

fieldfisher

# Trump, Brexit, China and so much more

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Everything you wanted to know about the new EU trade rules and other developments in international trade

18 October 2018

# Fieldfisher at a glance

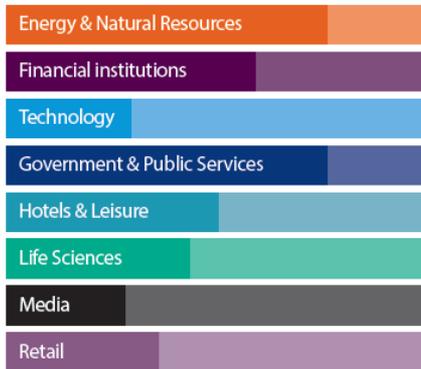
## Key facts

24  
Offices

1,300+ People   290+ Partners   700+ Lawyers

Amsterdam  
Barcelona  
Birmingham  
Beijing  
Belfast (2)  
Bologna  
Brussels  
Düsseldorf  
Frankfurt  
Guangzhou  
Hamburg  
London  
Luxembourg  
Madrid  
Manchester  
Milan  
Munich  
Paris  
Rome  
Shanghai  
Silicon Valley  
Turin  
Venice

## Our sectors



- Forward-thinking law firm, **technology-led**, not corporate-led.
- Growing network of European offices supporting an international client base alongside our US and China teams.
- More than **700 lawyers across Europe, + 240 partners**.
- **24 offices**: presence in Amsterdam, Barcelona, Beijing, Belfast, Birmingham, Bologna, Brussels, Düsseldorf, Frankfurt, Guangzhou, Hamburg, London, Luxembourg, Madrid, Manchester, Milan, Munich, Paris, Rome, Shanghai, Silicon Valley (Palo Alto), Turin and Venice.
- 2017 : **Law Firm of the Year by the British Legal Awards**
- 2018: **Law Firm of the Year by the Legal Business Awards**



## Our Brussels office

- Founded in April 2007
- Full service
- Fast growth (Y0-5), Consolidation (Y5-10), Growth in key areas (Y10-...) 42 lawyers including 18 partners
- Strong focus on International Trade and EU law, including trade defence, WTO law, customs, export control, sanctions, product safety and energy, Data Privacy, IP, competition ...
- Clients include start-ups, emerging growth companies, associations, established SMEs and listed corporates



### Areas where we can help

Arbitration & Mediation  
Commercial litigation  
Competition  
Corporate & M&A  
Data protection & privacy  
Employment & benefits  
Energy  
Environment  
EU Regulatory  
Intellectual Property  
International trade  
New technologies

## Established rules and approaches are changing fast

- Major recent revisions to EU trade defence rules
- New trade tools or revision or better use of existing tools?
- World Trade Organisation reforms
- Addressing the impact of EU regulations on trade
- Development of EU's bi- and multi-lateral relationships
- Change in basic EU orientation? “We are not naïve free traders!”

## Recent revisions to EU trade defence rules – NME rules

- **Methodology to address significant market distortions:** from Analogue Country methodology to Reference Country methodology (no more reference to NME's)
  - **Market distortions must be proven in complaint:** re China, Commission report exists but need to link the systemic distortions to product concerned  
(Reports for other countries? Report on Russia coming soon...)
  - **New methodology is not producer-specific:** NV no longer established based on actual sales prices and cost data of one or more AC producers
  - **NV is constructed** on basis of information re manufacturing costs (raw materials, labour, energy, ...), SG&A and profit which is publicly available in RC

## Recent revisions to EU trade defence rules – TDI modernisation

- **Non-application of the lesser duty rule:** always in anti-subsidy cases and possible in anti-dumping cases if major raw material distortions exist
  - High threshold: distortion of one raw material must be at least 17% of COP
  - Restricted set of qualifying distortions: closed list in Article 7(2a)
  - Additional Union interest test

## Recent revisions to EU trade defence rules – TDI modernisation (2)

- **Adjustments will allow higher injury margins**
  - **Minimum target profit: 6%** for EU producers
  - **Target price of EU producers:** possible to take into account additional costs
    - Actual costs of production which result from compliance with multilateral environmental agreements to which the Union is a party or from International Labour Organisation Conventions
    - Future costs which result from those agreements and conventions, and which the Union industry will incur during the application period of the measures

## Recent revisions to EU trade defence rules – TDI modernisation (3)

- **Change to standing requirement:** definition of “major proportion” of Union Industry de-linked from 25% threshold
- **Registration of imports:** possible from beginning of the investigation and on Commission’s own initiative
- **“Shipping clause” introduced:** pre-disclosure of provisional measures
- AD investigations possible for **continental shelf or exclusive economic zone**
- **Shorter procedure in AD investigations** for both provisional and definitive stages
- AS : Commission can take into account **subsidies found during investigation**
- **Refund of duties paid** during expiry review if measures are not extended

## New trade tools or revision or better use of existing tools?

- **Global trade environment** has changed much since WTO founded (1995)
  - No longer just country A exports to Country B: **global supply chains** with manufacturing with components from several countries, **borderless technology** (cloud computing)
  - Major **impact of technology on manufacturing** : Industry 4.0 and IOT
  - Greater concern to account for **social and environmental costs**
  - Greater impact of **State-run trade-disruptive economic model**: GOC direction of strategic industries (including via SOE's) & OBOR

## New trade tools or revision or better use of existing tools? (2)

- A number of **trade tools exist but they are not adequate/sufficient** for today's challenges
  - Trade defence tools (AD, AS, safeguards)
  - Other WTO rules re non-tariff (regulatory) barriers, IPR protection, investment measures
- **Adapt existing tools:** AD done, now focus is on AS
- **Devise new (EU-wide) tools**
  - Investment screening regime
  - Rules on public procurement
  - Rules on SOE activities

## World Trade Organisation reforms

- Over last 20 years, **WTO rules have become less relevant** to challenges of global trade realities (negotiations of new rules are stagnant) **while WTO jurisprudence has taken activist approach**
  - US blocks appointment of WTO Appellate Body members to protest against “gap-filling”, and uses “national security” & Section 301 (re IPR violations) to impose additional duties
  - Big issue is China’s failure to meet its WTO obligations (including its WTO Accession Protocol) (e.g. transparency obligations re subsidies) and inability of WTO rules to address adequately distortions from State-directed economic model
- **US and EU pursue reform on separate tracks, but also US and EU together with Japan**
  - EU launched working group with China : outcome of July 2018 summit, first meeting in October 2018
  - Trilateral initiative : focused on subsidies, SOE’s, transparency

## Trade impact of EU rules re labour, products and environment

- EU leads in advocating sustainability : but **unilateral regulations create uneven playing field**
- New trade defence provisions allow **consideration of environmental and labour standards and costs** in certain circumstances (e.g. choice of Reference Country)
- **Sustainability chapter in FTA and EPAs**
  - “No trade deals with countries that are not **parties to the Paris Climate Agreement**”  
(French initiative backed by the EU)
  - **But limited in scope and issues of sanctions, enforcement**
- Pending broader adoption of sustainability rules, EU needs to **consider trade impact of non-trade-specific EU regulations** (e.g. REACH), and **ensure level playing field**

## The EU's relationship with Third Countries

- **Stagnation of WTO talks led to flood of bi- and multi-lateral trade deals** : EU has FTAs in force with more than 70 countries accounting for 40% of the world's GDP (and new/ongoing negotiations with many others, including India, Indonesia, Mercosur)
  - EU-Japan Economic Partnership Agreement : finalised December 2017, awaiting approval of Council and EP
  - EU-Vietnam FTA : completed in December 2016, entry into force is expected in 2019
  - EU-Canada CETA : entered into force provisionally in September 2017, presently with EU MS for ratification
- **Brexit : with or without a Withdrawal Agreement, the UK and EU will negotiate trade arrangements in 2019**
- **US : talks on regulatory cooperation (zero tariff deal?)** (June 2018, EU retaliated against US steel and aluminium tariffs)
- **China** : investment agreement negotiations are difficult; proposed draft EU legislation would allow Member States to better control FDI in strategic EU sectors
- **Cambodia and Myanmar** : EU moves toward withdrawal of Everything but Arms benefit under the GSP

## Final observations and questions

- Change in basic EU orientation? “We are not naïve free traders!”
- New trade tools or revision or better use of existing tools?
- Short-term impact of WTO reform efforts?
- Effective EU measures (unilateral and bilateral) to ensure level playing field in relation to imports & impact of non-trade-specific EU regulations?
- Third country trade relations: Which way to go? (UK, US, China, ...)

# We are here to provide your solutions



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*“Sources highlight the firm’s strong focus on complainant work, with one describing them as ‘the stars for complainant work’, while another says they are ‘a powerhouse on the producer’s side’.”*

*“Clients are impressed by **Laurent Ruessmann’s** “articulation of the facts, which exhibits good background research and understanding’.”*

*“Sources say about **Jochen Beck** that he is ‘a great all-round lawyer and a great guy” and describe his work as “very impressive’.”*

Chambers&Partners 2017

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