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

on Trade and Investment Barriers and Protectionist Trends

1 July 2014 - 31 December 2015
{SWD(2016) 204 final}

SUMMARY

This report incorporates and replaces the Report on the Monitoring of Potentially Trade-Restrictive Measures of the European Commission's Directorate-General for Trade ("Protectionism Report") and the Commission's Trade and Investment Barriers Report ("TIBR"). Both have been published regularly since 2008 and 2011 respectively.

The first part of this report mirrors the Protectionism Report. It gives an overview of **protectionist tendencies** in 31 EU trade partners¹ in the period 1 July 2014 to 31 December 2015 (the "Reference Period"), complementing a similar biannual WTO report on protectionist measures adopted by G20 countries.² It finds that the stockpile of trade-restrictive measures adopted since 2008 continues to increase, although at slightly slower pace than in previous years.

The second part mirrors the TIBR, and provides an overview of **main trade barriers** in place in some of the EU's key economic partners (Mercosur, China, India, Japan, Russia and the United States (US)), new such barriers introduced during the Reference Period and EU actions to address them.

The third part describes the **Commission's strategy** to address trade and investment barriers. It underlines the importance of negotiations and implementation of multilateral, plurilateral and bilateral agreements and of the Market Access Strategy (MAS) in this context. In light of the Commission's Communication on Trade for All³, it emphasizes the shared responsibility of the Commission, the EU Member States (MS), the European Parliament (EP) and stakeholders in implementation and proposes an "enhanced partnership" to this effect.

I. GLOBAL MACROECONOMIC PICTURE AND KEY TRENDS

An overview of protectionist tendencies cannot be disconnected from global economic trends:

¹ Algeria, Argentina, Australia, Belarus, Brazil, Canada, China, Ecuador, Egypt, India, Indonesia, Japan, Kazakhstan, Malaysia, Mexico, Nigeria, Pakistan, Paraguay, the Philippines, Russia, Saudi Arabia, South Africa, South Korea, Switzerland, Taiwan, Thailand, Tunisia, Turkey, Ukraine, the US and Vietnam.

² The last (14th) WTO trade monitoring report on G20 trade measures (https://www.wto.org/english/news_e/news15_e/g20_wto_report_oct15_e.pdf) at the time of drafting this report dated 30.10.2015. Since the beginning of the global economic crisis, G20 leaders regularly renewed their commitment not to impose new barriers to trade or investment and to roll back existing ones. This pledge was also reconfirmed at the last three G20 summits.

³ Commission Communication "Trade for All – Towards a more responsible trade and investment strategy", 14.10.2015 (<http://ec.europa.eu/trade/policy/in-focus/new-trade-strategy/>).

A. MIXED MACROECONOMIC AND TRADE PERFORMANCE PICTURE

In 2015 growth strengthened in advanced economies (including the EU) while the emerging world entered a considerably more challenging environment driven by the slowdown in China, the fall of commodity prices and the tightening of international financial conditions. Overall, the world economy slowed down slightly to 3.1% (from 3.4% in 2014). Against this backdrop global trade activity in 2015 was relatively weak: trade volumes fell in the first half of the year (-0.7% in Q1 and Q2, on a quarterly basis) before returning to growth (+1.9%) in the third quarter⁴. For 2016 the latest IMF forecasts point to an acceleration of growth in world trade volumes (goods and services) to 3.4%⁵. The IMF also highlights a long list of risks to the outlook that could eventually lead to weaker than foreseen trade performance. Moreover, the WTO underlined that the expansion of world trade is already below the 5% average of the last 20 years (1995-2015).

The outlook is therefore characterised by a high degree of uncertainty. The deep recession in advanced economies that followed the outbreak of the global financial crisis paved the way for an atypical global recovery sustained by the emerging economies, which remained structurally vulnerable and proved to be too dependent on China, on very large capital inflows and on revenues from commodities exports. This proves to be a challenge for the robustness of the global economic outlook and risks curtailing the acceleration of trade expansion in coming months. There are also concerns that the current sluggish trade growth is of a more structural nature, reflecting a reduction in responsiveness (or elasticity) of trade to GDP over time. The macroeconomic uncertainty in the emerging and developing world together with the likely increase in volatility in foreign exchange and financial markets in the coming months calls for the monitoring of protectionist measures to be kept a policy priority.

B. NEW POTENTIALLY TRADE RESTRICTIVE MEASURES IN THE PERIOD 1 JULY 2014-31 DECEMBER 2015

1. General Protectionist Tendencies

(a) General

As in previous Protectionism Reports, the Commission has taken stock of all potentially trade restrictive measures ("Relevant Measures") that were adopted, substantially modified or in an advanced stage of adoption in 31 EU trade partners in the Reference Period. The Staff Working Document accompanying this report lists all such Relevant Measures per country and provides a more detailed analysis of protectionist tendencies. A list of all Relevant Measures, measures rolled-back and trade facilitating measures adopted since 2008 is

⁴ Cf.: <http://www.cpb.nl/en/number/cpb-world-trade-monitor-november-2015>.

⁵ IMF, World Economic Outlook Update, January 2016.

published on the Commission's website ("[overview of potentially trade-restrictive measures December 2015](#)").

Depending on the complexity, product scope, duration and comprehensive nature of the Relevant Measures, their effect on trade can vary and have more or less far-reaching consequences for EU or third country business. Also, the Commission may not have a full overview of all new Relevant Measures, which are often adopted in a non-transparent way. In line with previous Protectionism Reports, the aim of this section is thus to provide an overview of protectionist tendencies, not a comprehensive list of new trade barriers. This section does not prejudge the (il)legality of the Relevant Measures. Yet, all identified Relevant Measures have the capacity to unduly restrict trade.

During the 18-month Reference Period, a total of **201** new Relevant Measures were introduced while only **16** previously imposed Relevant Measures were actively withdrawn. Recalculation on the basis of a notional 13-month period for comparison with previous Protectionism Reports gives a total of around **145** newly adopted Relevant Measures, i.e. a **reduction** of 15% when compared to the 170 Relevant Measures identified in the previous Protectionism Report. However it increases the total stock of Relevant Measures identified since 2008 to **1059** while only **180** have been removed since then.

The protectionist tendencies observed in previous periods, as well as in the WTO's 14th trade monitoring report⁶ are thus largely confirmed during this Reference Period. This also applies to several G20 member countries, despite their pledge to refrain from adopting new protectionist measures and to remove existing ones (cf. footnote 2).

The same **emerging economies** as in the last Protectionism Report adopted the bulk of new Relevant Measures: **China, Russia, Indonesia and India** together account for nearly half of all new Relevant Measures identified. They were followed by South Africa, Argentina, Turkey, Ecuador, Algeria, Brazil, Mexico, Thailand, the US, Egypt, Nigeria and Malaysia.

⁶ The methodology of the WTO's trade monitoring report on G20 trade measures differs from this report, as it takes into account a smaller group of countries over a shorter, 6-month period. It also includes trade defence instruments, which this report does not. Nevertheless, the findings of the two reports are largely consistent and both conclude that the rate by which trade-restrictive measures are being eliminated remains insufficient to significantly counteract the growing number of new measures.

Tables 1 and 2 show a graphic representation of the main findings for this Reference Period:

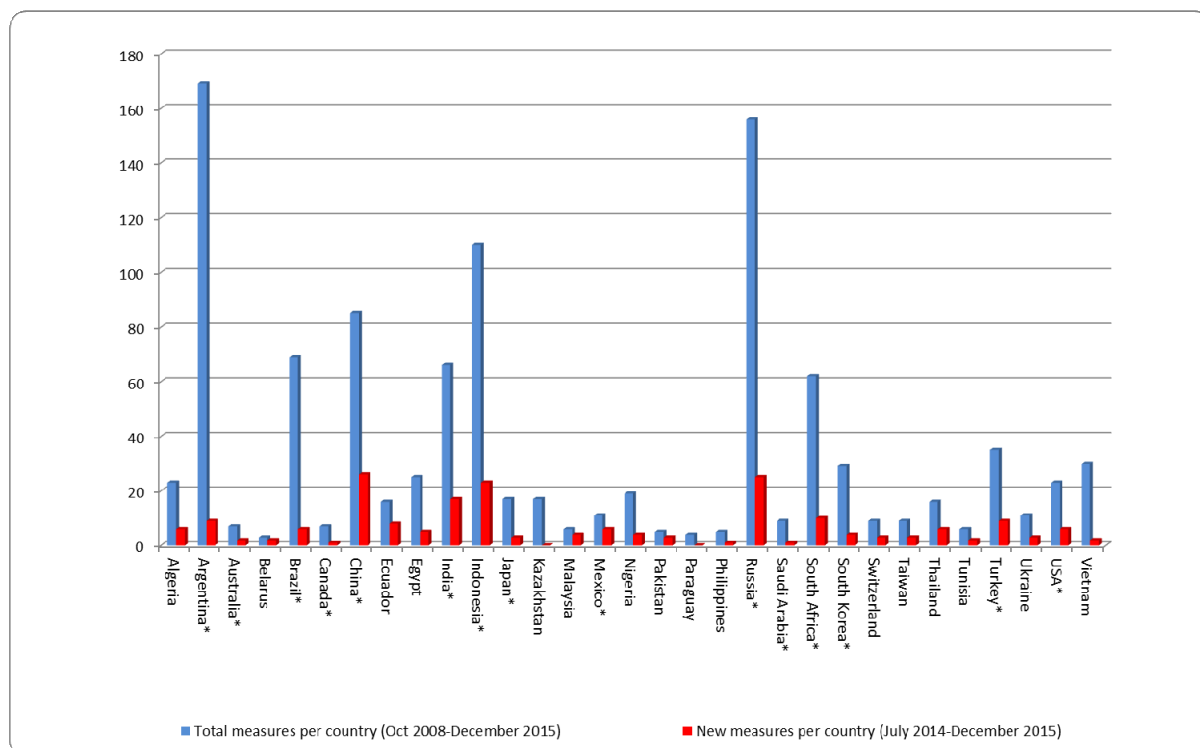


Table 1: Potentially trade-restrictive measures by country since October 2008 (* - G20 countries)

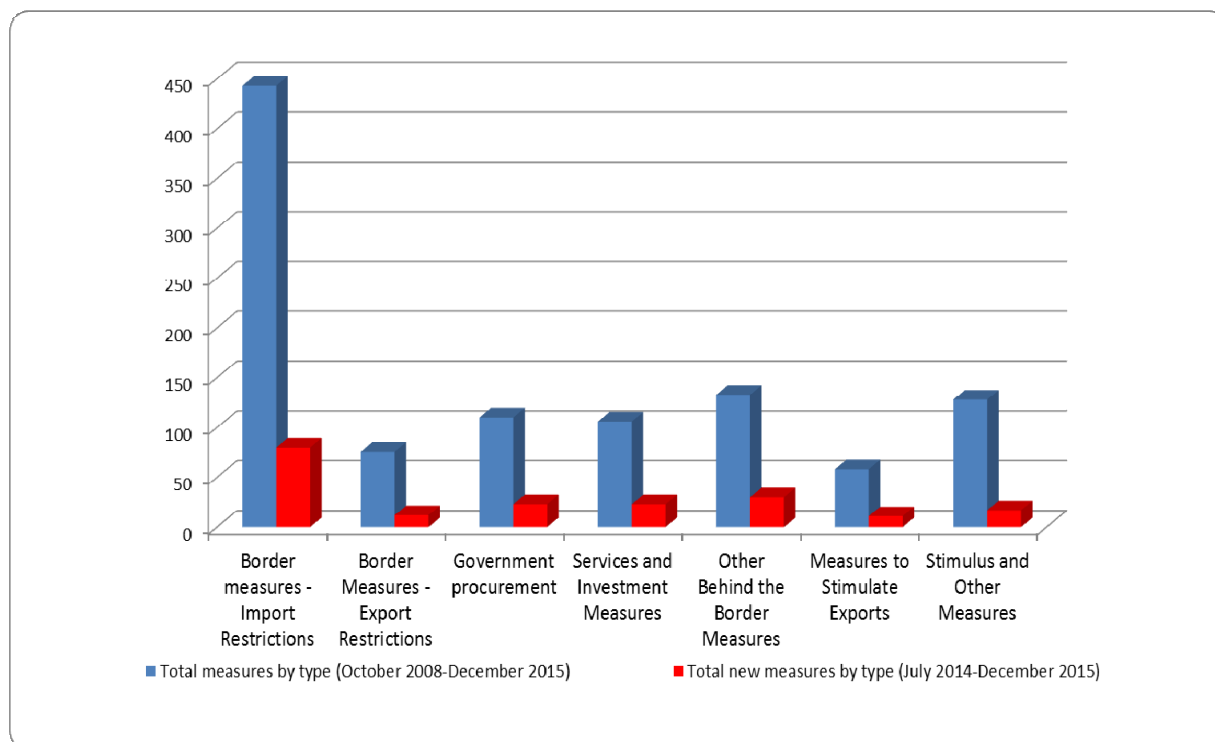


Table 2: Potentially trade-restrictive measures by type since October 2008

(b) Border Measures

As reflected in table 2, in terms of types of Relevant Measures applied, countries once more resorted mainly to **border measures directly affecting imports and exports**, typically through tariff increases, quantitative restrictions, import licensing or through outright trade bans. Over the 18-month period, the number of new **import measures was again much higher (80)** than the number of **export restrictions (12)**. When calculated on a 13 month basis for comparison with the last Protectionism Report, the number of new import measures remains stable, while the number of new export restrictions has been reduced by half. While this is in itself a positive development, the increase in border restrictions is still far from counterbalanced by the number of such measures removed.

(c) Behind-the-Border Measures

The Reference Period also shows a significant increase in the number of **new measures applied "behind-the-border"** (81). This suggests greater reliance on internal measures affecting foreign competition, which are often more difficult to tackle than border barriers. They include new measures in the field of government procurement (23) and in services and investment (27) (both in line with the last seven years average), as well as **31 "other"** behind-the-border measures. **China** once again resorted to the highest number of such behind-the-border measures, followed by **Russia**.

Russia issued the largest number of measures restricting **government procurement**, followed by the **US**. Compared to the previous reporting period, the number of such measures has significantly increased in Russia but decreased in the US. The continued protectionist trends in this area confirm the importance of ensuring the largest possible coverage of the Government Procurement Agreement (GPA) and of the EU's efforts in negotiating public procurement chapters in free trade agreements (FTAs), including TTIP. It also shows the importance of moving ahead with the proposed "International Procurement Instrument" (cf. section III.A.1).

In particular in the field of **services and investment**, **China** has adopted the highest number of restrictive measures, followed by **Indonesia**. The continued protectionist trend in many countries in this area underlines the need for an ambitious plurilateral Trade in Services Agreement (TiSA) as well as ambitious outcomes on bilateral services and investment negotiations, starting with the bilateral investment agreement with China (cf. section III).

Further, the **31 behind-the-border measures "other"** than those relating to services, investment or public procurement continue to represent an important part (**38%**) of newly adopted behind-the-border measures, although their number has decreased (by around 34%)

compared to the previous reporting period. They typically include discriminatory tax measures or other discriminatory provisions favouring local business or requiring local content, registration procedures and other standards and technical requirements. Such measures have mostly been observed in **China**, followed by **Argentina, Thailand, Indonesia** and **Algeria**. Also **Russia** follows an import substitution policy with a great number of measures containing local content requirements (LCRs), including in its subsidy schemes (cf. section II.F).

(d) Stimulus packages and other incentives

Finally, many countries continued to support their economic operators with new **subsidies, incentives and other measures (28)**. Although we can observe a decline in the number of such new measures compared to the previous monitoring period, this does not apply to the number of newly introduced stimulus measures aimed at boosting exports **(11)**, which remains stable. Such measures can have distorting competitive conditions globally and they are regularly raised at the WTO Committee on Subsidies and Countervailing Measures (SCM).

(e) Trade facilitating measures

In addition to monitoring protectionist tendencies, the Commission also took stock of measures potentially improving trade or investment conditions. In the Reference Period, **70 trade-facilitating measures** were identified, over 40% of them enacted by **China, Argentina and Mexico** together. On a 13 month basis, this number **(46)** is considerably higher than for the last monitoring period (36). This is a positive evolution as these measures contribute to the liberalisation of global trade flows and to the mitigation of existing protectionist trends, e.g., by reducing import or export duties, facilitating import procedures or relaxing foreign ownership limitations. However they do not qualify as eliminating existing obstacles in line with the G20 roll-back pledge (cf. footnote 2).

2. Protectionist trends in specific sectors

As observed in previous Protectionism Reports, many countries still retain barriers to the export of raw materials and discriminatory provisions relating to energy goods. During the Reference Period, existing export restrictions relating to **raw materials** were largely retained (e.g. in Algeria, Indonesia, Egypt, India and South Africa) and new ones enacted (e.g. in Indonesia, Malaysia and Ukraine). In the **energy** sector frequent use was made of LCRs (e.g. in Morocco, Nigeria, Turkey and South Korea). Tackling market access barriers and opening markets in these sectors remains a priority. The Commission has also committed⁷ to include an energy and raw materials chapter in each trade agreement as part of the broader work to

⁷ Commission Communication "Trade for All", footnote 3.

create a European Energy Union⁸ and in line with the raw materials initiative⁹.

Further, the digitalisation of the economy has brought new types of trade barriers. Since 2008, more than 35 Relevant Measures have been issued relating to the Information and Communication Technology (ICT) sector (mainly in China, India, Russia and Indonesia), of which more than 15 have been issued or implemented during the Reference Period. They often include localisation or LCRs. The Commission will use all available trade tools to tackle these challenges. Through trade agreements, notably FTAs and TiSA (cf. section III.A.1), it will seek to set rules related to ICT standards, e-commerce and cross-border data flows and tackle new forms of digital protectionism¹⁰. On the positive side, the recently concluded Information Technology Agreement (ITA2, cf. section III.A.1) will have a significant role in further eliminating customs duties on ICT products.

Finally, the acute worsening of global overcapacity in the **steel sector** has resulted in an increase of protectionist measures in this sector, in particular in the form of border measures (mainly duties), as well as in an increased use of Trade Defence Instruments (TDI), including safeguard measures (cf. section III.A.3.). The EU is also discussing with its partners bilaterally (notably with China) and within the OECD Steel Committee to tackle the root causes of the overcapacity problem. As true solutions are expected to take some time to emerge, this trend is likely to continue beyond the Reference Period. This is e.g. confirmed by the import licensing regime and quota for steel products introduced early 2016 in Algeria, the EU's second biggest steel export destination.

II. MAIN TRADE AND INVESTMENT BARRIERS MAINTAINED BY SOME OF THE EU'S KEY ECONOMIC PARTNERS ON 31 DECEMBER 2015

This section describes the most significant trade barriers in place for some of the EU's key economic partners. In line with previous TIBRs, this Report focuses in particular on Argentina/Brazil (Mercosur), China, India, Japan, Russia and the US.

A. ARGENTINA

While Argentina remains among the countries with the highest number of Relevant Measures enacted since 2008, the picture during the Reference Period is encouraging, with fewer such measures introduced than in previous periods and several positive developments following the entry into office of the new Argentine administration in December 2015.

⁸ Commission Communication "A framework strategy for a resilient energy union with a forward-looking climate change policy", COM(2015) 80.

⁹ Commission Communication, "The raw materials initiative", COM(2008) 699.

¹⁰ Cf. Communication "Trade for All" (footnote 3), p. 12.

Trade facilitating measures include the elimination in December 2015 of the "prior sworn import declaration" ("**DJAI**") for imports of goods (a major barrier over the last years) following a WTO ruling in a case initiated by the EU and others (DS438). However, the DJAI remains in place for services. Also, for goods it was replaced by a new Import Monitoring System (SIMI) and licence requirements (automatic for the majority of imports, but non-automatic for around 1400 tariff lines). In addition, importers of footwear and textiles must submit a sworn declaration of product composition. The Commission will closely follow these new measures.

Further, the new administration lifted most **currency** controls and allowed the peso to freely float with the aim of increasing inflows of foreign currency and investments.

It further abolished the system of **export licences** and most¹¹ **export taxes** on agricultural and industrial products (a long standing issue for the EU economy with regard to open and secure access to raw materials). Export taxes on soybeans and soy by-products were reduced. Finally, Argentina also modified the **luxury tax** that applied to vehicles, motorcycles and boats, eliminating direct discrimination against imported products. The modified tax will be applied on a non-discriminatory basis but may still affect certain (more expensive) imported cars more than those locally produced.

B. BRAZIL

The number of new Relevant Measures Brazil adopted during the Reference Period remained stable, but significant barriers persist. Brazil continues to resort to border measures as much as to behind-the-border measures, including in particular by providing discriminatory support to its local economy in a wide range of economic sectors.

Investment: some sectors, including media and communications, aviation, transportation, postal services, mining and health care, are still subject to foreign ownership limitations. The EU seeks to address these restrictions both bilaterally in the Mercosur negotiations, and multilaterally.

Taxes and subsidies conditional upon local content continue to apply in many sectors, specifically automotive vehicles, electronics, automated machinery and other related goods. The EU launched a WTO case against Brazil (DS472) on discriminatory tax advantages in the automotive, electronics and technology sectors, for which a panel was composed on 17 December 2014. This dispute has since been joined procedurally with a similar case launched by Japan (DS497). In July 2014, Brazil also reintroduced the "*Reintegra*" programme which provides export subsidies in the form of tax advantages to domestic companies that export 50% or more of their production. The programme now covers most of Brazil's exports. The

¹¹ Important exceptions include soybeans and soy by-products, biodiesel and seven tariff lines concerning ferrous waste and scrap.

Commission follows this issue closely with Brazil through the EU-Brazil Joint Committee Trade meetings, with particular focus on the method of calculating the tax credits. Its compatibility with the WTO Agreement on Subsidies and Countervailing Measures (SCM) is also being assessed.

Other tax discrimination: following a Supreme Court ruling on the tax calculation basis for social security taxes¹², Brazil in June 2015 increased the rates of these taxes for imported goods, with a higher increase for certain specific categories of products (e.g. pharmaceuticals, cosmetics and tyres) resulting in discriminatory treatment of imports and increased market protection. The EU continues to raise this with Brazil.

Procurement: Brazil maintains measures establishing preferential margins (from 8 to 25%, across a wide range of sectors) for certain national products in public tendering procedures. The Commission is tackling this issue in the context of its procurement strategy.

SPS: Brazil maintains long, complex and unpredictable approval procedures; e.g. relating to the approval of labels for products of animal origin, delays to perform audits, or costly pest risk analyses for plant products to be performed by the competent authority of Brazil (MAPA). These have resulted in an important and longstanding backlog of EU applications to market animal and plant products. Brazil also fails to apply international standards on regionalisation for plant and animal pests and diseases and often delays pre-listing of EU establishments wishing to export products of animal origin to Brazil. The Commission regularly raises such issues in its bilateral contacts (e.g. the yearly meetings of the EU-Brazil SPS Consultation Mechanism) as well as in the WTO SPS Committee.

Trade facilitating measures: On the positive side, the discriminatory ad rem system for internal **taxation of wines and spirits** was abolished on 30 December 2015. A 5% nominal tax rate discrimination in favour of cachaça against other spirits remains, but proposals for a higher discrimination margin of 13% were rejected in the face of objections from the EU and other stakeholders. Brazil also announced new legislation that should speed up and simplify its **label approval procedures**, expected to be adopted in 2016, and it relaxed the LCRs for **exploration of oil and gas** through a newly adopted incentives program. In the field of **SPS**, in 2015 there was significant progress regarding exports from the EU to Brazil of dairy, pork, fish, honey, beef and related products and of several plants and plant products, following political engagement in Brazil and the EU. While not yet engaged on an import/export structured dialogue (listing the legal and administrative steps and timelines to solve all pending market access applications and SPS issues), MAPA also announced market opening for additional products, scheduled audits in several EU Member States for 2015 and 2016 and undertook to address systemic issues and the long list of remaining applications.

¹² PIS ("Programa de Integração Social") and COFINS ("Contribuição para o Financiamento da Seguridade Social").

C. CHINA

China introduced more new Relevant Measures than any other country during the Reference Period, notwithstanding its commitment to increase market access for the private sector, including foreign companies¹³. Most of the new measures are behind-the-border measures, notably regarding services and investment.

EU companies continue to face numerous barriers in China, including relating to local partner requirements, market entry restrictions, approval processes, technology transfer as well as discriminatory post-establishment practices, for example in the field of technical regulations and standards.

National security requirements: Many of the new measures have been taken on the ostensible grounds of “**national security**”, including in the cyber domain. Examples include the National Security Law, the Anti-terrorism Law, the draft Cyber Security Law, the draft Law on Foreign NGO Management and measures taken in the context of “secure and controllable ICT” (in the banking and insurance sectors). Much of this legislation goes beyond essential national security concerns, contains broad and unclear definitions of national security that create legal uncertainty, oblige firms to hand over sensitive data to the authorities and generally risk imposing unnecessary restrictions on commercial activities. This is not consistent with China’s Third Plenum commitment to “*predictable and open investment conditions*” and can potentially reduce trade, investment and innovation in China.

The EU has repeatedly raised these issues with China bilaterally and has commented on the above legislation during public consultations. This appears to have had an effect in relation to the suspension of the guidelines on secure ICT for banking. However, the above concerns remain and the Commission continues to follow this closely.

Investment: Progress to open up sectors closed to **Foreign Direct Investment (FDI)** remains slow. Restrictions include joint venture requirements, restrictions on technology transfer as well as local content and administrative pre-approval requirements. Further, the draft 'Foreign Investment Law', published in 2015, contains some positive elements, but also tightens national security review screening and requires prior approval for investments above a certain threshold. Areas where foreign investment is specifically restricted appear to have remained largely unchanged with new restrictions in some areas. In October 2015, China announced a **nation-wide “negative list” system** which foresees the adoption of two lists of sectors where investment is prohibited or restricted: one list for domestic investors (and foreign investors from jurisdictions having an investment agreement with China) and another list for other foreign investors. The system is intended to be both simpler and more transparent since for sectors outside the list, in principle, there should be no prior approval for investment.

¹³ The Third Plenum of the 18th National Congress of the Communist Party of China Central Committee was held in November 2013. It sets China’s policy direction up to the year 2020.
http://www.china.org.cn/china/third_plenary_session/2014-01/16/content_31212602.htm

However this remains to be implemented and is still discriminatory. Also, considerations of national security can take priority.

The ongoing EU-China negotiations for an investment agreement focus mainly on investment market access and protection issues, including improving the regulatory environment. In 2015 negotiations had not yet entered into sector-specific areas.

Procurement: the EU continues to encourage China to enhance its market access offer for accession to the WTO GPA and to bring its legislation into line with it. In December 2014, China submitted a revised GPA offer. The EU welcomes the progress in terms of coverage at sub-central level but significant improvements are still needed, in particular with regard to the coverage of State-Owned Enterprises (SOEs).

Intellectual property: the Commission still has major concerns as regards patentability requirements, bad faith trade mark applications, protection for trade secrets, and the launch of competition cases against foreign IP holders. The administrative and judicial enforcement system in China remains problematic, particularly for foreign companies. E-commerce platforms have further aggravated China's severe counterfeiting problem. All these issues are raised bilaterally with China notably through the annual EU-China IP Dialogue and bi-annual IP Working Group.

Sanitary and Phytosanitary measures (SPS): China remains a very important market for EU's exports of agri-food products and offers a huge growth potential. EU companies face many SPS-related import measures in China, despite the very high EU food safety standards. This includes overly burdensome approval procedures, causing delays for years in some cases (notably for meats); country-wide bans without scientific justification (such as an over 15 years old ban on beef imports from most EU Member States, allegedly on BSE grounds); non-compliance with international standards; and country-wide bans following any outbreak of major diseases (such as avian influenza and African swine fever) inconsistent with international rules on regionalisation. In 2015, China also redrafted its Food Safety Law, in particular for imports of dairy products. The Commission has made submissions in relation to the relevant draft implementing rules with a view to preventing unnecessary restrictions. SPS issues are tackled through several bilateral dialogues.

Technical Barriers to Trade (TBT): For **medical devices** and **pharmaceuticals**, China's regulatory system should be aligned with international standards on issues such as clinical trials and registration requirements. Also, the registration process for new **cosmetics** ingredients should be improved and limited to higher risk ingredients. Concerning labelling of cosmetics by using stickers (so-called "overstickering"), it is positive that China suspended a measure aimed at prohibiting overstickering. The Commission addresses these issues through bilateral trade dialogues and sector-specific technical dialogues.

D. INDIA

India still features amongst the four countries with the highest number of new Relevant Measures.

Tariffs: It **raised duties** on many products including ICT, steel and motor vehicles. Regarding ICT, India effectively imposes a 10% customs duty on four groups of ICT products, claiming that they do not fall under the Information Technology Agreement 1 (ITA1). The Commission has raised the issue regularly with India, including in the context of the EU-India ICT Working Group and the Sub-Committee on Trade, and a Market Access Team has been set up at the EU Delegation in Delhi (bringing together the EU, Member States and stakeholders) to closely follow up on ICT issues. Relating to steel, in a possible attempt to limit the negative effects of global overcapacities, India imposed a provisional safeguard duty of 20%, increased customs duties for certain steel products and extended mandatory BIS certification (cf. TBT below).

SPS: Indian requirements appear disproportionate and often diverge from international standards. EU exports affected include **animal and animal products** (particularly bovine semen, pork), **plant and plant products, processed food and alcoholic beverages**. India is reviewing comments submitted by EU companies and authorities to its Draft 2015 Regulation on alcoholic beverages and the competent authority (FSSAI) accepted a dialogue with the EU and to meet European industry.

Further, in September 2015 India restricted imports of **apples** exclusively to the port of Mumbai, causing an increase of cost for EU exporters in reaching the final destination. India eventually withdrew the measure in January 2016, after the EU raised this issue bilaterally and in WTO Committees.

TBT: ICT and steel products as well as tyres continued to be affected by disproportionate conformity assessment requirements that do not seem in line with the WTO TBT Agreement. In particular, the proposed mandatory in-country security testing and certification of **telecom network elements** (postponed until April 2016) raises questions about test methods, costs and delays. Further, the Bureau of Indian Standards' (BIS) mandatory certification regime for 15 **steel** products was extended to 21 additional steel products and to three stainless steel products, placing an additional strain on EU steel industry in the form of burdensome and lengthy conformity assessment procedures and factory inspections. With regard to **tyres**, marking fees and bank guarantee requirements continue to be key barriers for EU exporters. Also the new BIS scheme for testing and inspection for certification of **cars and pneumatic tyres** for passenger cars introduces the concept of 'control unit' (5,000 tyres of the same family) and requires testing of every tenth control unit. This is an improvement compared to the previous requirement of 3-monthly Conformity of Production (COP) tests on all sizes of tyres imported to India, but is still very burdensome. The EU addressed this with India and

requested notification of the measure to the WTO. In 2015 EU companies also experienced TBTs in the implementation of the Indian liberalisation reform in **retail and insurance services** and relating to the marketing and labelling of **alcoholic beverages**.

The Commission raises these NTMs regularly in the WTO TBT and SPS Committees, bilaterally in the relevant EU-India Working Groups and at the EU-India Sub-Commission on Trade. Also close interaction is maintained with EU Member States and stakeholders both in Delhi and in Brussels.

Procurement: no further substantial progress can be reported with regard to the implementation of the Preferential Market Access policy for domestically manufactured electronic goods in public procurement.

Intellectual Property: **effective patent protection** in India remains difficult. The reasons include restrictive patentability criteria, such as the overly restrictive definition of "inventive step" to deny patent protection for innovative pharmaceuticals that build upon pre-existing products, combined with difficulties in enforcing patents and extremely broad criteria for granting compulsory licences or for the revocation of patents. This affects pharmaceuticals, chemicals and other sectors where local innovation is being promoted. India has so far declined the EU's calls for a regular IP-dialogue (in accordance with a specific 2005 agreement), but the Commission continues to channel its concerns through other bilateral contacts, including the EU-India Sub-Committee on Trade.

Investment: on **multi-brand retail**, the new Indian government did not withdraw the existing 51% FDI cap (despite announcement during elections that it would close this part of retail from FDI), but left its implementation up to the discretion of each single Indian State, without ensuring enforcement from the centre. This *de facto* restricts EU investments in the majority of Indian States. On the positive side, the 30% LCR for FDI in **single brand retail** (to be achieved within five years from receipt of the first FDI tranche) was relaxed in November 2015 and the applicable condition should be 30% LCR in five years as of the start of business operation. The current text of the notification states that the 30% LCR should be achieved immediately upon start of business operations, but the competent ministry has promised to correct this. Also, following regular discussions between the EU and relevant Indian authorities, single brand retailers are allowed to sell online since November 2015.

E. JAPAN

The EU seeks to address the numerous longstanding market access barriers (including tariffs, non-tariff measures (NTMs - i.e. TBT and SPS) and public procurement restrictions) in its comprehensive FTA negotiations with Japan. This has already had some concrete results:

NTMs: Some TBT/SPS barriers (e.g. regarding organic food, liquor wholesale licensing) have already been resolved. On some others for which Japan committed to act during the first year

of negotiations, significant progress can be reported, including on the adoption of **international standards** (e.g. pharmaceuticals, food additives, medical devices authorisation procedures and automotive standards on the basis of UNECE regulations). Further, by 31 December 2015 Japan had lifted its long-standing ban on **beef** (based on an alleged BSE risk) for four EU Member States and application procedures were at an advanced state for three other Member States. Discussions also continue regarding the restrictions on imports of **pig meat and pig meat products** from certain EU Member States that Japan still maintains.

In general, negotiations on NTMs continue on the basis of a second list submitted to Japan in December 2014. This list includes many outstanding SPS-related measures, such as the approval of food additives. Other possible NTMs are addressed in the context of specific FTA chapters, such as subsidies for which disciplines are being discussed within the competition chapter.

Procurement: The EU is also negotiating the further opening of the Japanese public procurement market, including its railway market. As part of the discussions on the so-called "one-year package", Japan has already taken concrete measures to increase the transparency of its railways procurement market. Discussions now continue with the objective of improving market access for EU companies, notably by addressing the so-called "Operational Safety Clause", which Japan can invoke to avoid public tendering procedures.

F. RUSSIA

EU trade policy vis-à-vis Russia focusses on solving a range of trade restricting measures that Russia has recently put in place, including some that breach its WTO commitments. After China, Russia introduced the highest number of new Relevant Measures during the Reference Period, resorting mostly to measures directly at the borders.

SPS: Russia introduced 10 new SPS-related import bans during the Reference Period. The EU has an ongoing WTO case against Russia's import restrictions on live pigs, pork and certain pig products originating in the EU (DS 475). On 7 August 2014 Russia imposed a new, politically motivated, ban on agricultural products and foodstuffs from the EU, applying to countries – including EU Member States – that took sanctions against Russia in the context of the Ukraine crisis. Overall losses for EU exports have been partially compensated by increased exports to China, South Korea, Hong Kong, Turkey and the US. But certain Member States and sectors have been hit hard (e.g. dairy products sector in Finland and in the Baltic countries).

Tariffs: Russia's tariffs on paper and paper products, appliances (such as refrigerators) and palm oil appear to violate Russia's WTO bound tariff commitments. On 31 October 2014, the EU launched a WTO case challenging such tariffs (DS485). On 15 September 2014, it also launched a WTO case (DS479) against the illegal levy by Russia of anti-dumping duties on light commercial vehicles from Germany and Italy.

TBT: Some of the Russian technical regulations, now adopted at the level of the Eurasian Economic Union, impose overly burdensome conformity assessment requirements that are not in line with international standards. The Commission is particularly concerned about two: the draft technical regulation on alcoholic drinks safety (in particular its provisions on beer, wine and hard liquors) and the draft amendments to the regulation "On safety of products for children and adolescents". The Commission has raised concerns regarding these regulations bilaterally and at the WTO TBT Committee and has requested Russia to ensure sufficient time before entry into force in order to allow manufacturers to adapt.

Subsidies: Russia adopted a number of **discriminatory subsidy programmes** favouring Russian producers, in particular in the car sector (subsidies with LCRs) and in the form of subsidies to producers of farm equipment and agricultural machinery under local content conditions. This is detrimental for EU exporters of cars and agricultural machinery (in particular of combine harvesters) which have a strong interest in the Russian market. The Commission has addressed this several times bilaterally and in WTO committees.

Procurement: Russia adopted a series of **sectorial measures** during the Reference Period restricting access to public procurements for non Russian companies. Russia has not signed the GPA, but this series of measures is likely ultimately to be economically counterproductive. It also adopted legislation aimed at formalizing the policy of giving **preference to Russian goods** in procurement by Russian SOEs and investment projects (including with private companies) with a minimum of 10% State participation.

G. UNITED STATES (US)

For the US, market access barriers are mainly addressed in the ongoing TTIP negotiations.

Procurement: After Russia, the US introduced the largest number of new procurement restrictions during the Reference Period. "Buy American" restrictions at federal, state and local levels still cover a large portion of public purchasing.

Intellectual property (IP): EU companies face difficulties in protecting IP rights, particularly EU geographical indications (GIs) in the wine, cheese and meat sectors.

SPS/TBT: The US still maintains several long-standing TBTs (such as third party certification or local standard requirements in certain sectors, notably engineering) as well as SPS import restrictions on meat (sheep, beef and goat) and on egg products, as well as excessive delays in processing import applications by EU companies for certain animal and plant products.

The TTIP negotiations provide an important opportunity to remove these restrictions, achieve a better protection for EU GIs in the US and obtain commitments to process SPS applications more quickly.

Subsidies: During the Reference Period, the EU launched a new WTO case against the US concerning subsidies granted to Boeing (DS487).

III. EU STRATEGY TO ADDRESS TRADE AND INVESTMENT BARRIERS

A. MULTILATERAL AND PLURILATERAL TRADE FRAMEWORK AND NEGOTIATIONS

1. Multilateral and plurilateral trade negotiations

The continuous increase in the number of trade restrictions world-wide and the limited roll-back as described above underline the importance of a strong multilateral trade framework that can effectively address such protectionist measures. The EU therefore continues to be a strong supporter of furthering the multilateral trade agenda and disputes resolution system, which remain the cornerstone of EU trade policy¹⁴.

In this context, the **WTO "Nairobi" package**, agreed at the 10th WTO Ministerial Conference of 15-18 December 2015 ("MC10") delivered a very significant deal aimed at ensuring fairer global trade and supporting development. Agreement was reached among others on **eliminating subsidies and other schemes unfairly supporting agricultural exports**; ensuring that food aid for developing countries is given in a way that does not distort local markets; seeking to simplify the conditions that exporters from the poorest countries have to meet so that their products benefit from trade agreements (rules of origin) and giving more opportunities for businesses from the poorest countries to provide services in other WTO member countries. The outcomes achieved on least-developed country specific issues, as well as the decisions on the accessions of Afghanistan and Liberia showed the attentiveness of WTO to the needs of its most vulnerable members. Moreover, MC10 saw the conclusion of the **Information Technology Agreement (ITA2)**, which eliminates customs duties on more than 200 high-tech products (including semi-conductors, medical equipment, game consoles and GPS devices), extending the 1996 ITA to cover EUR 1.3 trillion in global trade.

On 5 October 2015, the EU ratified the **WTO Trade Facilitation Agreement (TFA)**, the most significant multilateral trade deal since the 1990s. The TFA is expected to significantly simplify and modernise customs procedures around the world. This should help in particular small businesses access new export opportunities. It should also play a significant role in increasing developing countries' involvement in global value chains.¹⁵

At the plurilateral level, negotiations on a **TiSA** progressed well and are expected to speed up in 2016. TiSA is currently being negotiated by 23 WTO members (including the EU), which

¹⁴ Cf. Communication "Trade for All" (footnote 3), pp. 27-29.

¹⁵ <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1374>

together account for 70% of world trade in services. It aims at liberalising trade in services beyond the GATS in areas such as licensing, financial services, telecoms, e-commerce, maritime transport, and professionals moving abroad temporarily to provide services. Services account for some 70% of EU GDP and employment and represent an increasingly important part of international trade. The TiSA has significant potential to help EU businesses export services.

Since July 2014, the EU and 16 other WTO Members have also been negotiating an agreement to liberalise global trade in environmental goods (the "**Environmental Goods Agreement**" or EGA), with the aim of removing barriers to trade and investment in goods, services and technologies that can contribute to protecting or improving the environment. At present the talks focus on removing tariffs on a broad range of environmental goods. The EU's ambition is also to include services related to exports of environmental goods (e.g. repair and maintenance of wind turbines) and to tackle non-tariff barriers, such as LCRs or restrictions on investment. The EU being a world leader in exports and imports of environmental goods, the EGA could create significant opportunities for EU business.

The revised **GPA** entered into force on 6 April 2014. While the ratification process is ongoing, discussions continue on upcoming accessions to the Agreement, in particular those of China and Australia. The EU participates in these discussions with the aim to ensure the largest possible coverage.

In addition, on 29 January 2016 the Commission adopted an amended proposal for an "**international procurement instrument**"¹⁶, a tool to promote further opening of public procurement markets around the world. While the EU is an open economy, many of the EU's major trading partners apply restrictive practices discriminating against EU businesses. Many such new measures were again adopted during the Reference Period (cf. section I.B.1.(c)). The new proposed tool should allow the Commission to initiate public investigations in cases of alleged discrimination against EU companies in third country procurement markets. If the discrimination is confirmed, the Commission could invite the country concerned to engage in consultations on the opening of its procurement market. If this fails, bids by companies from the country concerned for EU procurement tenders could be subject to a price adjustment mechanism, thereby giving bids from other non-EU and EU companies a competitive advantage. At the end of 2015, the proposal was under discussion in the Council. It should be adopted by ordinary legislative (co-decision) procedure.

¹⁶ Amended proposal for a Regulation of the European Parliament and the European Council on the access of third-country goods and services to the Union's internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries, COM(2016)34 final, 29.01.2016.

2. **WTO Committees and Dispute Settlement proceedings**

The EU remains among the most proactive WTO Members in WTO Committees dealing with TBT, SPS, SCM, Import Licensing Procedures and Trade Related Investment Measures. These committees are effective fora for highlighting EU concerns, informing, raising awareness and building alliances with other affected WTO Members and for resolving issues or - if necessary - preparing the grounds for further enforcement action.

WTO Dispute Settlement (DS) remains the strongest option when other enforcement tools have proven to be insufficient. Although such proceedings take considerable time and resources, they can tackle significant barriers in a systematic way and increase legal certainty in the longer term.

In the Reference Period, the EU launched two WTO DS cases: one against Russia on tariffs (DS485) and one against the US concerning subsidies granted to Boeing (DS487). WTO panels were also established in a dispute against Brazil regarding tax advantages for domestic producers of automotive vehicles, electronics and automated goods (DS472) and in two disputes against Russia on certain measures concerning the importation of pigs and pork (DS475) and on anti-dumping duties on light commercial vehicles (DS479). Further, proceedings were concluded in an important dispute on Argentina's import restrictions (DS438) with a positive outcome for the EU (cf. section II). Another important example of a successful case (DS 432) launched by the EU concerns China's restrictions on the export of rare earths, where China decided in January and April 2015 to abolish respectively its export quotas and export duties following a WTO ruling adopted by the DS Body in August 2014.

3. **Trade Defence Instruments (TDI)**

The use of TDI (anti-dumping (AD), countervailing measures (AS) and safeguards) is subject to WTO rules. Such measures are not listed in this Report as potentially protectionist, as they aim precisely at correcting anticompetitive behaviour or at reacting to sudden increases in imports causing injury. At the end of the Reporting Period, the number of TDI measures in force against the EU or its Member States remained stable (**151**). The most active countries imposing such measures were **Brazil, India, Australia, Indonesia, Morocco and Turkey**. Of particular concern to the EU is the increased imposition of safeguard measures (**24** during the Reporting Period). Such measures apply against all countries of origin, whether or not they cause any injury to the domestic industry, and without demonstration of the existence of unfair trade practices.

The Commission continues to actively monitor trade defence cases initiated by third countries against EU companies¹⁷ in order to ensure that any measures are applied in strict observance

¹⁷ The Commission prepares every year a detailed analysis of third countries defence actions against EU companies, published at: <http://ec.europa.eu/trade/policy/accessing-markets/trade-defence/actions-against-exports-from-the-eu/>.

of the relevant WTO rules. E.g., during the Reference Period, the EU initiated a WTO DS case against Russia's unfair levy of AD duties on light commercial vehicles (cf. section II.F).

Conversely, the EU also applies TDI against unfair third country trade practices. End of 2015, a total of **97** definitive measures were in place (86 AD and 11 AS). Most affected by those measures were the steel and chemicals sectors. The country most targeted was China with **56** measures in place. However, only less than 1% of EU's total imports are affected by TDI, making the EU a very moderate user of TDI globally.

In light of the current significant overcapacity and strong pressure on prices in the steel sector, an increased resort to TDI relating to steel products could be observed as from the second half of 2015. By the end of 2015, out of the **33** definitive measures in force concerning steel (30AD and 3AS), **14** were targeting steel imports originating in China (13AD and 1AS) and other investigations are ongoing. To face the steel crisis, other countries (**US, Morocco and India** in particular) likewise adopted such measures, including safeguards (**India**).

B. BILATERAL TRADE AGENDA

1. Negotiations

The EU aims at pursuing bilateral and regional agreements in a manner that supports returning the WTO to the centre of global trading activity¹⁸. It has the most ambitious bilateral trade agenda in the world, with preferential trade agreements in place with 52 countries and negotiations for FTAs and Economic Partnership Agreements (EPAs) ongoing with 80 countries, including with some of its key economic partners (the US, Japan, Mercosur and India – although negotiations with the latter country are currently stalled). It is also negotiating investment agreements with China and Myanmar¹⁹. While FTAs in force covered less than a quarter of EU trade ten years ago, they now cover more than a third of EU trade and will cover two thirds if and when all ongoing negotiations are concluded.

Bilateral and regional negotiations are very important in terms of removing trade barriers and opening markets. This is so both during negotiations, as well as upon their conclusion. E.g., even before official launch of the ongoing FTA negotiations with **Japan**, substantial work started on NTMs, which has led to concrete results during negotiations, such as on the issue of the liquor wholesale licensing (cf. Section II).

¹⁸ Cf. Communication "Trade for All" (footnote 3), pp. 29 et seq.

¹⁹ For an overview, cf. <http://ec.europa.eu/trade/policy/countries-and-regions/agreements/>.

Furthermore, the FTA negotiations with **Vietnam** were concluded in December 2015²⁰. In line with the usual procedure, the text of the FTA will now be subject to a legal review and translated into all EU languages before being presented to the Council and the European Parliament for ratification. During this period, the Commission is already working closely with Vietnam to identify legislation that needs to be adopted or amended by either side to bring it in line with the new FTA. Several long standing market access barriers are expected to be removed as part of this process, allowing rapid results when the FTA enters into force (cf. Commission's website: "[overview of potentially trade-restrictive measures December 2015](#)").

Also the negotiations between the EU and **Ecuador** of a Protocol of Accession to the EU-Colombia Peru FTA were concluded on 17 July 2014 and the Protocol is now to be signed and ratified by the Parties. Similarly, the negotiations of the EU-Canada FTA (CETA) were concluded on 26 September 2014 and of the EU-Singapore FTA on 17 October 2014.

2. **Implementing and enforcing existing FTAs**

As underlined in the Communication "Trade for all", in order to ensure that FTAs, once they enter into force, result in the promised market opening and business opportunities on the ground, it is crucial to ensure their fullest implementation. Currently, this is done mainly through the MAS (cf. section C.), by making use of the specific structures set up under the FTAs (such as specific trade committees allowing early exchange and diplomatic resolution of market barriers and, as a last resort, specific DS mechanisms) as well as of the general existing structures such as WTO Committees or WTO DS²¹, if more appropriate.

The EU's FTA with **South Korea**, which has been applied since 1 July 2011, shows the importance of effective monitoring to ensure the fullest possible implementation of the FTA²². In the period covered by this Report, a number of FTA implementation and market access issues could thus be solved. E.g., in the financial services area, following continued pressure by the EU and in line with Korea's FTA commitment, a new framework was enacted in June 2015 authorizing EU financial institutions to transfer data abroad and to outsource IT facilities, facilitating greatly their operations in Korea. Moreover, concerning organic food, an equivalence arrangement that was finalised in autumn 2014 entered into force in February 2015 and has been smoothly implemented since. Further, in the automotive area, following EU intervention, since summer 2015 the Korean authorities accept "Euro VI" approved

²⁰ Cf. <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1449>.

²¹ So far, enforcement action has taken place exclusively through WTO channels, but FTA enforcement channels may gain importance as more FTAs with specific DS mechanisms enter into force.

²² For the latest implementation report, cf. <http://ec.europa.eu/trade/policy/countries-and-regions/countries/south-korea/>.

vehicles without additional excessive requests for information. Nevertheless, market access issues persist in this sector and continued close monitoring continues to be important.

Also the implementation process relating to the **EU-Colombia Peru FTA**²³ works well. Some concerns remain, e.g., in the area of SPS for Peru and on taxation of spirits in Colombia and Peru. On the positive side, Colombia presented in June 2015 a single procedure covering all the necessary steps to authorise EU exports for animal products. This simplifies formalities imposed on EU exports and reduces response times, facilitating EU market access. Further, 526 Colombian and 1133 Peruvian companies, out of which a significant number of SMEs, exported for the first time to the EU since the entry into force of the FTA.

The start of implementation of the **EU-Georgia** and **EU-Republic of Moldova Deep and Comprehensive FTAs (DCFTAs)** on 1 September 2014 has enabled close cooperation with business organisations and Member States to support trade governance reforms and intensify work on addressing trade barriers in those countries. Whereas the business climate in Georgia is largely favourable, the Commission worked intensely on resolving several business concerns in the Republic of Moldova (e.g. on energy, insurance, customs formalities, ground-handling). Implementation of the DCFTA reform agenda is expected to ensure a level-playing field for EU and local business in those countries.

Effective monitoring and implementation of FTAs thus create new market access opportunities and contribute to the removal of existing barriers.

C. THE MARKET ACCESS STRATEGY: TOWARDS AN ENHANCED PARTNERSHIP

The Market Access Strategy (MAS)²⁴ complements the EU's multilateral, plurilateral and bilateral trade negotiations by ensuring that trade opportunities created by trade agreements (both FTAs and the WTO agreements) are translated into real market access for European exporters. The Strategy is based on a "Market Access Partnership" (MAP), consisting of regular coordination between the Commission, Member States and business both in Brussels and in third Countries. The MAS has proven to be an effective tool for gathering information on trade barriers and for prioritizing and defining a common barrier removal strategy. That strategy can range from diplomatic demarches, discussions within specific committees or structures within the WTO or of FTAs to mediation and formal DS.

In light of the ever expanding bilateral trade agenda and the number of FTAs that will enter into force over the next few years, the MAS will play an ever more important role in pursuing

²³ The second Annual report on the implementation of the EU-Colombia Peru Agreement was adopted on 10.02.2016 (<https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-58-EN-F1-1.PDF>).

²⁴ Cf. Commission Communication on "Global Europe – A stronger partnership to deliver market access for European exporters" of 18 April 2007, COM(2007) 183 final ([Market Access Strategy](#)).

the EU's trade interests and rights. Ensuring that EU FTAs are properly implemented and enforced will be crucial in order to ensure that they translate into actual market access and business opportunities for EU exporters abroad. This is, however, not an exclusive task of the Commission, but a shared responsibility of the Commission, the Member States, the European Parliament and stakeholders. In its 2015 Communication "Trade for All", the Commission has therefore proposed an "enhanced partnership" with Member States, the European Parliament and stakeholders for the implementation of trade agreements. This will extend and reinforce the current "MAP" beyond the removal of obstacles to trade and investment. It will cover the implementation of FTAs, including reinforced awareness raising and customs cooperation activities, trade facilitation and sustainable development.

CONCLUSION

The slight slowdown of world economy and relatively weak global trade activity in 2015 were accompanied by an increased resort to potentially trade restrictive measures during the Reference Period July 2014-December 2015 and by a very limited roll back of previously-introduced measures. The stock of trade restrictive measures enacted since 2008 thus continues to grow. As in previous years, emerging countries have resorted to restrictive measures to the greatest extent, but also developed countries, including G20 members, continue to apply such practices, despite their repeated pledge not to adopt trade-protectionist measures and to roll back existing ones.

Also some of the EU's key economic partners analysed in this Report continue to maintain a large number of trade barriers. For the US and Japan, the EU seeks to address these in the context of the FTA negotiations and some could already be resolved, in particular for Japan. With still many significant barriers remaining, some positive developments could further be noted for the Mercosur countries (for Brazil and in particular for Argentina) following EU efforts bilaterally, multilaterally and in the context of the FTA negotiations. For India progress remains difficult and market access barrier removal remains most challenging in China and Russia, with only limited successes in the Reporting Period.

Against this background, effective further progress in the multilateral, plurilateral and bilateral trade agenda continues to be crucial, while it is at the same time essential to increase the focus on effective implementation and enforcement of trade agreements. The EU Market Access Strategy with its Market Access Partnership between the Commission, Member States and stakeholders, remains of central importance in this regard. In light of the ever expanding bilateral trade agenda, an "enhanced partnership" with Member States, the European Parliament and stakeholders is proposed with a view to join forces in the implementation of trade agreements, ensuring that they translate into actual market access and business opportunities to the maximum extent.

At the same time, it is necessary to continue to call upon more anti-protectionist determination at global political level, keeping in mind the positive effects of open markets on innovation, productivity, economic growth and prosperity.