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FOURTEENTH REPORT
OVERVIEW OF THIRD COUNTRY TRADE DEFENCE ACTIONS
AGAINST THE EUROPEAN UNION FOR THE YEAR 2016

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

FOURTEENTH REPORT

**OVERVIEW OF THIRD COUNTRY TRADE DEFENCE ACTIONS
AGAINST THE EUROPEAN UNION FOR THE YEAR 2016**

{SWD(2017) 277 final}

1. INTRODUCTION

Trade defence instruments (TDIs) consist of three important tools specifically designed within the framework of the World Trade Organisation (WTO) to meet this goal: anti-dumping, anti-subsidy and safeguards.

Anti-dumping (AD) and anti-subsidy (AS)¹ measures aim at counteracting the material injury (or threat of it) caused by dumped and/or subsidised imports to a domestic industry, while safeguards (SFG) provide domestic producers with a temporary relief from an unforeseen and significant increase of imports. Safeguard measures are applied on imports from all origins indifferently (*erga omnes*), while anti-dumping and anti-subsidy measures are country – and even company – specific.

Each WTO member has the right to make use of TDIs to counteract unfair trade practices. However, this has to be done in full accordance with WTO rules, as misuse of TDIs leads to unlawful and unjustified protectionist measures that have a negative impact on global trade and economic development. The EU itself is a regular user of TDIs (with the exception of safeguards) but has a moderate and balanced approach. EU standards are in fact even more stringent than those provided by WTO rules and provide for additional conditions before any measures can be imposed. These so-called 'WTO plus elements' include, for example, a mandatory Union interest test to be carried out before any measure is imposed, in order to assess the effect of the imposition/non-imposition of measures on the European economy.

Starting from 2010, a significant increase in the use of TDIs by third countries against EU exports has been observed. In these times of economic slowdown and stagnant demand, especially in certain sectors, EU industries naturally look for other outlets for their production, including export markets. It is therefore crucial that these export opportunities are not hindered by unwarranted trade defence measures, which unduly restrict market access.

The EU expects its trading partners to also follow the applicable WTO standards in their use of the instruments and has continued its efforts to promote best practices: every year the Commission organises a comprehensive one week TDI-related seminar for officials from investigating authorities of third countries. 20 officials from 6 different countries (Egypt, Japan, Thailand, Tunisia, Turkey and Vietnam) and the WTO secretariat participated in the training organised in November 2016. In addition, bilateral meetings to exchange EU best practices with TDI officials from, respectively, Indonesia, Thailand, China and Korea took place last year, as well as more informal contacts with other trade partners.

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 address systemic issues identified in the proceeding and to ensure WTO compatibility. This is for instance done through written submissions to the investigating authority in third countries but also 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 its bilateral agreements and in the multilateral context.

¹ In the framework of the WTO, anti-subsidy (AS) measures are referred to as countervailing duties (CVD).

This report describes the overall trends in trade defence activities by third countries, which adversely impact or could impact EU exports, the main problems identified and results achieved in 2016. It also gives an overview of what the Commission has done concretely in third country monitoring with a detailed country-by-country analysis and exhaustive figures in the Annex.

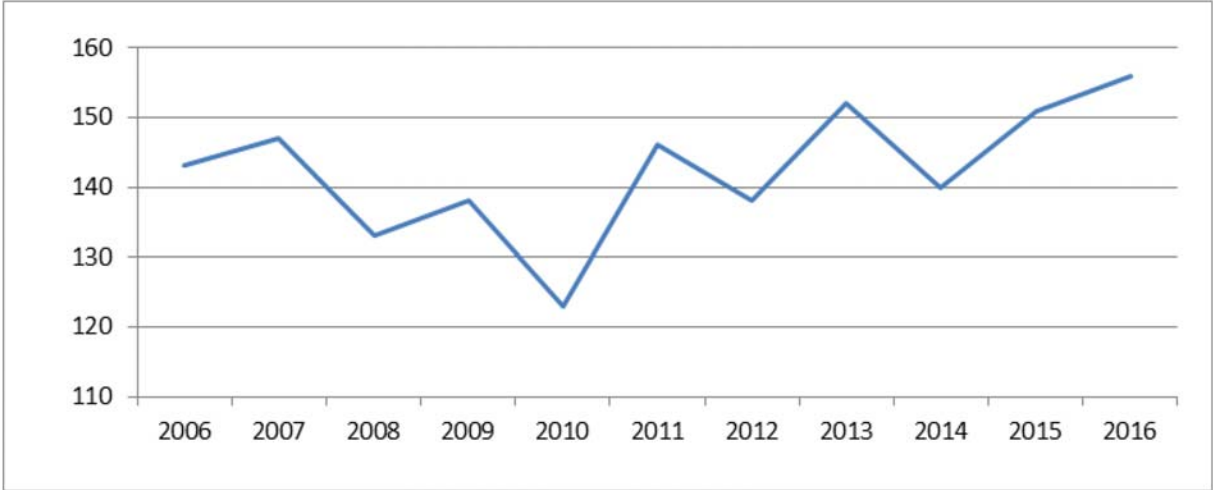
2. OVERALL TRENDS

2.1. Measures in force at the end of 2016

Similar to 2015, the trade defence activity by third countries against EU industries in 2016 remained intense.

At the end of 2016, there were 156 TDI measures in force affecting EU exports, which represents an increase when compared to the 151 measures in force at the end of 2015. As shown in the graph below, there has been a clear increasing trend in the number of measures in force affecting EU exports since 2010, and the TDI activity is still quite important.

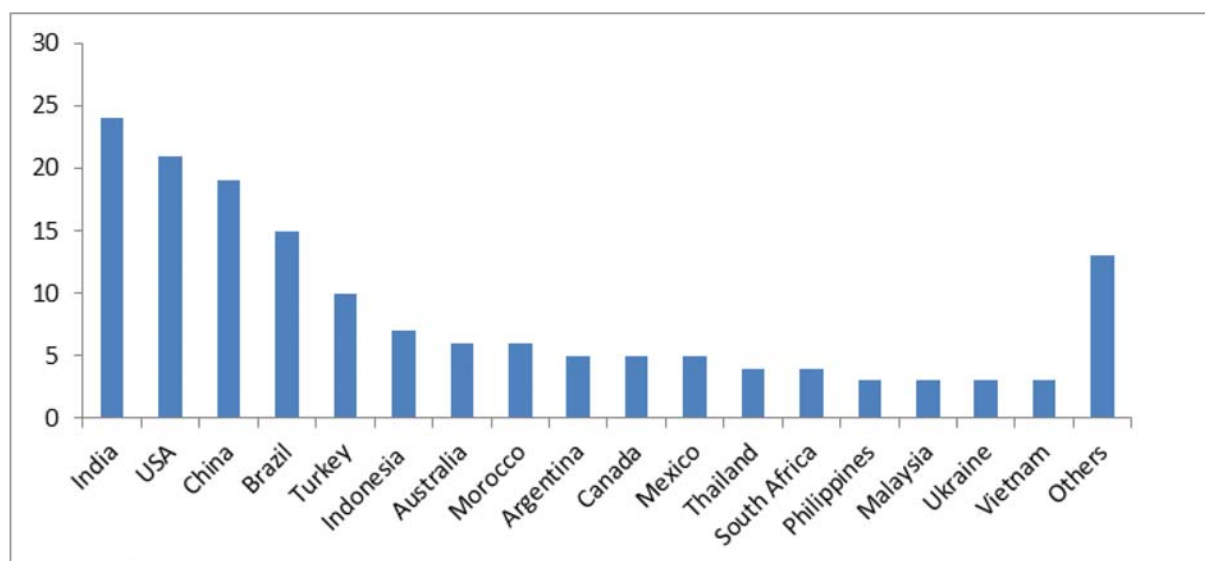
Total number of measures in force at the end of 2016



Source: WTO and EU statistics

As showed in the graph below, **India** remained the most active user of TDIs against the EU, with a total of 24 measures in force at the end of 2016 (19 AD and 5 SFG), an increase of 5 measures as compared to 2015 (19). The **United States** follow with 21 measures in force, 19 of which are AD (3 more than in 2015) and 2 are AS. **China** remained stable with 19 measures (17 AD and 2 AS) and so did **Brazil**, with 15 measures, all AD.

Measures in force at the end of 2016 by country



Source: WTO and EU statistics

By type of instrument, out of the 156 measures in force², 116 are AD, 5 are AS and 35 are SFG (it is recalled that SFG measures are not country-specific, thus not all of them necessarily affect EU exports).

More specifically on safeguards, the most important users in 2016 were Indonesia (7), with the highest number of measures in place, followed by India (5) and four other Asian countries: Malaysia, the Philippines, Thailand, and Vietnam (3 each).

2.2. New investigations initiated in 2016

In terms of new investigations, 2016 has seen a considerable decrease: all third countries together opened a total of 30 new cases against the EU, 7 less than in 2015. This is mainly due to a **decreasing trend** in the number of **new SFG investigations**, which dropped from 18 in 2015 to 12 in 2016 (-6). The number of AD and AS investigations remained relatively stable as compared to 2015, i.e. 18 new AD and no new AS.

It is worth noting that, among all countries, **India** is the one who opened the highest number of new investigations (5, 4 of which are AD), reversing the decreasing trend it has had in 2015, when no AD case was initiated.

In terms of sectors, as in 2015, the increasing trend of new **steel cases** initiated by third countries against the EU persisted over 2016. As shown in the graph below, the proportion of new steel investigations exceeded the total number of cases in all other sectors. In fact, in 2016 17 out of the 30 new investigations against the EU concerned steel products. Starting from 2015, the steel sector worldwide has often been subject to trade defence investigations and measures. This is mainly due to excess capacity and overproduction in China that result in very significant levels of exports at dumped prices. Even though there is no overcapacity in the EU steel production, EU industries are also often targeted by trade measures imposed by

² 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>.

third countries against imports of steel. This is particularly the case of SFG, which are applied irrespectively of the country of origin. However, EU industries are also sometimes included by third countries in the scope of AD investigations which otherwise mostly target dumped steel products coming from Asia.

The EU itself also opened a number of cases and imposed measures on imports of steel products. In order to closely monitor the developments in the sector, the EU has put in place a "steel surveillance" mechanism: this entails a regular monitoring of import trends which threaten to cause injury to EU steel producers.

New investigations against the EU in steel and other sectors



Source: WTO and EU statistics

2.3. Measures imposed in 2016

A total of 30 new measures were imposed in 2016 by third countries on EU exports. This represents a **significant decrease** as compared to 2015 (37) notably in the number of **safeguard measures**, which dropped from 15 to 10. In this regard, it is important to recall that the European Commission is very active in promoting a fair use of TDIs by its trading partners, especially when it comes to SFG.

As regards AD and AS measures imposed, figures show an overall stable trend. As compared to 2015 (21), last year there was a slight decrease in the total number of AD measures imposed (19), but some countries have imposed more measures than in 2015: the US and India have imposed respectively 5 and 3 AD measures, while in 2015 they imposed measures only in 1 case each. On the other hand, Brazil had a reverse trend: it has only imposed AD measures in 1 case, while in 2015 it imposed measures in 8 cases. Only 1 AS measure was imposed last year by the US, same as in 2015.

3. RECURRING ISSUES

3.1. Anti-circumvention³

In 2016, the number of cases by third countries against the EU involving circumvention concerns continued to be significant. As in 2015, last year there was a total of 5 cases involving circumvention: Turkey had 3 measures in force (2 on woven fabrics from Bulgaria and Poland and 1 on plywood from Bulgaria, the latter being imposed in October) and initiated 1 new investigation (hinges from Greece, Spain and Italy), and another one was initiated by Argentina (coated paper from Finland).

Circumvention refers to illegal practices such as transshipment, miss-declaration of origin, product modification or assembly operations, which aim at avoiding the payment of applicable AD or AS duties. When circumvention is found, the existing AD or AS measures can be extended to the third country not subject to the measures (but often geographically close to it) where the circumvention activity takes place, or to the slightly modified product. Since there are currently no uniform rules in the WTO agreements as regards circumvention, and given the fact that it can become problematic when anti-circumvention measures capture genuine producers, this is a sensitive area that the Commission is monitoring closely.

3.2. Rights of defence

A key element in all TDI investigations is the rights of defence of the parties. It is up to the investigating authorities to ensure that a meaningful non-confidential file is made available for consultation. Such a file should exclude business secrets and present redacted information in the form of indexes or ranges that enable all parties to have a complete picture of the situation. Unfortunately, in many investigations (in particular those with few or only one complainant), hardly any information is provided in the non-confidential file, or it is simply blanked out. This lack of meaningful information makes it impossible for parties to understand the circumstances of the case and to defend themselves. In such cases the Commission intervenes systematically, insisting on more transparency during the proceedings.

3.3. Injury and causal link

Investigations should result in measures only when the relevant WTO conditions are strictly fulfilled; unfortunately, this is not always the case. In particular, the Commission has often been confronted with inadequate analysis where the existence of a clear causal link between the alleged dumped imports and the injury suffered by the domestic industry was very doubtful. When the link between those two cannot be established, even when injury is found, there is no sufficient ground to impose any measure according to WTO rules. It is important to recall that there can be many reasons for the domestic industry to be injured: the inefficient utilisation of its capacity, a drop in domestic demand, or an increase in raw material and energy prices, amongst others. Any injury from such other factors may not be attributed to dumped imports and may break the causal link. The Commission pays particular attention to the analysis of injury and causal link in third country investigations, as without a causal link,

³ Anti-circumvention investigations do not appear in the web-engine referred to under footnote 2, while in the annexed statistics these are counted as anti-dumping cases.

any measures go beyond remedying injury caused by dumped/subsidised imports and can easily turn into protectionism.

3.4. Questionable use of safeguards

As explained before, safeguard is the most trade-restrictive instrument, as it applies to all imports regardless of their origin. This is why it should be used in very exceptional circumstances only, in order to temporarily protect the domestic industry from a sudden and sharp increase in imports. Although the use of SFG has started to decrease in 2016, the Commission continues to intervene systematically in almost all investigations, as many do not seem to respect the strict rules provided for in the WTO Safeguards Agreement. Many SFG investigations refer to imports that are actually originating in only one country, thus the AD or AS instruments would be more appropriate in providing a more targeted response to the problem, without unduly limiting market access. In 2016, this was the case particularly in South East Asia, where SFG investigations aimed at protecting the domestic steel markets against increasing imports of steel products mainly from China.

4. MAIN ACHIEVEMENTS

China – Termination of AD measures following WTO AB report

On 22 August 2016 China terminated the AD measures on certain **high-performance stainless steel seamless tubes** originating in the EU and Japan. This decision represents the implementation of the WTO Appellate Body (AB) report of October 2015, which concluded that the AD measures imposed by China in 2012 were in breach of WTO rules (see also under point 5 below). This case is an example of unwarranted Chinese TDI measures, which were motivated by retaliation and were not in compliance with WTO rules. The case was initiated shortly after an EU case against imports of Chinese steel. The WTO AB found notably that the Chinese Ministry of Commerce did not undertake a segmented analysis of the impact of the dumped imports on the Chinese domestic industry, failing to ensure that the injury caused by other factors was not attributed to the dumped imports; it also found that interested parties were not allowed to properly exercise their rights of defence.

Australia – Decrease of duties for exporting producers of processed tomatoes

In 2013 the Australian authorities initiated an AD investigation concerning **processed tomato products** from Italy (EU exports of this product to Australia of € 48 million). Further to several interventions, the investigation for the two main exporters, who represent around 45% of total EU exports, was terminated because no evidence of dumping was found. The duties for the other cooperating exporters were relatively low (on average 4%).

In 2015 Australia initiated a new AD investigation regarding the two exporting producers against whom the previous investigation had been terminated. Despite several technical and political interventions at various levels, early in 2016 the Australian authorities imposed measures ranging from 4.5% to 8.4%. These measures were based on a methodology the application of which lead to serious systemic concerns, as it indirectly challenged EU agricultural green box payments (which are allowed under WTO rules) within the framework of an AD investigation. In April 2016, at the request of the Italian companies and authorities, the Australian Anti-dumping Review Panel initiated a review of the measures. The

Commission, in coordination with industry, promptly intervened in the proceeding, showing that the price of raw tomatoes purchased by the two exporters was not influenced by the EU green box payments. As a consequence, there should not have been any cost adjustments, which resulted in artificially high dumping margins. This argument prevailed and, on 5 January 2017, the Australian authorities reduced the level of the applicable duty for the two exporting producers (to 0% for one exporter and to 4.6% for the other), acknowledging that the cost adjustment methodology was not appropriate.

In parallel, in May 2016 an interim review limited to the other exporting producers already subject to the measures was also initiated by the Australian authorities, in order to apply the cost adjustment methodology they had initially applied to the two Italian companies with the aim of raising also their dumping margins. But in January 2017, further to the methodological review lodged by the two Italian exporters (which has been described above), the Australian AD Committee reviewed its conclusions and decided to no longer apply the cost adjustment methodology and to reduce the duty rates for all the exporters concerned.

Brazil – Termination of AD investigation on X-ray machines without imposition of measures

In February 2017, Brazil terminated the AD investigation against imports of **X-ray dental machines** from Germany (EU exports of this product to Brazil of around €5 million). In view of the arguments presented by the Commission and the industry (three interventions addressing serious flaws relating to the analysis of volume and price effects, injury and causal link), the Brazilian Department of Trade Remedies (DECOM) reverted its preliminary determination and concluded that the domestic industry was not injured by the investigated imports.

Turkey – Less restrictive form of SFG measures

Turkey imposed SFG measures on imports of **wall paper**, including those of EU origin (EU exports of this product to Turkey of around €13 million). The Commission intervened at several levels, including during the WTO SFG Committee in Geneva. After extensive contacts, in April 2017 the Turkish authorities eventually agreed to put in place a tariff rate quota that would apply as of August 2016, considerably limiting the negative economic impact on EU exporters.

Morocco – Less restrictive form of SFG measure

The Commission intervened as from initiation in the Moroccan SFG case concerning **paper in reels and reams** (EU exports of this product to Morocco of around €20 million). The injury and causal link analysis were found inconclusive and the only domestic producer seemed to have problems with quality, available quantity and delivery time. A decreasing *ad valorem* duty was then proposed, but the Commission's and the industry's joint efforts and various interventions resulted in a less restrictive tariff quota for EU exporters.

Tunisia – Non-imposition of measures in three SFG investigations

Tunisia initiated three SFG investigations in recent years: **glass bottles** and **fibre board** in 2014 and **ceramic tiles** in 2015 (EU exports of these three products to Tunisia of around €70 million). The Commission intervened strongly, as all three cases were initiated on very weak

grounds. In particular, the domestic industry was not suffering serious injury: difficulties were caused by other factors, such as an increase in raw material and energy prices. Following the Commission's interventions in cooperation with industry, the imposition of measures has been avoided so far. The Commission continues to exercise pressure so that these investigations are closed also formally.

Egypt – Termination of a SFG investigation without imposition of measures

The SFG investigation concerning imports of polyethylene terephthalate (**PET**) was initiated in December 2015. The Commission intervened several times to highlight significant shortcomings. In particular, the industry was in a start-up phase and, after the production started, imports did not increase but actually decreased. Furthermore, most indicators showed a positive trend, especially as regards market share (producers had reached 60% within only one year of production), and any difficulty the applicant was experiencing was related to the start-up phase, not to an increase in imports. The investigation was terminated without measures in August 2016.

Turkey – Termination without measures of two SFG investigations

In two SFG cases, **hot rolled flat steel** and **mobile phones**, following several submissions by the Commission, in cooperation with the industry, the Turkish authorities eventually recognised that the complaints were unfounded. Consequently, both investigations were terminated without the imposition of duties.

South Africa – Lower SFG measures on frozen chicken

In December 2016 South Africa imposed provisional SFG duties of 13.9% (*ad valorem*) on **frozen chicken** (EU exports of this product to South Africa of around €200 million). The same product has already been subject to AD measures since 2015. Following several Commission interventions, the provisional duty imposed was considerably lower than the one initially proposed by the applicant. But the case is still ongoing and, at the time of this report, the two duties were still applied cumulatively.

New Zealand – Termination of AD measures on Spanish preserved peaches

In 2016 New Zealand initiated an expiry review of the AD measures imposed in 2011 on imports of **preserved peaches** from Spain. However, also following interventions from the Commission, in March 2017 the New Zealand authorities concluded that the duties were no longer necessary and they were thus terminated.

5. WTO ACTIVITY

The Commission is active at WTO level in order to defend the interests of the EU in specific cases and to ensure full respect of WTO law. If TDI measures taken by other members are considered to violate WTO rules, the Commission may challenge them and request the establishment of a Panel.

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 case was mentioned in last year's Annual Report). 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 Union⁴.

As regards another case also mentioned last year, namely *AD measures imposed by China on imports of certain steel tubes (DS460)*, following the ruling of the Appellate Body report of October 2015, on 22 August 2016 China implemented the WTO Dispute Settlement Body's (DSB) recommendation and terminated the measures.

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.

In 2016, the Commission intervened, amongst others, in two WTO disputes (*DS464: US – AD and AS measures on large washers from Korea*, and *DS471: US - Certain methodologies and their application to AD proceedings involving China*), in which the methodology to establish targeted dumping and the application of zeroing by the United States in AD investigations were challenged. The Appellate Body reports issued in both cases are of particular interest for the EU, as this methodology, which artificially inflated dumping margins, is used by the US also in cases against imports from the EU.

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. In addition, the Commission takes part in a more general discussion group on safeguard issues, which main objective is to exchange views on the respective practices of WTO members.

6. CONCLUSION

The information and data presented in this report show that throughout 2016 the trade defence activity against the EU remained intense and required continuous efforts by the Commission services. Even though the Commission welcomes the decreasing number of new

⁴ The member states of the Eurasian Economic Union (EAEU) are: Belarus, Kazakhstan, Russia, Armenia and Kyrgyz Republic.

investigations and measures against the EU, especially as regards safeguards, it should be noted that the total number of measures currently in force has increased compared to 2015, reaching a particularly high level.

Last year was also marked by an increasing complexity of the cases at stake due to various factors such as the global steel overcapacity and the political context in some third countries, where TDI measures may acquire a protectionist connotation. Moreover, producers in EU Member States facing challenges on the internal market have been looking for export outlets in order to achieve growth and employment objectives and are thus more often subject to third countries' TDI measures.

The Commission's approach when confronted with TDI activity against EU industries by third countries is to intervene systematically during ongoing proceedings by making technical interventions; but it also works to build a constructive dialogue with the TDI services of its trading partners. This should contribute to developing well informed investigating authorities, 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. However, many of the issues encountered in the past still persist.

Furthermore, in view of the increasingly complex and often politicised global trading environment, an increased use of TDIs may be expected. In this difficult context, the Commission will concentrate its efforts so that "use" does not turn into "misuse" of TDIs. Close interaction with the EU industry, individual EU companies and Member States, as well as bilateral dialogues and the sharing of best practices with third countries, play a key role in the Commission's endeavours.

Global trade, which is being continuously liberalised and which offers important opportunities for stakeholders, can only function on fair terms. Trade defence ensures that fair terms prevail. In that sense, it is an integral part of the EU's trade policy, as well as that of other important trading partners.

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