

## client alert

INTERNATIONAL TRADE | BRUSSELS |

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### TBR: ANOTHER EUROPEAN TOOL TO ENSURE A LEVEL PLAYING FIELD IN INTERNATIONAL TRADE

The European Commission initiated on 7 July 2017 an investigation against Turkey under the "Trade Barrier Regulation" (TBR).

Although Trade Defence Instruments (notably, antidumping and anti-subsidy) aimed at protecting the European industry against unfair trade are well known and largely used by businesses, such is not yet the case of the TBR.

However, the TBR is the only channel through which industries and individual companies can file complaints directly with the Commission against trade practices by foreign countries that violate international rules and have negative effects on their interests in the EU market as well as in third country markets. Practices concerned may be customs practices like in the present case, as well as any restrictive or discriminatory practices that impact the EU industry domestically or abroad.

While industries and companies harmed by unfair foreign trade practices may ask their government directly to request action from the Commission against such practices, there is no guarantee that their request will be accepted by their government and, ultimately, by the Commission which has to take into account the views, often divided, of Member States.

Compared with this uncertain procedure, the key advantage of the TBR is that, once a complaint by an industry or company has been lodged and contains sufficient evidence as to the existence of an illegal practice and of the negative effects of such practice, and shows that an investigation would be in the Union's interest, the Commission must investigate to determine whether these allegations are founded. Should it come to such a conclusion, the Commission, while it has a significant power of appreciation as regards the need for action and the type of action that would be appropriate, would then be under considerable pressure to act.

Where industries or companies complain through their government, rather than through the TBR, political considerations often play a key part in the decision as to whether the case should lead to action by the Commission, and in particular whether it should be taken to the WTO dispute settlement body. In this event, obtaining redress is an uphill battle for industries, all the more so since the Commission tends to be overly cautious regarding the use of WTO dispute settlement and only resorts to it when it feels fully confident that it will prevail. Additionally, industries themselves, for a variety of reasons but primarily for the diversity of interests among their members, are often hesitant to initiate requests for action against foreign exporters or governments that require time, effort, and resources.

As a consequence, the EU has, over the years, only made a limited use of the WTO dispute settlement mechanism and the dispute settlement mechanisms contained in its bilateral agreements, leaving public opinion as well as businesses with the feeling that the Commission is not making use of all available tools to protect the European industry from the effects of unfair foreign trade practices.

**With certain sectors having suffered (and still continuing to suffer) from considerable damage deriving from such practices, the EU can no longer afford to remain passive *vis-à-vis* countries that violate international rules. The TBR constitutes in this respect an underused instrument of which businesses (individual companies or European associations) should avail themselves more actively, with potential significant benefits for them. It also belongs to the European industry to put pressure on the Commission to resort more systematically to the dispute settlement of the WTO and to bilateral agreements, thus making threats of action against unfair foreign practices more credible.**

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