

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.	The BGA, the Federation of German Wholesale and Foreign Trade, is the leading organization for the wholesale, foreign trade and service sector in the Federal Republic of Germany. It currently consists of 28 regional employers' associations and 51 branch associations covering the entire spectrum of wholesale and foreign trade and representing over 80.000 companies, mostly SMEs.

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.

The response to this questionnaire is based on the work of an ad hoc working group set up by our European umbrella organization EuroCommerce. Our answers to the questions supplement the work done by EuroCommerce.

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?

BGA welcomes the Green Paper on Trade Defence Instruments. It is an unprecedented opportunity for the EU to reconcile the diverging interests of producers, importers and consumers. To make this process a success, we expect from the EU and its member states the readiness for reform, not just minor technical adjustments.

The trading environment has been subject to manifold changes over the past decades. Today, the aim of trade defence instruments should be to foster competitiveness in compliance with the Lisbon Agenda, not to protect uncompetitive companies. In many cases, safeguards and antidumping have not proven to help European producers, even less to save or create jobs and much less to attract investment in Europe. On the contrary, they lead to higher prices for consumers and jeopardise traders' calculations.

In their present shape, the EU cannot be sure that the effects of its trade defence instruments (anti-dumping and anti-subsidies) are limited strictly to goods unfairly traded. As a result of the Green Paper process, the European TDI rules therefore must no longer be an attractive tool for those seeking protection against competitive imports from abroad.

Ironically, TDI nowadays also imply the danger that domestic producers who have outsourced their production see themselves confronted with TDI measures against imports from their own factories. This hinders EU operators having recourse to delocalisation in their quest for efficiency. Overall, the *raison d'être* of TDI is to best serve the interests of the European economy as a whole.

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 EU should reduce its use of antidumping, antisubsidy or safeguards to the minimum possible:

- Safeguard measures need to be limited to a small number of exceptional cases where there is evidence of existential threats to European manufacturing sectors.
- Antidumping and antisubsidy need to be limited to cases of clear unfair practices, according to their respective nature. Where there is no case of dumping, but actually it is about illegal subsidies, anti-subsidy actions should be initiated instead of AD. In the leather shoes case it can be argued that the issue of state interference which led to a rejection of individual market economy treatment should have been dealt with in an anti-subsidies investigation as in fact the companies were accused of receiving illegal subsidies.

In some instances the goods subject to antidumping measures are also subject of existing protectionist measures such as quantitative restrictions, safeguards etc. ("double protective measures"). This leads to untenable trade discrimination. There is no legitimate Community interest in doubling the protective action by supplementing safeguards or quantitative restrictions with antidumping proceedings.

By no means should the Commission initiate investigations on its own initiative. Investigations should not be started unless interested parties present a clear and substantiated case for their initiation. Ex officio initiations make the whole proceeding even more intransparent as it is not clear in whose interests the Commission is acting.

Upon receipt of a complaint, the Commission should immediately give importers, users and consumers the possibility to prepare their case against possible measures (for details see answers to the more specific questions).

At present, importers and users are all too often not aware of the initiation of a proceeding. This could be changed by imposing an obligation on the complainants to list the main EU importers and users, to whom the Commission should directly send a questionnaire without delay.

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

International trade is increasingly liberalised, outsourcing has become a normal phenomenon and supply chains are globalised. Against this background, international competition rules would be the best alternative to TDI instruments.

But even without such rules, the definition of dumping has lost much of its relevance in a world with more and more interdependent economic operators. The complexity of the production worldwide (design, fast fashion, materials, quality differences, variety of available materials and substitutes) can hardly, if at all, be taken into due account by the rules governing antidumping. Moreover, the European Commission can only compare, to some extent, *price* differences, but without having a full picture of the quality differences involved.

There is no efficient instrument against trade diversion. Globalisation of world trade is like chess: any move automatically creates reactions elsewhere. An antidumping measure against a certain product in a determined country works as an invitation to move production to another country. TDI influence price calculation, product facilities, the availability of materials etc.

Nonetheless, BGA recognises that in the existing political landscape it is not realistic to abolish trade defence instruments. However it should be possible

- to strengthen the criteria for their use,
- to include all relevant operational elements such as buying cycles
- and to make them more predictable, legally certain and transparent.

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?

The Commission should review and strengthen the Community Interest Test. Under the current rules, the interests of 480 million EU consumers and 5.5 million European traders are not sufficiently taken into account.

- The Community interest test should be given the same significance as the other three criteria dumping, causality and injury. It should be recognised that the interests of all economic operators, i.e. also the importers, users and consumers, are equally important in the assessment of what constitutes the interest of the Community.
- Current legislation allows substantial room for different interpretations of Community interest. The Commission should elaborate and publish Guidelines on the methodology for the Community interest test.
- The burden of proof should be reversed. It is only logical that those requesting TDI measures

have to substantiate and prove that these measures are in the Community interest right from the beginning. It should be clearly demonstrated that in any decision a clearly defined impact assessment and cost-benefit analysis has been carried out.

- A requirement should be placed on the Commission to actively identify the end users of imported products on which it is intended to impose anti-dumping duties and seek their views. Under the existing system, insufficient attention is paid by the Commission to identifying and listening to the concerns of both the user industry, in cases involving “intermediate” products, and consumers in cases involving consumer products. Often the lack of consumer/user industry cooperation arises because the consumers or users are not made aware of antidumping measures.
- Sufficiently long deadlines should be built into the proceedings to allow the relevant organisations (representing importers, users and consumers) to provide informed comments. Situations should be avoided where companies’ or associations’ views are ignored because they reached the Commission after the deadline. A ten or fifteen days time limit to make oneself known to the COM and to request a questionnaire is simply not enough because importers, traders, users and consumers are not organized in the same degree as European industry and appear on different levels of trade.
- The Commission should also accept informal contributions from stakeholders who are not „interested parties“ in the legal sense of the term.
- Rather than focusing investigations on a specific moment in the past (which is simply a snapshot), the Commission should also accept new comments and actual information not falling in the investigation period throughout the investigation (in order to get the whole picture).
- Silence by importers, users or consumers should not be seen as approval of measures.
- If measures are imposed, the results of the Community Interest Test should also be relevant for the determination of their level/modus (see question 8).

Outsourcing

- The practice of outsourcing production should be recognised and taken into account in assessing the Community interest. Many EU companies are outsourcing production while retaining e.g. design and research and development activities in-house. By excluding outsourced production and basing the interest test solely on companies whose production activities are in the EU, the decision to impose anti-dumping measures is skewed in favour of the complainants.
- The Community Interest Test should also determine whether the complainant producers have production facilities in third countries other than those subject to the antidumping proceeding. Where antidumping measures are clearly sought to favour imports from countries in which the complainants have production facilities at the expense of the countries allegedly dumping *no* antidumping measures should be imposed.

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. Consumer interests need to be better reflected in the Community Interest Test (see also question 4). Input from consumers should be weighted in accordance with the impact on them. Accordingly, investigations related to consumer goods require a stronger consideration of consumer interests.

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?

The task of the Community interest test is to weigh the different economic interests at stake based on objective economic criteria and facts. It is not supposed to include wider policy considerations. TDI is not a panacea.

- A clear distinction should be made between TDI and social standards. Rather than imposing trade sanctions, the potential of the ILO should be fully exploited. The commerce sector has been proactive by setting up various ambitious and effective voluntary initiatives in the field of CSR with regard to social standards in the supply chain. The EU consumer is the final judge in this respect and consumers are increasingly sensitive to this very important issue.
- Environmental concerns are global (the outsourcing of manufacturing activities may have an impact, for instance, on global CO² emissions). However, they are neither tackled under current WTO rules nor in the current framework of TDI although the competitive position depends on the regulatory framework for operators. TDI cannot solve these problems to the extent desirable, but environmental standards may well be misused for protectionist purposes. Beyond the scope of Article 31 (iii) of the Doha Declaration, the Multilateral Environmental Agreements (MEAs) provide the right platform to address environmental concerns; more work could be done on that level.

Social and environmental aspects have nothing to do with the concept of price differentiation. The evaluation of these and other non-trade issues in the dumping calculation (e.g. by making price adjustments) would make the whole instrument highly political (no international accord exists so far), intransparent and unpredictable, and thus in the end unworkable.

The application of TDI can affect trade from certain countries whose development the EU supports through its development and aid programmes; sometimes even development by the very industries affected by TDI measures. Under the current system, the EU takes to some extent with one hand what it gives with the other. Special and differential treatment to take into account the specific needs of LDCs could be envisaged whenever AD proceedings are addressed against LDCs.

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

The Commission should apply a clearly defined economic interests test based on objective criteria and facts when weighing the relative benefits and costs of antidumping measures with regard to the different economic operators. Like in the Community injury test, objective factors should be used to assess the impact of measures and forecast the economic effects on the other economic operators.

Under the current system, the Commission is biased towards the producer interests in assessing the benefits to the Community industry of imposing the duties and in assessing the costs to importers, user industry and consumers of the measures. It is a common remark in the Community interest paragraph in disclosure documents that the measures concerned "will only cost consumers a few Euro cents". Under the new system, this should be changed.

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?

Yes. If measures are imposed, the results of the Community Interest Test should be relevant for the determination of their level/modus. It should also be possible to exclude certain product categories from the measures in the interest of the European economy; this may well be the case if the overall costs of the measures on consumers or industrial users would outweigh the benefits for the EU producers.

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?

BGA explicitly supports the idea of Community interest test being used already at the complaints stage or before initiation of expiry reviews! If there is a clear trend that measures are not in the interest of the Community, a decision should be reached at a much earlier stage, either to terminate the proceeding or even not to initiate it.

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?

Principally, it is not the role of the European Commission to decide whether or not an industry is viable in the EU. This should be left to market forces and fair competition with both EU and non-EU producers. However, the Community interest test calls for a decision on whether the adoption of measures would be in the overall economic interest of the Community and how any measures would affect interested parties. In this regard, it makes perfect sense to ask if the imposition of measures would have any positive effects on the economic situation of the complainants at all, or if it would only hurt other economic operators including consumers. For instance, one might think about a situation where the Community industry has a meager market share of below 5 per cent. In this case, it can certainly be concluded that even with anti-dumping measures the Community industry would not be able to raise its prices to a sufficient level and would not, in sum, gain any significant benefit.

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

Consultations with exporting third countries should be considered in order to diffuse the political tensions which often accompany TDI investigations. To be useful, such consultations must take place at a sufficiently early stage. However, once a complaint for an AD/AS proceeding has been lodged, there shall be no room for political manoeuvre anymore.

It would also allow for third-country governments to take corrective action in the case of state-induced distortions without the need to pursue lengthy TDI decision-making.

Furthermore, it allows central governments to take corrective action when the distortion to trade is being induced by sub-national government authorities.

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?

Yes. The EU should more specifically foresee the use of the AS instrument instead of the AD instrument. In the case of the privately owned shoes companies from China, it can be argued that the issue of state interference which led to a rejection of individual market economy treatment should have been dealt with in an anti-subsidies investigation as in fact the companies were accused of receiving illegal subsidies. However, this makes necessary a reformulation of the criteria for market economy treatment in cases involving companies in transition economies.

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 EU should review the standing requirements for the definition of Community industry to take into account changing supply chains in the global economy. European industry does not exclusively produce at home anymore. There might be European producers in a given case that are related to the foreign exporters or that import the concerned product themselves. These companies can legitimately be seen as part of the Community industry. Insofar, there is no reason to exclude them from the standing assessment (same is true for the injury assessment, cf. question 32). If such companies will be included in the assessment, it is reasonable to have the level of support needed to endorse a complaint unchanged. However, if current practice of excluding companies will be kept, the total Community production threshold shall be increased to 50 percent because it can be argued that at least a majority of European producers not having any production interests in the concerned third country should support the complaint.

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?

Indeed, these thresholds should be changed. BGA suggests that de-minimis thresholds be increased significantly.

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. Adjustments with regard to start up costs shall be generally allowed where relevant information extends beyond the investigation period.

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?

It should be ensured that antidumping measures are applied only to the part of the injury that is caused by dumping. Example: if 75% of the cause of the injury is due to currency movements, then the anti-dumping duty should be reduced to 25% of the calculated rate. Reasons: Under the current rules, once a causal link has been established between the dumping and injury, the whole of the dumping is subjected to the measures even though there may be other more important factors which contribute to the injury e.g. currency fluctuations. Alternatively, to focus AD measures solely on unfair practices, it can be argued to strengthen the causal link between dumped imports and injury. The

dumped imports should be the main and most important cause for the injury of the Community industry.

In the calculation of the constructed normal value as well as in the calculation of the injury margin (target price) all too often an excessive profit margin is assumed which has nothing to do with the business realities or domestic situation in the country concerned (e.g. profit margins in the case of sweet corn ex Thailand).

Moreover, it should be recognized that trade in agricultural goods or commodities is a special case.

For instance, price fluctuations in agricultural trade are not yet sufficiently taken into account. Exporting producers in a third country may have a good or bad harvest, which has a direct effect on the price calculation. Therefore, the investigation period of one year is in many cases not sufficient to provide a true picture of the situation. At least, EU antidumping law should allow for relevant information not falling into the IP to be taken into account so that necessary adjustments can be made.

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?

Yes.

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?

Yes. The implementation of a business or restructuring plan (to be approved and monitored by the COM) should be made a condition for imposition of measures. All too often the real causes for the negative economic situation of the complainants are not dumping, but other factors which have a bearing on them. Complainants should thus be obliged to implement restructuring measures if other important factors (like mismanagement, bad export performance, loss of technological advantage etc.) coincide with the dumping.

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

Importing SMEs need predictability and legal certainty in order to prevent their calculations from being jeopardised. Moreover, for them no level playing field exists in AD proceedings because of procedural and substantial disadvantages to defend their interests.

BGA suggests:

- Questionnaires are a major area for improvement. They are complex and difficult to fill in. SME participation could be facilitated by accepting contributions from stakeholders also in other formats and after the consultation deadline.
- Questionnaires should be two-tiered in order to give SMEs the opportunity to provide the basic information they can reasonably contribute.

Trade associations can play a helpful role in collecting and providing input. To this end, as a matter of principle, questionnaires should be provided also to importer associations.

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?

No. Not least the “bra war” (2005) and the antidumping duties on Chinese and Vietnamese footwear (2006) have demonstrated traders’ need for legal certainty and twelve months predictability, but also for more transparency.

Contrary to the question, any change to the deadlines in TDI investigations should be to lengthen them. The current calendar makes it difficult, if not impossible, for importers to respond in a meaningful way and provides no opportunity for businesses to take operational decisions within the supply chain in a timely fashion.

BGA suggests the following changes:

- All stakeholders should be informed of the complaint within the pre-investigation stage, i.e. 45 days before the publication of the initiation of the investigation. This would soften the very disruptive impact of the inevitable rumours surrounding possible complaints. The COM could publish the lodging of a complaint either in the OJ or on its website.
- The deadlines for submission of answers to the questionnaire should be extended, but relevant contributions after the deadlines (not as an “interested party”) should still be accepted if they can reasonably be taken into account in the investigation.
- Announcements that provisional anti-dumping measures are not to be imposed should be published in the OJ. Under the current rules, there is no obligation on the Commission to publish any notice to inform of decisions not to impose provisional anti-dumping measures. As uncertainty over whether provisional anti-dumping measures will or will not be imposed damages business confidence, a notice should be published in good time to allow traders and importers to plan.
- A compulsory 30 days period between publication of the measures in the OJ and their implementation should be introduced.
- On grounds of due process disclosure of provisional determinations should be made prior to the imposition of provisional measures so that the concerned parties can defend their interests effectively.

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

Producers’ need for effective measures on the one side and consumer and industrial users interests on the other side need to be reconciled. This being said, the EU should follow a more flexible approach when adopting measures. In order to take into account the diverging interests in complex cases, the Community interest test shall not only be relevant for the decision if measures are to be imposed or not, but also for the form and modalities of measures. It can be envisaged that provisional duties phase in over time and that definitive duties decrease from year to year. Besides tariff rate quotas with an adequate AD duty free quota level could be an alternative to the standard ad valorem duties. Moreover product exclusion for specific product segments/categories might be an idea.

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?

Sufficient time should be allowed between the publication of antidumping regulations and their implementation for those affected to adjust their internal procedures. Currently anti-dumping measures enter into force the day after their publication date in the Official Journal. This often means that many enterprises, particularly SMEs, are totally unprepared to deal administratively with the measures.

To take into account the need of predictability in the buying circle of importers, BGA suggests:

- A minimum of thirty day time period between publication in the Official Journal and implementation should be compulsory.
- Decisions should include a clause which would exclude any goods which are already en route (i.e. have left the point of production) as well as all orders already placed. The proof of the date of the order could be provided e.g. by an irrevocable and confirmed letter of credit.

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 rule that the duration of definitive antidumping duties is generally 5 years is in many cases outdated. Antidumping measures should remain in force only as long as, and to the extent that, it is necessary to counteract the dumping which is causing injury. Nowadays, production methods and product life-cycles change much more quickly, particularly in the area of consumer goods.

BGA suggests:

- The duration of antidumping measures should be tailored specifically to the life cycle of the product concerned. The duration should also be shortened to take account of unforeseen market-relevant circumstances (e.g. natural disasters, bad harvests etc.).
- The duration for consumer goods (food and non-food) and information technology products should be limited to three years, with flexibility to reduce that period further.
- Antidumping and antisubsidy measures should be performance-linked (e.g. restructuring, rationalisation, diversification etc.), and a duration accordingly set up to five years maximum to reach these objectives. After an expiry review, measures should be extended only once and for only half of the duration of the original 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. It is only right that duties overpaid during expiry reviews which conclude that measures are not to be continued should be paid back. The basic regulation should include a general reimbursement clause in cases where expiry reviews have been concluded negatively or decisions have been annulled before the WTO or the ECJ.

There should not be any duty over the deadline set by the regulation or where AD regulations have been annulled.

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. The existing legislation makes it difficult for importers to plan ahead. Especially the practice of the Commission to initiate an expiry review on the last day of the lifetime of measures makes any planning of buying activities totally impossible.

BGA suggests:

- Expiry reviews should be initiated and completed within the lifetime of current anti-dumping measures. Expiry reviews entail an automatic extension of the measures when they are initiated affording up to fifteen months additional protection to those requesting the reviews. If the expiry review results in a further extension of the measures for five years, then the complainant may enjoy up to a total six and a quarter years of anti-dumping measures. Reviews should in any case be concluded within 9 months.
- Antidumping measures should be renewed only once, at least in cases where dumping is not the main cause of injury to the Complainants. Under the basic antidumping Regulation there is no limit to the number of times an antidumping measure may be extended. Potentially measures could last up to 100 years if renewed twenty times.
- An interval of at least twelve months should elapse before a new investigation may be started. Chain complaints should in any case be prohibited.

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"?

The extension of antidumping/antisubsidy measures should be possible only in exceptional cases. In principle, the 5-year (or shorter) period should meet the Regulation's stated intention. Under current practice, approximately 50 per cent of all expiry review requests lead to an extension of the measures. This simply shows that the threshold for extension of measures is too low and should thus be raised.

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?

As in DG Competition, a hearing officer should be a semi-neutral figure who is responsible for overseeing that procedures are followed correctly and to whom grievances can be referred.

In particular, the hearing officer should ensure all interests are heard in the investigation and that the Community Interest test is more than just a 'tick-box' exercise tagged on to the end of a TDI investigation; rather the hearing officer should be committed to importers and, in cases involving consumer goods, also consumer interests – a 'guardian of EU competitiveness'.

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

Public hearings should ensure that fact-based and objective decisions can be reached.

The decision to award country-wide Market Economy Status to China is a political decision to be taken by the MS. Before making this decision, all stakeholders should be consulted. Insofar a public hearing would help.

Apart from this political issue, public hearings might also provide the opportunity to get a clearer view on case-specific questions. For instance, one could envisage a hearing on the question of the choice of an appropriate analogue country, the injury assessment, and Community interest in a given case.

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. BGA suggests:

- Requests for trade defence action from the complainant industry, questionnaires and guidelines followed by Commission officials should be published. Preliminary findings of investigations should be provided simultaneously to Member States and interested parties. Under the current practice, working documents are restricted. Disclosure of preliminary findings is not simultaneous, nor is the same information disclosed to the Member States and to interested parties.
- The agenda of the Antidumping Committee, as well as the names of its members, meeting calendars, minutes and other relevant working documents should be made available directly by the Commission on the internet.
- Commission guidelines for applying anti-dumping legislation should be published. Currently the “clarification papers” exercise is only open to Member States so that other stakeholders are excluded from participating in the debate on how the Commission applies its legislation. If, as it claims, the Commission really believes that the basic Regulation is “gold plated”, it should not object to constructive criticism from entities other than Member States.

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?

Yes. BGA suggests:

- The Commission should provide access via internet to non-confidential versions of complaints, questionnaire replies, disclosure and working documents etc. The purpose of this internet file would be to avoid unnecessary speculation and rumours among interested parties. It would also allow for a better understanding of the issues at stake.
- The agenda of the Antidumping Committee, as well as the names of its members, meeting calendars, minutes and other relevant working documents should be made available directly by the Commission on the internet.

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?

Although definitive decisions are taken by national ministers, it is incumbent upon the Commission in its provisional decisions and proposals for definitive measures to isolate itself from pressures for protectionist abuse of TDI. Current procedures result in a built-in bias within DG Trade towards the producer community. Measures must be taken to ensure that Commission activity in this area reflects the broadest Community interest.

BGA suggests:

- There must be a reversal in the changing of the voting modalities on AD/AS cases in 2004. There is no justification for a voting system which allows the adoption of enormously significant decisions with active support of only a minority of member states.
- There should be no additional transfer of competences related to antidumping to the European Commission.
- The period granted to Member States to consider documents relating to antidumping proceedings should be extended to at least fifteen days. Currently Member States have only five days to give their opinion on the initiation of new anti-dumping investigations and ten working days to consider Working Documents. This necessarily restricts the ability of Member States to consult all the interested parties.
- The deadlines for stakeholders to react to e.g. notices of initiation and register themselves as interested parties should be extended. The ten days deadline to request a questionnaire is simply too short.

An independent agency should be created which is responsible for the injury and Community interest assessment. Besides, the Agency could also take over other more basic tasks for the EU institutions like economic research and analysis. The COM should only investigate dumping allegations.

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

It happens rather often that European producers suggest the U.S. with its relatively high labour and production costs as an analogue country. The results achieved on this basis are often biased. The economic data of the analogue country should have to be similar to that of the concerned country (same level of economic development). Moreover, the consultation period for exporters, importers and users reacting to the proposed selection of the analogue country should be extended significantly. Under the current deadline (ten days) it is practically impossible to find companies in another reference country which are willing to cooperate.

Against the majority of members in the AD Committee, the initiation of AD proceedings and the adoption of provisional measures should not be possible.

Apart from the legal costs associated with the APO system which gives US lawyers access to the confidential files, such a system is not a reasonable instrument in the European legal order. Indeed, full access to the dumping and injury margin calculations is not a priority for importers.

The definition of community industry in the injury assessment should be changed. It is not reasonable to exclude European producers which are related to foreign exporters or import themselves the product concerned from the injury assessment. Such producers have an equal stake in the investigations as in fact they are part of the Community industry. There is no legitimate reason to exclude such companies that might have outsourced parts of their production from the injury assessment. Currently, injury is only determined on the basis of the situation of the complainants. Such an analysis can never give the full picture on the state of the European industry. It is totally biased towards the complainants. An objective analysis requires to look at the whole Community industry!