

Special Report

**Trade defence instruments: system for protecting EU businesses from dumped and subsidised imports functions well**



EUROPEAN  
COURT  
OF AUDITORS

# Contents

	Paragraph
<b>Executive summary</b>	I-X
<b>Introduction</b>	01-13
<b>Trade defence instruments</b>	01-07
<b>The institutional framework</b>	08-10
<b>The legal framework</b>	11-13
<b>Audit scope and approach</b>	14-17
<b>Observations</b>	18-89
<b>The Commission's approach to imposing trade defence measures is sound, but its outreach is limited</b>	18-37
The Commission follows the procedures in TDI investigations properly	21-23
The Hearing Officer ensures that parties' procedural rights are observed	24-26
Although all parties are treated equally, confidentiality assessments are not sufficiently documented	27-32
Legal requirements justify the heavy administrative burden, but the Commission makes little effort to promote TDIs	33-37
<b>Measures are justified properly, but there is potential for improvement in some aspects of the Union interest test</b>	38-50
Justification for the Commission's conclusions was appropriate in the investigations themselves	40-45
The analyses underlying the trade defence measures are sound, but could be improved for some aspects of the Union interest test	46-50
<b>The Commission does not fully exploit the potential of monitoring and follow-up tools</b>	51-74
The Commission made efforts to address the challenges of collecting TDI duties	54-57
The way measures are monitored is thorough but largely limited to legal obligations, and actions are not prioritised	58-68
The Commission's reporting focuses on activities rather than on impact	69-74

**The Commission is an active player in global trade, but does not systematically prioritise activities** 75-89

Good workload management meant human resources constraints had no impact on investigations 77-78

The Commission defends the interests of European industries, but does not systematically prioritise its actions 79-83

The EU does attempt to tackle the challenges of the future 84-89

**Conclusions and recommendations** 90-102

## **Annexes**

**Annex I - Trade distortions and the corresponding trade defence instruments**

**Annex II - The TDI process**

## **Acronyms and abbreviations**

## **Glossary**

## **Replies of the Commission**

## **Audit team**

## **Timeline**

## Executive summary

**I** As a member of the World Trade Organization and given its own values, the European Union is committed to free trade. However, if European industries suffer from unfair trade practices (such as dumping or subsidies) by third countries, the EU should protect them effectively. These practices result in products from abroad being sold in the EU at artificially low prices, thus creating unfair competition for the industries affected.

**II** The European Union responds to unfair trade practices with Trade Defence Instruments (TDIs). The European Commission is responsible for carrying out investigations to verify the existence of subsidies or dumping, the resulting injury for European industry, and the potential consequences of such measures for the EU economy as a whole. If all legal criteria are met, the Commission imposes duties (or other form of measures) via implementing regulations. The Commission also supports European industries in anti-dumping or anti-subsidy investigations initiated by third countries.

**III** We examined whether the Commission was successful as an enforcer of trade defence policy. In particular, we looked at whether it followed procedures properly and carried out sound analyses to justify its decisions. Our investigations also sought to establish whether the Commission monitored the measures in place thoroughly, and reported accurately on its activities in this area. In addition, our analysis also covered the Commission's involvement in the World Trade Organization forum and in third countries' investigations. The ECA is now looking at this area for the first time, given the increasing importance of TDIs against a backdrop of growing tensions in international trade politics.

**IV** The audit covered the Commission's actions in 2016-2019. The audit evidence came from a documentary review (including a sample of 10 investigations), as well as interviews with relevant Commission staff, Member State authorities, and stakeholders.

**V** Our overall conclusion is that the Commission was successful as an enforcer of trade defence policy. It followed procedures properly during the investigations and made sure that the parties concerned received equal treatment. However, the assessment of the confidentiality status of submitted documents was not systematically documented. Although investigations imply a heavy administrative burden for the parties, this was justified by legal requirements. However, the

Commission made limited efforts to raise awareness of trade defence instruments, as currently only a few industries use them.

**VI** While we found that the Commission justified its decisions during TDI investigations well, the advice it gave to industries before they officially lodged complaints was informal. The Commission's analyses underlying its decisions were sound and comprehensive. However, we found that there was room for improvement in its assessment of the relevant competition aspects as part of the Union interest test.

**VII** Although the implementing regulations clearly defined the products concerned, national customs authorities still faced some challenges in applying them, a crucial issue if TDI duties are to be collected effectively. The Commission monitored the measures thoroughly, but confined its work mainly to the checks required by law. However, those monitoring tools where the Commission has more discretion were used sparingly, and they were not prioritised using clear criteria.

**VIII** While the Commission made good use of some follow-up tools (e.g. by issuing alerts to customs authorities), it used its powers to launch the investigations on its own initiative only to a limited extent. The Commission's reporting on TDIs was accurate, but focused on activities rather than the effectiveness of measures.

**IX** Resource constraints did not prevent the Commission from tackling the growing challenges of trade defence policy. However, although it used its powers to defend European industry in the World Trade Organization forum and in third-country investigations, it could prioritise its actions better. The Commission did prepare for the consequences of Brexit at operational level. It also took account of the EU's social and environmental ambitions to some extent.

**X** In order to make its trade defence actions both more efficient and more effective, we recommend that the European Commission should:

- (a) document its assessments of the confidentiality status of the documents which parties provide;
- (b) raise awareness of trade defence instruments among industries;
- (c) improve guidance on competition aspects;
- (d) improve the focus of monitoring activities and the scope of reporting;

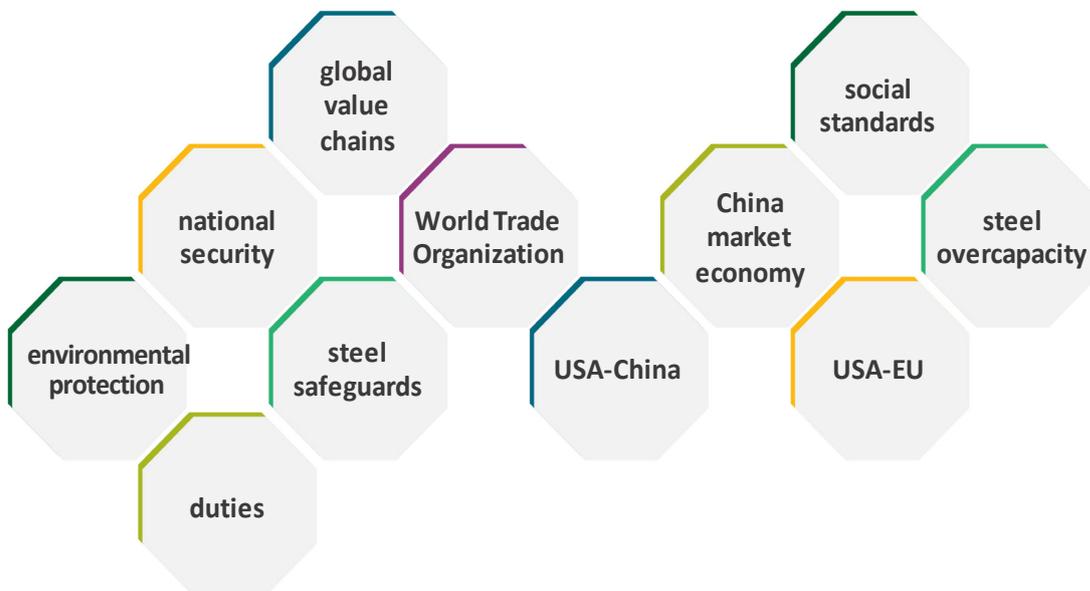
- (e) define its conditions for launching the investigations at its own initiative;
- (f) use clear criteria to prioritise the EU's response to measures by third countries.

# Introduction

## Trade defence instruments

**01** International trade is a key growth factor for the EU economy, and the EU is the world's largest trader of goods. As well as creating jobs, international trade fosters competitiveness and innovation, and offers a wider variety of goods to consumers at lower prices. Although international trade has grown dynamically over the last few decades, many trade-related issues have recently emerged or intensified (see [Figure 1](#)).

**Figure 1 – Global trade issues**



Source: ECA.

**02** As a member of the World Trade Organization (WTO), the EU is committed to an open rules-based trading system. Nevertheless, when third countries apply unfair trade practices, such as subsidies or dumping which contravene WTO rules, the EU protects its industries by using facilities known as trade defence instruments (TDIs).

**03** Measures are imposed in the form of duties, subject to strict legal conditions defined by the WTO and the EU itself (see [Box 1](#) and [Annex I](#)). Trade policy is an exclusive competence of the EU, meaning that the European Commission has responsibility for carrying out investigations and imposing duties on behalf of the Member States.

## Box 1

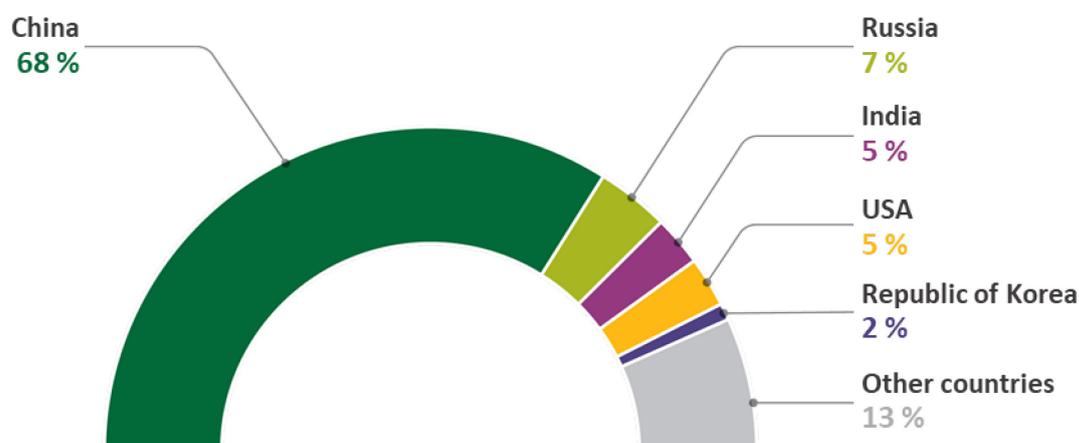
### Definitions of trade distortions in the TDI context

**Dumping** - A non-EU company sells goods in the EU below the sale price in its domestic market or, if prices cannot be used, below its cost of production plus a reasonable profit.

**Subsidy** - A non-EU government or public body gives financial assistance to a specific industry or group of industries, which may reflect on the export prices to the EU.

**04** Among WTO members, the EU is an active user of TDIs, accounting for 6.5 % of all measures<sup>1</sup>. During the 2014-2018 period, the Commission started an average of 13 new anti-dumping (AD) or anti-subsidy (AS) investigations per year. At the end of 2018, 133 AD or AS measures were in force, most of them concerning products from China (see *Figure 2*).

**Figure 2 – EU AD and AS measures in force at the end of 2018, by country**



Source: ECA, European Commission data.

**05** The TDI process (see *Annex II* generally starts with a complaint by an EU industry or company (the "complainant"). In the subsequent investigation, the Commission collects data from all parties (typically: European producers, third country exporters, users, distributors and consumers), and checks the data on the spot. In doing so, Commission staff focus on establishing whether the essential criteria for imposing TDI duties have been met, i.e.:

<sup>1</sup> [https://www.wto.org/english/res\\_e/statis\\_e/itip\\_e.htm](https://www.wto.org/english/res_e/statis_e/itip_e.htm)

- the existence of dumping or subsidies;
- material injury (economic loss) to the EU industry, or the threat thereof;
- a causal relationship between the injury and dumping/subsidy;
- EU interest: measures may not be imposed if the economic disadvantage to other EU parties clearly outweigh the need to remove the injurious effects of dumping or subsidisation (see [Annex I](#)).

**06** The investigation ends either with the Commission adopting an implementing regulation that stipulates the type and level of measures (see [Box 2](#)), or with the investigation being terminated without measures. To protect the EU industry's interests before the definitive measures are in place, the Commission may impose provisional measures.

### Box 2

#### Types of measures that can be imposed following TD investigations

**Ad valorem duty** – a percentage of the price of goods (e.g. 20 % of the import price).

**Specific duty** – a fixed amount per unit of goods (e.g. €15 per tonne).

**Variable duty/minimum import price** – the difference between a defined minimum import price and the foreign exporter's export price.

**Price undertaking** – the individual foreign exporter voluntarily commits to selling its goods at or above a minimum import price which is not made public.

**07** Once definitive measures are in place, the Commission monitors them and, under specific circumstances, can decide to launch a review. This can happen at the request of a party or at the Commission's own initiative:

- a review of a new exporter's pricing;
- an interim review, if it is assumed that the measure is no longer needed or is insufficient;
- an anti-circumvention review, when exporters may circumvent the measure, e.g. by transporting via another country;

- an expiry review at the end of the measure (measures are usually imposed for five years);
- re-opening the investigation, where exporters reduce export prices to absorb some or all of the duties.

## The institutional framework

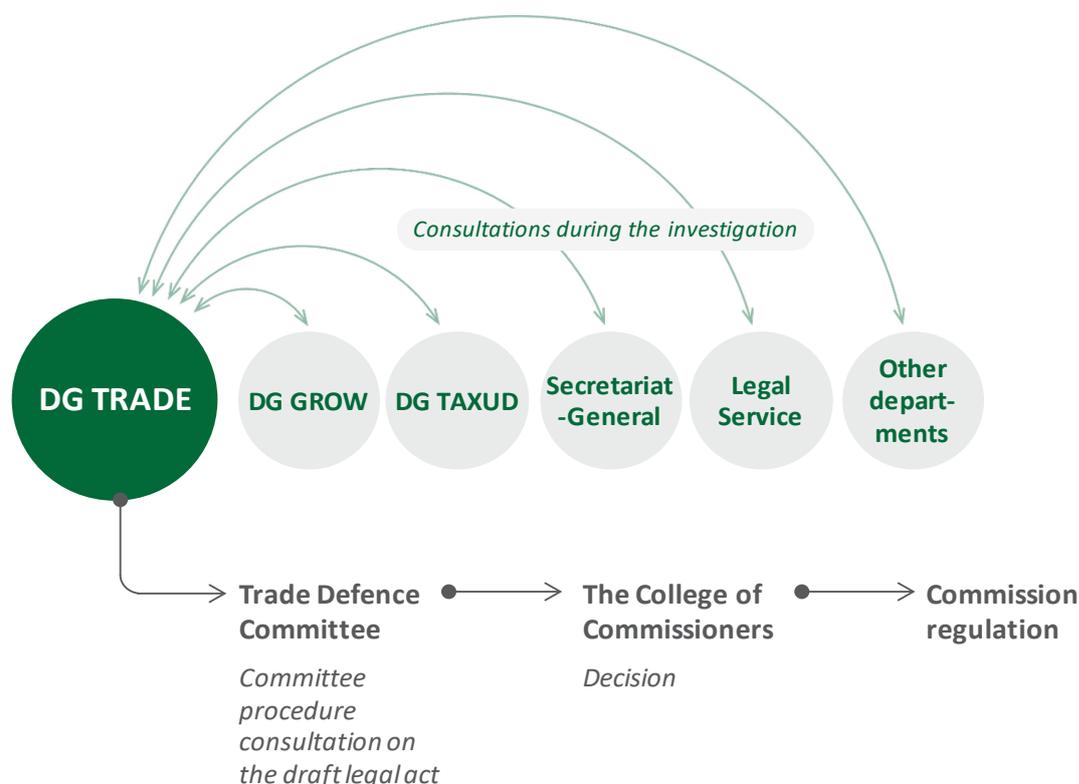
**08** As trade is an exclusive competence of the EU, the European Commission is the main player in trade defence (TD) investigations (see [Figure 3](#)). The Commission department responsible is the Directorate-General for TRADE (DG TRADE). During the investigations, DG TRADE cooperates with other Commission departments and consults them formally at key stages of the procedure via Inter-Service Consultations. Based on proposals from DG TRADE, the College of Commissioners takes the decisions to launch investigations, and adopts Commission regulations imposing definitive or provisional measures<sup>2</sup>.

**09** Member States take part in decision-making through the Trade Defence Instruments Committee during the comitology process. The Commission is required to consult or inform the Committee about several specific decisions during the TDI process. Depending on the stage of the procedure, the Committee's opinion can be advisory or binding (the latter category concerns the imposition of final duties). The Commission cannot adopt its proposal for TD measures if there is a qualified majority of 55 % of votes against it. In this case, but also in the event of a simple majority against a Commission proposal, the proposal will go to an appeal committee. A negative opinion by the appeal committee requires a qualified majority.

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<sup>2</sup> The measures are Implementing Acts for the Basic AD/AS Regulations.

**Figure 3 – The EU institutional framework**



Source: ECA.

**10** During and after an investigation, parties can contact the Commission's Hearing Officer for trade proceedings, the European Ombudsman and the European Court of Justice and the WTO in the event of complaints or issues.

## The legal framework

**11** As trade defence is a global issue, it is regulated at global level. This means that WTO Agreements define the TDI's legal and institutional framework, including detailed requirements about when they can be applied and what rules the investigations have to follow. EU legislation needs to reflect WTO rules fully, but in some cases it may introduce additional requirements before adopting measures, as was the case for the Union interest test. The main EU legislation for TDIs is the "Basic AD Regulation"<sup>3</sup> and

<sup>3</sup> Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union, (OJ L 176, 30.6.2016, p. 21).

the "Basic AS Regulation"<sup>4</sup> from 2016, with important recent amendments in 2017<sup>5</sup> and 2018<sup>6</sup> (referred to hereafter as the "basic regulations").

**12** The 2017 "methodology amendment" changed the methodology for calculating dumping margins in order to take account of "substantial government intervention", which creates distortions in the market of the exporting country.

**13** The 2018 "modernisation package" covered several topics. It shortened the timeline for AD investigations, ensured that parties in an investigation are provided with information about the measures at an earlier stage compared to the pre-modernisation rules, and stipulated when duty levels could be higher because of distortions involving raw materials in the exporting country. The package also introduced environmental and social standards into specific aspects of the investigations.

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<sup>4</sup> Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union, (OJ L 176, 30.6.2016, p. 55).

<sup>5</sup> Regulation (EU) 2017/2321 of the European Parliament and of the Council of 12 December 2017, (OJ L 338, 19.12.2017, p. 1).

<sup>6</sup> Regulation (EU) 2018/825 of the European Parliament and of the Council of 30 May 2018, (OJ L 143, 7.6.2018, p. 1).

## Audit scope and approach

**14** Given the increasing importance of TDIs for European industry against a backdrop of continuously shifting global trade politics, we decided to audit this policy area for the first time. Our audit examined whether the European Commission was successful in enforcing trade defence policy with a view to improving its effectiveness and efficiency. We looked not only at the trade defence measures imposed by the EU on products imported from third countries, but also the way the Commission reacted to other countries' trade defence policies. We specifically addressed whether the Commission:

- (a) complied with procedures and deadlines in TD investigations;
- (b) carried out appropriate analyses in TD investigations and sufficiently justified its conclusions;
- (c) appropriately monitored TD measures and reported on the achievements of trade defence policy;
- (d) actively responded to global trade challenges.

**15** While we focused on those aspects for which DG TRADE was responsible, we also covered DG TRADE's cooperation with other Commission departments (such as DG TAXUD and DG BUDG), as well as Member States. The audit covered the Commission's activities in 2016-2019.

**16** Our audit did not cover the effectiveness of work by national customs authorities, which are solely responsible for collecting the duties imposed as a result of TDI investigations. Nor did we cover the work done by other Commission departments to monitor the collection process or investigate related fraud cases. Such activities are not specific to TDI duties, and the related collection and monitoring procedures are the same as for other types of duties. We have covered these issues in other recent reports<sup>7</sup>.

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<sup>7</sup> See special report 19/2017: "Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU" and special report 02/2014: "Are preferential trade arrangements appropriately managed?" ([www.eca.europa.eu](http://www.eca.europa.eu)).

**17** Our work mainly involved reviewing documentation and interviewing staff from DG TRADE and other relevant Commission departments. Our assessment of TDI investigations was based on a sample of 10 finalised cases, i.e. where the Commission had imposed definitive TDI measures. We selected the cases in such a way as to reflect the diversity of DG TRADE's work in terms of sectors, countries concerned, and types of investigation (anti-dumping vs. anti-subsidy, new investigations vs. reviews). We also collected evidence through information-gathering meetings with Member State authorities, experts and stakeholders (business associations and companies representing all parties involved in the investigations).

# Observations

## The Commission's approach to imposing trade defence measures is sound, but its outreach is limited

**18** Trade defence investigations follow a highly formalised process, based on detailed EU and WTO legal frameworks. Since TDI measures have a major economic impact on both EU and non-EU producers, and also affect importers and EU users in the supply chain<sup>8</sup>, this translates into thorough scrutiny of the Commission's investigations by the parties concerned. The Commission must comply with these requirements so as to ensure that measures can be defended if appealed against in the courts. However, the Commission also has to consider the burden of investigations for the parties concerned so as to ensure that companies which are subject to unfair trade behaviour are not discouraged from filing complaints.

**19** In order for trade defence to work effectively, EU industries need to be aware of the instruments available to them, and have sufficient guidance to be able to file complaints of sufficient quality for the Commission to consider them.

**20** We therefore assessed whether:

- (a) the Commission complied with procedures and deadlines;
- (b) the Hearing Officer ensured the rights of the parties concerned;
- (c) the Commission ensured equal treatment, and the various parties' access to information;
- (d) the Commission dealt with the administrative burden appropriately, and engaged in sufficient outreach.

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<sup>8</sup> Imports from the targeted countries may drop drastically while EU producers' sales increase.

## The Commission follows the procedures in TDI investigations properly

**21** The scrutiny of the Commission's investigations by the parties concerned takes place at two levels. First, parties intervene during the investigations: written comments and hearings with DG TRADE are possible at any stage, and the parties can request intervention by the Hearing Officer and the European Ombudsman. Second, after the investigations parties can initiate litigation before the European Court of Justice or the WTO (see [Figure 4](#)).

**Figure 4 – Solving TDI issues**



Source: ECA.

**22** In order to ensure compliance with the rules, DG TRADE uses a planning system, which includes all procedural steps and deadlines, and sends reminders to case handlers where relevant. However, the system is not used systematically as a management tool to follow the progress of the cases. DG TRADE relies on staff to carry out their checks (including on deadlines), but we have found that the risk of non-compliance is low.

**23** In addition, DG TRADE provides its staff with an extensive set of guidance documents and tools, which are available in several places. Due to the regulatory changes made in 2017 and 2018 (see paragraphs [12](#) and [13](#)), but also because of the need for staff to access guidance on previous rules and procedures (e.g. to implement

court cases for which old rules apply), old guidance documents are kept alongside updated ones. We found that some updates were made several years after the regulatory changes (DG TRADE updated several documents during 2019). Although this does not make it easier for staff to use the guidelines, we did not notice any impact on individual cases. Our casework showed that the Commission complied well with procedures and deadlines.

### **The Hearing Officer ensures that parties' procedural rights are observed**

**24** An independent Hearing Officer provides additional assurance regarding the parties' procedural rights. When an interested party contacts the Hearing Officer, the Officer usually organises a hearing with the party and DG TRADE.

**25** The Hearing Officer is appointed by the President of the Commission, and, for administrative purposes, is attached to the Commissioner responsible for Trade. The two other staff members selected by the Hearing Officer are administratively attached to DG TRADE, but not specifically to the Directorate dealing with TDIs. Our audit work confirmed that this attachment does not influence the Hearing Officer's functional independence. The Officer decides on hearings, and issues notes in individual cases independently, without any review or approval from DG TRADE or the Trade Commissioner.

**26** Our work showed that, in four out of the 10 cases we sampled, the parties secured the Officer's intervention without any difficulty. We found that the Hearing Officer analysed the parties' concerns properly and justified its conclusions accordingly, thereby ensuring that the parties' rights were guaranteed in TDI investigations.

### **Although all parties are treated equally, confidentiality assessments are not sufficiently documented**

**27** All parties in an investigation have the same procedural rights, and DG TRADE ensures that they are treated equally. When a party submits information to DG TRADE, it is required to label the information it considers confidential. Confidential information should not be available to other parties in the investigation, e.g. for competition reasons. However, a party must provide, for the other parties, a non-confidential version of sufficient quality (where the sensitive information is summarised, deleted, etc.).

**28** Our audit work confirmed that DG TRADE does indeed give parties the same access to non-confidential information and the same rights to be heard. The audit did not reveal issues with regard to equal treatment, nor did complaints to the Hearing Officer, the Ombudsman or the Court of Justice provide evidence of this.

**29** An example of good practice in this respect is the fact that DG TRADE shares documents with interested parties through the TRON electronic platform. This solution means that parties have direct access to non-confidential files, and receive automatic notifications when new documents are available. A further example of good practice is that DG TRADE provides parties with the information underlying its decisions automatically, rather than on request.

**30** The confidentiality requirement means that, in many cases, the information disclosed to parties cannot include such level of details of other parties' data to allow them to verify every step of the dumping, subsidy or injury calculations. For example, a complainant would typically be able to verify an injury calculation (as it is based on its own industry's data), but not all details of a dumping calculation (which is based on an exporter's data).

**31** DG TRADE decides whether or not to grant confidentiality status. In line with internal guidelines<sup>9</sup>, it should only grant confidentiality status if parties with a "good cause" request it for information they submit. Similarly, it should assess whether the non-confidential version is of sufficient quality. This assessment allows DG TRADE to balance the legal confidentiality and transparency requirements.

**32** Although DG TRADE informed us that confidentiality assessments are carried out, we found that these are not systematically documented (we found one positive example of a thorough assessment in our sample). Therefore, we were not in a position to confirm this statement or the depth of these checks. Further, DG TRADE largely relies on parties to complain if a non-confidential version is insufficient. Although parties may eventually obtain access to further information after a complaint, this way of proceeding can cause delays (see [Box 3](#)).

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<sup>9</sup> The updated guidance follows from a WTO Appellate Body report of February 2016 (DS397).

### Box 3

#### Examples of delays in the follow-up on non-confidential summaries

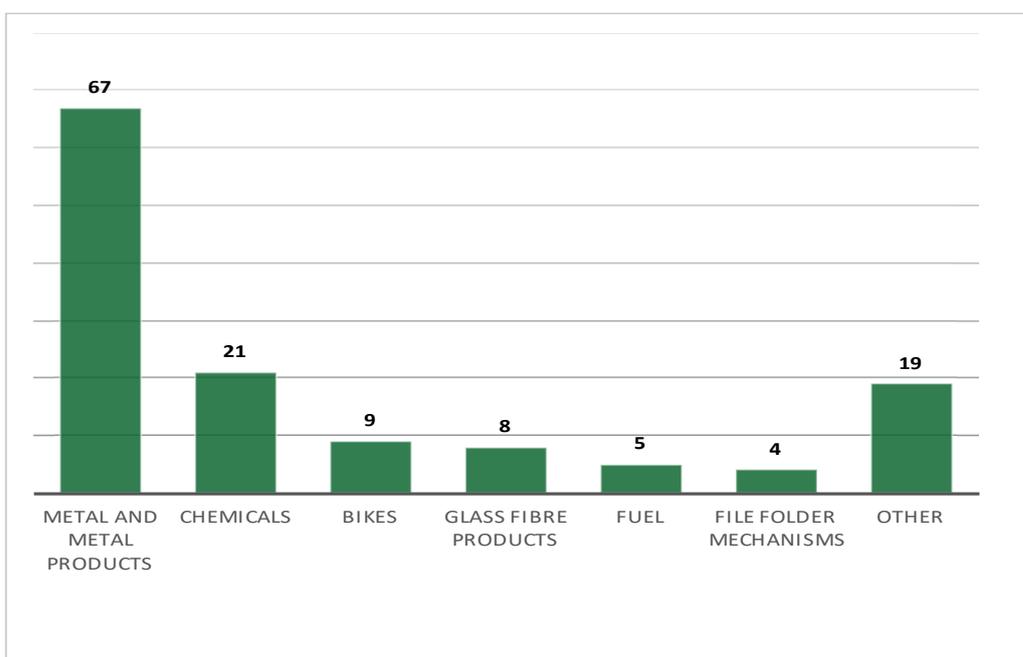
**Case A:** An interested party complained about the quality of two non-confidential sets of documents. For the first file, eight weeks elapsed; for the second, three and a half weeks elapsed between the initial file being made available and the party's complaint. Within two working days, DG TRADE requested improved files (new versions) from the submitting party, and the party provided new files within 11 days.

**Case B:** An interested party complained about the quality of a non-confidential file. The party complained shortly after the initial file became available. It repeated its request three times over a period of more than three months before DG TRADE reacted. Once the submitting party was asked to provide an improved non-confidential file, it did so the following day.

#### Legal requirements justify the heavy administrative burden, but the Commission makes little effort to promote TDIs

**33** A few major industries are the most frequent users of TDIs: 50 % of measures in place at the end of 2018 were for metal and metal products, and 16 % were for chemicals (see [Figure 5](#)). The products concerned are usually industrial (rather than consumer) products, with bicycles being a notable exception. To make TDIs work for the entire European economy, facilitation and promotion are therefore very important.

**Figure 5 – EU AD and AS measures in force at the end of 2018, by product group**



*Source:* ECA, based on European Commission data. The table includes the measures as well as all decisions extending initial measures.

**34** Complainants are required to provide all necessary evidence at the complaint stage, including export prices from the country concerned. This means that complaints may include more than 100 annexes. Given the extent of the information required and the need for most parties to hire lawyers, the cost of filing a complaint can be very high. While companies and associations – in particular, inexperienced users of TDIs and fragmented industries – have problems gathering some of the requested information, our audit work confirmed that DG TRADE needs that information.

**35** Despite this assessment, and acknowledging the legal requirements for TDI complaints, we note that DG TRADE has not yet investigated the scope for reducing the administrative burden, even if only marginally. For example, the Commission has not made a detailed comparison of the information requested in the EU with other countries' information requirements.

**36** To help companies and industry associations file complaints, DG TRADE has published several information documents on its website, including templates for questionnaires (indicating the information parties need to make available to DG TRADE) and a complaints guide. The available guidance is overall sound and clear. While small and medium-sized enterprises (SMEs) use TDIs rather sporadically, we found that DG TRADE made a specific effort to help them, e.g. by providing additional

general guidance and support in the course of individual investigations. However, support for SMEs is very limited in scope, and does not correspond to the ambitions stated by the Commission when the basic regulations were being modernised in 2018 (see [Table 1](#)).

**Table 1 – Ambition vs. action to facilitate procedures for SMEs**

Ambitions <sup>10</sup>		Actions
A dedicated web page for SMEs	Yes	A web page has been set up <sup>11</sup> .
Easier access to instruments	Yes	DG TRADE assists SMEs more during the pre-initiation and investigation phase, and there are specific questionnaires for SMEs.
Streamlined procedures	n/a	Procedures are more streamlined because of shorter deadlines and more uniform extensions of deadlines. There is no specific positive impact for SMEs that applies to all companies.
A new TDI Helpdesk	n/a	The Helpdesk already existed.
Information in all official EU languages	Partially	The key documents, including the SME guide and the guide “How to make a complaint”, exist in all EU official languages. Other documents on the webpage exist only in English.
Reach out to business associations in Member States	Limited	Only two Member States were visited by DG TRADE staff.

Source: ECA.

**37** Although DG TRADE facilitates procedures for participating parties, it does very little outreach to increase awareness and use of TDIs among EU industries. Sectors such as steel and chemicals are well acquainted with TDIs (see paragraph [33](#)), but other sectors are much less familiar with them. This means that industries experiencing unfair trade may not apply for and benefit from protective measures. While there are forums where companies and industry associations can meet with DG TRADE, in particular for the purpose of obtaining information on EU funding possibilities, the Commission does not use these forums to raise awareness about TDIs.

<sup>10</sup> “Europe’s Trade Defence Instruments now stronger and more effective”, available on <https://trade.ec.europa.eu/doclib/html/156921.htm>.

<sup>11</sup> <https://ec.europa.eu/trade/policy/accessing-markets/trade-defence/actions-against-imports-into-the-eu/help-for-smes/>

Examples include DG GROW's website on international activities for entrepreneurship and SMEs, and the website of the Enterprise Europe Network<sup>12</sup>.

## Measures are justified properly, but there is potential for improvement in some aspects of the Union interest test

**38** The current decision-making process for TDIs (see paragraph 09) means that the Commission has a decisive voice when it comes to imposing duties. Between 2014 and 2018, only two cases were submitted to the appeal committee; in neither case did the Committee reach a qualified majority for a negative opinion, and so the Commission proposal prevailed.

**39** Given the economic impact and the Commission's powers, including its assessment of the Union interest test (see paragraph 05), it should pay particular attention to ensuring that its conclusions in TDI proceedings are accountable. This is a requirement of the legal framework. In particular, stakeholders should be in a position to verify the Commission's decisions. We therefore used our sample to assess whether the Commission:

- (a) justified its decisions and calculations properly;
- (b) carried out sound analyses before taking its decision.

## Justification for the Commission's conclusions was appropriate in the investigations themselves

**40** We verified the Commission's justifications both for a decision to impose a trade defence measure and for a decision to start an investigation once a complaint had been received. Our assessment is without prejudice to any judgments by the European Court of Justice or other judicial bodies.

**41** We found that the conclusions of the implementing decisions in our sample were justified properly. They responded to parties' comments, and provided references to important decisions in previous cases and case law. Furthermore, the regulations provided detailed analyses of and methodology for the calculations. While confidentiality issues sometimes make it impossible to present a calculation in such

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<sup>12</sup> [https://ec.europa.eu/growth/industry/international-aspects\\_en](https://ec.europa.eu/growth/industry/international-aspects_en) and <https://een.ec.europa.eu/>

detail that an external party can verify it (see paragraph 30), the Commission's logic was always clear. In our sample, we found some especially good examples of justification, but also some shortcomings (see Box 4). However, such shortcomings do not change our overall assessment that the Commission's justifications were appropriate.

#### Box 4

##### Examples of justifications for decisions

**Good practice:** One investigation involved more than one exporting country, and took place in parallel with another investigation for the same product from another country. In each investigation, DG TRADE balanced its arguments carefully, and provided careful analysis to justify that the trade behaviour of each targeted country caused injury to the EU industry concerned. The fact that these justifications were properly corroborated meant that the Commission could impose measures in both investigations.

**Room for improvement:** When assessing the injury to the EU industry concerned, DG TRADE based the industry's profit margin on the actual profit made in one year during the period considered for injury. The level was higher than the level suggested in the complaint, and was also significantly higher than in a similar, previous case. In addition to the reference to the previous year's profit, the Commission could have provided a more detailed justification for its choice.

**42** For all the cases in our sample, we found that the Commission provided proper justification for its decision to initiate an investigation. The complaints also fulfilled all the criteria set out in the basic regulations.

**43** The basic regulations require the Commission to "examine the accuracy and adequacy of the evidence provided in the complaint, to determine whether there is sufficient evidence to justify the initiation"<sup>13</sup>. In the cases we examined, we found that DG TRADE did indeed examine these aspects, and documented its findings in internal notes. However, the internal notes do not explain how the evidence was assessed for each case, for example whether the complainant's information was checked against other information (e.g. Commission databases).

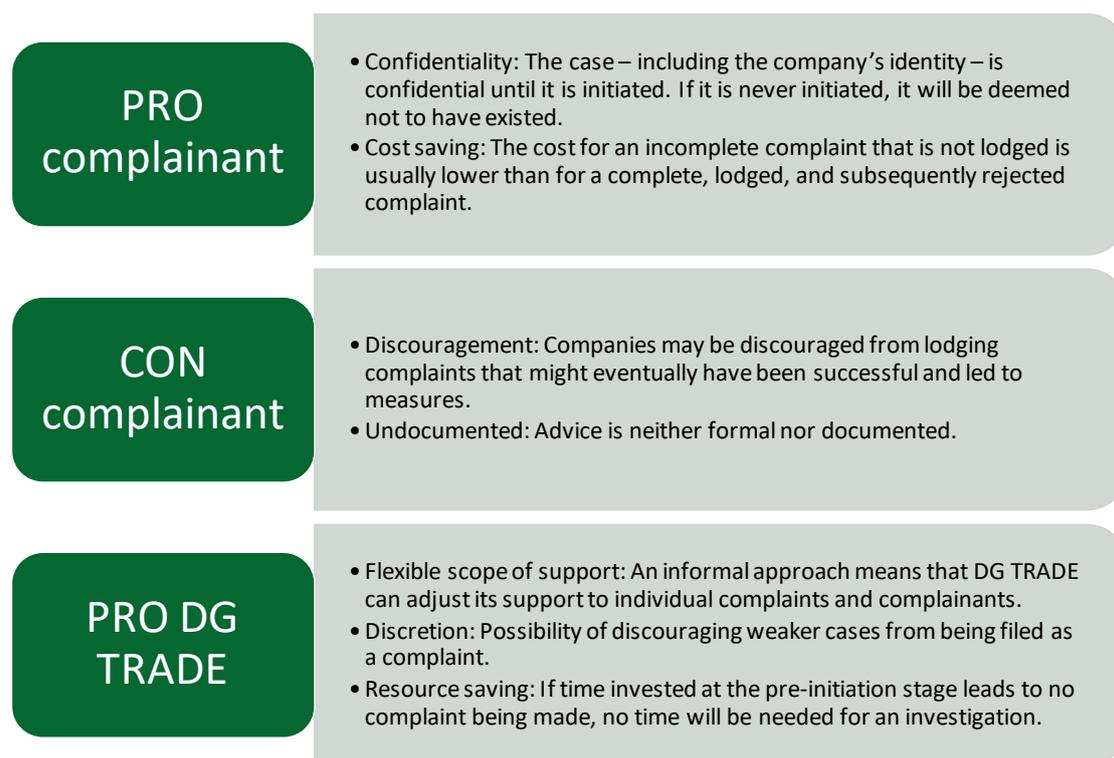
**44** In 2016-2018, the Commission rejected only one officially lodged complaint. In the same period, four complainants withdrew their complaints before the Commission

<sup>13</sup> Article 5(3) of Regulation (EU) 2016/1036, as amended by Regulation (EU) 2017/2321 and Regulation (EU) 2018/825.

was due to take its final decision. The low number of withdrawals and rejections is due to a thorough – albeit informal – assistance and screening process that entails consultations taking place before a complaint is officially lodged. This process enables the parties to build a stronger case, thus making it likelier that DG TRADE will launch an investigation. However, the advice given by DG TRADE can discourage a party from officially lodging an application.

**45** This solution has both positive and negative implications (see [Figure 6](#)). Although the informal advice is based on the Regulations’ criteria for dumping, subsidy, injury and causality, and on internal policy notes, it is not transparent and there are no records of DG TRADE’s advice to the parties, or specific guidelines in this respect. By contrast, it does allow for significant efficiency gains, both for DG TRADE and complainants.

### Figure 6 – Pros and cons of an informal pre-initiation process



Source: ECA.

### The analyses underlying the trade defence measures are sound, but could be improved for some aspects of the Union interest test

**46** Our review of the sampled cases showed that the Commission’s calculations and analyses underlying the measures are sound. In some cases, the Commission went an extra step in its analyses to ensure that the calculations truly reflected market realities

(see [Box 5](#)). The analyses followed the detailed methodology established by DG TRADE, and we found no examples of conclusions running against EU or WTO case law. The Commission has organisational arrangements in place to ensure that its practices take full account of EU and international case law, and are applied consistently across cases.

### Box 5

#### Example of appropriate analysis by DG TRADE

The product under investigation was imported into the EU in two ways: (1) EU companies related to the exporting producer bought the product for further sales or processing; and (2) unrelated EU companies bought the product. The further processed product was not within the product scope.

DG TRADE concluded that direct imports of the product to unrelated producers were too low to calculate the dumping margin. Sales to related companies were therefore included, but the cost was recalculated, based on the price of the further processed product. This is good practice, as DG TRADE looked at different methods and thoroughly examined how best to reflect commercial realities in individual cases.

**47** Although investigations are carried out in line with legal requirements and the Commission's methodology, there is room for improvement with regard to the consideration of the relevant competition aspects in the Union interest test. This is particularly important, given the potential economic impact of any measures.

**48** As the Union interest test evaluates the potential impact of trade defence measures on EU importers, users and consumers, DG TRADE should assess, among other things, whether possible measures may lead to any disproportionate consequences. They could result in increased risks for competition, such as interruptions of the supply chains. This could apply for example where the product that is subject to measures has two types of user:

- users which are vertically integrated within a group that produces the product that is subject to measures;
- independent, non-integrated users which do not have access to the key component of production (the product subject to measures) within their own company group, and are thus bound to supplies from the producing industry.

Independent users could then find themselves in a situation where they have difficulties sourcing their inputs, or must find new suppliers in other third countries.

**49** As regards competition aspects, we found that DG TRADE based its analyses on the information provided by parties. In certain cases we audited, we found that some of the parties' arguments (e.g. a fear of supply problems) were rejected without detailed justification. The Commission focused its analysis on the situation at the time of investigation and the past. Analyses of the forward-looking aspects of the Union interest test, although mentioned in a majority of the cases we audited, did not include a detailed analysis of (i) the measures' impact on targeted imports; and (ii) the potential impact on the supply chains such as the availability of imports from other third countries.

**50** We found that the Union interest test was always performed and mentioned in the implementing decisions. Since early 2012, no investigations have been terminated without measures solely because of the Union interest test. Nevertheless, in two cases it actually did have an impact on the form or duration of measures.

### **The Commission does not fully exploit the potential of monitoring and follow-up tools**

**51** Any measures imposed are only effective if duties are eventually collected for as long as the unfair trade behaviour continues, and if specific conditions imposed (such as a minimum price or a quota on quantities) are adhered to. Otherwise, unfair trade behaviour will not be addressed and EU industry will remain unprotected.

**52** National customs authorities are responsible for collecting duties. For collection to be effective, an accurate description of the product concerned by the measures is key. Other Commission departments are also involved in monitoring the effective collection of duties (DG TAXUD, DG BUDG). Nonetheless, DG TRADE also has a number of tools at its disposal to support effective implementation of measures.

**53** We therefore assessed whether the Commission:

- (a) designed the measures appropriately, especially product descriptions in order to facilitate collection;
- (b) used its monitoring and follow-up tools effectively;
- (c) reported appropriately on its activities in the field of TDIs, including their impact.

## The Commission made efforts to address the challenges of collecting TDI duties

**54** Collecting TDI duties can pose a challenge for customs authorities because collection involves two legal frameworks: one governing trade policy (in particular, the Commission's regulations imposing customs duties on specific products) and another governing customs policy (in particular, the Union Customs Code, including the Combined Nomenclature [CN] codes).

**55** The Commission's regulations imposing TDI duties include detailed descriptions of the products concerned. This helps the national customs authorities – which typically rely on CN codes – to identify at the import stage those products that are subject to duties. DG TRADE works with DG TAXUD to ensure that these descriptions are clear and unambiguous for the customs authorities. This was true for all but one of the cases we reviewed, where the title of the Commission's implementing regulation and the product description caused confusion for customs authorities (see [Box 6](#)) and led customs authorities to requesting clarification from the Commission.

### Box 6

#### Biodiesel

The term "biodiesel", as mentioned in the title and product description in anti-dumping/subsidy implementing regulations is different from the terminology used in customs legislation. Biodiesel in anti-dumping/subsidy regulations covers a wider range of products. For instance, classification under CN code 271019 in customs legislation does not cover a certain type of products containing biodiesel, while anti-dumping/subsidy legislation does consider such products as biodiesel.

**56** CN codes can also cover a broader category of products than the TDI measures themselves. The Commission then creates specific, longer codes for products subject to TDI measures (so-called "Taric" codes).

**57** Due to the impact of TDI duties on their turnover and profits, the companies concerned are tempted to try to circumvent them. This can happen, for example, by falsely declaring that goods have originated from another country, which is not subject to TDI duties. If the Commission becomes aware of and can prove such a practice, it can extend duties to products from such countries to ensure that EU industry receives proper protection. In such circumstances, the Commission has used the term "consigned from". In some cases Member States' customs authorities found it difficult to implement legislation using this term, because a single definition does not exist and

customs legislation does not cover it. Despite several clarifications by the Commission, the issue is still not clear for all national customs authorities.

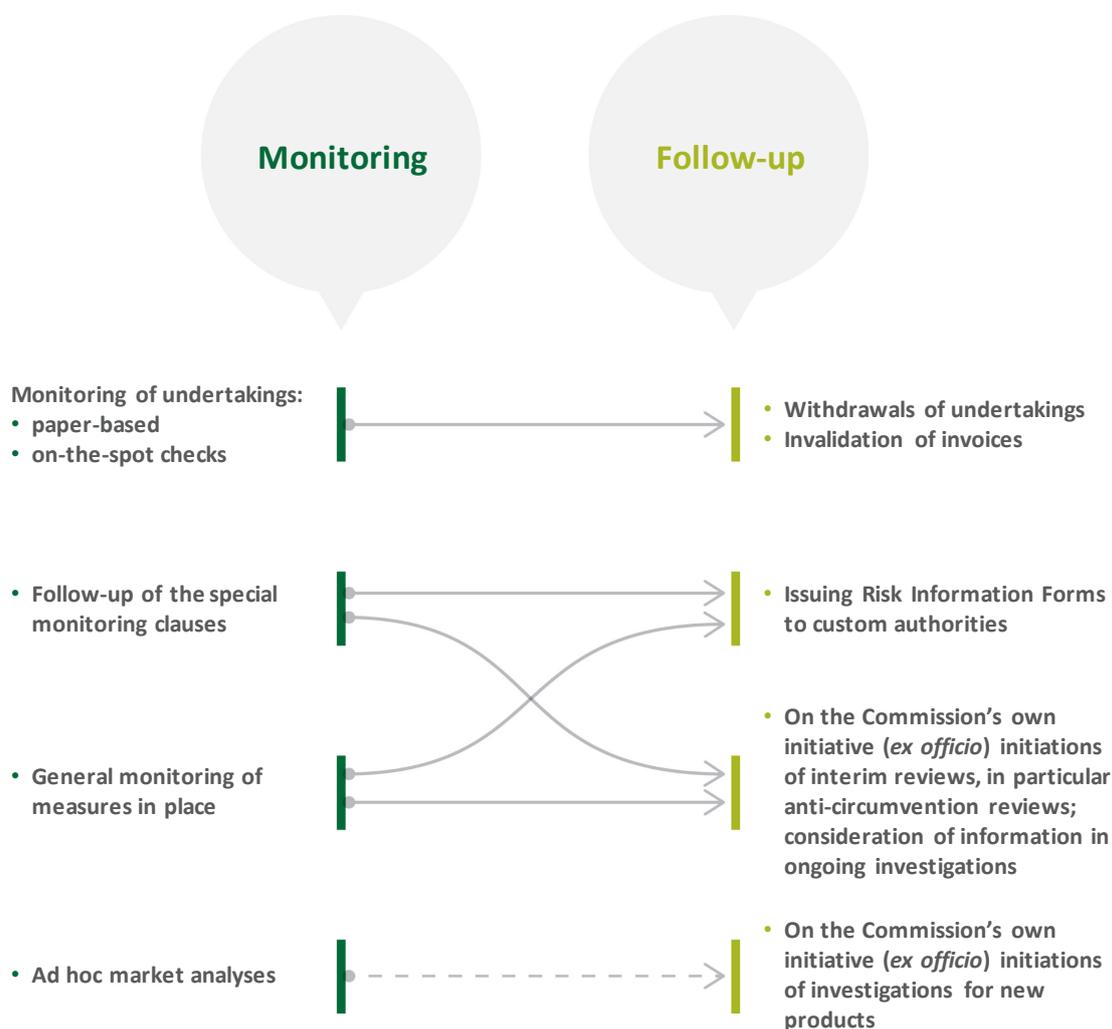
### **The way measures are monitored is thorough but largely limited to legal obligations, and actions are not prioritised**

**58** To ensure that TDI measures are properly implemented and effective, the Commission can use a range of monitoring and follow-up tools (see [Figure 7](#)). By law, the Commission is required to:

- monitor undertakings. These are voluntary commitments by companies, which export products subject to TDI duties to the EU, and accepted by the Commission. Undertakings replace anti-dumping and anti-subsidy duties with a minimum import price; i.e. the importer commits to sell at a price not lower than the agreed minimum price.
- follow up special monitoring clauses if these are included in regulations imposing trade defence measures for specific products. They are designed to minimise the risk of circumvention in cases where duty rates for different exporters vary significantly.

The scope of other monitoring activities is within the Commission's discretion.

**Figure 7 – Monitoring and follow-up tools for TD measures**



Source: ECA.

**59** The Commission uses the vast majority of its limited monitoring resources (2.5 full-time equivalents) on undertakings. We found that the Commission duly checks compliance with the undertakings using (i) desk-based methods for compliance on paper; and (ii) verification on the premises of exporting companies for physical compliance, as non-compliance with the minimum import price is difficult to verify otherwise.

**60** The Commission carries out its desk-based checks mainly using the quarterly records provided by exporters. These were complete in our sample. In some cases, the Commission examines further evidence (e.g. where received from industrial associations) if the undertaking also included an annual level for product imports. The verification visits were detailed, and the underlying analysis was thorough and well documented. Although the Commission endeavours to visit all companies with undertakings while the measures are active, it did not manage to do so for the two

most recent cases. The actual frequency of the visits depended on resources, and the Commission did not apply any specific criteria or carry out a structured risk analysis to decide which companies to visit.

**61** As a result of its monitoring, the Commission can withdraw an undertaking. It did so for over 20 companies in two recent cases with undertakings. Our review of a sample of such cases showed that these decisions were properly justified. Withdrawal of an undertaking does not have retroactive effect. In theory, therefore, past sales of goods in contravention of the undertaking would remain unpenalised. Given the increasing number of cases of non-compliance and the need to penalise them effectively, the Commission started in 2016 the practice of invalidating invoices specifically related to breaches of an undertaking. Invoices relating to the respective period can be invalidated even after the measures have expired.

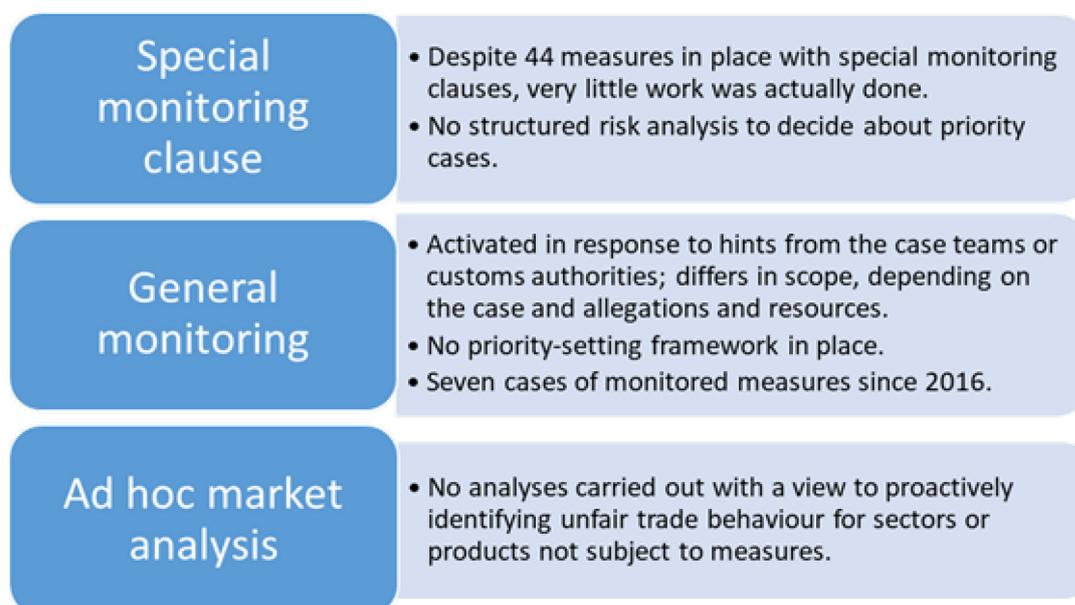
**62** This shows that the Commission has been proactive in ensuring that the measures are effective. However, it remains difficult for customs authorities retroactively to collect duties resulting from invalidation because undertakings are not subject to guarantees<sup>14</sup>, and customs debts can be time-barred. Of the 12 cases where the Commission applied this "invalidation", four were challenged before the European Court of Justice.

**63** Given the very high workload involved in monitoring undertakings, the Commission's work on other types of monitoring in recent years has been limited (see [Figure 8](#)). These activities lacked systematic analysis for identifying the riskiest cases, which is particularly important where resources are limited. As regards special monitoring clauses (see paragraph [58](#)), the Commission set detailed rules on when to apply them/include them in a regulation. Its internal guidelines stressed that staff should strictly and consistently apply the conditions for using the special monitoring clause. We observe that human resource constraints entail a risk of monitoring activities being downscaled because of these limitations, rather than because there is actually a low risk of non-compliance.

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<sup>14</sup> Guarantees are a mechanism for securing the payment of customs duties within a given period.

**Figure 8 – Scope of monitoring activities**



Source: ECA.

**64** As a follow-up to its monitoring activities or in response to warnings received from customs authorities or other sources, the Commission issues Risk Information Forms. These are sent to customs authorities to make them aware of specific risks (e.g. sales by a specific company below a minimum import price, or transshipments). Customs authorities should include this information in their own risk assessments, and should be more vigilant about specific issues during customs controls. We found that the Commission makes good and frequent use of this instrument.

**65** In line with the basic regulations for AS and AD investigations, the Commission is authorised to initiate its own investigations ("*ex officio*"). Typically, this happens when measures are found not to be effective (e.g. due to circumvention), or if the Commission becomes aware of new aspects during an initial investigation (e.g. new subsidy schemes) but is unable to consider them (e.g. because they took place after the investigation period). In such cases, the Commission might be better placed than an industry to obtain evidence, or an industry might be unwilling to launch a complaint for fear of retaliation.

**66** The legal requirements for opening a case *ex officio* remain the same as for other cases launched at an industry's request. Our review of three *ex officio* cases showed that they did meet the general requirements of the basic regulations.

**67** The Commission has never launched *ex officio* investigations (AD or AS) for products that had not been previously subject to measures, although the basic

regulations allow it under special circumstances. Moreover, the 2018 modernisation exercise strengthened the possibility of *ex officio* investigations where companies fear retaliation. Despite this, the Commission has not defined which are the special circumstances that should trigger an *ex officio* intervention.

**68** As the Commission has no systematic market monitoring in place (see [Figure 7](#)) – even theoretically –, it would be unable proactively to identify potentially unfair trade behaviour in new sectors. In practice, this means that *ex officio* investigations are limited to interim or anti-circumvention reviews (see paragraph [07](#)).

### The Commission's reporting focuses on activities rather than on impact

**69** The Commission reports on its performance in applying trade defence instruments in different ways. These include publishing case-related information and sectorial and statistical fact sheets on the Commission's website, in DG TRADE's annual activity report, and a dedicated annual report, which the basic regulations require the Commission to send to the Parliament and the Council. In recent years, the Commission has made improvements in terms of timeliness of the annual report (it published the 2018 report in March 2019), and covered all the elements required by the basic Regulation.

**70** The annual report provides a good and fair overview of what the Commission does in the field of TDIs, and how successful it has been at defending the measures in court. The report thus fulfils the requirements of the Regulations, but provides only limited qualitative analyses of the root causes of the trends observed (e.g. regarding the use of TDI measures by third countries, or accessibility of the instruments for SMEs). Similarly, the report provides little information on the effectiveness and impact of the activities, in particular as regards growth and jobs.

**71** DG TRADE, like every Commission DG, was required to align its strategic objectives for the 2016-2020 period with the Commission's overall policy objectives. In its Strategic Plan for 2016-2020, it concluded that trade defence policy as a whole should contribute to the Commission's overall objective of boosting growth and jobs.

**72** However, DG TRADE does not provide a clear and comprehensive picture of the impact of TDIs on growth and jobs because it has carried out only limited assessments in this respect. Evaluations of specific measures are, to some extent, "built into" the investigations through the review processes (including interim reviews), which can be requested at any time if circumstances change. Before the rules were modernised

(see paragraph 13), the Commission also carried out an assessment of the potential impacts on employment, depending on the legislative option chosen. This, however, was a one-off exercise. The Commission also produced partial estimates of the impact on job creation in selected sectors (e.g. steel or e-bikes), and included some conclusions in its annual reports (e.g. in 2018). However, these partial or one-off exercises cannot fully replace a regular assessment of the overall economic impact of the policy.

**73** Based on publicly available information and interviews with stakeholders, we found that the TDIs had a mixed impact on the economic situation of the EU's industries along the supply chains (see *Figure 9*):

- A clearly positive impact for the e-bikes sector. Without the measures, production in Europe would probably have ceased. Furthermore, TDI measures on normal bikes and bike parts have been vital in enabling EU bike producers to invest in and develop their e-bike production<sup>15</sup>.
- An important source of support for the steel industry. TDIs for a number of products have saved a significant share of the EU's steel industry, and imports from targeted countries have fallen significantly<sup>16</sup>. However, imports from other third countries have offset most of the fall. We also noted adverse consequences for certain market segments, where supply shortages occurred. Furthermore, TDI measures for one steel product led to increased Chinese exports of another steel product.
- Very limited impact on the solar panel industry. Despite several years of measures for solar panels and modules, the EU sector has seen bankruptcies in recent years and is faced with significant downscaling. By contrast, the EU's solar power installation industry displays a very positive trend, and benefits from imports from China (currently not subject to measures)<sup>17</sup>. In addition to TDIs, the solar power

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<sup>15</sup> "European bicycle market employment and investment figures in 2018". *European Bicycle Manufacturers Association and the Confederation of the European Bicycle Industry*. Available at <http://ebma-brussels.eu/wp-content/uploads/2019/03/OPEN-EU-Bicycle-Industry-Employment-and-Investment-Study-2019-with-2018-data.pdf>.

<sup>16</sup> "Making sense of steel's turbulent trade climate", BCG. Available at <https://www.bcg.com/publications/2019/steel-turbulent-trade-climate.aspx>.

<sup>17</sup> "The European PV market outlook", Pietro Radoia, March 2019. Available at <https://www.solarpowersummit.org/wp-content/uploads/2019/03/Day-1-European-Market-Outlook.pdf>.

sector as a whole is strongly impacted by political decisions about the environment and climate change.

**Figure 9 – Impact of TDI decisions in selected sectors**



Source: ECA.

**74** Lastly, we note that an analytical review by DG TRADE of data on the rate at which duties are collected (i.e. the financial impact) could not only highlight inefficiencies in the process but also help to improve future decision-making (particularly the way measures are designed). This opportunity is currently not used, as DG TRADE does not analyse the data on:

- the extent to which duties are collected and problems are encountered;
- the amounts recovered as a result of invalidated invoices (see paragraphs [61](#) and [62](#)).

### **The Commission is an active player in global trade, but does not systematically prioritise activities**

**75** In the dynamic area of trade, the Commission needs to be well-equipped and flexible to respond to global challenges effectively. These challenges include the current crisis at the WTO (in particular as regards the Appellate Body), Brexit, and the increasing importance of labour and environmental standards for fostering sustainable development. In addition, as well as responding to complaints from European industries, the Commission can also play a role in defending EU industries that are subject to investigations by third countries.

**76** We therefore assessed whether DG TRADE:

- (a) had sufficient human resources;
- (b) reacted appropriately to third country measures' against EU industries;
- (c) responded well to global challenges relevant for TDIs.

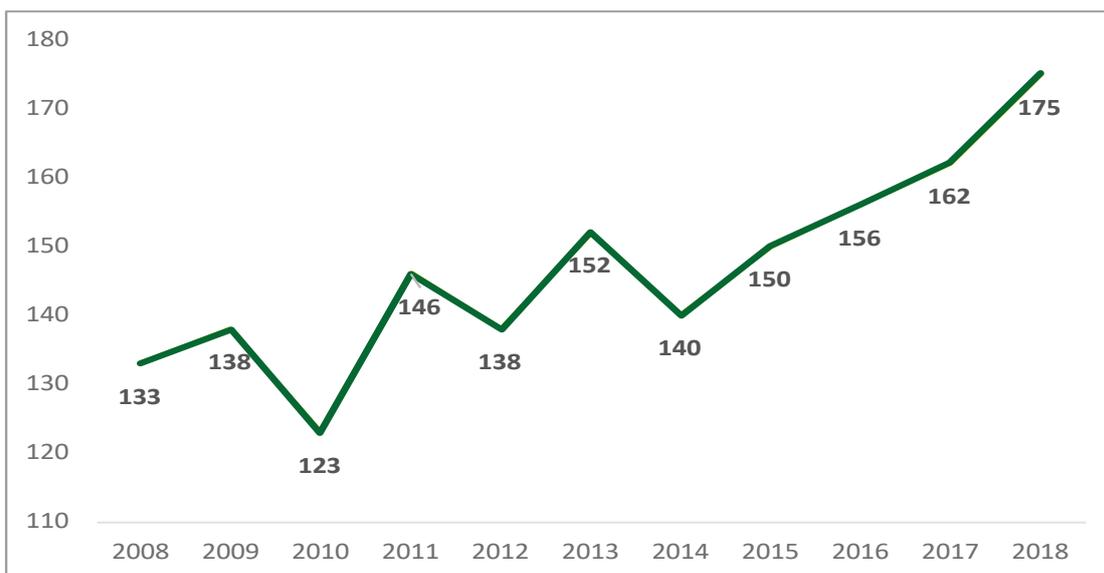
### **Good workload management meant human resources constraints had no impact on investigations**

**77** In recent years, the Commission has faced a number of new or greater challenges in the TDI field. These have included general technical development (more complex products) and trade modernisation (see paragraph **13**). At the same time, the number of staff dealing with TDIs is over 14 % lower than 10 years ago. This placed considerable constraints on resources, which DG TRADE had mentioned in its most recent staffing requests. Given the Commission's priorities, staffing increases for DG TRADE's directorate directly responsible for TDIs were only marginal in 2016-2018 (one or two posts per year).

**78** Constraints on resources were partially offset by DG TRADE's good workload-management system, and had no impact on the quality or timeliness of the investigations. However, resource constraints meant that DG TRADE had to limit some activities such as outreach and monitoring (see paragraphs **37** and **63**), which can have a significant impact on the overall effectiveness of trade defence policy. We also note that the Commission cannot call upon additional "stand-by" resources if the number of complaints unexpectedly increases (e.g. if trade practices change in a key third country).

### **The Commission defends the interests of European industries, but does not systematically prioritise its actions**

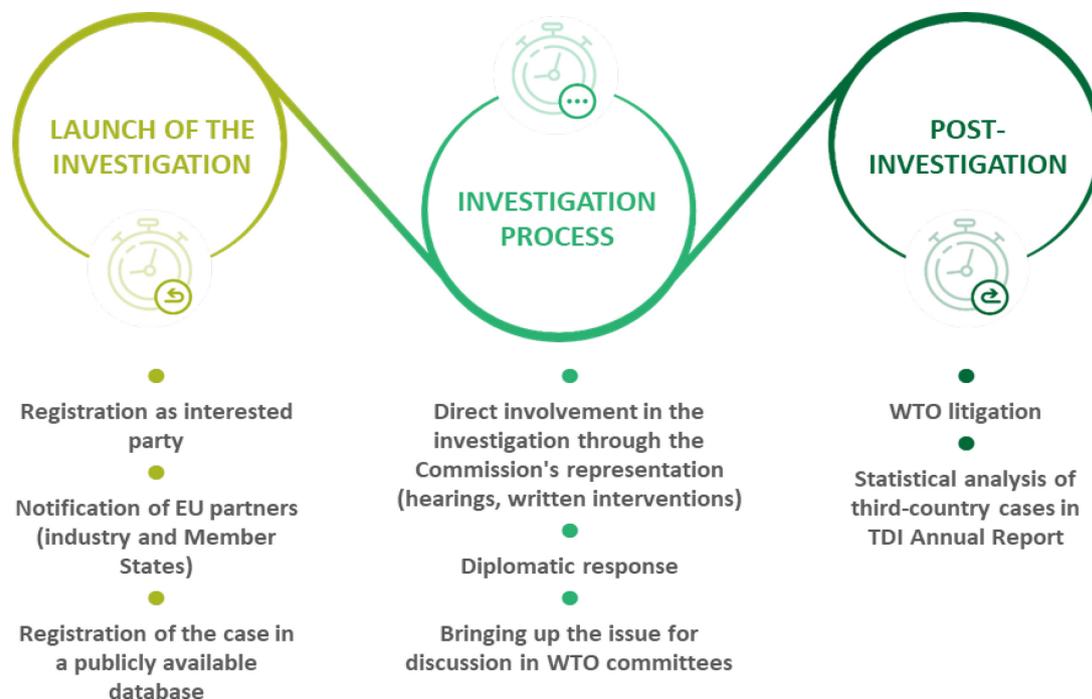
**79** International trade has been far from stable in recent years. As a result, countries have used TDIs more frequently, also against the EU (see **Figure 10**). The US accounts for the highest number of such cases (34 in 2018, compared to 18 in 2015), but the geographical distribution of TDI cases has recently been rising, with more countries making use of them (e.g. Columbia, Madagascar and some Gulf states).

**Figure 10 – Number of third-country TD measures against the EU**

Source: European Commission.

**80** The EU uses a number of instruments to monitor and respond to these developments. Generally speaking, the Commission registers as an interested party and is then directly involved in specific investigations initiated by third countries. It can also opt for a diplomatic response and/or decide to bring an issue before a WTO Committee (see [Figure 11](#)).

**Figure 11 – The Commission’s intervention tools in third-country investigations**



Source: ECA.

**81** We observed that the Commission makes active use of the tools at its disposal. The Commission also duly informs relevant EU partners that investigations have been launched, and registers the cases in a public database so that their status can be monitored. A broader statistical picture of third countries' measures then follows in the TDI Annual Report, but this does not explain the root causes of the trends observed (see paragraph 70).

**82** In its interventions, both in third-country investigations and in WTO committees, the Commission provided detailed technical analysis, and raised concerns from several perspectives. These included formal aspects (e.g. the right to information and the correct use of indexes) and substance-related ones (e.g. the nature of alleged subsidies, injury calculation, and causation between injury and dumping/subsidies). In several cases, the Commission's interventions have led to more favourable results for EU industry (see Table 2).

**Table 2 – The impact of the Commission’s involvement in third-country investigations: selected cases from 2018**

Product	Country of measures	Type of measures	Results	Economic impact
Tyres	Turkey	Safeguards	Termination without duties	EU export value – €450 million
Acrylic fibre	India	AD	Termination without duties	EU export value – €7 million
Uncoated paper (Portugal)	US	AD	Reduction of the duty from 37 % (final determination) to 1.75 % (final duty)	EU export value – \$160 million

Source: European Commission.

**83** Although the EU’s defensive actions are sound, they differ significantly in terms of intensity (e.g. the number of interventions) and scope (e.g. the stages of interventions and the types of arguments raised), depending on the case and the underlying issues. The specific type and scope of a reaction (or lack thereof) is decided on a case-by-case basis, and the Commission has no guidelines specifying any rules or criteria for its priority-setting. However, this aspect is relevant, particularly when considering the limited resources available (only four to five full-time equivalents are assigned to third-country work) and the growing number of cases. The Commission informed us that the important – albeit informal – criteria which matter when deciding about the scope of intervention are a case’s economic importance and its systemic dimension.

### The EU does attempt to tackle the challenges of the future

**84** In addition to its usual work in WTO committees, where it actively represents EU Member States, the Commission has recently taken steps to improve the overall functioning of the WTO system. These improvements were necessary in the context of deep crisis in the WTO’s rules-based system. Many of today’s key trade-policy challenges – such as how to deal with China’s state-led economic model – are not effectively covered by WTO rules. To this end, the Commission published a concept paper in 2018 that was intended to serve as a basis for discussion with other institutions and stakeholders. The paper included proposals for the general functioning of the WTO, dispute settlement, and TDI-specific procedures (see [Box 7](#)).

## Box 7

### TDI issues in the Commission's concept paper on WTO reform

- Improving the transparency and quality of notifications (Members are increasingly reluctant to comply with reporting requirements, which makes it difficult for them to review each other's actions and so hampers the enforcement of rules).
- Better coverage of the activities of State-owned enterprises (in view of their influence on markets) by clarifying how current WTO rules apply to them, thus ensuring that they cannot continue to avoid WTO rules on subsidy agreements.
- Covering the most trade-distorting types of subsidies more effectively, in particular those that create overcapacity in several sectors of the economy.

**85** Although the EU's proposals have been realistically tailored to political reality (e.g. by not mentioning ambitious ventures so as to ensure that TD investigations take greater account of environmental aspects), they have not yet led to the desired changes:

- considerations about the general functioning of the WTO have led the EU and other countries to raise a number of specific proposals at the WTO forum (e.g. regarding the Appellate Body);
- legislative proposals were made about the quality of TDI notifications, but not about other TDI-related issues (see [Box 7](#)). However, they will still be subject to negotiations at political level within the WTO.

**86** The impact of the EU's activity in this respect is, however, limited by the highly formalised nature of international cooperation and the widely varying interests of WTO Member States, all of which means that finding compromises is extremely challenging.

**87** Brexit has also caused considerable uncertainties for international trade. DG TRADE duly analysed the practical consequences of Brexit for TDI policy, and updated its staff on several occasions by means of staff notices. In terms of practical preparations, the Commission already reports certain types of analysis separately for the UK (e.g. regarding the significance of the UK market for the case, the volume and value of trade with the UK, and the existence of interested parties). The purpose of gathering such data separately is to ensure a smooth continuation of the Commission's trade defence activity after the transition period by the end of 2020.

**88** The EU's commitment to high social and environmental standards means that these should be reflected, whenever possible, in every policy field. The new dumping calculation methodology and the TDI modernisation included some elements that provide a response in the field of trade defence. However, the scope for such considerations in TDI investigations is limited by the WTO framework. The WTO regards dumping as a strictly economic phenomenon, and does not allow for these standards to be directly reflected in dumping calculations. EU legislation therefore provides for consideration of social and environmental aspects only in specific circumstances (see [Box 8](#)).

### Box 8

#### Social and environmental standards in TDI investigations

- Calculation of the normal value of the imported product: when, owing to State interference, prices are proven to have been distorted, another so-called representative country needs to be selected to establish the normal value of a product. According to EU law, significant distortions can relate to labour standards, but cannot take account of environmental standards. However, when selecting a representative country, both social and environmental protection aspects should be considered.
- The target price used to establish the injury margin (i.e. the theoretical price under the assumption of no dumping/subsidy): the modernised TDI rules allow for EU companies' production costs to reflect the cost of applying social and environmental standards.
- Undertakings: the Commission can consider social and environmental standards when granting undertakings, and reject them when standards are not met.

**89** Our review of one case subject to the new methodology for the dumping calculation (the only one finalised at the time of the audit) showed that the Commission carried out a quantitative assessment of social and environmental standards to select the representative country that is used to calculate the normal value of a product. Specifically, the Commission compared the extent to which two countries had adhered to labour and environmental conventions, and chose the country which had signed or ratified the greatest number. This is a rather formalistic approach, as ratification of a convention does not necessarily reflect its practical enforcement and the actual level of environmental protection.

## Conclusions and recommendations

**90** Our overall conclusion is that the Commission was successful as an enforcer of trade defence policy. The investigations led to timely measures being imposed to protect a number of European industries from unfair trade behaviour by third countries, such as dumping or subsidies.

**91** As regards the procedures required by the basic TDI regulations, our sample of cases showed that the Commission followed them properly and in good time. DG TRADE's internal controls ensured compliance, despite some weaknesses in the internal guidance provided for staff. During the investigations, the Commission ensured that the parties had equal rights, and the Hearing Officer provided effective additional assurances in this respect (see paragraphs [21](#) to [26](#)).

**92** The Commission has recently introduced a new web-based application to facilitate the various parties' access to non-confidential documents. Parties submitting documents decide themselves what they consider to be confidential. The Commission does not systematically document its checks on whether confidentiality status is justified. Therefore, we were not in a position to verify the scope of these checks (see paragraphs [27](#) to [32](#)).

### Recommendation 1 – Document the confidentiality assessment

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In order to limit the room for disagreements among parties about confidentiality, the Commission should sufficiently document its reviews of the confidential and non-confidential files the parties have submitted.

**Timeframe: 2021**

**93** Although TDI investigations involve a substantial administrative burden for the parties concerned, the documents that the Commission required did not exceed what it actually needs in order to verify compliance with legal requirements (see paragraph [34](#)).

**94** The Commission provided parties with satisfactory guidance, although the support SMEs were given met only to a limited extent the ambitions stated by the Commission when the TDIs were being modernised. While TDIs are currently concentrated in a few industries, the Commission made little effort to raise awareness

among companies in other sectors about how TDIs might be an effective tool to protect their interests in global markets (see paragraphs 33 and 35 to 37).

## Recommendation 2 – Raise awareness about trade defence instruments

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In order to maximise the number of stakeholders that are aware of TDI as a tool, the Commission should seek additional communication channels to raise stakeholders' awareness. Such channels could, for instance, take the form of regular events for stakeholders which the Commission would organise, paying particular attention to the specific needs of SMEs.

**Timeframe: 2021**

**95** Considering the impact that duties have and the fact that decisions can be appealed against, the Commission needs to pay particular attention to the way measures are justified. Our sample showed that the Commission's work satisfied these expectations. Despite this assessment, we found that the Commission's contacts with potential claimants before they submit their complaint are mostly informal. In practice, the Commission's informal advice has a selective effect, because many potential complainants do not go on to pursue their complaint. Nevertheless, whatever advice the Commission provides, complainants are still free to lodge their cases and have them formally assessed (see paragraphs 40 to 45).

**96** The Commission's conclusions in TDI investigations were soundly argued insofar as they followed DG TRADE's methodology and reflected market realities. However, we found that the assessment of the measures' potential impact on competition in the EU, as part of the Union interest test, was not always detailed enough. Also, the parties' arguments were sometimes rejected with limited justification only (see paragraphs 46 to 50).

### Recommendation 3 – Improve guidance on competition aspects

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In order to ensure that relevant competition issues raised in the context of the Union interest test are properly analysed, the Commission should i) give more guidance in the questionnaires through which it seeks information from users and importers, amongst other things, on competition concerns; ii) provide additional internal guidance for staff on how to analyse the parties' concerns regarding competition and document this analysis.

**Timeframe: 2021**

**97** The Commission is required by law to monitor the undertakings and special clauses included in TDI measures. Although this monitoring was effective, resource constraints meant that the Commission seldom went beyond what was legally required, i.e. the general monitoring of measures and ad hoc market monitoring. Also, the Commission did not document how it selected measures for optional monitoring, therefore we were not in a position to assess whether this was done on the basis of clear criteria. The same applies to the selection of companies for on-the-spot visits aiming to verify compliance with price undertakings (see paragraphs [58](#) to [60](#) and [63](#)).

**98** The Annual Report on TDIs provides a full and accurate picture of the Commission's activities in this area; however, it has so far not provided an overview of the TDIs' overall effectiveness. In addition, DG TRADE does not analyse the data it receives from Member States on collection of duties (or revenues generated by follow-up tools such as invalidation of invoices; see paragraphs [69](#) to [74](#)).

### Recommendation 4 – Improve monitoring

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In order to improve the way TD measures and their effectiveness are monitored, the Commission should:

- (1) Stipulate criteria for identifying measures with the highest risk of circumvention, or other problems detrimental to effectiveness. It should therefore not only select measures for in-depth monitoring on the basis of these criteria, but also document that selection. Using the same logic, where compliance with undertakings cannot be verified on the spot for all companies concerned, the Commission should apply clear criteria for selecting the companies to be inspected.

- (2) Carry out regular evaluations (at least every five years) to estimate the overall effectiveness of trade defence measures, also for individual sectors where relevant.

**Timeframe: 2021 for (1) and 2023 for (2)**

**99** The Commission has been effective in using its tools to follow up the findings from the monitoring process (e.g. withdrawals of undertakings, and risks alerts issued to customs authorities). However, the Commission used the possibility of launching *ex officio* investigations only to a limited extent and did not define the specific circumstances that should trigger its intervention with regard to products not being subject to any measures in the past (see paragraphs [61](#) to [62](#) and [64](#) to [68](#)).

### Recommendation 5 – Fully use the *ex officio* procedures

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In order to strengthen the protection of the EU's industry, the Commission should use its powers of initiating ex-officio investigations more fully. To this end, it should specify the criteria to initiate an investigation for new products ex-officio. The Commission should act swiftly where conditions are met and specify in each case the precise circumstances which triggered the ex officio investigation.

**Timeframe: 2021**

**100** Although TDI activities increased over the last decade, the Commission dedicated fewer human resources to them. A good workload-management system meant that resource constraints did not hamper the investigations; however, some other activities were affected, especially monitoring (see paragraphs [77](#) to [78](#)).

**101** The Commission not only carries out its own trade defence investigations, but is also active in responding to the measures proposed by third countries. It does so by engaging directly in a selected number of investigations and by supporting the interests of EU industry at the WTO forum. However, it does not prioritise its actions on the basis of clear criteria. At the WTO forum, the Commission was also active in tackling a number of more fundamental problems relating to international trade cooperation and the *modus operandi* of the WTO itself (see paragraphs [79](#) to [86](#)).

**102** As regards other current challenges, the Commission has prepared for the consequences of Brexit, and has included social and environmental considerations in the TDI investigations. As concerns the latter, however, it has done so mainly by adopting a formalistic approach. As the WTO framework does not allow dumping

calculations to include social and environmental considerations, EU legislation requires the Commission to take them into account in marginal areas, e.g. by selecting the country used to calculate the normal price of a product. However, the Commission confined its verifications to a country's ratification of relevant international conventions (see paragraphs 87 to 89).

## **Recommendation 6 – Prioritise the EU's response to third-country measures**

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The Commission should prioritise its response to third-country measures more effectively, both during the investigations and at the WTO forum. It should define specific criteria and assess the measures on this basis so as to provide clarity about the reasons for and scope of its response.

**Timeframe: 2021**

This Report was adopted by Chamber IV, headed by Mr Alex Brenninkmeijer, Member of the Court of Auditors, in Luxembourg at its meeting of 30 June 2020.

*For the Court of Auditors*

Klaus-Heiner Lehne  
*President*

# Annexes

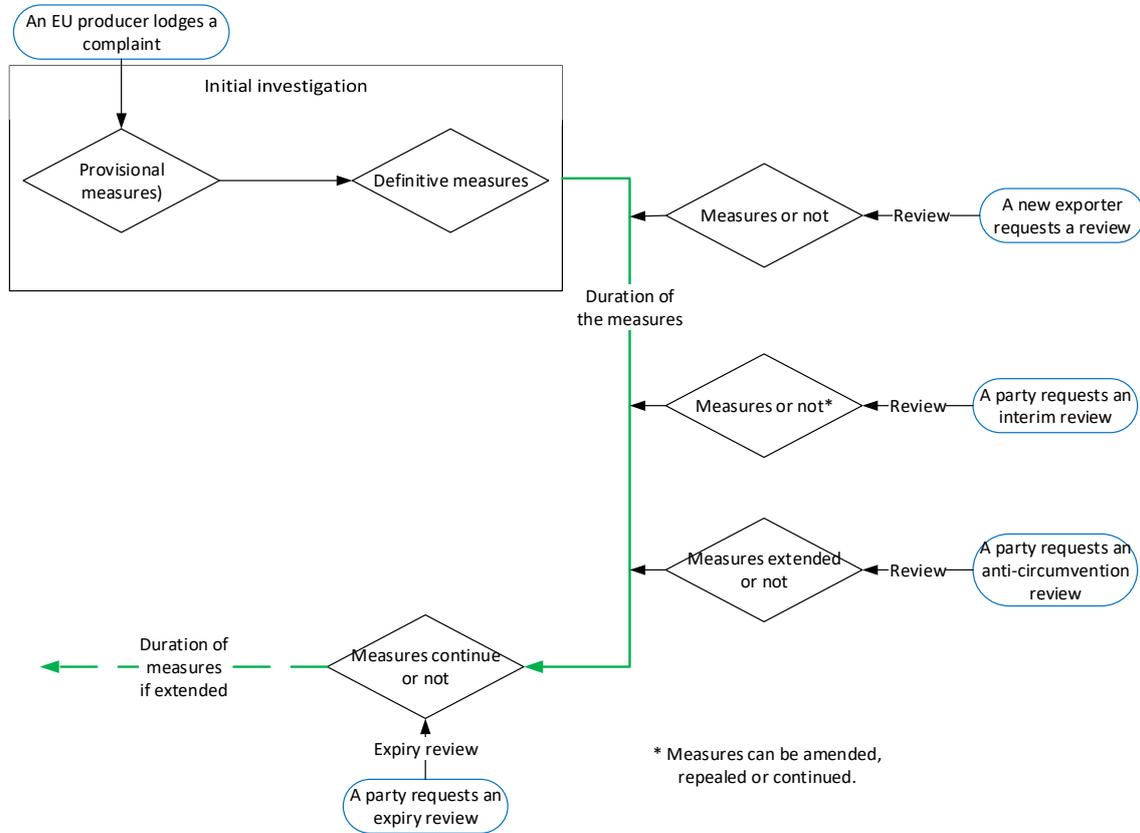
## Annex I - Trade distortions and the corresponding trade defence instruments

	Dumping	Subsidisation	A surge of imports
Which TDI?	<b>Anti-dumping (AD) measures</b>	<b>Anti-subsidy (AS) measures</b>	<b>Safeguard measures</b>
What is the nature of the distortion?	A non-EU company sells goods in the EU below the sale price in their domestic market or, if prices cannot be used, below its cost of production plus a reasonable profit.	A non-EU government or public body gives financial assistance to a specific industry or group of industries which may reflect on the export prices to the EU.	A sharp unforeseen increase in the absolute or relative volume of imports of a specific product into the EU.
Conditions for applying measures	(1) Dumping/subsidisation must occur. (2) The EU industry producing the product must either suffer material injury from the low prices of the imports, or there must be a threat of material injury; (3) The dumping/subsidy is a cause of this material injury.		The increase in imports is sharp, due to unforeseen developments, and causes or threatens serious injury to EU industry.
Form of measures	(1) <i>Ad valorem</i> duty – a percentage of the price. (2) Specific duty – a fixed amount per unit. (3) Variable duty/minimum import price – the duty is the difference between a defined minimum price and the exporter's sales price. (4) Price undertaking – the exporter commits to selling at or above a minimum import price.		Quantitative restrictions on imports of a product from all countries. (1) Import quotas with a limit on permitted imports. (2) Tariff quotas with a duty for imports above the limit.
Additional condition in the EU regulations	The measure cannot be against the Union interest. The benefits of the measure for the EU industry producing the product must be greater than the cost to other EU parties, such as importers or users of the product.		

Source: ECA.

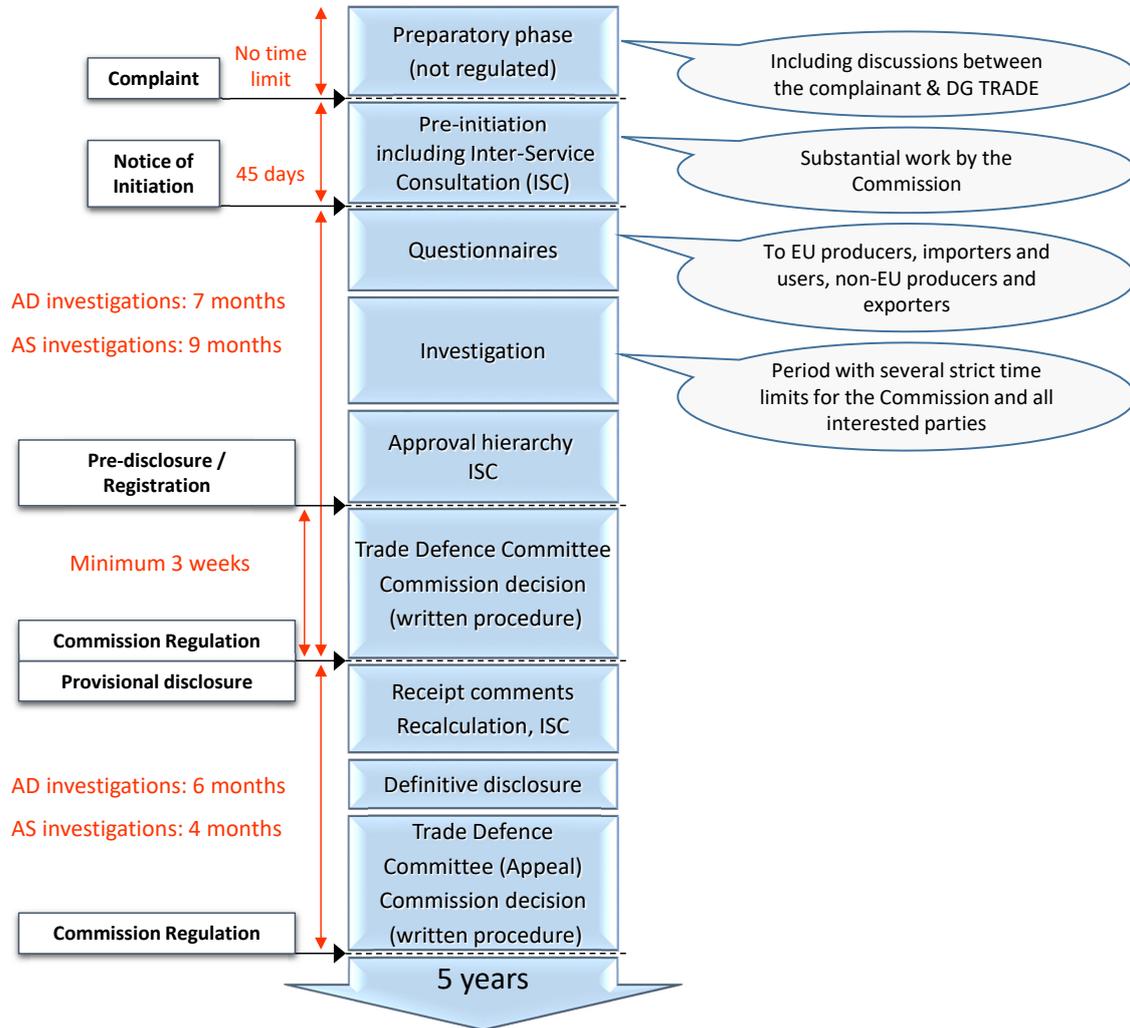
## Annex II - The TDI process

### From lodging a complaint to terminating the measures – an overview



Source: ECA.

### Overview and details of the initial investigation: Commission tasks



Source: European Commission, adapted by ECA.

# Acronyms and abbreviations

**AD:** Anti-dumping

**AS:** Anti-subsidy

**DG:** Directorate-General

**DG BUDG:** Directorate-General for Budget

**DG TAXUD:** Taxation and Customs Union Directorate-General

**DG TRADE:** Directorate-General for Trade

**OLAF:** European Anti-Fraud Office

**SMEs:** Small and medium-sized enterprises

**TDI:** Trade defence instrument

**WTO:** World Trade Organization

# Glossary

**Anti-dumping measure:** A duty collected on imported goods or a minimum sale price imposed on an enterprise, where goods for resale are imported to the EU at below market value.

**Anti-subsidy measure:** A duty or other form of penalty imposed on a good produced in a third country with the support of unfair subsidies.

**Combined nomenclature:** A classification of goods under the Common Customs Tariff. Used as a basis for customs declarations and the EU's trade statistics.

**Comitology:** A procedure whereby the Commission formally consults a committee of Member State representatives on proposed measures.

**Dumping:** A non-EU company sells goods in the EU below the sale price in its domestic market or, if prices cannot be used, below the cost of production and reasonable profit ("normal" value).

**Dumping margin:** The difference between a good's import price and its normal value (see **Dumping**).

**Ex officio:** An investigation that the Commission opens on its own initiative, without having received a formal complaint.

**Hearing officer in trade proceedings:** An independent mediator at the European Commission, available for consultation by parties to trade proceedings.

**Interservice consultation:** A formal procedure whereby a Commission department seeks the advice or opinion of other departments regarding a proposal.

**Interested party:** A party that can prove an objective link between its activities and a product that is the subject of a trade defence investigation. Such parties are usually EU producers and their trade associations, trade unions, importers and exporters and their representative associations, users and consumer organisations, and the government of the exporting country.

**Own resources:** The funds used to finance the EU budget, the vast majority of which come from Member State contributions.

**Trade defence instrument:** A measure used by countries or a trading bloc (including the EU) to protect producers against unfairly traded or subsidised imports and sudden large increases in import volumes.

**Trade proceedings:** An investigation by the Commission to determine whether to apply a trade defence instrument. Also referred to as a "trade defence investigation".

**Union interest test:** An assessment performed during a trade defence investigation to determine whether a trade defence measure would be in the EU's interest.

**Union Customs Code:** The main piece of EU customs legislation.

**World Trade Organization:** A global organisation that deals with the rules of trade between nations and acts as a forum for negotiating trade agreements and settling trade disputes.

**WTO Appellate Body:** An independent seven-person body that considers appeals in WTO disputes.

# FINAL REPLIES OF THE EUROPEAN COMMISSION TO THE EUROPEAN COURT OF AUDITORS SPECIAL REPORT

## “TRADE DEFENCE INSTRUMENTS: SYSTEM FOR PROTECTING EU BUSINESSES FROM DUMPED AND SUBSIDISED IMPORTS FUNCTIONS WELL”

### EXECUTIVE SUMMARY

Common Commission reply to paragraphs I-IX.

Trade defence is a crucial element of the EU’s trade policy, underpinning the commitment to open, rules-based international trade. The EU’s trade defence instruments tackle harmful unfair trading practices as well as sudden surge in imports, and, are based on internationally agreed rules within the World Trade Organisation (WTO). In recent years, the EU, following proposals from the European Commission, has reinforced and strengthened the EU trade defence system, with two major legislative changes in December 2017 and June 2018.

The European Commission, tasked with applying the trade defence instruments, does so to a very high standard and is successful in this role, as confirmed by the European Court of Auditors (ECA). While the ECA has made a number of recommendations, it confirmed that the Commission correctly applies the EU legislation, as well as complies with relevant WTO and EU Courts’ jurisprudence, takes appropriate decisions in applying the trade defence instruments (TDI) following a structured and transparent procedure without creating undue burdens on the stakeholders in the process. These elements are critical in ensuring that the trade defence measures, which the EU imposes, correctly address the injurious imports, in a balanced and robust way.

The profile of the trade defence instruments has increased significantly over recent years, prompted by the steel crisis, as well as the legislative changes implemented in 2017 and 2018. This has raised awareness by economic operators across all sectors of the role of the instruments in tackling, in particular, the damage caused by unfairly traded imports. The Commission ensures that all sectors, whether characterised by large companies or SMEs, have access to the instruments from initial contacts right through the process with emphasis placed on protecting the rights of all interested parties with full transparency of all steps and decisions. Building on initiatives such as dedicated SME assistance, as well as on-line access to non-confidential files, the Commission is fully committed to **reinforce** existing practices.

Full compliance with the applicable EU trade defence legislation while complying with its international obligations, is the cornerstone of the Commission’s administration of the EU’s trade defence instruments. The EU trade defence instruments require a public interest test, which is extra to the requirements of the WTO. The test, which ensures a balanced application of the instruments, allows the Commission to examine whether imposing measures is in the overall economic interest of the Union. In this context, the focus is to eliminate unfair competition resulting from dumped or subsidised imports.

The European Commission is fully committed to open and fair trade that must be based on global rules that are effective, enforceable and create a level playing field for all. This is

characterised by correctly implementing the trade defence legislation in a robust manner. At the same time, the Commission makes every effort to guarantee that our trading partners apply the instruments correctly.

X. The Commission accepts all the recommendations of the ECA, except for recommendation 5, which the Commission partially accepts since it intends to continue launching *ex officio* investigations according to its current practice.

## **OBSERVATIONS**

32. The Commission is fully committed to respecting the rights of defence of all interested parties in its TDI investigations. TRON – an electronic platform serving as a single contact point for electronic communication between interested parties in Trade Defence proceedings and DG Trade – plays an important role in this respect. It ensures access of interested parties to the non-confidential files, which is a significant step forward from the previous practice where parties had to come to the Commission premises to get access. In addition, parties are automatically provided with full disclosures of the findings in cases. A meaningful non-confidential file of all submissions received is a further important element when it comes to ensuring the rights of defence in trade defence investigations. The Commission reviews claims for confidential treatment in order to make sure that rights of parties are not undermined by unjustified claims for such treatment. Without increasing the burden on interested parties, the Commission will document these reviews thereby reinforcing its commitment to providing complete access to information underlying its findings and decisions.

Common Commission reply to paragraphs 35-37.

All EU industries, across all sectors, regardless of company size, which suffer damage from dumped or subsidised imports, have access to the trade defence instruments. The Commission engages regularly with business associations such as Business Europe, specific sector associations, as well as Civil Society, in sessions dedicated to explaining the purpose, application and developments of the trade defence instruments. These groups include representatives of producers, importers, users etc. from numerous sectors and different company size. The Commission has made specific efforts to guide SMEs. This includes the creation of a webpage containing such information as a specific guide for SMEs published in all official languages as well as draft questionnaires. The Commission also runs a dedicated helpdesk for SMEs, providing all-inclusive support to SMEs wanting to make the use of TDIs. In line with its commitment to protect EU industries from unfair trade practices, the Commission is committed to further improving its communications channels to raise stakeholders understanding of the instruments, focussing on SMEs in particular, within its resource limitations.

Common Commission reply to paragraph 41 and Box 4 “Examples of justifications for decisions”.

In the context of determining the injury margin in anti-dumping cases, the Commission will normally select a target profit. A number of considerations will guide this selection, one being the profit rate that should correspond to the one, which the industry could have

obtained under normal conditions of competition, namely in the absence of the dumped imports. The result will depend on the specific circumstances of the case, in particular on the evidence collected. As a result, the target profit will normally vary from one investigation to another, even within the same sector. While the complainants can suggest a profit margin, this is not binding. The reasons for the choice of the relevant profit margin are always explained in the implementing regulations, as was the case in the specific example given in Box 4. Following the legislative changes adopted in June 2018, a minimum profit margin of 6% was introduced.

43. The accuracy of the information and the supporting evidence, provided by complainants, is checked and verified, where possible, against sources such as Commission statistical databases (in particular the COMEXT<sup>1</sup> and the Surveillance<sup>2</sup> databases as regards import volumes and prices), publicly available market and company information, findings of previous investigations, etc. Details of these checks and analysis are always fully documented in the Commission's case folders.

Common Commission reply to paragraph 49 and 50.

While the EU's use of trade defence instruments are based on World Trade Organization rules, it applies a number of additional rules, which are only optional in the WTO. This includes a Union interest test where the Commission examines whether the imposition of measures is not against the interest of the Union.

In order to conduct the Union interest test, the Commission invites all European interested parties, including Union producers, trade unions, importers and their representative associations, representative users and representative consumer organisations to provide information on the impact of measures, if imposed. In carrying out such an examination, Articles 21(1) and 31(1) of the Basic Anti-Dumping<sup>3</sup> and Anti-Subsidy<sup>4</sup> Regulations (respectively) refer to the “*need to eliminate the trade distorting effects of injurious dumping [subsidization] and to restore effective competition*” which “*shall be given special consideration*”. This refers to the objective of removing unfair competition resulting from dumped/subsidized imports.

The objective of ‘protecting the efficient functioning of markets from competition distortions’ falls under the competence of the EU competition policy where specific rules apply concerning such an analysis.

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<sup>1</sup> Eurostat's reference database for detailed statistics on international trade in goods.

<sup>2</sup> Established under Article 56 of Commission Regulation (EU) 2015/2447 laying down detailed rules for implementing the Union Customs Code (OJ L 343, 29.12.2015, p. 558.).

<sup>3</sup> Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (1) (‘the basic AD Regulation’).

<sup>4</sup> Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (1) ( the ‘basic AS Regulation’).

In trade defence investigations, the Commission uses mainly information obtained from interested parties on a voluntary basis and does not have the powers to oblige parties to furnish data to conduct a full competition analysis.

The Commission would like to recall that there is currently an internal contact channel between competent departments, which facilitates an exchange of information on competition related issues that may arise in respective investigations.

Common Commission reply to paragraph 55 and Box 6 “Biodiesel”.

The Commission considers that no confusion was caused to customs authorities by the case mentioned by the ECA.

Given that the products description in the trade defence legislation and the product description in the customs nomenclature answer two different goals, the product description in the trade defence legislation cannot and does not need to be identical to the descriptions in the customs nomenclature. The trade defence product description, which defines the product scope of the trade defence measures, must be sufficiently precise and comprehensive to allow the customs authorities to classify the product in the customs nomenclature according to the customs classification rules.

The titles of the Commission Implementing Regulations provide a brief description of the product concerned serving mainly communication purposes of the proceeding.

Common Commission reply to paragraphs 60-63.

As regards the monitoring activities, the nature of the monitoring work and its resource intensity fluctuates, typically in view of the number of price undertakings in place. The Commission’s resources dedicated to monitoring reflect this specific nature of monitoring. The Commission will keep using all the tools, which it has at its disposal for monitoring and it will continue to make use of information brought to its attention by the EU industry, by OLAF, by national customs authorities etc. Articulating more precisely criteria to identify cases for general monitoring or those with the highest risk of circumvention may further bolster the Commission’s monitoring activity.

In this connection, the Commission endeavours to visit all companies with undertakings. It managed to do so in all but one case where the number of undertakings was exceptionally high. With regard to the second case, where undertakings exist for companies belonging to the same group, the verification can be carried out at the group level.

Common Commission reply to paragraphs 67 and 68.

The Commission observes that the applicable EU legislation, as well as the relevant WTO agreement, provide that trade defence investigations are initiated upon complaints, unless there are ‘special circumstances’. Therefore, initiating investigations *ex officio* remains an exception. In practice, the Commission does not typically possess the market information necessary to open investigations on its own initiative. On the other hand, whenever the

Commission was in possession of sufficient information, it did open the investigations, such as in the case of anti-circumvention investigations, where the relevant data was on the Commission files already.

For all practical intents and purposes, this means that the Commission will occasionally be in a position to open *ex officio* anti-circumvention investigations. The information needed for doing so is limited and monitoring of imports (as opposed to market monitoring) sometimes reveals such information. By contrast, monitoring of imports will not produce the type of information that the Commission needs for the initiation of a fully-fledged new anti-dumping or anti-subsidy investigation.

Therefore, the Commission is confident that it has fully complied with its legal obligations and political commitments with respect to initiating investigations *ex officio*.

Common Commission reply to paragraphs 72-74.

Concerning the impact of the trade defence policy on growth and jobs, the Commission points out that the concrete and tangible indicator of jobs protected by trade defence measures is built into all trade defence investigations, since the employment criterion forms an inherent part of the analysis of injury caused to the EU industry by dumped or subsidized imports. Moreover, the number of jobs covered by trade defence measures is a regular feature of feedback, which the Commission receives from the EU industry. The impact of trade defence will inevitably depend on whether dumping or subsidisation occurs and whether the Union industry decides to take action. Concerning the example on solar panels, the Commission notes that the EU internal demand decreased sharply which may have been the main cause for the bankruptcies reported.

73. Any examination of the impact of TDI on growth and jobs would be resource intensive, not only for the Commission but also for the economic operators.

Common Commission reply to paragraphs 84-86.

With respect to the functioning of the WTO, the Commission points out the strain put on the international rules-based system by certain key global actors in the recent years. The Commission also emphasizes the inherent limitations of any multilateral negotiations stemming from the consensus principle of the WTO.

Common Commission reply to paragraphs 88 and 89.

The Commission recognizes the importance of labour and environmental standards in the context of international trade. Consequently, the Commission is committed to pursuing an ambitious sustainable-development agenda, in particular by including dedicated chapters into new free trade agreements ensuring the highest standards of climate, environmental and labour protection. However, in the area of TDI, these standards can play a role only within the existing WTO legal framework. The inclusion of labour and environmental standards in the recently amended trade defence legislation reflects and takes account of these boundaries. The legislators incorporated such standards in part into a number of core trade defence concepts, such as dumping calculation but in a very circumscribed way: (1) The Commission

can look into wage distortions as part of its analysis whether a country has significant government-induced distortions. (2) When selecting a representative country the Commission looks at the labour and environmental track record of individual countries. While some aspects of such analysis focus on formal ratification given the lack of available data on actual application, the extremely tight legal deadlines, as well as limited resources, other parameters, such as wage distortions, are analysed in greater detail, depending on the specific requirements in individual investigation.

## **CONCLUSIONS AND RECOMMENDATIONS**

91. There is a strong emphasis placed on ensuring that the trade defence staff have easy access to updated comprehensive information and guidelines on the application of the trade defence instruments. This is supported by extensive and regular trainings, which have further intensified to ensure that developments, in particular brought about by the legislative changes in December 2017 and June 2018, are implemented consistently and to the highest standards.

92. See Commission reply to paragraph 32.

### **Recommendation 1 – Document the confidentiality assessment**

The Commission accepts the recommendation.

The Commission is fully committed to ensuring the rights of parties are not undermined by unjustified claims for confidential treatment. The Commission will continue to review these claims and will endeavour to document better these reviews in order to guarantee that complete information underlying its findings and decisions is available to interested parties.

94. The Commission continues to disseminate information on TDIs through regular dedicated sessions with business representative organisations that cover all economic operators, various sectors and company sizes, including SMEs. In addition, the Commission has created a guide for SMEs, as well as a dedicated webpage and helpdesk to assist such companies in addressing the challenges they face in dealing with TDIs. The Commission can explore possibilities to deepen/increase the engagement with stakeholders paying further attention to the specific needs of SMEs. However, the Commission will continue to focus on explaining the role of TDI to all interested parties.

### **Recommendation 2 – Raise awareness about trade defence instruments**

The Commission accepts the recommendation.

The Commission is fully committed to increasing awareness of the role and application of the trade defence instruments by all economic operators across all sectors. In this context, it will continue to help SMEs in accessing and understanding the instruments by building further on the specific SME related initiatives implemented following the legislative changes in June 2018.

96. See Commission replies to paragraphs 49-50.

### **Recommendation 3 – Improve guidance on competition aspects**

The Commission accepts the recommendation.

Common Commission reply to paragraphs 97-99.

The Commission points out that, as far as its monitoring activities are concerned, a system for prioritisation is in place even if it could be improved with respect to its documentation.

However, the Commission does not consider *ad hoc* market research with a view to opening new investigations on the Commission's own initiative as appropriate. This is due to the only residual role that the legislation ascribes to *ex officio* investigations but also the fact that the information typically needed for trade defence investigations cannot be obtained through market research. The Commission recalls that it has previously launched *ex officio* investigations whenever it was aware of sufficient information justifying the initiation and it remains committed to maintaining this good practice also in future. Given the nature of the information that can be obtained through monitoring, this will mostly apply to the launch of anti-circumvention investigations.

With respect to assessing the effectiveness of the trade defence policy, the Commission emphasizes that the impact of trade defence measures on employment features in individual investigations as a standard part of the analysis. In this context, the Commission recalls that the Annual report on TDI contains information on industrial jobs that are protected by the measures in force as well as an overview and analysis of the general trends observed for trade defence actions taken by third countries and the related Commission's interventions on behalf of the European industry.

#### **Recommendation 4 – Improve monitoring**

The Commission accepts recommendation 4, sub-point (1). While prioritisation of monitoring activities on the basis of pre-defined criteria is effectively in place, documenting how such prioritisation is carried out can further raise the transparency of the Commission's action, thereby contributing to the objective of increasing the transparency within trade defence investigations as laid down in Directorate-General for Trade's Strategic Plan 2016-2020.

The Commission accepts recommendation 4, sub-point (2). The Commission recalls that the current Multi-annual Evaluation Plan of Directorate-General for Trade already reflects this recommendation and, consequently, an evaluation of the EU's trade defence instruments is foreseen for 2022.

#### **Recommendation 5 – Fully use the *ex officio* procedures**

The Commission partially accepts this recommendation.

The Commission points out that in its current practice, whenever it had at its disposal information, which would warrant opening a trade defence case, an investigation had been initiated. However, given the nature of the information needed, this is linked to anti-circumvention investigations. Moreover, the Commission will launch *ex officio* investigations in the context of retaliation where the Union industry (or parts thereof) provide the Commission with the necessary information in confidence.

Beyond these two scenarios, the Commission does normally not envisage to launch *ex officio* investigations. The Commission points out that the applicable legislation stipulates clearly that trade defence investigations are to be carried out on the basis of complaints brought by the European industry and that investigations on the Commission's own initiative can only be initiated under special circumstances.

However, bearing the above in mind, the Commission recognizes that articulating more precisely the criteria for *ex officio* initiation will bring further clarity, address certain existing misconceptions and provide additional guidance for the European industry.

Common Commission reply to paragraphs 101 and 102.

Given the current crises of the WTO's dispute settlement system, the Commission considers it essential that the EU will continue its work towards the preservation and reform of the rules-based system of international trade. To this end, the Commission remains committed to its regular WTO work, as well as to its leading role in the WTO reform endeavours. The Commission further recognizes the importance of labour and environmental standards. The Commission therefore, remains committed to take them into account in its trade defence investigations. However, the applicable WTO legal framework, as well as practical feasibility set clear limits on the Commission's activity in this respect.

#### **Recommendation 6 – Prioritise the EU's response to third-country measures**

The Commission accepts this recommendation.

In line with its continued effort to provide the most effective and targeted assistance to the European industry exposed to third-country trade defence actions, the Commission appreciates the benefits potentially brought by more clarity on the type of action that can be taken by the Commission and the criteria for such action. On the one hand, clearer criteria will help the European industry to better understand the scope and limits of the Commission's possibilities for interventions. In addition, such criteria can further streamline the Commission's internal priorities for action in the WTO context.

## Audit team

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. The ECA selects and designs these audit tasks to be of maximum impact by considering the risks to performance or compliance, the level of income or spending involved, forthcoming developments and political and public interest.

This report was produced by Audit Chamber IV – headed by ECA Member Alex Brenninkmeijer – which has a focus in the areas of regulation of markets and competitive economy. This audit was led by ECA Member Ildikó Gáll-Pelcz. She was supported in the preparation of the report by Claudia Kinga Bara, Head of Private Office; Zsolt Varga, Private Office Attaché; Marion Colonerus, Principal Manager and Kamila Lepkowska, Head of Task. The audit team consisted of Benny Fransen, Anna Ludwikowska and Maria Sundqvist. Linguistic support was provided by Mark Smith.

**As a consequence of the COVID-19 pandemic and the strict confinement conditions, no picture of the audit team could be provided.**

# Timeline

Event	Date
Adoption of Audit Planning Memorandum (APM) / Start of audit	19.3.2019
Official sending of draft report to Commission (or other auditee)	20.3.2020
Adoption of the final report after the adversarial procedure	30.6.2020
Commission's (or other auditee's) official replies received in all languages	17.7.2020

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The EU's trade defence policy provides protection for European companies facing unfair practices in international trade. In such cases, the European Commission can impose anti-dumping or anti-subsidy duties to restore fair competition. We examined whether the Commission successfully enforced this policy. Our conclusion was that the system for imposing trade defence instruments functions well. The Commission followed the required procedures properly during the investigations, and its justification for the decisions was satisfactory. However, the Commission could do more to raise awareness of trade defence instruments, document some checks better, and improve the way it monitors the measures and the policy's overall effectiveness.

ECA special report pursuant to Article 287(4), second subparagraph, TFEU.



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