

Position Paper

UEAPME¹ position on Modernisation of Trade Defence Instruments

1. Introduction

UEAPME welcomes the consultation on modernisation of trade defence instruments. In particular all suggestions to increase transparency, predictability and information-sharing mentioned in the public consultation are of great values for 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 SME's more than bigger businesses. We also favor the idea of pre-disclosure of measurements, even if for error-finding and calculation problems only, and the proposed shipping clause (not to impose measures the first three weeks after disclosure of measurements). In big lines, the proposed measures in the questionnaire aim at simplification and at suggesting realistic procedures and deadlines, which to us seems to be the right way forward.

2. Opinion on the initiative

2.1 Increased transparency and predictability

UEAPME welcomes any improvements on transparency and predictability. Lack of information and predictability can have serious financial and other implications on any business, but even more on SME's.

- **Pre-disclosure / Advance notice**

We also favour the idea of pre-disclosure of measurements, even if for error-finding and calculation problems only, and the proposed shipping clause (not to impose measures the first three weeks after disclosure of measurements). Such measure would give the businesses the possibility to evaluate possible effects on the measures that the Commission is going to adapt. UEAPME welcomes a limited pre-disclosure from the Commission to interested parties even it is only around three weeks before the imposition of provisional measures and a limited scope.

Such a proposal would give to the businesses the possibility to evaluate possible effects on the measures that the Commission is going to adopt.

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](#).

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

The Commission should also inform interested parties in good time prior to the expiry of the 9-month deadline, in cases where the imposition of provisional measures is not envisaged. This would be another step to increase transparency.

- **Activities of the Anti-dumping/Anti-subsidy Advisory Committee**

UEAPME would also welcome if DG TRADE could send a summary document about the proposed measures to interested parties, at the same time as the documents for consultation on provisional and definitive anti-dumping/ countervailing duty measures are sent to the ADC/ASC. This would increase transparency and provide the enterprises with as much information as possible to adopt more suitable corporate policies. It would also be helpful to get the contact details of the members of ADC/ASC.

- **Shipping clause**

UEAPME welcomes commitments not to impose provisional measures within a period of around three weeks after the sending of the pre-disclosure. However, it would be even more helpful to also inform about the timeframe in which provisional measures will take place, so the businesses can better calculate with them.

- **Injury margin**

UEAPME welcomes very much the drafting and publishing of guidelines regarding the calculation of the injury margin. This would increase transparency and also the acceptance of the business for the decisions issuing injury margins. It would also make it possible to adopt more suitable corporate policies.

- **Analogue country**

Guidelines regarding the choice of analogue country are also strongly supported by UEAPME. This would increase transparency and also the acceptance of the businesses for the decisions taken by the Commission.

- **Union Interest Test**

UEAPME welcomes very much guidelines on the Union interest test. It would allow businesses better understand the mechanisms that lead the Commission to take decisions on whether duties are adopted or not and of course be another important way to improve transparency.

- **Expiry Reviews**

Guidelines regarding expiry review investigations would be very much welcomed by UEAPME. It would help enterprises better understand the mechanisms that lead the Commission to take decisions on adoption or non-adoption of measures and therefore be an important step in improving transparency. 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).

1.2 Fight against retaliation

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

The initiation of ex-officio investigations in situations where there is threat of retaliation by the Commission is a useful tool but must only be used in in very restricted situations.

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

In case the Commission established procedures for the purposes of ex-officio investigations, businesses should not be obliged to cooperate in such procedures. In addition they should not be threatened with financial penalties if they chose not to support an 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**

The most common circumvention practice which our members have experienced is mis-declaration of origin. UEAPME welcomes ex-officio anti-circumvention investigations initiated by the Commission, if it has sufficient evidence at its disposal, because such circumventions are usually based on severe law breaches. Such measures would also provide support to the enterprises and would help to improve the relationship of trust between businesses and European Commission.

- **Verification visits**

UEAPME supports an increase on the length of investigation visits to four or five days per company to improve the quality and precisely of the verification visits in general. Of course an increase on the lengths of those visits needs to be appropriate and should not create unnecessary burdens.

- **Lesser Duty Rule**

The Commission should continue to apply the lesser duty rule in cases of fraud, circumvention or subsidisation because it helps to discourage fraudulent exporters.

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 supports the extension of the deadlines for users to make themselves known to the Commission and to submit questionnaire replies, because the current 15 days are simply too short for most users.

- **Simplification of refund procedures**

The handling of refund applications should be reviewed to facilitate such requests and to make such decisions more easily accessible to the public. The possibility of refund hardly is known. Procedures and conditions are unclear. It is important to publish clear information on the TDI homepage with instruction on the procedure and the application, documents and information to be submitted and contact details. Currently you actually need a lawyer for succeeding with the refund procedure which causes high costs and actually renders the refund procedure useless.

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

UEAPME supports the upgrade of the SME helpdesk, as a strong support to help smaller enterprises. The helpdesk should offer specific professional advice of import-export and also be a point of reference to gather information. Ideally an answer within 3-4 days guaranteed should be envisaged. Considering that many SMEs cannot afford a lawyer, the helpdesk could support them in their procedures with translation services, support by dealing with the received data etc.

1.5 Optimizing review practice

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

UEAPME welcomes very much 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 in such cases.

- **Expiry reviews combined with interim reviews**

UEAPME supports second and any further expiry review of measures to be combined with an interim review, in order to allow for the level of the duty to be changed if appropriate. 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**

Systematically initiating interim reviews of measures by the Commission when relevant anti-competitive behaviour has been identified is a very tricky issue. On one hand it could help the enterprises stay in the markets at the best conditions; on the other hand we are not yet convinced that there is a real need for introducing such a new measure.

1.6 Codification

- **Registration of imports ex officio**

We think that the proposal of registration of exports ex officio is positive, as long as the scope will not be extended.

- **Ensure that exporting producers with a zero or de minimis dumping margin in an original investigation (as opposed to a review investigation) will not be subject to any review**

We agree in considering that these enterprises can be subject to new investigations.

- **Clarify the definition of "a major proportion" of the Union industry**

UEAPME welcomes a more precise new definition instead of a deletion of it.

- **Sampling provisions should refer to Union producers and not to complainants, except for the standing test**

UEAPME agrees that article 17 should be modified to include all cooperating Union producers. Producers who are not cooperating should not be included in the scope.

- **Clarify that the investigation of Union interest covers all Union producers and not only complainants**

We agree with the proposed modification of article 21 Section 2.

3. Conclusion

In conclusion UEAPME welcomes this consultation as very supportive for SMEs. In particular its proposals in improving transparency and predictability will be very valuable. The envisaged review of the current deadlines is a step into the right direction. 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 guide also non-lawyers through relevant documents and questionnaires need to be created. UEAPME is also in favor 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.

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