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Trade defence instruments

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The European Union (EU) is the world's largest trading bloc and has become deeply integrated into global markets. This is because the EU is committed to an open, rules-based trading system. Free trade also contributes significantly to economic growth in the EU. However, this openness also means that the EU needs effective instruments to protect domestic industries from unfair trade practices by third countries. Trade Defence Instruments (TDIs) can be used to respond to practices such as dumping (where the price of goods for export is below the domestic price in the exporting country) and subsidisation (state support for exported products) which are not compliant with World Trade Organisation (WTO) rules. If such practices are confirmed during a TDI investigation by the Commission, the EU can respond by imposing appropriate anti-dumping or anti-subsidy measures (mostly in the form of duties) on the companies concerned.

EU trade policy is exclusively a policy of the European Union, therefore the Commission bears sole responsibility for carrying out TDI investigations and imposing measures. The underlying analytical work is carried out primarily by the Directorate-General for Trade, in co-operation with other departments as appropriate. Member States are co-decision makers through the Trade Defence Committee and all TDI investigations are subject to strict rules defined both at EU and WTO level.

The European Court of Auditors is conducting an audit on whether the Commission has been successful in enforcing the EU's trade defence policy.

If you wish to contact the audit team, you may do so at the following email address: ECA-trade-defence-audit@eca.europa.eu.

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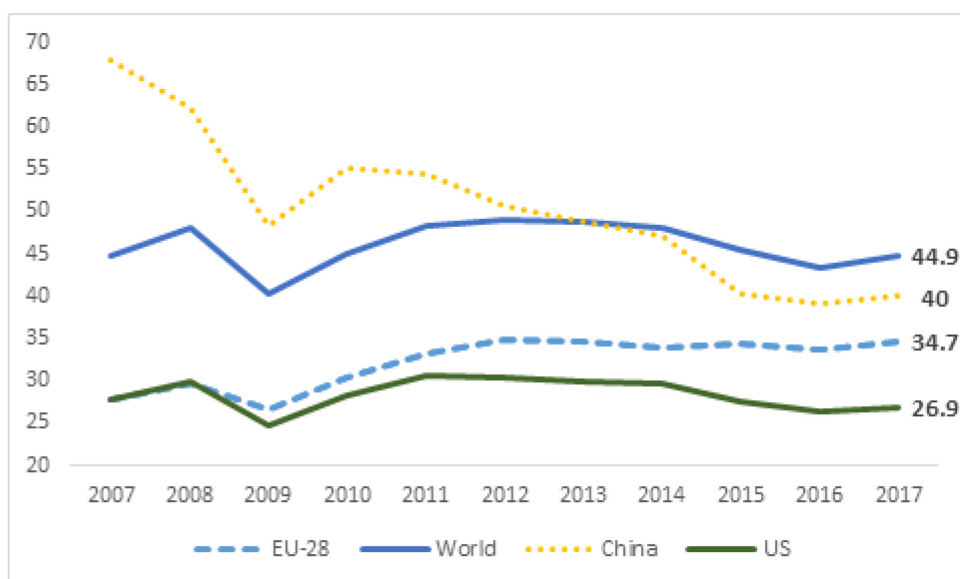
Introduction

The European Union (EU) is the world's largest trading bloc. Open trade creates opportunities for European companies and is considered essential for growth, jobs and competitiveness. It is also seen as developing and securing economic ties between nations and thus contributing to economic and political stability.

Since 1948, international trade has grown worldwide by a multiple of over 290, from 59 billion dollars in 1948 to 17 198 billion in 2017¹.

The EU's global trade (imports and exports) in goods and services was worth 5 318 billion euros in 2017 (34.7 % of the EU's GDP), a substantial increase compared to the figures for 2007 (27.8 %). Over the same period the US and China saw a reduction in trade expressed as a percentage of GDP (see [Figure 1](#)).

Figure 1 – Trade in goods and services (% of GDP)



Source: ECA (based on European Commission data; DG Trade Statistical Guide, June 2018).

The EU economy is deeply embedded in global value chains. Small and medium-sized businesses play an important role in EU trade, with over 600 000 of them accounting for one third of total EU exports. EU exports provide jobs for 31 million Europeans, 6 million of them in small and medium-sized businesses. Overall, one in seven jobs in the EU depends on exports. However, Europe's share of goods exported worldwide has been decreasing in recent decades: from just over 50 % in 1973 to 38 % in 2017².

Key EU trading partners

The EU's trade in goods, of both imports and exports, is dominated by four main partners, namely China, the USA, Russia and Switzerland. The EU's largest trade deficit is with China (see [Table 1](#)).

Table 1 – Key EU trade partners in 2018 – goods (values in billion euros)

Top EU exports to:		Top EU imports from:		Largest EU trade surplus:		Largest EU trade deficit:	
USA	406	China	395	USA	139	China	-185
China	210	USA	267	Switzerland	47	Russia	-83
Switzerland	156	Russia	168	UAE	27	Norway	-30
Russia	85	Switzerland	109	Hong Kong	27	Vietnam	-27

Source: DG TRADE, 2018 trade statistics.

The role of the World Trade Organisation

In a global context, the legal and institutional framework for international trade is provided by the World Trade Organisation (WTO). The organisation has 164 members and the EU is the only customs union that is itself a member of the WTO. At the same time, the EU is signatory to 33 trade agreements and three customs unions.

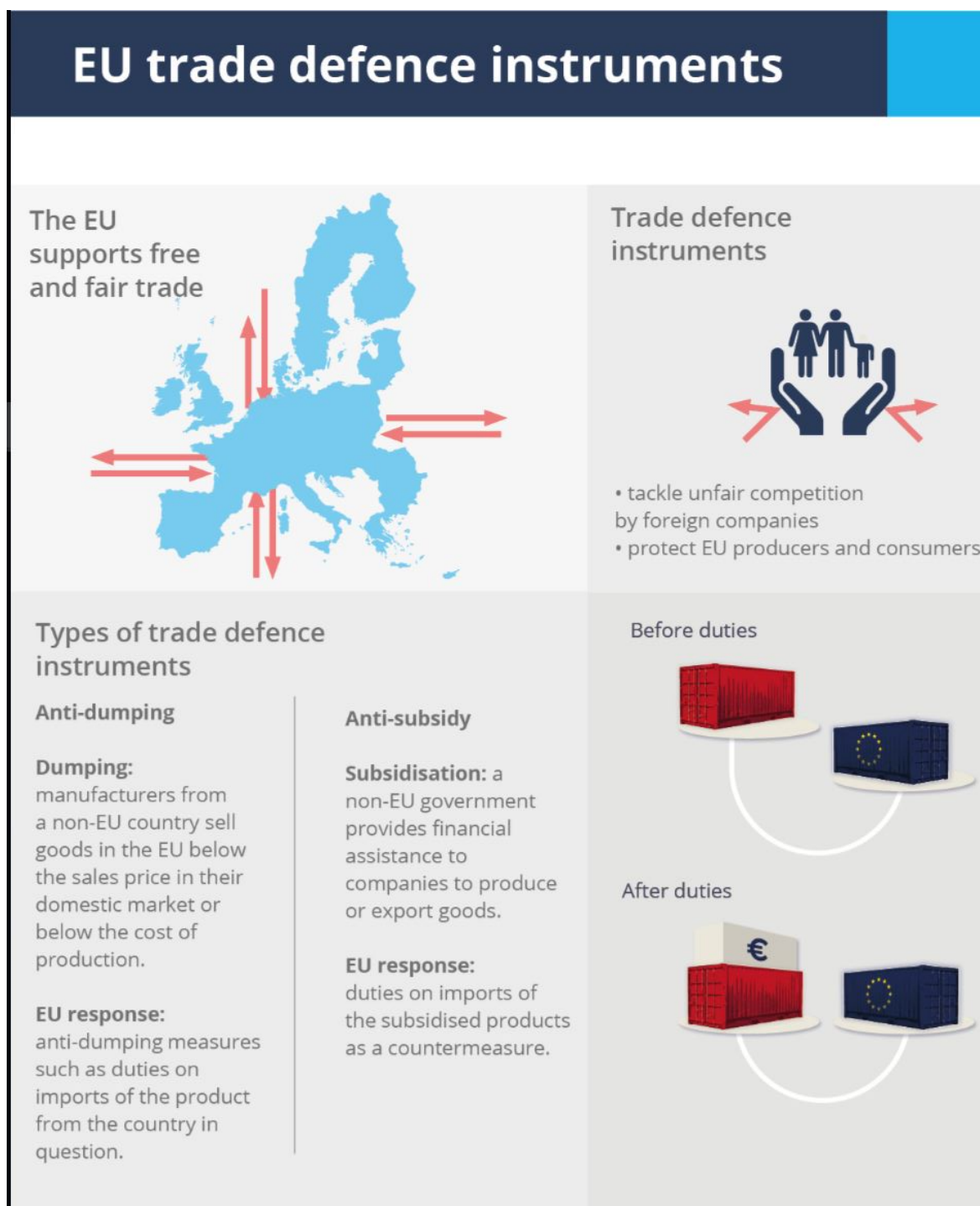
Trade defence instruments

Objectives

Through its participation in the WTO, the EU is committed to an open, rules-based trading system. However it needs to have instruments in place to protect its industries when third countries apply unfair practices, such as subsidies or dumping, which are not compliant with WTO rules.

In practice, these trade defence instruments (TDIs) allow the EU to react to unfair competition where products are being sold for export at less than their domestic price or have been manufactured with the support of unjustified non-EU public funding. The measures usually take the form of an extra import duty to compensate for losses suffered by EU industry as a result of the unfair practices (see [Figure 2](#) for details).

Figure 2 – Types of trade defence instruments



Source: European Commission.

Moreover, when imports increase suddenly, WTO and EU rules allow for short-term measures to regulate them, in order to help companies adapt to the changed trade situation.

Type and duration of the measures

The measures to counteract unfair practices take the form of three basic duties imposed by the EU, together with possible price undertakings:

- **ad valorem duty** – the duty is a percentage of the price of the goods (e.g. 20 % of the import price);
- **specific duty** – the duty is a fixed amount per unit of the goods (e.g. 15 euros per tonne);
- **variable duty / minimum import price** – the duty equals the difference between a defined minimum import price and the foreign exporter's export price;
- **price undertaking** – the individual foreign exporter commits to selling its goods at or above a minimum import price, which is not made public.

The measures implemented by the EU can be provisional or definitive. Definitive anti-dumping and anti-subsidy measures usually expire after five years, but may continue if a Commission review finds that the distortion still exists. After definitive measures are in place, the Commission can still intervene with the following actions to extend or amend measures already in place:

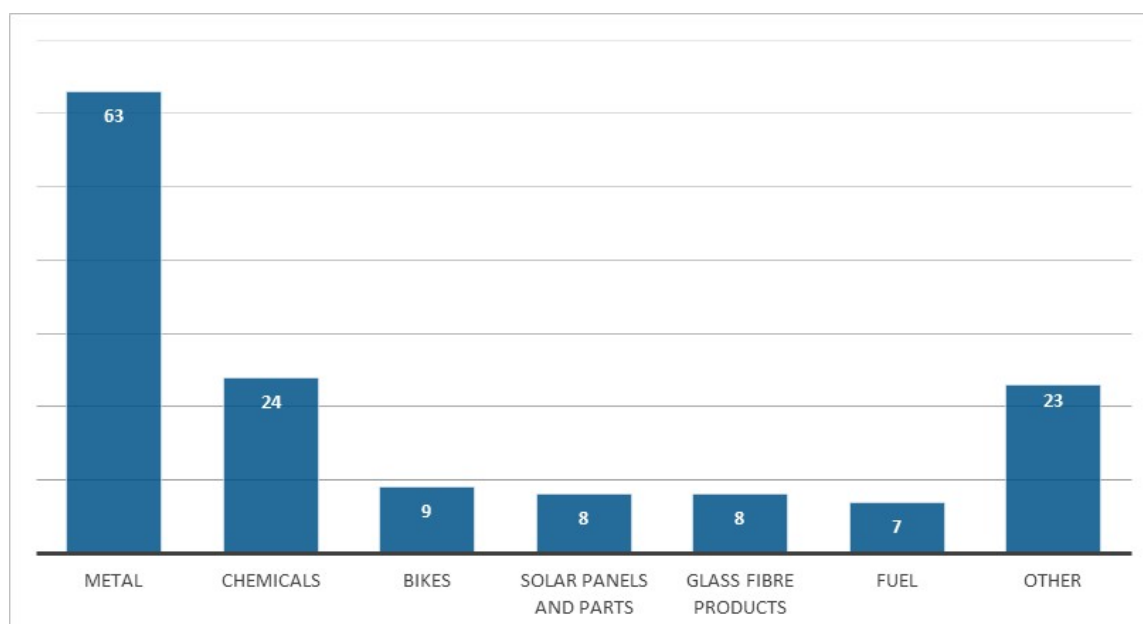
- **expiry review** (at the end of the measure);
- **interim review** (e.g. if it is assumed that the measure is no longer needed, or no longer sufficient);
- **new exporter review** (when a new exporter enters the market and requests an individual dumping margin);
- **anti-circumvention review** (when it is likely that exporters are circumventing the measure, for example when the measure concerns goods from one country and the measures are circumvented by transporting them via another country or declaring a false country of origin);
- **re-opening of the investigation** (when it is likely that exporters are absorbing part or all of the duties by reducing the export prices).

Application of the measures – statistical overview

In 2013-2017, the Commission initiated an average of 13 new anti-dumping (AD) and anti-subsidy (AS) investigations per year. It opened an average of 27 review investigations, with 46 investigations ongoing at the end of 2017, including new, review and reopened investigations. At the same time, 142 AD or AS measures were in force³. According to the Commission, AD and AS measures affected 0.31 % of total imports into the EU in 2017⁴.

The TDIs in force are concentrated in a few major industries, with 44 % in metals and metal products and 17 % in the chemical industry (see [Figure 3](#)). In most cases, AD and AS measures target industrial, rather than consumer products, with bicycles (electric and standard) being a notable exception⁵.

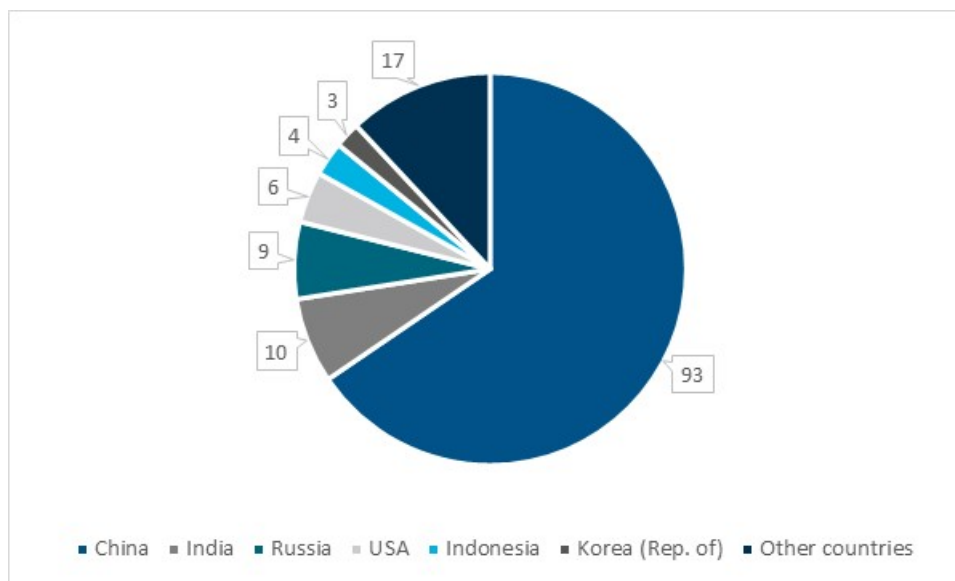
Figure 3 – AD and AS measures in force end of 2017, by product type



Source: ECA, data from “Commission Staff Working Document Accompanying the document Report from the Commission to the European Parliament and the Council 36th Annual Report from the Commission to the European Parliament and the Council on the EU’s Anti-Dumping, Anti-Subsidy and Safeguard activities (2017)”, COM(2018) 561 final.

The vast majority of AD and AS measures in force affect China (i.e. 93 measures representing 65 % of all measures⁶; see [Figure 4](#)).

Figure 4 – Number of AD and AS measures in force at end 2017, per country



Source: ECA, data from “Commission Staff Working Document Accompanying the document Report from the Commission to the European Parliament and the Council 36th Annual Report from the Commission to the European Parliament and the Council on the EU’s Anti-Dumping, Anti-Subsidy and Safeguard activities (2017)”, COM(2018) 561 final.

Legal framework

The use of TDIs is regulated by the WTO⁷ and the EU. The main current anti-dumping legislation is Regulation (EU) 2016/1036 of the European Parliament and of the Council on protection against dumped imports from countries not members of the European Union. The anti-subsidy legislation is Regulation (EU) 2016/1037 of the European Parliament and of the Council on protection against subsidised imports from countries not members of the European Union. Both regulations were amended in 2017 and in 2018:

- an amendment to change the methodology for calculating dumping margins came into force on 20 December 2017, in response to the expiry of certain provisions of China’s WTO Accession Protocol and the granting of market economy status to China;
- a modernisation package came into force on 8 June 2018. This package shortened the time line for the AD investigations by 1-2 months, introduced pre-disclosure of information to the parties concerned prior to provisional measures, and defined distortions on raw materials which potentially lead to higher duty levels. It also makes it easier for SMEs to participate in TDIs, and opens the way for trade unions to participate fully in the proceedings.

Roles and responsibilities

The investigation, imposition and monitoring of the TDIs involves a number of key actors and stakeholders within the EU institutions and the Member States, embedded in a complex institutional framework and legal context.

European Commission

With regard to enforcement of trade defence, the main actor is the Commission, in particular Directorate-General for Trade (DG TRADE), which is solely responsible for the Union's trade policy. Throughout the process, DG TRADE cooperates closely with other Commission services.

DG TRADE is responsible for handling AD and AS complaints within its Office of Complaints. Once a complaint has been lodged, DG TRADE has 45 days to analyse it and decide whether or not to launch an investigation (the pre-initiation stage). DG TRADE can also open investigations without having received a complaint, where it has sufficient evidence to do so (*ex officio*). The subsequent investigation can take up to 14 months. Since 2007, parties involved in trade proceedings have been able to request the intervention of a Hearing Officer who reports directly to the Trade Commissioner. The role of the Hearing Officer is to facilitate communication between the relevant parties and the Commission departments.

When deciding whether to impose trade defence measures, DG TRADE must also consult the Trade Defence Instruments Committee (TDC), composed of representatives of all EU Member States⁸. Moreover, the TDC may veto TDIs through a qualified majority of votes in the Appeal Committee⁹.

Member States

Member State authorities are responsible for collecting TDI duties. In principle, they do this in the same way as they collect other duties, customs charges or traditional own resources. The amounts collected are transferred to the EU budget, net of collection costs. In 2018, the five Member States which collected the largest amount of TDI duties were Germany (75 million euros), Italy (70 million euros), the United Kingdom (62 million euros), Poland (44 million euros) and the Netherlands (42 million euros).

Besides the Member States' responsibilities, a number of Commission departments and an EU body (see [Table 2](#)) support and/or monitor the collection of duties.

Table 2 – Division of responsibilities in collection of TDI duties

Body	Responsibilities
Member States' Customs Authorities	<ul style="list-style-type: none"> - Operate an appropriate administrative framework by which they collect anti-dumping/anti-subsidy duties. - Investigate potential infringements and impose sanctions.
DG TAXUD	<ul style="list-style-type: none"> - Ensures that all Member States apply the Common Customs Tariff (CCT)¹⁰ for goods imported from third countries. - Administers the CCT and manages the Integrated Tariff of the EU (TARIC), a multilingual database integrating all measures relating to the EU customs tariff, commercial and agricultural legislation.
DG BUDG	<ul style="list-style-type: none"> - Verifies if the national customs authorities collect (and refund) import duties properly and follows up on infringements with a financial impact on the EU budget. - Carries out TDI-related inspections, including calculation of anti-dumping and countervailing duties, as part of checks on EU traditional own resources¹¹.
OLAF	<ul style="list-style-type: none"> - Investigates and co-ordinates investigation of fraud cases; in particular, circumvention of AD or AS duties (declaring an incorrect country of origin or incorrect customs classification) or declaring a lower value for the imported goods. - Makes recommendations to the national authorities on action, but does not itself impose fines.

Source: ECA.

Parties can appeal against TDI decisions before the EU and national courts under the procedure set out in Article 263 of the TFEU.

Focus of the audit

The European Court of Auditors is conducting an audit on whether the Commission has been successful in enforcing the EU's trade defence policy. In particular, we will examine whether:

- the Commission ensures due and efficient process in applying the TDIs;
- the TDI-related decisions are appropriate;
- the Commission makes full use of its tools to ensure that the TDIs are effective; and
- the Commission is appropriately equipped to ensure that the TDIs are properly applied.

In our assessment we will draw on the results of case reviews, using documentation and discussions with the Commission and other relevant stakeholders. We will also carry out visits to selected Member States to meet with the customs authorities and the ministries responsible for TDI policy. Wherever relevant, we will organise further meetings with national authorities, stakeholders or experts.

Since these focus areas are identified before the audit work commences, they should not be regarded as audit observations, conclusions or recommendations.

ABOUT ECA SPECIAL REPORTS AND AUDIT PREVIEWS

The ECA's special reports set out the results of its audits of EU policies and programmes or management topics related to specific budgetary areas.

Audit previews provide information in relation to an ongoing audit task. They are based on preparatory work undertaken before the start of the audit and are intended as a source of information for those interested in the policy and/or programme being audited.

If you wish to contact the team in charge of this audit, please do so through the following e-mail address: ECA-trade-defence-audit@eca.europa.eu.

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- ¹ WTO, World Trade Statistical Review 2018, p. 122.
 - ² Idem.
 - ³ In these statistics, one measure covers one product and one country. For example, imports of hot-rolled flat products (steel) from five countries are subject to duties, and these count as five measures.
 - ⁴ Commission Staff Working Document Accompanying the document Report from the Commission to the European Parliament and the Council 36th Annual Report from the Commission to the European Parliament and the Council on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities (2017), COM(2018) 561 final.
 - ⁵ Idem.
 - ⁶ This number includes measures that were extended to other countries because they were involved in circumventing the rules.
 - ⁷ The WTO Agreements in this area are the Anti-Dumping Agreement, ADA ("Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994") and the SCM Agreement ("Agreement on Subsidies and Countervailing Measures"), both included in Annex 1 to the "Marrakesh Agreement Establishing the World Trade Organization", in turn attached to the "Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations".
 - ⁸ The TDC may issue non-binding opinions through the advisory procedure, on the imposition of provisional AD and AS measures, for example. These opinions are adopted by a simple majority. Through the examination procedure, the TDC issues opinions which the Commission shall follow, for example on the imposition of definitive measures and the amendment or extension of existing measures.
 - ⁹ Article 6 of the Regulation (EU) no 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.
 - ¹⁰ EU customs tariffs are set out on the basis of Regulation (EEC) 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff. Annex I to this Regulation, updated annually, establishes a goods nomenclature, including a schedule of customs duties.
 - ¹¹ The Member States are obliged to transfer the amount of collected Traditional Own Resources to the EU budget, however retaining 20 % of the amounts by way of collection costs.

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