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**REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN
PARLIAMENT**

13th REPORT

**OVERVIEW OF THIRD COUNTRY TRADE DEFENCE ACTIONS
AGAINST THE EUROPEAN UNION FOR THE YEAR 2015**

{SWD(2016) 197 final}

1. INTRODUCTION

Trade defence (also referred to as Trade remedies) is ensured by the three trade defence instruments ('TDI'): anti-dumping ('AD'), anti-subsidy ('AS') and safeguard ('SFG') measures. While AD and AS measures aim at counteracting the negative effects of unfair trade practices resulting from dumped/subsidised imports threatening or causing material injury to the domestic industry, SFG aim to temporarily shield domestic industries from the negative effects of unforeseen and significant increases of imports threatening or causing them serious injury. It should also be recalled that SFG measures are applied on imports from all origins having, thus, *erga omnes* effects, while AD and AS measures are more targeted and are therefore country (and even company) specific.

The application of TDI is regulated under the World Trade Organization ('WTO') relevant agreements and jurisprudence. Such rules need to be scrupulously respected for the proper functioning of the WTO multilateral system. Misapplication of TDI leads to unlawful and unjustified measures that have a negative impact on free and fair trade. This is in particular the case for the SFG instrument, which is the most trade restrictive instrument because measures apply to all countries of origin, irrespectively whether they individually increase their exports and/or cause injury. This is why relevant WTO jurisprudence has set higher standards for the imposition of safeguard measures.

Over the past years, and in conjunction with the global economic and financial crises, there has been an increase in the use of trade defence measures against the European Union ('EU') and individual Member States. In times of economic slowdowns, when domestic consumption in certain sectors decreases, industries look for other outlets in an effort to maintain production/employment and control their costs and naturally focus on export markets. It is therefore crucial that these export opportunities are not hampered by unwarranted trade defence measures, which unduly restrict market access.

WTO members have the right to make use of TDI. However, it is important that the TDI are properly used and do not result in protectionist measures. The EU itself is a regular user of these instruments (notably AD and AS) and its system is based on a balanced and moderate approach, with standards laid down in the EU legislation¹ that go even beyond the WTO commitments. For example, there is a mandatory public interest test and the application of the lesser duty rule by which measures are imposed at levels below the dumping margin when they are sufficient to remove the injury suffered by the relevant industry². The EU expects its trading partners to also strictly follow the agreed WTO required standards in their use of the instruments against the EU or individual Member States. In this context, the European Commission ('Commission') continues its efforts to promote best practices in the use of TDI

¹ Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p.51–73); Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from non-EU countries (OJ L 188, 18.7.2009, p.93–126); Regulation of the European Parliament and of the Council of 11 March 2015 on common rules for imports OJ L 83, 27.3.2015, p. 16–33; Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries OJ L 123, 19.5.2015, p.33-49

² Note that the Commission has proposed to amend the legislations in order to limit the scope of the application of the lesser duty rule under certain conditions (COM(2013) 192 final of 10.04.2013), but this is pending a decision from the European Parliament and the Council.

among its trading partners, and the monitoring activity of third country TDI actions remains intense and focused.

For the above reasons the Commission intervenes, whenever necessary, in order to address systemic issues identified in third countries' use and practice of trade defence and ensure WTO compatibility. The Commission submits comments in writing, and also regularly participates in public hearings in third country TDI proceedings, especially when it is considered that EU exporters' rights and interests are unjustifiably affected. The Commission also intervenes in the relevant institutional instances created by our bilateral agreements.

Furthermore, in an effort to spread its own high standards in TDI investigations and thereby increase the quality of investigations carried out by third countries, the Commission provides comprehensive TDI-related training to officials from the investigating authorities of third countries. Such training is usually organized once a year, in the form of a one week seminar for up to 25 participants from different third countries. Officials from India, Japan, Jordan, Tunisia and Vietnam participated in the training organized in 2015. In the course of 2015 the Commission has also been in contact with more third countries – regular users of TDI, to establish a best practice exchange regarding the use of TDI in addition to the already established dialogues.

The present report describes the overall trends in trade defence activities by third countries, which adversely impact or could potentially impact EU exports (AD or AS measures by third countries can target either the EU as a whole or individual Member State(s)). It also gives an overview of what third country monitoring means concretely with detailed analyses per country and detailed figures in annex.

2. OVERALL TRENDS

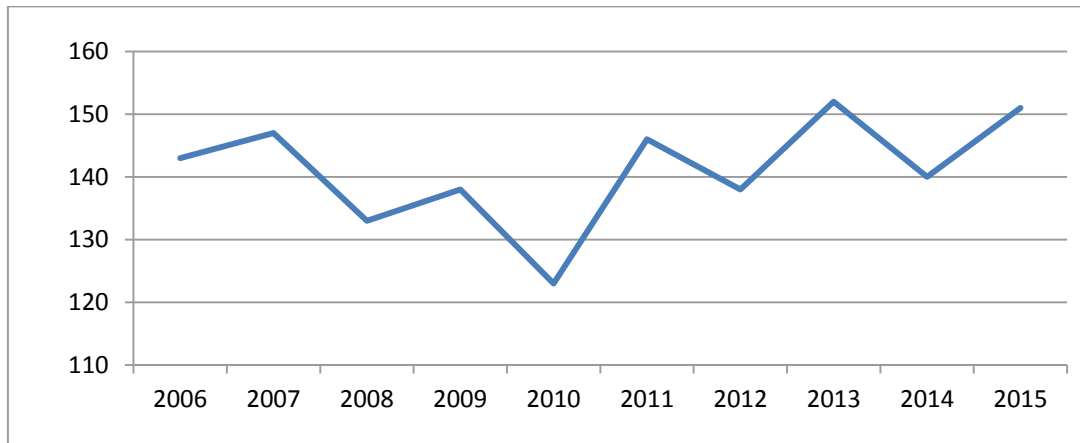
2.1. Measures in force at the end of 2015

The number of TDI measures in force affecting EU exports in 2015 was 151³, which corresponds to an increase when compared to the 140⁴ measures in place in 2014. As shown in the graph below, there is a clear increasing trend in the number of measures in force since 2010, and the TDI activity remained quite important.

Total number of measures in force in 2015

³ The details of the measures imposed by third countries against the EU are available in DG TRADE webpage under: <http://trade.ec.europa.eu/actions-against-eu-exporters/cases/index.cfm>

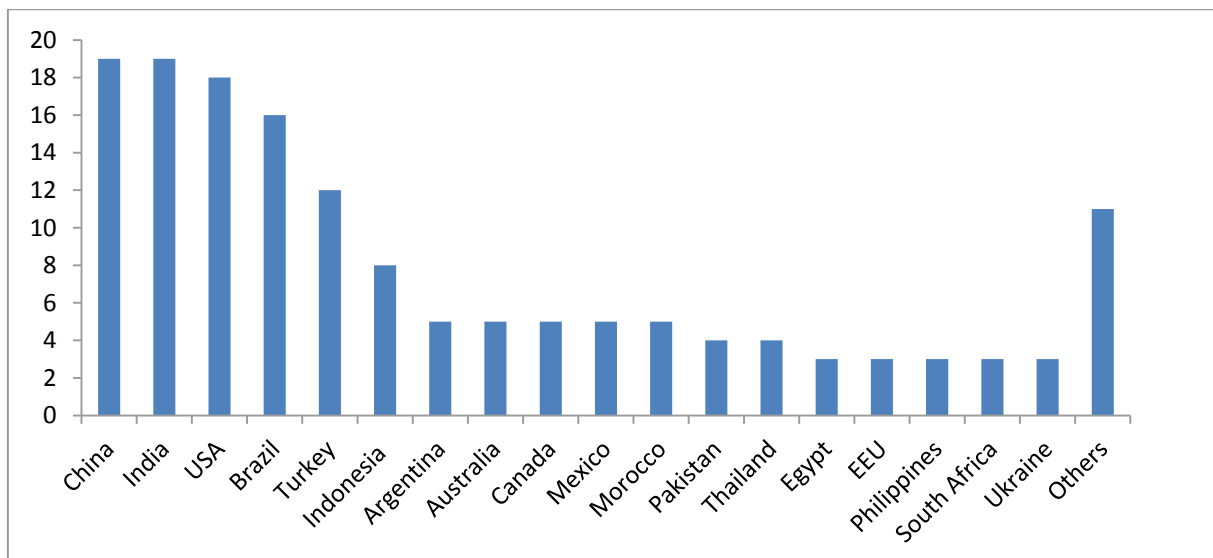
⁴ A case opened against the EU is counted as one case, irrespective of the number of EU Member States concerned.



Source: WTO and EU statistics

India is still the country having, together with **China**, the highest number of measures against EU exports, with 19 measures in force (respectively for India 4 SFG and 15 AD and for China 17 AD and 2 AS measures). Whilst for India this represents a decrease of 7 measures (AD) as compared to 2014, for China this is relatively stable since it means an increase of one measure since 2014. The **United States** follow with 18 measures in force, mostly AD, two of which are new TDI measure on EU exports (1 AS and 1 AD). **Brazil** has 16 (AD) measures, which is a remarkable increase of 7 additional measures as compared to last year. Finally, **Turkey** has quite a stable (12), but steady number of measures in force. This year however, for the first time since a while, Turkey has more AD (7) than SFG (5) measures in force.

Measures in force at the end of 2015 by country



Source: WTO and EU statistics⁵

Regarding the type of instruments used, out of the 151 measures in force, 108 are AD measures, 5 are AS measures and 38 are SFG (it is recalled that SFG measures are imposed

⁵ The remaining 11 measures are spread over 10 countries: Chile, Costa Rica, Dominican Republic, Ecuador, Japan, Korea, Malaysia, New Zealand, Vietnam and Zambia.

against all countries of origin, and not all of them necessarily directly affect the EU which may have limited economic interest in some cases).

Indonesia (8) in 2015 became the most frequent user of SFG, followed by Turkey (5) and India (4). Interestingly some countries appear for the first time as SFG users: Chile, Costa Rica, Ecuador, Malaysia and Zambia. There are however no or limited EU exports to these countries for the affected products.

2.2. Measures imposed in 2015

There was a total of 37 new measures imposed in 2015 (21 AD, 15 SFG and 1 AS), which is a slight increase than in 2014 (34). With 8 new measures (all AD) Brazil is the main contributor. This is a remarkable increase as compared to last year when Brazil did not impose a single TDI measure against EU exports, but not surprising given the high number of new investigations (7) initiated in 2014.

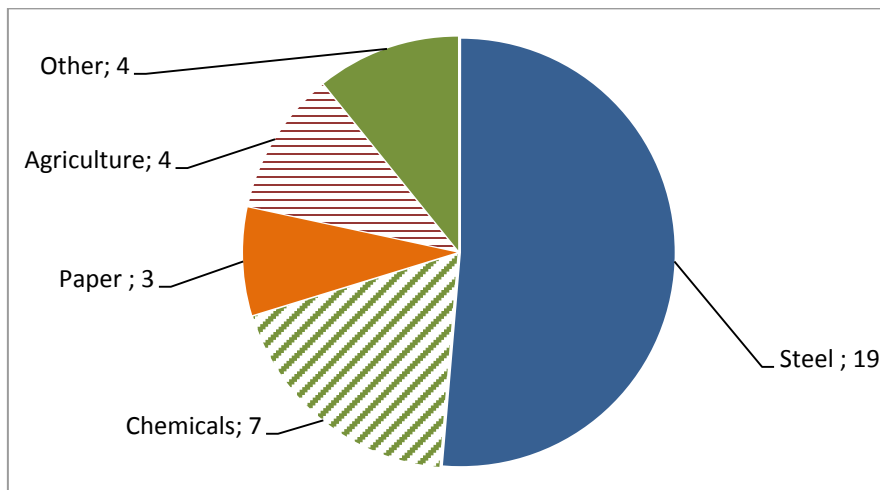
2.3. Investigations initiated in 2015

In terms of new investigations, 18 SFG investigations, 18 AD and 1 AS investigations were initiated in 2015. This is slightly less than in 2014 (37 as compared to 41).

The number of new SFG investigations in 2014 showed an increasing trend, but the number in 2015 went back to its 2013 level. In absolute terms, this remains however a significant number.

In terms of **sectors**, steel was subject to most trade defence initiations. Indeed 19 out of the 37 new investigations initiated in 2015 concerned steel products (more than a half of the total number of new investigations and more than the 12 new investigations on steel in 2014). The **chemical** sector follows with 7 new investigations initiated in 2015 (a decrease when compared with 11 in 2014). The **paper industry**, which had been especially targeted in 2014 (5 new investigations), had 3 new investigations initiated in 2015.

New investigations initiated in 2015 by sector



Source: WTO and EU statistics

As already mentioned, the vast majority of the new cases in 2015, concern the steel sector which is experiencing a global crisis mainly due to excessive overcapacity. In 2015 the United States imposed provisional AS measures and a few developing countries initiated SFG investigations (India initiated 2 cases and Chile, Malaysia Vietnam and Zambia, each one case). Given the *erga-omnes* nature of SFG measures, they could result in trade diversion effects, nevertheless at the time of writing this report this risk does not seem to have materialised.

The scale of global overcapacity combined with the falling demand and low prices for steel make the sector most vulnerable to attract third party trade defence measures. If the underlying problem of global overcapacity is not remedied properly it poses a threat of proliferation of trade defence. This may also concern other sectors , such as aluminium or ceramics.

3. RECURRING ISSUES AND MAIN ACHIEVEMENTS

3.1. Recurring issues

In addition to some issues recurring over the last years - such as the use of SFG often by emerging economies or lack of transparency in TDI proceedings- in the course of 2015 the Commission observed a growing number of anti-circumvention procedures. Since there are currently no uniform rules in the WTO agreements regarding anti-circumvention, this is an area which requires particular attention. There were also Commission interventions in procedures involving EU exports of processed agricultural products.

Safeguards remained a difficult issue also in 2015. The SFG instrument is the most restrictive instrument and should thus only be used in truly exceptional circumstances. Even though not all SFG investigations affect EU exports directly, the Commission intervenes systematically in almost all investigations, in order to raise serious shortcomings often already at initiation stage.

In addition to the recurrent flaws seen in several third country SFG investigations, (no clear increase in imports, lack of transparency or weak and unconvincing injury assessments) the

number of cases and the emergence of new users especially by developing countries remains worrying.

Despite systematic interventions by the Commission, prepared in coordination with industry and stakeholders, in most cases measures are nevertheless imposed.

On the other hand, such interventions have led, at least in some cases, to less restrictive measures (i.e. lower duty rates, higher quota, shorter duration or faster liberalisation of measures).⁶ In some cases measures have also been avoided, but the mere initiation of an investigation has nevertheless a negative impact on trade flows due to the uncertainty of the outcome.

In 2015, Chile surprisingly led in the number of new SFG investigations (4 in total; in 2014 India had initiated 7 safeguard investigations). Also Zambia remarkably became active in trade defence and initiated for the first time a steel investigation which led to the imposition of 1 SFG measure in 2015. The steel sector has also been targeted by safeguards which – given the *erga omnes* nature of the instrument – is always likely to lead to trade flow diversions which risk generating a domino effect.

The rights of defence of the parties in the frame of TDI proceedings is a key element in each trade defence investigation as the interested parties should be in a position to consult a non-confidential file in a timely manner. It is therefore important that it contains a meaningful non-confidential version of each registered document and/or a meaningful summary of confidential information.

Unfortunately, in many investigations and jurisdictions, in particular when few or only one complainants are involved, hardly any information is provided in the non-confidential file. In such cases the Commission intervenes with the investigating authorities to request at least information in the form of indices or ranges, so that parties can obtain a meaningful general picture of the situation.

In 2015 the number of cases involving **circumvention**⁷ of AD measures has increased. The objective of an anti-circumvention investigation is to ascertain whether an exporter subject to AD or AS or an importer liable to pay those duties attempts to avoid them, often via transshipment through another third country. When an investigating authority finds a practice of circumvention, the AD or AS duties may be extended to the product consigned from that third country or exported from a specific exporter found to be involved in circumvention (similar rules apply to parts or a slightly modified version of that product). Whilst circumvention is in principle unacceptable and illegal, anti-circumvention investigations may become problematic when they affect genuine producers/exporters which do not attempt to circumvent measures but simply pursue their normal activity.

Anti-subsidy cases require a rather intense activity due to the discussion related to the nature of EU support, notably in cases concerning processed agricultural products. When it comes to EU aids, the Commission becomes directly an interested party and has to co-operate by filling in a specific questionnaire response. For instance, both in the Canadian case on refined sugar and the Egyptian one concerning Edam cheese, the Commission actively participated in the

⁶ For more details see below section 3.2 “Main achievements”.

⁷ Anti-circumvention investigations do not appear in the web-engine referred to under footnote 3.

procedure to demonstrate that such EU programmes are non-specific under WTO rules and thus should not be addressed by TDI instruments. This was successful in the latter case, as outlined later in the report.

3.2. Main achievements

3.2.1. *Brazil – suspension of measures*

The main achievement in Latin America was the suspension of AD measures against the EU on Emulsion Styrene Butadiene Rubber - **ESBR (synthetic rubber)**. Brazil had initiated this AD investigation in May 2014. The economic interest for the EU producers is estimated at around €80 million.

Even if measures were imposed for five years on 22 November 2015, they were suspended for one year for reasons of public interest - in this case price stability. The suspension can be extended for another year, after which the measures expire. They can also be reapplied at any time. The suspended measures range from 0% to 36.4%.

The Commission intervened in an intensive technical and political debate with the Brazilian authorities about the suitability of the measures. Such a debate was decisive to the duty suspension.

3.2.2. *United States – decrease of the negative impact of measures on uncoated paper*

In February 2015 the US authorities initiated an AD investigation against imports of **uncoated paper** originating among others in Portugal (economic interest for the EU producers of about 105 million €). In its preliminary determination, the US Department of Commerce (USDOC) determined that an EU exporter failed to cooperate during the investigation. Consequently, the USDOC imposed on the company a preliminary dumping margin of 29.53% based on the application of adverse facts available.

The Commission, in coordination with the affected EU exporter intervened *vis-à-vis* the USDOC to argue that the company had in fact properly cooperated. The USDOC decided in its final determination to reduce the dumping margin to 7.8%.

3.2.3. *Turkey – no safeguard measures imposed on printing and writing paper*

Turkey conducted a SFG investigation on **printing and writing paper** involving a significant economic interest for the EU: about €175 million. The publicly available evidence suggested that the case was rather weak. The Commission and the industry in coordination intervened on various occasions and the investigation was terminated without the imposition of measures in August 2015.

3.2.4. *Morocco – reduction of the negative effect of SFG measures*

The Commission, in coordination with the industry, intervened in the SFG investigation on **cold rolled steel sheets and plated or coated steel sheets**, having an economic interest for EU exporters of around €130 million. The main objective was to avoid that the significant EU imports into the free zone of Tangier would be excluded from the investigation and the scope of the measures, and to highlight that there was no coincidence in time between the

increase of imports and any injury of the domestic industry. The Commission's interventions were successful as the negative effect of the measures was reduced.

3.2.5. Egypt – no serious injury in the SFG investigations on automotive batteries and white sugar

In December 2014, Egypt initiated a SFG investigation on **automotive batteries**, involving an economic interest of around €40 million for EU exporters. The Commission intervened with written submissions and participation to public hearing and to consultations under the Euromed agreement to point out that the injury and causal link analysis were inconclusive. The investigation was terminated in December 2015 without imposition of measures.

In April 2015 Egypt initiated another SFG investigation on **white sugar**, raising an economic interest of around €35 million for EU exporters. Provisional measures were imposed at the same time. The case showed major shortcomings; in particular the domestic industry was developing positively and there was neither a recent, sharp and sudden increase of imports nor serious injury. Following strong interventions by the Commission in coordination with the industry, the Egyptian authorities concluded in their report of October 2015 that indeed the industry was not suffering serious injury, which led to the formal decision of February 2016 to terminate the investigation without measures.

3.2.6. Republic of the Philippines – decrease in duties imposed on newsprint

In 2013, the Philippines initiated a SFG investigation against imports of **newsprint**, which potentially could have affected imports from the United Kingdom, Finland, Germany and the Netherlands with an economic interest for EU producers of about € 8 million. The Commission was involved from the very beginning and closely cooperated with the industry and stakeholders to address the legal flaws appearing in the petition and determinations disclosed by the investigating authorities. Between 2013 and 2015 the Commission made several interventions, both written and oral ones. The last interventions were made in March 2015 just before the adoption of the final determination. As a result of the coordinated efforts, the level of the SFG duties was eventually reduced by 60% from approximately €46 to €18 per metric ton of newsprint.

3.2.7. Jordan – termination of a SFG investigation without measures

The SFG investigation regarding imports of **A4 Paper**, involved an economic interest for EU exporters of around € 4 million and was initiated on weak grounds in August 2014. In particular, it appeared that the difficulties suffered by the local industry were mainly due to inefficiency and quality problems. The EU industry was very concerned by this case as a 'contagion effect' had been observed in this sector, namely similar investigations were launched by Morocco, Turkey and the United States. Following strong interventions by the Commission (written submission, participation in the public hearing and consultations under the association agreement) the investigation was terminated without measures in November 2015.

3.2.8. *Other cases to mention*⁸

In 2013, the Australian authorities initiated an AD investigation concerning **processed tomato products** from Italy. The economic interest for the EU was € 48 million. The Commission supported the Italian industry on several occasions with a number of submissions and 45% of exports were excluded from the measure while and the duties for the other cooperating exporters were relatively low (on average 4%). In 2015 the Australian authorities however, initiated a new investigation on grounds which appear extremely weak only a few months after the end of this investigation. The aim is to re-investigate the imports from two companies earlier excluded from the measure, meaning for the EU an economic interest of about €28 million. In 2015 the Commission continued to intervene strongly in support of the Italian exporters. Unfortunately, early in 2016 the Australian authorities imposed measures based on a questionable methodology that presents serious systemic concerns. On 13 April 2016 the Australian Anti-dumping Review Panel initiated an administrative review of the measures at the request of the Italian companies and authorities. The Commission, in coordination with industry and stakeholders, at the time of writing this report is deeply involved in technical and political efforts to address the issues at play.

In 2014, Egypt initiated an AS investigation regarding imports of **Edam cheese** (EU economic interest €20 million) from the Netherlands. The Commission highlighted that the subsidy programmes under investigation were non-specific and thus not actionable under WTO rules. The Egyptian authorities retained such arguments and in March 2015 they terminated the investigation without imposition of measures.

South Africa proposed definitive duties for imports of **frozen chicken parts** from Germany, the Netherlands and the United Kingdom. The case raised an economic interest of € 30 million. Both the Commission and other interested parties questioned the dumping margins and their calculations for the UK. ITAC, the South African investigating authority, lowered those rates for both individual UK producers (from 18.68% to 13.07%) and for the “all others” UK rate (from 34.7% to 22.3%) in the final determination of 27 February 2015.

4. ACTIVITY AT THE WTO

The Commission is also active in the WTO in order to defend the interests of the EU in specific cases, or to address issues of systemic concern. This takes the form of (i) challenge at WTO of TDI measures that the EU considers inconsistent with WTO law, (ii) intervention in WTO's TDI related disputes as a third party and (iii) active participation in the relevant Rules Committees in Geneva.

(i) When measures are considered inconsistent with WTO law, the Commission may request the establishment of a WTO Panel. This was for example the case for the *AD measures imposed by China on imports of certain steel tubes (DS460)* and the *AD measures imposed by Russia against imports of light commercial vehicles (DS479)*.

In the first case, the WTO Dispute settlement Body (DSB) adopted the Appellate Body report in October 2015, with a favourable outcome for the EU, and recommended China to bring its

⁸ The present section cover cases already mentioned in the annual report 2014 <http://ec.europa.eu/trade/policy/accessing-markets/trade-defence/actions-against-exports-from-the-eu/> and formalized in the course of 2015:

measures into conformity with the WTO rules. China has until 22 August 2016 to implement the DSB recommendations and ruling. For the second case, the Panel started its activity only in 2015 and a decision is expected in the course of 2016.

(ii) Furthermore, the Commission also intervenes as a third party in WTO proceedings requested between third countries, with the main objective to address and monitor issues of systemic interest, which may also impact the EU's use of the trade defence instruments. Such interventions have also an offensive interest, since the Commission advocates for higher standards in trade defence investigations abroad. In 2015, the Commission intervened again as a third party in a number of cases.

(iii) Finally, the Commission also actively participates in the relevant WTO committees in Geneva. In the AD/AS Committees, actions taken by other WTO Members are reviewed in the context of the semi-annual and monthly reporting exercises to the WTO. Special focus is paid to the SFG Committee, given the increasing use of this instrument, which as explained above is a cause of concern. The Commission raises individual cases, where the EU has an economic or a systemic interest. In addition, the Commission also actively participates in a technical discussion group on SFG issues, which takes place in the margins of this WTO Committee and chaired the 2015 group discussion. The main objective is to exchange views on the respective practices of WTO members.

5. CONCLUSION

The data presented in this report show that throughout 2015 the trade defence activity against the EU or its Member States remained intense and required considerable effort by the Commission services.

The year was also marked by the increased complexity of the cases at stake due to various factors such as the ongoing debate on global steel overcapacities, the political context in some third countries where TDI measures may acquire a protectionist connotation. Moreover, producers in EU Member States facing challenges in the internal market or their own domestic markets have made significant efforts to export in order to achieve growth and employment objectives and are thus more often confronted with third countries' TDI measures.

Finally, in 2015 the Commission engaged, with positive results, in some demanding discussions with certain third countries on the nature of the EU subsidies, with a view to clarify that they should not be considered specific under the WTO rules.

The Commission always aims at a dialogue that usefully contributes to the development of the TDI systems of third countries, advocating and encouraging compliance with WTO rules. Accordingly, in the course of 2015 bilateral contacts took place with Turkey and Brazil (two of the most active countries in trade defence against EU producers) with the objective to exchange best practices and to promote mutual better understanding and cooperation, which ultimately helps avoiding that unfair measures are applied to the EU industry. Such a dialogue already exists with China.

The importance of the Commission's interventions has been increasing from year to year, given the experience gained in successive interventions and the existent formal and informal contacts with third countries. However, many of the issues encountered over the past years still persist, and some even in an aggravated manner, in particular the proliferated use of safeguards and the questionable way this instrument is used by a number of third countries.

Trade defence measures imposed by third countries, as well as ongoing investigations, have an important economic impact on EU exports. Therefore, the Commission will continue its efforts to promote among the EU trading partners the high standards the EU applies as they contribute to a market access strategy for fairly traded goods. It will also intensify its interventions and its provision of technical support and advice to EU exporters especially when they are faced with potential abuse of the TDI by third countries. These efforts are fully consistent with the Commission's other efforts regarding market access.

In carrying out these tasks, the interaction with the Union industry, individual EU companies and Member States plays a crucial role, as well as the bi-lateral dialogues and the sharing of best practices with third countries. In that sense, the Commission's activities regarding third countries' use of TDI go far beyond simple monitoring and in fact constitute an intensive part of its activity.