**GLOBAL EUROPE**

**Europe's Trade Defence Instruments in a changing global economy**

**A Green Paper for public consultation**

**Questionnaire**

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| Organisation/individual belonging to the following category | public administration<br>Community producers<br>Users<br>Consumers<br>Importers<br>Law firm<br>University<br>**X** Other **International Non-Profit Organization** |
| If organisation, please provide some economic key figures, e.g. turnover and employment and any other figure that you consider relevant. | **The Association of European Chambers of Commerce and Industry represents 46 members (45 national associations of Chambers of Commerce and Industry and 1 Transnational Chamber Organisation), a European network of 2000 regional and local Chambers with over 19 million member enterprises in Europe.** |



Replies to the questionnaire should reach the Commission by **31 March 2007** at: Trade-tdi-green-paper@ec.europa.eu. Comments received will be made available on-line unless a specific request for confidentiality is made, in which case only an indication of the contributor will be given.

**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?

**EUROCHAMBRES welcomes the Green Paper for public consultation on Europe's Trade Defence Instruments (TDIs) and sees this as a major opportunity to improve the TDI overall system.**

**EUROCHAMBRES believes that the aim of TDIs –in line with the Lisbon Agenda– should be to promote EU competitiveness in the global economy and not to hide inefficient and uncompetitive enterprises under such trade barriers. We must remember that the EU comprises some of the most open economies in the world which account for over 20% of global trade and almost half of foreign direct investment and that its openness has been a major catalyst for growth over the last decades.**

**In this sense, the EU should continue promoting free trade and the principles of market economy should govern. However, until an international system of rules of competition within the WTO is not set and respected, TDIs have a valid role in tackling unfair practices in third countries. Moreover, measures against unfair competition are necessary to re-establish market dynamics where these are being influenced by other players and governments. But, there should be clear evidence of threats to European industry to allow a valid imposition of TDIs. Also, cost-benefit analysis and impact assessments, -where all the participants' views are taken into account- should be accomplished and the decision made accordingly upon its conclusions.**

**However, since these measures provoke damage to fair economic players, the participants' views must primarily come from businesses, which are also the most negatively affected by such behaviour.**

**EUROCHAMBRES considers that it would be unacceptable that speculative behaviour aimed at short term economic gains should result in entire business and production sectors being unfairly penalized by external impacts.**



**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?

**The imposition of trade defence instruments should only be advisable if a solid, transparent, inclusive and fair investigation has been conducted. Safeguards measures should tackle evident threats/injuries to European industry whereas antidumping and antisubsidy measures should be limited to clear unfair practices from third countries.**

**EUROCHAMBRES believes that the European Commission should not initiate more trade defence investigations on its own initiative.**

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

**No there are not. The EU should act firmly within the framework of the WTO to promote rules of competition. The negotiation of such international rules within the WTO should be the long-term goal of the EU. Also, there is the possibility to include a competition policy chapter on the current and/or future free trade agreements the European Commission is negotiating/will negotiate.**

**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?

**Yes, there is a need to review this current balance of interests. The main purpose of the EU TDIs' policy should be to strengthen the long-term competitiveness and economic growth of the EU.**

**Trade defence investigations must comprise an overall macroeconomic analysis of the Community's interest and the impact/effects of trade defence measures in the whole EU economy. Views and/or positions of all relevant European actors should be collected in trade defence investigations. Measures should only be taken when they are done for the benefit of the Community. If there is a clear evidence of unfair behaviour, then the measures should be implemented.**

**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?

**Yes, the EC should review the way consumer interests are taken into account. The interests of consumers must be part of the overall macroeconomic analysis of the Community's interest, which is an analysis where all participants will democratically have their voice heard.**

**We must highlight that in today's globalized world, European and international associations are raising European consumers' awareness of some producers' unfair practices such as the hiring of children to work for them, counterfeiting and unfriendly environmental practices, among others. Therefore, European consumers are now taking into account, besides the price, additional information in their purchasing decisions and this could constitute a 'natural' trade defence mechanism that could play a more important role in the future.**

**However, we acknowledge that some practices (the best examples being**

**subsidies or state internal aids) are deliberately hidden by those economic players that want to make benefit from unfair economic practices. Therefore, it is very difficult for consumers and consumer associations to be actually aware of these. Moreover, in most antidumping cases the goods are actually semi-processed products so consumer interests may be hard to assess.**

**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?

**Yes, it should include wider considerations in the Community's interest assessments. The assessment of Community interest in trade defence investigations must be coordinated with all relevant actors in the European policy-making. In order to avoid distortions, all EU policies should be coherent, complementary and consequent in their objectives.**

**Trade defence measures should only be taken/implemented when there is evidence of government subsidies, dumping or unfair trade. Developing countries should be able to take full benefit of their competitive advantages in the form of lower wages and costs. This should be considered as part of a global free trade system, where countries have different competitive advantages.**

**However, trade defence measures must not hamper the results on international development cooperation strategies and must contribute to the effective use of development funding.**

**EUROCHAMBRES considers that if a formal distinction is going to be made between least developing countries and the rest of developing countries, this will go against the most-needed de-politization process of the system.**

**EUROCHAMBRES believes that all efforts should be made to keep the Community Interest assessments always done on the basis of technical aspects.**



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

**We insist that an overall macroeconomic analysis for determining the Community's interest should be used.**

**Moreover, we believe an analysis that takes into account an evaluation and a balance of profits and losses could be helpful.**

**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?

**Trade defence measures should be applied only when unfair trade, dumping, subsidies or other trade-distortion can be proved. Furthermore, measures should only be taken when justified by a Community's interest perspective based on an overall macroeconomic analysis. Whenever unfair practices in trade exchange are evidently confirmed, EU producers should be protected with trade defence measures without any sort of exclusions.**

**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?

**Yes. The European Union should seek to obtain transparency within the WTO framework as it is in the interest of all market operators and would result in a more effective system. The analysis of the Community's interest should be carried out prior to investigations not only to avoid results/outcomes to be contradictory with the Community's interest but also to prevent resources to be wasted.**

**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?

**The natural forces of the market should be the ones determining whether an industry –or any sector of the European Union economy– is viable or not. Thus, the European Commission has not to fulfil such a task of assessment.**

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

**Yes. Consultations and open dialogue with exporting countries could induce a voluntary review of their policies and national pricing techniques, with a potential to prevent the imposition of defence measures. However, these consultations must be carried out at a stage early enough to generate positive results and without introducing undue political elements of pressure.**

**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?

**No. The current practice should remain.**

**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 'standing requirements' for the definition of "Community industry" or "total Community production" should be reviewed. All European companies in the sector should be included, irrespective of ownership or parallel import activities. The possibility of excluding import companies or companies that are related to exporters from standing assessments should not be considered. Such exclusion would only contribute to unfair competition.**

**The level of support needed to endorse a complaint should be reviewed and adapted to reflect the structure of the actual industry. Industries with a high centralization are clearly benefiting from the rules, whereas industries with a predominance of SMEs will encounter administrative barriers to collect the required level of support for a complaint. Thus, industries with a small number of dominant actors should be able to use the TDIs to enhance their competitive advantage within the EU.**

**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?

**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?

**Yes. However, the European Commission already has discretional flexibility in this issue by choosing the beginning of production to compute if dumping practices are being made. In any case, start-up situations cannot constitute a base to launch an antidumping investigation.**

**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?

**Yes. Any changes in the methodology that can improve evidence of dumping**

**practices would be appropriate. Moreover, any rules in antidumping investigations which are not transparent enough and could act against free competition rules should be improved.**

**Calculation of dumping margins should take into account normal business practice, including pricing strategies. In this sense, marginal-cost pricing –when occurring in the absence of subsidies and/or market dominance– should be accepted as normal business practice.**

**Finally, it is important to highlight that calculation of antidumping duties should only take into account dumping practices that are responsible for harming current trade flows. In other words, if other factors are causing an injury, they should be left out from the antidumping duty to be applied: only dumping practices should be included in the imposition of antidumping duties.**

**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?

**We believe that the inclusion of new exporters will not have a significant impact in changing/modifying the final results/decisions.**

**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?

**No. In a free market economy, the restructuring of a company/industry is mainly a response to growing competition in order to keep up competitiveness. Therefore, restructuring plans have nothing to do with dumping or subsidy practices and are irrelevant for the decision to impose protective measures. In other words, evidence of European Union companies suffering from dumping is sufficient for the adoption of measures. There is no need of additional evidence.**

**Question 19:** What are the particular obstacles for SMEs to participate in trade defence investigations and how could they be addressed?

**SMEs perceive trade defence investigations as complicated, time-consuming and expensive. To file a complaint or participate in investigations, they need to invest on efforts that are unproportionally heavy to their capacity. Moreover, it is difficult for them to keep track on the status/stage of the procedures. Thus, they have no chance to participate without the intermediation of a business and/or trade association in the form, for example, of a legal-specialized support.**

**The implications for SMEs have to be addressed through the adaptation/adjustment of the requirements, for example trying to improve the**

**questionnaires and giving more freedom to SMEs to submit their views. A partial solution for more involvement of SMEs in trade disputes could be that necessary procedures (for instance market analyses) were undertaken by state administrations and/or the European Commission itself.**

**Participation of SMEs to the process may be helped by allowing the 25% threshold value –if it is not going to be raised or lowered– to be computed through accepting declarations of business associations on behalf of represented members (in this case 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?

**Flexibility is good whenever it results in better efficiency but must not diminish the transparency of the investigations. This is crucial for companies in their operations' strategic planning.**

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

**Yes, this could be useful because today's economy is changing rapidly and the rigid terms for current measures are not always justified. However, we must bear in mind that greater flexibility should not transform on greater complexity.**

**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?

**To ensure predictability for an orderly conduct of business, measures should only include deals made after the date of imposition. All products shipped before the implementation of measures should not be imposed with anti-dumping measures, even if brought into the European Union after the implementation of such measures.**

**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?

**Yes. The time-limit of five years needs to be generally revised in order to adapt it to the variable situation of all industries in today's global economy scenario.**

**Moreover, the occurrence of protective measures during a period of five years**

**provides incentives to European Union companies to postpone necessary restructuring which, in a long term perspective, will be harmful to the overall European Union competitiveness and growth.**

**Besides this, whenever evidence is provided about anticompetitive practices being stopped, this should constitute sufficient cause to stop the imposition of trade defence measures.**

**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?

**Yes.**

**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?

**Yes. Expiry reviews should be carried out before the end of measures for the purpose of knowing clearly if the measures will be renewed or not.**

**Furthermore, expiry reviews should be made in the form of a complete new investigation. Finally, it is important to consider that measures can not be imposed *ad infinitum* and that a certain period of time (to be determined by all the parties) should be allowed before a new investigation is started and eventual trade defence duties are reimposed to a particular good.**

**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"?

**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?

**This is a good idea. The following functions –in no particular order– could be carried out by the hearing officer for trade defence investigations:**

- **The officer should safeguard the framework implementation for trade defence instruments,**
- **The officer should assist companies in their relationship with the European Commission,**
- **The officer should ensure that all parties are heard and that the European Commission has investigated thoroughly and has undertaken a real/fair Community interest test,**
- **The officer should play a mediation and informative role for all parties involved. In this sense, he/she should provide all the participants of the hearing with the arguments of the other parties, always guaranteeing the**

**no-disclosure of confidential information.**

**This will allow the parties to better exploit all possible forms of argumentation of their position/interest. Also, their lobbying positions would be better balanced and transparency in investigations would be enhanced.**

**All this, together with the possibility of actually having resource to the European Court of Justice, will make the system even more efficient and at the same time more transparent.**

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

**Yes. It would help to balance better positions of European Union producers doing business in developing/transition countries and to increase transparency in the investigations. Moreover, the state administration of third countries would be more involved in the process of adopting world trade rules. But, all efforts should be made to try to avoid the politization of the process.**

**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?

**Yes. Higher transparency and access to information is crucial for business planning and predictability. Moreover, the better the information the better the reaction from all involved business operators and market players; thus, better decisions and better implementation. In this sense, agendas, discussion papers, minutes of meetings, preliminary findings of investigations, among other relevant documents should be provided to all interested parties.**

**Of course, due to potential sensitive content (for example, margins and costs' structures) and in order to avoid the threat of eventual commercial retaliation, some information needs to be kept confidential.**

**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?

**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?

**No. On one hand, the European Council should be involved as little as possible in trade defence decisions. On the other hand, we believe the European Court**

**of Justice should continue to review decisions.**

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

**No.**