announced its final affirmative injury determination, thus definitive AD and AS duties will enter into force, marking the end of both investigations.



respect the strict rules provided for in the WTO Safeguards Agreement. Many SFG investigations concern imports that are actually originating mainly in one country, thus the AD or AS instruments would be more appropriate in providing a targeted response to the problem, without unduly limiting market access to other countries.

The SFG measures in place in 2017 are predominantly from **South East Asian countries**, namely Indonesia and Vietnam (four each), and Thailand, Malaysia and the Philippines (three each). Often, these SFG measures were (inappropriately) imposed in order to address massive inflows of Chinese steel products, and possible circumvention via other countries. However, SFG measures do not differentiate between origins and thus often cause collateral damage to non-injurious trade.

In terms of new SFG investigations, **the novelty of 2017** is that South East Asian countries are no longer the primary "initiators" of investigations. In 2017, the main "initiators" were **the US** (two new SFG investigations, concerning **crystalline silicon photovoltaic cells and modules** and **large residential washers**) and **Turkey** (two new SFG investigations as well, one concerning **tyres**, which entails significant EU economic interest, the second one concerning **toothbrushes**, which involves little EU economic interest).

The two US SFG investigations were the first SFG investigations initiated by the United States **in more than a decade**. The Commission complained that they should not have been initiated, since the allegedly problematic surge of imports originated from a limited number of Asian countries only. In fact, the United States should have used other more targeted instruments, such as AD and/or AS, in order to address those imports and avoid creating collateral damage to fair imports that were not at the root of the problem.

As concerns the **Turkish** SFG investigation into imports of **tyres**, the Commission intervened successfully and obtained the termination of the investigation without measures (see details under Section "Main Achievements" below).

#### **4. MAIN ACHIEVEMENTS**

##### *US – Termination of the AD/AS investigations concerning large civil aircraft from Canada*

In January 2018, the US International Trade Commission (ITC) found that imports of Bombardier's **large civil aircraft** C-series did not injure the US industry and, therefore, blocked the imposition of 292% tariffs on imports of certain aircraft from the Montreal-based manufacturer. The US Commerce Department had previously investigated and found cumulated AD and AS margins of 292%. This is a major achievement for Canada, but also for the UK and the EU. Thousands of jobs were at stake at Bombardier's plant in Northern Ireland (where the wings of the C-series jet are produced) and also at downstream suppliers in other EU Member States. The Commission strongly supported Bombardier and the UK government in these US AD/AS investigations. The Commission *inter alia* objected to the US findings of subsidization, argued that there is no threat of injury to the domestic industry (i.e. Boeing),

and that any difficulties the domestic industry may be experiencing are due to other factors, in particular a lack of newest technology and matching for the type of aircraft in demand. The US investigation was based on one 2016 order of 75 Bombardier C-series jets by Delta Air Lines (to be delivered from 2018 onwards), which Boeing claimed were subsidised and were offered at a lower price on the US market than on the Canadian market.

*Brazil – Termination of measures on imports of synthetic rubber*

The Brazilian AD measures on EU exports of **synthetic rubber** (E-SBR) that were imposed and immediately suspended in 2015 were finally terminated in November 2017 on public interest grounds. In collaboration with the EU industry and Member States, the Commission made numerous submissions to the Brazilian authorities, pointing notably to the fact that EU exports did not cause any injury to the domestic industry. This has been confirmed, inter alia, by the fact that during the above-mentioned 2-year suspension of measures, the domestic industry has managed to increase its market share. EU exports to Brazil amounted to 80 million EUR in 2013, prior to the imposition of measures.

*Turkey – Termination of SFG investigation regarding tyres without imposing measures*

In January 2018, Turkey terminated the SFG investigation concerning imports of **tyres** (passenger vehicle, bus, truck) without imposing measures. The SFG investigation had been initiated in April 2017. The Commission, alongside the industry, intervened in the proceedings (submissions, hearing), and seized any opportunity in bilateral high-level meetings to raise the issue. As a consequence, Turkey did not impose provisional measures as it had initially announced, and eventually terminated the SFG investigation without imposing any measures. The fact that Turkey did not impose SFG measures is a big success for the EU, given the value of EU tyre exports to Turkey (450-500 million EUR per year).

*Israel – Termination of AD investigation on cocoa spread from the EU*

In September 2016, the Israeli authorities initiated an AD investigation on imports of **cocoa spread** from the EU (economic interest 56 million EUR). The main EU exporting producer is the Italian company Ferrero, whose plants are located in Italy and Poland. The exporting producer cooperated in the investigation and the Israeli authorities conducted verification visits in Italy, Poland and Luxembourg. In close cooperation with Italian authorities, the Commission intervened actively in support of the Italian exporting producer by means of written submissions and participation in the public hearing. The main issues outlined by the Commission included a questionable analysis of injury and causality. In January 2018, the Israeli Ministry of Trade issued the official notification terminating the investigation without imposing any measure.

*Morocco – Termination of AD investigation on exports of ceramic tiles*

The AD investigation opened by Morocco on exports of **ceramic tiles** from Spain, was terminated in November 2017 without imposing measures. The Spanish industry targeted by the Moroccan AD investigation was very concerned, as the economic interest was around 70 million EUR of annual exports. The Commission made several submissions in cooperation

with Spanish authorities and industry, and closely followed the case at every step of the proceeding. The Commission pointed notably to the following weaknesses of the investigation: absence of injury, presence of other factors breaking the causal link between dumping and injury (notably imports from China and Egypt, increase in production costs and unused production capacity). Thanks to the coordinated efforts of the industry, Spanish authorities and the Commission, a successful outcome was achieved for the Spanish ceramic tile industry.

*India – Termination of AD duties on exports of melamine*

The expiry review of the AD duties on **melamine** was initiated in September 2017 (original measures were imposed in October 2012, exports around 4,5 million EUR mostly from Germany). The Commission made a written submission at initiation, highlighting that there was no continuation/recurrence of injury. The domestic industry was highly profitable and, although running at almost full capacity, was not able to satisfy domestic demand, for which reason imports were necessary to fill in the supply gap. This was confirmed in February 2018 by the Indian authorities, who terminated the investigation without re-imposing the duties.

*Brazil – Termination of AD investigation into imports of X-ray dental machines*

The Brazilian AD investigation on imports of **X-ray dental machines** (EU economic interest is 4 million EUR) from Germany was terminated in February 2017 without measures, since Brazil considered that there was no injury to the domestic industry. The collaboration between the industry and the Commission was key for the positive conclusion of this case.

*Ukraine – Termination of expiry review of SFG measures on porcelain without prolongation of measures*

In May 2017, Ukraine terminated the SFG expiry review investigation concerning the existing SFG measures on imports of **porcelain tableware and kitchenware** without extending the original measures (EU economic interest is around 2 million EUR). The SFG review had been initiated in December 2016. The Commission intervened in the proceedings with submissions and participation in hearings. Eventually, Ukraine terminated the SFG investigation without imposing any measures.

*India – Non imposition of AD measures for two EU exporters of wooden flooring*

The AD investigation on imports of **wooden flooring** from the EU was initiated in February 2017 (EU economic interest of around 3 million EUR). The Commission raised a number of flaws in the investigation, namely the issue of data confidentiality, the inconclusive injury picture, the lack of causal link, and the inappropriate cumulation of high-priced EU imports with low-priced imports from other countries. In February 2018, the Indian authorities recommended the imposition of definitive AD measures, except for the two cooperating EU exporting producers, which were found not to have caused material injury to the Indian industry.

### *Australia – Decrease of duties for Italian exporters of processed tomatoes*

In 2016, Australia imposed AD measures on imports of **processed tomatoes** from Italy (more specifically, from two main Italian exporters representing around 45% of EU exports to Australia). Total EU exports of processed tomatoes to Australia were worth around 44 million EUR in 2015. Supported by the Commission and Italian authorities, Italian exporters challenged a cost adjustment for EU Common Agricultural Policy support. As a result, the Australian Anti-Dumping Review Panel (ADRP) found in January 2017 that the EU-decoupled income support to tomato growers in Italy did not have a distortive effect on the price of tomatoes. The dumping margins for the two exporting producers were adjusted downwards, resulting in zero or low duties. In a twin case concerning the remaining Italian exporters, the same issue was raised again and, in February 2018, the Australian ADRP was consistent with its previous conclusion according to which the cost adjustment was not warranted. This is a major success for the Commission and Italian trade diplomacies, which jointly intervened technically and politically at all stages of the above procedures.

## **5. WTO ACTIVITY**

The Commission defends the interests of the EU in specific cases at the WTO in order to ensure full respect of WTO rules. If TDI measures taken by other members are considered to violate WTO rules, the Commission may challenge them at the WTO through the dispute settlement mechanism.

This was the case of *AD measures imposed by Russia against imports of light commercial vehicles (LCV) (DS479)*, for which a Panel report was issued in January 2017. The Panel declared such duties as in breach of WTO rules, agreeing with the EU on all procedural claims and recognising several problems with the analysis made by Russia, in particular because it disregarded the massive overcapacity in the domestic LCV sector. In February 2017, however, the Russian Federation appealed the Panel report on behalf of the Eurasian Economic Union. The EU cross-appealed and the hearing took place in November 2017. The report of the WTO Appellate Body was issued in March 2018.

The Commission also actively intervenes as a third party in WTO proceedings involving other WTO members, with the aim of addressing and monitoring issues of systemic concern and advocating for higher standards in trade defence investigations worldwide.

Finally, the Commission regularly participates in the relevant WTO Committees in Geneva. In the Anti-dumping and Anti-subsidy Committees, individual actions taken by other WTO members are discussed and reviewed in the context of the semi-annual and monthly reporting exercises to the WTO. The Commission systematically intervenes and raises individual cases also in the framework of the Safeguard Committee, in view of the intensive use of this instrument, which is a cause of major concern.

## 6. CONCLUSION

The Commission's approach when confronted with TDI activity by third countries is to intervene during ongoing proceedings by making technical interventions. As seen above, these interventions are often, albeit not always, successful.

The Commission is also using diplomacy to build a constructive dialogue with the TDI services of the EU's trading partners. It is ultimately in the EU interest to support the development of a network of well-informed TDI practitioners, who are better aware of the importance of compliance with WTO rules in carrying out trade defence investigations in their own countries.

In recent years, given the experience gained over time, the Commission's technical interventions have had an increasing impact. This, in combination with political interventions and formal and informal contacts with third countries, has led to a number of important achievements.

For years, the Commission has been organising a one week seminar for TDI officials from investigating authorities of third countries. As an example, 20 officials from six different countries (Egypt, Japan, Thailand, Tunisia, Turkey and Vietnam) and representatives from the WTO secretariat participated in the latest such seminar organised in November 2016. In addition, bilateral meetings to exchange best practices with TDI officials from the US, China, Japan and Korea took place in 2017.

In tune with the recovery of global trade, TDI activity, measured in numbers of new investigations and new measures, declined slightly in 2017.

On the other hand, significant new risks have emerged in 2017, with, for example, the US deliberately having adopted a more aggressive stance. The Commission is concerned with the possible proliferation of measures taken on alleged national security grounds for the purposes of economic protection. These measures lack legitimacy, factual basis and violate international trade rules. They not only shift the attention away from shared strategic challenges that genuinely threaten the market-based economic model, but also trigger negative spill overs when trade partners are forced to take rebalancing measures or to shield their market from the consequences of important trade diversion.

The EU (now endowed with modernised trade defence instruments) is prepared to resolutely safeguard the economic interests of its producers and exporters, through the appropriate bilateral and multilateral channels, including via WTO dispute settlement, if needed.

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