

Position Paper

UEAPME¹ position on the proposal for a Regulation amending the current Regulations (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community and Regulation (EC) No 597/2009 on protection against subsidised imports from countries not member of the European Community

1. Introduction

UEAPME welcomes the Commission proposals to review the two Regulations mentioned above as an attempt to modernise the current trade defence instruments². In particular all suggestions to increase transparency, predictability and information-sharing are of great value to businesses and in particular SMEs. These aspects are indeed crucial when doing business. Lack of information and predictability can have serious financial and other implications on any business, which always harms SMEs more than bigger businesses.

1.1 Increased transparency and predictability

UEAPME notes with satisfaction that the current drafts are moving in the direction of improving transparency and predictability.

- **Pre-disclosure / Advance notice**

We also favour the idea of pre-disclosure of measurements, even if for error-finding and calculation problems only. However, a deadline of two weeks is far too short; a minimum of three weeks should be granted. UEAPME further suggests that the time line for a reply is extended from 3 working days to at least 7 full days.

- **Advance notice of the non-imposition of provisional measures**

UEAPME is of the opinion that informing interested parties in good time prior to the expiration of the 9-month deadline, in cases where the imposition of provisional measures is not envisaged, is another step to increase transparency. However, the envisaged deadline of 2 weeks is far too short and should be extended to 6 weeks

¹ UEAPME subscribes to the European Commission's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](#).

² For more details please refer to our latest position paper² in which UEAPME replied to the public Consultation from the European Commission on the modernisation of Trade Defence Instruments of July 2012.

http://www.ueapme.com/IMG/pdf/PP_modernisation_of_trade_defence_2012_July.pdf

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before the expiration of the deadline.

- **Shipping clause**

UEAPME welcomes the commitment of the European Commission not to impose provisional measures within a certain period after sending off the pre-disclosure. Nevertheless, UEAPME requests that the timeline be more oriented on the reality of doing business. Therefore, 2 weeks are simply too short. The ideal timeframe would be 6 weeks. Further, it would be helpful to also inform about the timeframe in which provisional measures will take place, so the businesses can better calculate with them.

Guidelines

UEAPME very much welcomes the drafting and publishing of guidelines regarding the injury margins, analogue country, union interest test and expiry reviews as another step to increase transparency and predictability. Such guidelines would enable businesses to better evaluate their situation.

In general all guidelines adopted by the Commission should be made publicly available to the businesses, including "Clarification Papers" (e.g. like product, reimbursements, undertakings, causal link).

Further guidelines in the areas of "product concerned/ like products", "union industry/ calculation of standing/ related parties" and "undertakings" would also be beneficial.

1.2 Fight against retaliation

- **Ex-officio AD and CVD investigations**

UEAPME is of the opinion that ex-officio investigations in situations where there is threat of retaliation by the Commission is a useful tool but must only be used in very restricted situations. It needs to be ensured that this is only done in close cooperation with the union industry and only if the majority of it approves such an act.

- **Obligation to cooperate in ex-officio investigations**

UEAPME opposed the obligation of companies to cooperate in ex-officio investigations. Companies should be "invited" to cooperate but it needs to be left to each single company to decide whether or not they want to support the ex-officio investigation.

1.3 Effectiveness and enforcement

The EU trade defence system is not always effective. There are circumvention activities, because markets react very quickly on adopted measures and change their delivery channels. The adopted measures are not always timely nor a solution for the problem.

- **Ex-officio anti-circumvention investigations**

UEAPME welcomes ex-officio anti-circumvention investigations initiated by the European Commission, based on severe law breaches, if it has sufficient evidence at its disposal. The most common circumvention practice which our members have experienced is mis-declaration of origin.

- **Lesser Duty Rule**

UEAPME further supports the current application of the lesser duty rule. If the European Commission decides to extend the lesser duty rule, it should only be extended to cases of subsidisation.

1.4 Facilitate cooperation

Most businesses have experienced difficulties in cooperating in trade defence investigations. In particular the

short deadlines, extensive questionnaires, high costs for lawyers, too little knowledge, too few lobby possibilities and too many different languages cause problems for SMEs.

- **Time-limits: longer time-limits for users to register as interested party and to reply to the questionnaire**

UEAPME welcomes the extension of the deadlines for users to register as an interested party to the Commission from 15 days to 29 days, and the time for replying to the questionnaire from 37 to 51 days.

- **Simplification of refund procedures**

UEAPME is happy to see the simplification in the handling of refund procedures. Every type of information and support is strongly welcomed.

- **Small and Medium Sized Enterprises (SMEs)**

UEAPME strongly welcomes the upgrade of the SME helpdesk, as a strong support to help smaller enterprises make use of the Trade Defence instruments.

1.5 Optimising review practice

- **Expiry reviews – re-imbusement of duties paid if the investigation is terminated without renewal of measures**

UEAPME further very much welcomes the idea of reimbursing duties that had been collected since the opening of the review investigation in cases where, after investigation, the measures are not prolonged. There is no legitimate reason for keeping those duties.

- **Expiry reviews combined with interim reviews**

UEAPME supports second and any further expiration review of measures to be combined with an interim review, in order to allow for the level of duty to be changed if appropriate. However, only an automatic connection between expiry review and interim review will be able to establish a realistic comprehensive picture of the situation on the market, keeping in mind that markets can change significantly in 5 years.

- **Ex-officio interim reviews**

UEAPME welcomes Ex-officio interim reviews in case of serious anti-competitive behaviour, e.g. in case of cartels, price fixing.

1.6 Codification

- **Registration of imports ex officio**

We are of the opinion that the proposal of registration of imports ex officio in cases of circumvention is positive. The retrospective application of duties however should be avoided or even given up.

2. Conclusion

UEAPME welcomes the proposal to review the trade defensive instruments. In particular the actual steps to improve transparency and predictability will be very valuable. The envisaged review of the current deadlines is a step into the right direction, but some deadlines are still too short and completely unrealistic in practice. Keeping the think-small first principle in mind, procedures should be facilitated wherever possible and, if this is not possible, better user-friendly tools or instruction manuals to also guide non-lawyers through relevant documents and questionnaires need to be created. UEAPME is also in favour of upgrading the helpdesk and promoting the

already existing activities. Those helpdesks usually play a very important role for SMEs in trying to avoid high legal fees.

Brussels, July 2013

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