

GLOBAL EUROPE

Europe's Trade Defence Instruments in a changing global economy

A Green Paper for public consultation

Questionnaire

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If organisation, please provide some economic key figures, e.g. turnover and employment and any other figure that you consider relevant.	

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.

As a preliminary remark we regret to note that even if some (very few indeed) of the questions contained in the Green Paper suggest a balanced view of their authors on Trade Defence Instruments (TDI), the rationale behind this document is difficult to accept. The grounds for initiating a reform of a system that functions well and which is by independent evaluations considered liberal, transparent and fair should be compelling and deeply justified. Instead, the only motive presented sufficiently clearly is the imposition of anti-dumping measures on footwear while it is commonly known that this case was as much exceptional as controversial. In fact, the main concern expressed in this document are the interests of the so called "European delocalized industry" along with allegations of a negative impact of TDI on consumers. In our opinion it is absolutely wrong to link issues of TDI and outsourced production. Also, a negative impact of TDI on consumers has never been supported by any evidence, including shoe case. Those assertions will be further developed below.

***Q1 & Q3:** 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? Are there alternatives to the use of trade defence instruments in the absence of internationally agreed competition rules?*

The role of trade defence instruments remains the same: they substitute competition rules ensuring a level playing field for international traders. The EU internal competition rules are strongly fastened in the Treaty and strictly enforced by the Commission. It is equally obvious that the EU should pay the same attention to the trade practices considered unfair by all the members of the WTO. As stated above, we believe that the European system of trade defence instruments is liberal, fair, balanced, transparent and more advanced when compared to requirements of WTO and other TDI users. Even if some minor improvements might be considered, in our opinion interfering in this system can bring a threat to competitiveness of European producers instead of benefits to other participants of the market. Furthermore, since TDI is subject to negotiations within the WTO it would be unreasonable to grant unilateral concessions in this regard. The Community should rather promote the present European standards in the field of TDI which are higher than required by the WTO and practiced by major trade partners of the EU. We do not see any alternative to TDI as long as there are no international competition rules.

The globalization of economy and planned as a result of the DDA reduction of tariff protection of the European market calls for a effective TDI system rather than its further liberalization.

***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?*

Each of trade defence instruments should be applied for circumstances provided in the relevant WTO legislation. In case of some economies however, like Chinese one, where state influence penetrates whole economy and market mechanisms are limited, it is impossible to identify and quantify subsidies to the extent enabling to counteract according to the WTO

rules. For market distortions caused by such practices and leading to unfair pricing the AD remains the only efficient instrument.

Taking into account that economies of 12 newly accessed Member States (in 2004 and 2007) are under development exposing them to unfair practices is unacceptable. It should be rather considered to encourage the use of these instruments. *E.g.* Romanian and Bulgarian industries, rapidly changing the trade regime thus being in exceptional circumstances, might be subject to unforeseen injurious increase of imports which would clearly justify the use of safeguard clause, designed precisely for such situations.

Taking into account the foregoing the timing for a relaxation in TDI would be all much the worse.

Poland is however in favour of a system driven by economic operators rather than by public authorities regardless of *ex officio* reaction in legitimate circumstances (see e.g. reply to Question 19).

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?*

International trade in goods is concerned with commodities which means that its basic category is product and main purpose is to protect resources used to manufacture it. This also means that companies which moved production process from Europe and use non-European production resources are no longer “European producers” in terms of international trade. Hence, product manufactured outside Europe is a foreign product and it is a subject of trade policy of countries where it is made and whose resources are used to manufacture it. If it was otherwise we should re-define basic concepts in this regard (like origin of product, domestic subsidies, purpose of custom tariffs etc.) and eventually cease to use a notion of “European product” if it entails no consequences for trade policy. In our opinion it would be incompatible with WTO principles and clearly unreasonable.

TDI are legal instruments assuring that trade in goods is fair and competition of global resources placed in different countries is made on a level playing field. Designed to this and no other objective, TDI are not instruments of industrial policy that might address concerns raised in this question. European industries that outsourced production leaving channels of distribution, marketing, R&D etc. in EU in fact do not use European production capacities and are not “producers” in terms of international trade. Thus their development (although important) should be shaped by means of other EU policies (e.g. industrial, services) and not that of TDI which are designed for entirely different purpose.

Indeed, the review of the TDI in the direction suggested by the Green Paper would result with the encouragement and rewarding the European industries for delocalization of the production by softer application of the fair trade rules. Apart from other issues, Poland doubts whether this should be the objective of any EU policy, especially in the light of principal goals of the Lisbon Strategy, namely growth and employment.

In our opinion unfair practices should be penalized regardless who is committing them. The Green Paper ignores the fact that as long as exporters trade fairly (i.e. do not dump) they are not subject to any trade defence measures. Industries that moved only **part** of their production still enjoy the protection of the European TDI.

Industries which moved production outside EU benefit from comparative advantages of those countries, access to their markets and support of their trade policy (among them tariff protection and TDI). It's a natural process and does not require interference and additional reaction in the field of TDI. There are other countries that delocalized the production, US being high-profile example. Despite that, no other country is planning to soften TDI for this reason.

The effect of the reform would go deeper. Any relaxation of TDI rules taking into account a "delocalized European production" would also have softening effect on other foreign production unfairly exported to EU which would make European not-delocalized-producers even more vulnerable to unfair competition.

Influx of foreign investments requires their appropriate protection. Further relaxation of the European TDI may prevent flow of investments from the third countries to the EU. Foreign investors making decisions certainly take into account the potential protection against unfair trade practices which is assured in the European market. Any discouragement to foreign investments counteracts creating employment possibilities.

In our opinion the interests of all interested groups are well protected under the present rules. "Community interest" test is based "on an appreciation of all the various interests taken as a whole". This includes Community industry, upstream industry, importers, traders, processing industry, consumers. "Lesser duty rule" assures that products subject to anti-dumping measures will not exceed the price of the like Community products. No other major trading partner of the EU has equivalent regulations.

***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?*

First and foremost, anticompetitive behavior both in internal and external dimension in short term can be beneficial to consumers (e.g. because of aggressively low pricing), but in the long term leads to injurious results for producers and consumers alike, by elimination or distortion of competition. Unfair practices may cause collapse of the Community production which would make consumers dependent on imports. Such a situation may lead to an increase of prices in the long term. On the other hand, due to the existence of the "lesser duty" rule price of the imported product after imposition of AD or AS measures cannot exceed the price of the like Community product.

As mention above (Q4 *in fine*) - the interests of **all interested groups** are well protected under the present rules. Consumer goods are very rarely subject to anti-dumping measures. The impact on prices of semi-goods for processing industry is very carefully examined during the investigation under the Community interest rule, as well as all other interested groups.

The footwear case is a questionable example of contrasting the interests of Community producers, importers and consumers. Clearly the importers with an average profit of 125% were the most benefited interested party to that investigation and they could easily absorb the duty by diminishing their profit so the impact on consumers might have been none. According to the recent monitoring report of the Commission regarding AD measures on footwear in fact there was no increase of prices at all. There is no case reported so far indicating a noticeable impact on consumers. If this would be a case an interim review might be initiated to re-examine the situation of consumers. Finally, it must be highlighted that EU is the only market in the world softening application of TDI by the Community interest test.

As was proved by the shoe case simplistic approach to assessment of TDI on consumers is wrong. Application of any model weighting interests of consumers (simplified by its nature) will not reflect the complexity and diversity of interests on markets which should be analyzed on case-by-case basis.

Poland is in favour of the TDI system driven by interested parties, including consumers organization, which have full right to participate in the investigation if so wish.

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?*

As a matter of principle issue of fairness, including fair trade and competition, should not be treated in a relative and selective manner. We are not in favour of any modifications in this direction since it would change the nature of TDI instrument from the economic to political one. It would make any reasonable and foreseeable assessments impossible.

If policy considerations are not decisive for application of internal EU competition rules we do not see any reason why it should be so for TDI. Development policies are aimed at support of economies as a whole to help them to fairly compete in the global market. Instead, any relief in TDI would be made towards single producers and would not pursue the objective of this support. Moreover, it would be done at the expense of the Community producers. There is no reason why this particular group should bear the cost of such “development”. It would be discriminating. As regards other policies, e.g. environment, it must be stressed that EU has the highest standards in this respect which already puts additional economic burden for the Community producers.

It must be also recalled that any preferential treatment towards developing countries beyond Article 15 of the WTO antidumping Agreement¹ might be considered discriminating towards other countries, thus WTO incompatible.

As far as safeguards measures are concerned preferential treatment towards developing countries is already envisaged by Art. 9 of the WTO Agreement on Safeguards. Measures shall not be applied against a product originating in a developing country as long as its share of imports does not exceed 3% of total imports to the importing country of the product

¹ Article 15 of the ADA stipulates: „It is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members.”

concerned. It must be noted however that this deviation from the general rules does not regard measures against unfair practices but exceptional actions taken against fair but excessive imports. Any further preference in this respect without the WTO authorization may be considered discriminating for exporters from other countries.

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

As stated above, there is no reasonable and objective analytical framework to pursue an assessment of policy and economic issues combined. It would be an arbitrary exercise.

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?*

No. Taking into account that application of strict and specific calculation models is impossible in the Community interest test, any exclusion would be absolutely arbitrary and subject to purely political considerations. It was already demonstrated in the footwear case. Exclusion of children shoes at the provisional stage of investigation was groundless and impossible to justify and maintain at the definitive stage. Lack of reasonable basis for an exclusion also opens a possibility of circumvention (the only distinct characteristic of “children shoes” was size which was an extremely convenient room for circumvention).

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?*

First of all, if the WTO rules required the public interest test, as applied in the EU, it would lift the situation of the Community exporting producers to the level which foreign exporters to the EU enjoy now. Since it is virtually impossible due to the objection of major TDI users there is a question why to pursue even more unrealistic goal.

Moreover, such a modification of TDI would be very inappropriate *i.a.* for practical reasons. Decision of non-imposition of measures on the basis of the Community interest requires collecting substantial data and thorough analysis of their possible impact on the various interests. It is impossible to make it at the complaints stage.

Again, if any circumstances change (including those related to the Community interest) each interested party is free to request an interim review. The fact that such a request never occurred is a clear indication that the Community interest is not endangered by TDI and exploring this problem is a purely theoretical exercise.

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?*

Under present rules the Community interest test allows an assessment whether imposition of measures is not disproportionate in terms of benefits for industry and impact on other interested groups (e.g. users or consumers). In other words, if investigation reveals that positive effect of measures on the Community industry would be minimal for any reason (e.g. because of no potential for recovery) but would bring negative consequences for other parties

the measures will not be imposed. Thus viability and future perspectives are taken into account under present rules.

But a special care is necessary in such an analysis since it is clear that under a pressure of unfair imports the condition of the Community industry may dramatically worsen (level of production, market share etc.) so rigid criteria of measurement of viability would be inappropriate.

Finally, the WTO and EU rules allow for protection from the unfair practices in case of material retardation of the establishment of the domestic industry. In such a case an examination of viability of the domestic industry is meaningless.

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

No. First of all these are private companies which are involved in unfair practices. Consultations with governments would be irrelevant. Instead they would make a room for political consideration and we are of opinion that TDI should be as technical and objective as possible. We believe it is in all economic operators' interest (both exporters and the Community industry) to have a predictable system instead of series of political negotiations.

Secondly, consultations would delay the remedy for the Community industry with no guarantee whatsoever for their positive result.

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. As already explained in reply to Question 2 in case of economies in transition, like the Chinese one, where state influences the whole economy and market mechanisms are limited, it is impossible to identify and quantify subsidies to the extent enabling to counteract according to the WTO rules. For market distortions caused by such practices and leading to unfair pricing the antidumping actions remain the only efficient instrument.

Moreover, it should be assured that each countervailing subsidy found during the AD investigation will result with not granting MET for applying company.

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?*

It is not appropriate to change the standing requirements which currently correspond with those of the WTO (25% of producers must support the complaint). It must be recalled that the EU is the world biggest market, consisting of many Member States and producers located all over Europe. It is very difficult to raise a necessary support even at present thresholds by contrast to smaller countries applying TDI.

Additionally, if the industry is fragmented or consisting of SMEs it is all the more difficult to meet standing requirements. This is also true for the agricultural sector. Increasing the threshold would render this impossible and would enable the use of TDI only for highly concentrated industries.

It is claimed sometimes that 25% standing makes the injury analysis unreliable and unrepresentative for the whole sector. It is not true. The situation of the non-complaining part of the industry is also examined and taken into account in the causal link analysis.

Possibility of excluding of related producers (or importing themselves) should certainly remain for a very likely conflict of interest and possible pressure of exporters or importers on the Community producers.

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?*

No. The Community applies two sets of injury thresholds: one resulting from the WTO legislation (imports less than 3% of overall imports) and another from the EU legislation (imports less than 1% of Community consumption). This makes the EU system stricter than the WTO and we see no reason why they should be further tightened. In fact, in such a big market as the EU even 1% market share and 3% of overall imports can be very detrimental for the Community producers.

2% of margin dumping may seem little but it must be highlighted that undercutting or underselling may be much higher and so the impact on the Community industry. Thus reducing this margin at the same moment would reduce the possibility of launching an investigation even if injury margin would be much higher and problematic for the Community industry. Besides in many sectors profit margins are very low (e.g. steel sector) so even 2% might have a significant impact.

Any relaxation in respect of *de minimis* thresholds would constitute another unjustified softening of protection against unfair practices in comparison to the WTO and to the detriment of the Community producers.

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 reason for this. We are not aware of any problems related to this issue under present approach. The current rules give the Commission the possibility to take “start-up costs” into account.

However, too flexible treatment of “start-up costs” in dumping calculations would allow over-invested foreign producers to penetrate the Community market and injure the Community industry in the short term even if in a long term those investments would turn out commercially unable to return.

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?*

The existing rules on the “ordinary course of trade test” are reasonable. They are in line with the practice of other TDI users and should remain unchanged.

There is however the ruling of the WTO Appellate Body (*bed linen* case) which distorts the balance in treatment of the exporters with *no domestic sales* made in the “ordinary course of trade” and the exporters with *more than 20% of domestic sales* in the “ordinary course of trade”. It results for the former with lower normal value and lower margin dumping than for the latter. This is unjustified treatment which should be properly addressed.

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?*

More expeditious investigation is welcome but it seems that present rules ensure a proper treatment of new exporters. We would like to underline however that for granting the status of new exporter sufficiently representative sales should be made to the Community in order to avoid a threat that those sales are made merely to obtain a low margin of dumping.

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?*

This is absolutely unacceptable. A restructuring plan is required in safeguard cases since it is a protection granted as a result of sharply increased but *fair* imports. Such a temporary relief is aimed at adjustment to the new circumstances.

Requiring restructuring plans in AD cases would lead to the confusion what is actually to blame for the injury suffered by the Community industry: unfair practices or the industry itself? There is no reason whatsoever to demand a restructuring plan to the situation resulting from unfair practices.

We reiterate that TDI (by contrast to tariff duties) are not the instrument of industrial policy forcing the Community producers to the economically desired behaviour. TDI's purpose is to ensure an equal foot for the domestic industry in competition with foreign exporters enjoying and exploring unfair advantages.

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

Best known SME's obstacles in application of TDI are the following:

- Standing requirements (as already referred to in Question 13) – it is not possible to lessen them but they should not be increased
- Resources necessary to pursue a TDI procedure (preparation of complaint, collecting data, filling questionnaire, participating in the proceedings) – the Commission should provide the assistance
- Possible retaliation of big companies (exporters, clients) – SMEs may be (and in the past have been) pressed by business partners not to pursue TDI proceedings – an *ex officio* actions by the Commission might remedy this problem

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?

We support imposition of provisional measures to react to injury suffered by the industry. To this end it would be reasonable to introduce more specific conditions of their activation. The time period between first symptoms of injury suffered by the Community industry and the first remedy is very long. The basic Anti-dumping Regulation allows imposition of provisional measures two months after initiation of investigation. Since provisional measures are imposed for six months in practice it is done closer to ninth month in order to avoid a time gap without measures between expiry of provisional measures and imposition of definitive ones. In other words, it is possible to impose provisional measures earlier within the present legal framework but it requires faster completing of investigation. This is a matter of resources rather than of legal modification of time limits.

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

The present set of measures (*ad valorem* and specific duties, UT) results from the WTO Agreements. Their level is based on the objective criteria and countable factors. This set in practice gives a significant flexibility. Expanding of this flexibility would put in question predictability of the system and would open the floor for political bargaining, as happened in the past to the detriment of the Community industry.

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?*

The investigation lasts up to 15 months (plus preparatory stage and 45 days of lodging a complaint to the initiation). The notice of initiation is published. Business associations, Member States and the Commission itself inform all interested parties possible to identify. Traders with the minimum of due diligence may and should be aware of ongoing investigation and its potential results, similarly as in any other public process. This is sufficient time to balance a risk and take appropriate steps.

As mentioned before (Question 20) the time period in which TDI may counteract unfair and injurious practices is already very long. Postponing of this moment suggested in this question would be for the meaningless reason and to the unjustified detriment of the Community producers.

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?*

This is another suggestion aiming at softening TDI system without a sufficient rationale. Our arguments stated in reply to Question 21 remain valid. Widening the set of measures would be to the detriment of the predictability of the system for all parties and would open ground for political bargaining. Indeed, shortening of duration of measures already took place in the footwear case which was the result of political considerations. It did not make the system more transparent.

We do not see any reason for shortening duration of measures. Business processes take time. One may assume that in the first year after imposition of measures stocks of dumped products are still significant and have influence on the market. Thus in reality the Community

producers have only 4 years to recover. In any event, in case of changed circumstances there is a set of instruments available under present rules (suspension of measures, interim review) enabling reaction to any interested party.

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?*

We are not against this idea but it entails practical problems.

Firstly, duties are paid by importers and would be reimbursed to them whereas a real impact of measures is on exporters. Secondly, if measures are imposed simultaneously in the form of price undertaking and duties it would make the issue of reimbursement even more difficult.

We are ready however to consider reasonable solutions to this matter (e.g. registration of imports after initiation of expiry review, securing duty instead of collecting it etc.).

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?*

As argued in reply to Question 23, recovery process takes time. If in the first year after imposition of measures stocks of dumped products have impact on the market and review would be initiated 15 months before expiry it would give 2.5 years of effective protection. This is not sufficient time to assess in the expiry review whether measures have fulfilled their role.

Needless to say all major TDI users start expiry review at the end of the 5 years period.

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”?*

“Threat of injury” test to be fulfilled requires imminent injurious effect on the industry, e.g. the goods are already on their way to the Community market. In “likelihood of recurrence” test it is sufficient to indicate probability of such effect in case measures are lifted. Therefore for systemic reasons it is simply impossible while measures are in force to prove that injurious effect will take place with 100% certainty. Therefore in expiry review there should be another analytical tool employed indicating reasonably *probable* scenario in case measures are lifted. Changing the current rules to the “threat of injury” test would make impossible prolonging AD measures as a result of expiry review.

This is one of the series of questions (among those on the Community interest and questions 13 to 16, 18 and 22 to 25) where affirmative reply would further tighten the European regulation comparing to the WTO rules and would make situation of the Community producers much more discriminating comparing to the producers from other countries. We note lack of any question or reflection indicating possible impact on the Community producers of such changes. We also note lack of sufficient justification for exposing the European producers to threats resulting from those possible changes.

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 are of opinion that the TDI system basically should be driven by adversary principle, by which we mean that parties deliver arguments supporting their views (this should absolutely not exclude a proactive stance of the Commission in collecting evidence). In this context we see a possible role of the hearing officer as a person ensuring transparency and respect for the rules.

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

We would like to stress that we are against any solutions enabling a political bargaining on MES. Granting MES should be subject to objective and strictly technical assessment. Thus the transparency of this process should be reassured.

On the other hand we must bear in mind that MES analysis is a very detailed and complex one. A possible hearing on this matter should be based on the provisional report of the Commission known to the participants and conducted in appropriate manner. The final report should certainly not be limited to arguments raised during such a hearing.

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?*

The Anti-Dumping Committee is the working advisory group of experts. We do not think it is appropriate to expose this sort of forum to excessive lobbying or political pressure, also of other countries. This would rather diminish predictability and transparency of the system by involvement of the purely political considerations instead of legal and economical ones. Working groups dealing with external policies and sensitive business information as a matter of principle are being subject to confidentiality rules and there is no reason why it should be otherwise in this case. Publication of minutes is in our opinion unacceptable. This would radically change the expert character of this body and make it a political one.

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?*

We would be in favour of making non-confidential files and file index accessible on the Internet for the interested parties only. Otherwise it would provoke numerous submissions of non-interested parties involving resources of the Commission without a good justification. This would also put in question the status of interested party. Even non-confidential summaries contain sensitive business information and there is no reason to make it open for non-interested parties.

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?*

In our opinion the current system operates reasonably well. We are in favour of the system run on the basis of objective criteria and where politics is kept out.

It might be also considered a split of injury analysis and dumping analysis between two separate institutions (as it is operated in the US).

We would also strongly support a creation of a specialized court's trade chamber with the fast track procedure enabling the interested parties to have a quick and effective judicial review of

the TDI decisions, including decisions on rejection of complaints and non-imposition of measures.

We reserve the right to further submission in this regard.

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

We note problems with non-confidential versions of the confidential files. They not always reflect the content of the confidential submissions to the extent enabling a proper reaction of other parties. It might be considered to grant the representatives of the interested parties an access to confidential files as it is done in the US and under similar restrictions.

The present European TDI system does not fit the peculiarity of the European agricultural sector. It is very fragmented which makes difficult and sometimes impossible to collect a support of 25% of producers for the AD complaint. Therefore it would be reasonable to consider a proposition of decreasing this threshold for agricultural sector under the WTO rules.

We also note an increasing influence of state in some economies which deepens unfair advantages of exporters in those countries and which cannot be dealt with effectively under present rules (e.g. dual pricing). Some improvements might be done in this respect.

We urge on faster and more decisive reaction on circumvention of measures.

We should consider more balanced use of the Community interest test and lesser duty rule. Those rules are in favour of exporters and their application should be dependent upon other considerations, e.g. disregard for social or environment standards or selling below costs. Injury test should be also made under more realistic approach.

We reserve the right to further submission with respect to this question.