

GLOBAL EUROPE

Europe's Trade Defence Instruments in a changing global economy

A Green Paper for public consultation

Questionnaire **DRAFT**

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Organisation/individual belonging to the following category	<input type="checkbox"/> public administration <input checked="" type="checkbox"/> Community producers <input type="checkbox"/> Users <input type="checkbox"/> Consumers <input type="checkbox"/> Importers <input type="checkbox"/> Law firm <input type="checkbox"/> University <input type="checkbox"/> Other (please specify)
If organisation, please provide some economic key figures, e.g. turnover and employment and any other figure that you consider relevant.	

Question 1: What is the role of trade defence instruments in the modern global economy? Do trade defence instruments remain essential in order to ensure respect for international trade rules and to protect European interests? Should the EU consider how they might be improved?

It took the EU years to establish clear rules for competition and the absence of international competition rules may be the main reason for maintaining TDIs. The development of international competition rules that would truly be able to address predatory practices is unlikely on a foreseeable future.

*The economic justification for TDIs is to alleviate the injurious impact on EU industries ,**which provide thousands of jobs**, of unfair trade practices and/or subsidisation.*

*The recent evaluation study(January 2006) of EU trade defence Instruments came to the conclusion that procedural rules governing the existing TDIs as well as the practice of the Community Institutions function well and did conclude that the **status quo** was both reasonable and adequate in order to address the interests of all groups of parties concerned.*

Question 2: Should the EU make greater use of Anti-Subsidy and Safeguard instruments alongside its Anti-Dumping actions? Should the Commission, in particular circumstances, be ready to initiate more trade defence investigations on its own initiative provided it is in possession of the required evidence?

Safeguard measures do not focus on whether trade is fair or not but on shifts in the volume of trade in such quantities as to cause or threaten to cause serious injury to the concerned industry :it should be used only for emergency situation as it is less appropriate due to its global approach. Anti-dumping and anti-subsidy actions are much fairer instruments as they apply only to those countries which are the source of injury.

Question 3: Are there alternatives to the use of trade defence instruments in the absence of internationally agreed competition rules?

Without effective defence instruments the respect of international fair trade rules cannot be guaranteed ("Toothless tiger)

Question 4: Should the EU review the current balance of interests between various economic operators in the Community interest test in trade defence investigations? Alongside the interests of producers and their employees in Europe, how should we take into account the interests of companies which have retained significant operations and employment in Europe, even though they have moved some part of their production out of the EU? How should we take into account the interests of importers or producers who process affected imports?

In principle the interests of the various economic operators are well balanced in the existing law and we are against any extension of the scope of the Community interest test.

In case an EU Company has an outsourced production unit in a country which is affected by an AD/AS complaint, the investigation should give evidence whether the inclusion of the foreign affiliate into measures is justified or not !In another words it does not make sense to treat outsourcing in a privileged way if unfair competition is proved !

The protection of the EU based Industry injured by unfair competition must keep priority over any other interests

Question 5: Do we need to review the way that consumer interests are taken into account in trade defence investigations? Should the Commission be more proactive in soliciting input from consumer associations? How could such input be weighted? How could the impact of trade defence measures on consumers be assessed and monitored?

Consumer interests are sufficiently taken into account and it should be noticed that most of the products concerned by AD/AS are not consumer products!

If nevertheless any further input from consumer associations should have to be considered this could only apply to consumer goods

Question 6: Should the EU include wider considerations in the Community interest assessments in trade defence investigations, such as coherence with other EU policies? With regard to development policy, should the EU make a formal distinction between least developed countries and developing countries in the application of trade defence measures?

No, otherwise it would jeopardize the principles of the law ,which is following clear formal rules . Otherwise decisions get dependent on political considerations which may vary to changing circumstances : things should not be mixed up

Question 7: What kinds of economic analysis might help in making these assessments?

The Community interest assessment should remain as it is based on a thorough analysis based on information, facts and considerations and various interests submitted by all parties which have the full opportunity to express their concern if they believe that TDI measures would have disproportionate negative effects on the EU economy.

Question 8: Should it be explicitly foreseen that the level of proposed measures might be adjusted downwards following the results of the Community interest test in trade defence investigations? Should the EU explicitly allow for exclusion of certain product types under Community interest considerations? If so, what criteria should be applied?

We are totally against the possibility of adjusting (limited to downwards adjustments?) the proposed measures which would adversely affect the process in general notably in respect of transparency with the risk of introducing political pressures and interventions ending up to arbitrary decisions.

For the same reasons we cannot envision to exclude some products from the proposed measures

Question 9: Should the EU seek to have WTO rules changed to allow Community interest tests to be used at the complaints stage in Anti-Dumping and Anti-Subsidy investigations? Are there other situations where the community interest test would be appropriate – for example before the initiation of expiry reviews?

The examination of Community interest at complaint stage does not make sense as such examination requires first in-depth analysis to establish measures determined on the basis of the dumping and injury found.

*It is also irrelevant to consider Community interest tests to be used before the initiation of expiry review as upon a request by any importer or exporter an interim review can be initiated during the five years period as long as they can bring sufficient evidences, **including those with regard to the change of Community interest**, substantiating the need for such an interim review.*

Question 10: Are viability assessments relevant in reaching decisions on using trade defence instruments? If so, what criteria should be used in assessing the viability of EU industries in trade defence investigations, e.g. level of production, employment, market share?

Each industry , as a potential complainant, should get assistance by the European Commission when it feels concerned by allegedly dumped imports which are causing injury to its Community industry :the possibility of lodging a case followed by an investigation process in full accordance with the basic regulation must be kept absolutely independent from national industrial policies or branch policies. It must be left to free and fair market competition regulation.

Question 11: Should the EU consider consultations with exporting third countries after receiving complaints and prior to launching Anti-Dumping investigations?

No it would be too late) to open consultations with exporting third countries when the complaint is lodged. At this early stage the Commission has not even yet launched questionnaires nor gathered any evidences to judge about the situation.

Furthermore, by informing concerned exporters at this early stage we foresee a big risk from certain third countries which could not resist the temptation to increase their deliveries to EU directly or thru other third countries in order to anticipate or avoid further measures.

Question 12: Should the EU more specifically foresee the use of the Anti-Subsidy instrument in cases involving companies in transition economies that receive market economy treatment?

First the granting of market economy treatment to individual exporters should not be a decision with a political dimension (as in Ukraine in 2005 where the non-market mechanisms, apparently, remained in force!) but should merely be based on an assessment as to whether an exporter's home market sales are reliable and sufficient for calculating normal value if that exporter is located in a country with an economy in transition.

With countries still with an opaque economic system ,it will be difficult to find evidence of the level of subsidies given. So ,once again, we do prefer maintaining an efficient AD instrument.

Question 13: Should the EU review the 'standing requirements' for the definition of Community industry in Anti-Dumping and Anti-Subsidy cases? Is the level of support needed to endorse a complaint and thus launch an investigation appropriate? Should we review the possibility of excluding companies which themselves import or are related to exporters from standing assessments?

The study confirmed that the Commission applies the right standing requirements for the definition of the Community Industry.It would not be easy to raise more support in such a big EU27 Community producers more specially for the SMEs.

*It is important to stick with the Article 4-1a. of the basic Regulation which is **excluding**, for standing purposes ,**Companies related to exporters** .This is important to avoid any conflict of interest between the EU parent company and its possible interest to support export to the EU from its related company.*

Question 14: Should the EU change the de-minimis thresholds (in percentage and absolute terms) that currently apply to dumping and injury in trade defence investigations?

Once again, the study confirmed that the Commission applies the right threshold when deciding on the acceptance of a request lodged by the Community Industry yo initiate a trade defence investigation.

Question 15: Should the Commission refine the approach on "start-up costs" for dumping calculations in Anti-Dumping investigations in order to give a longer "grace period" to exporters in start-up situations?

We do not see any necessity to give a longer "grace period" to exporters than the existing provisions fairly offer.

By offering a more generous treatment of start-up situations we see a danger to encourage new exporters to implement ambitious and unrealistic export sale policy to gain market shares without prices and costs control to the detriment of the EU Industry.

Question 16: Are there other changes to the dumping margin calculation methodology in Anti-Dumping investigations – for example existing rules on the "ordinary course of trade-test" – that need to be considered?

No contribution as we have no experience in our sector.

Question 17: Should the EU refine the provisions on the treatment of new exporters in Anti-Dumping and Anti-Subsidy investigations? Should the EU introduce the possibility of dealing with newcomers that start to operate during the investigation of the main case more expeditiously?

The Commission should only calculate a dumping margin for a new exporter if there is a sufficiently large number of export transactions.

If EU introduces the possibility of "dealing" (we understand avoid recourse to trade defence measures) with newcomers that start to operate during the investigation of the main case a pre-requisite must be obtained from the concerned new comer consisting of getting his alignment of positions on the Basic Regulation and international rules(WTO)

Question 18: Is evidence of restructuring by an EU industry in any way relevant in Anti-Dumping and Anti-Subsidy investigations? If yes, in what way, and at what stage?

It would be a deliberate provocation to require submission of a restructuring plan from a domestic Industry which is in a bad shape as a result of unfair practices which by definition involve market distortions and unfair competition with which no private Company can compete over the long term.

Question 19: What are the particular obstacles for SMEs to participate in trade

defence investigations and how could they be addressed?

The lack of resources to draft and support the follow-up of an Anti-dumping complaint (except if they do belong to a business organisation able to provide expert advices)

The difficulty in obtaining standing because SMEs sectoral organisations, of which there may be many, have difficulties to make decisions

Possibly it therefore could be considered to work with simplified questionnaires dedicated to SMEs ?

Question 20: Bearing in mind that any shortening of deadlines could impose limitations on the conduct and transparency of investigations, should the EU consider shortening the deadlines in Anti-Dumping and Anti-Subsidy investigations within which it must decide whether or not to impose provisional measures? Should these deadlines be made more flexible?

In recent practices, we have noticed a substantial number of cases in which the Commission did not impose provisional measures. It is also noted that provisional measures ,where imposed ,are mostly adopted at the last end of the 9 month period although the law allows imposition already after 2 months after initiation . In the mean time some other countries- like USA -impose provisional measures in a shorter deadline.

We urge upon the Commission to return to its previous practice and to be prepared to impose provisional measures earlier in order to limit further deterioration of the situation of the Community Industry.

We also ask the Commission to make use of the appropriate flexibility within the existing rules to shorten the overall dead line between the initiation and the final measures which is often too long

Question 21: Should the EU make greater use of more flexible measures in Anti-Dumping and Anti-Subsidy investigations?

Under the existing system, stakeholders generally praised the Commission for doing a good job on initiating and conducting investigations as well as for adopting measures .

We are not prepared to suggest the introduction of “more flexible measures or rules” in the application of TDI ,subject to interpretation by decision-makers which could affect the core of the current system.

Question 22: Do EU measures in Anti-Dumping and Anti-Subsidy investigations need to be adapted so as to take better account of products with a long order or shipment time? If yes, how?

In no way this proposal is acceptable . We have already reported that the time between the moment when the impact of unfair trading practices is first felt and the introduction of measures was too long and we have requested to shorten the procedure.

To postpone the application of measures in the above circumstances would simply mean that relief for the EU Industry would come later and in many cases too late.

Question 23: Should it be made explicitly possible for the duration of definitive measures in Anti-Dumping and Anti-Subsidy investigations to be shorter than 5 years? If yes, in what type of situations would a shorter duration of measures be justified?

No, as far as we know the 5 year period has not created any problem .

During this period any exporter or economic operator can always request an interim review.

Question 24: Should duties collected beyond the 5-year duration of the measures in Anti-Dumping and Anti-Subsidy investigations be reimbursed if the expiry review concludes that measures are not to be continued?

No because it would mainly benefit to the importers rather than to the producers/exporters

Question 25: Should expiry reviews in Anti-Dumping and Anti-Subsidy investigations be timed to end on the fifth anniversary of measures rather than to start on that date?

No the expiry review, in accordance with the WTO rules, is due to start on the date of the end of the fifth anniversary of measures.

Question 26: Should the EU increase thresholds for expiry reviews in Anti-Dumping and Anti-Subsidy investigations? For example should the EU consider introducing the "threat of injury"- standard instead of the "likelihood of recurrence"?

No. The "threat of injury" is relevant in investigations of a new AD or new AS because it can be appreciated in a market where there is no measures yet: a threat of injury is unlikely to take place when measures are in force because imports should not expect to surge.

The "likelihood of recurrence of injury" is the suitable test in the framework of an

expiry review because it takes into account the assumption that the measures have eliminated the threat of injury and it is based on a prospective analysis of the term needed by exporters to regain their market shares they had previously held by dumping practices.

Raymond ,Giovanni please can you confirm or comment this response

Question 27: The Commission is going to create the position of a hearing officer for trade defence investigations - what precise functions should such a person carry out?

We understand that a hearing officer is a Commission official not involved in the case at hand, who should help in clarifying the concerns raised by the party and ensure a further internal check of a party's claims.

The hearing officer could for instance review whether non-confidential summaries give a fair account of the information provided in confidence.

Question 28: Should the Commission conduct public hearings in Anti-Dumping investigations for decisions to award country-wide Market Economy Status to a country?

Prior granting MES to one non-market economy country, the Commission should conduct a complex in-depth analysis of the five cumulative criteria considered by the EC in assessing request from that country .

The Commission is the only authority which can conduct such a comprehensive analysis and we do not see the advantage of conducting a public hearing except for delivering transparent information.

Question 29: Should there be greater openness regarding the working of the Anti-Dumping Committee, e.g. publication of its agenda and/or the minutes of its meetings?

Improving the openness regarding the work of AD Committee represent an open invitation to increase lobbying of Member States with possible blackmailing or political pressures from exporting countries.

Question 30: Would it be desirable for the non-confidential files in trade defence investigations to be accessible via the internet? Would intermediary solutions be more appropriate – for example the publication of a file index?

Making non-confidential files accessible for everybody on the internet represent a risk to provoke a flood of submissions from parties which are not really concerned by the investigation.

Access via internet could be limited to registered interested parties to whom a password would be assigned.

Give me your opinion to complete this paragraph

Question 31: Should current institutional arrangements for adopting Anti-Dumping, Anti-Subsidy and Safeguard measures be maintained? Are there ways to improve the way those decisions are taken?

Recent experiences in the past months have shown some shortcomings of the EU's TDI like the lack of predictability, the impact of political considerations at all levels of the EU TDI system. Often the AD activity is not enough accompanied by sufficient transparency with regard to the procedures and practices followed and this situation jeopardises the overall credibility of the AD instrument.

We would support the creation of an independent agency which is responsible for the conduct of TDI investigations and the imposition and monitoring of TDI measures. This could be accompanied by judicial review of TDI decisions in a specialized tribunal with special competences in the matter (like in USA where antidumping decisions are adopted by technical organs of the Court of International Trade)

Question 32: Is there any other aspect of the EU's trade defence instruments that you would like to see addressed?

Some areas(not exhaustive) where improvements should be made:

- more realistic profitability assessment in relation with business realities*
- more severity in addressing fraudulent behaviour of circumvention of measures*
- more transparency in the decisional process in the AD Committee and the Council (for example, the grant of the market economy status should be based of a more transparent procedure where all interested parties should be given the possibility to participate)*
- more transparent application of antidumping provisions*
- investigation should be speeded up and provisional antidumping measures imposed in a shorter deadlines (6 months)*
- TDI rules must remain free of political influence.*
- the instrument of a retroactive application of AD measures should be used more frequently when appropriate.*