

# Thoughts in response to the list of issues considered by the Commission

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11 July 2006

**[This document reflects the views of the author only]**

## Introduction

On invitation by Trade Commissioner Peter Mandelson a group of stakeholders and experts, including EuroCommerce President Dr. Peter Bernert, will discuss challenges that globalisation poses to Trade "Defence" instruments and possible ideas for reform. As a contribution to the preparation of the seminar, EuroCommerce wishes to provide some thoughts in response to the list of issues considered by the Commission<sup>2</sup>.

EuroCommerce is also preparing a position paper on more technical aspects of the EU trade "defence" instruments.

## Preliminary remarks

- Commerce is the only sector in the EU with direct contact to 450 million consumers, at whose service it is and whose opinions it therefore reflects.
- Globalisation brings better prices to European consumers and development possibilities for developing countries (income, technology transfer).
  - It is beneficial to import t-shirts and shoes and to export textile machinery and airplanes.
- The term Trade "Defence" Instruments (T"D"I) is *per se* negative. Antidumping, subsidisation and safeguards do not "defend" trade, they create obstacles to trade.
- The EU should focus on the opportunities of globalisation rather than on possible threats. Countries like China (1.3 billion consumers) and others offer a huge potential for the export of European goods and services. The current use of T"D"I is not conducive to improve the EU's relations with its trading partners worldwide.
- We need to be aware that the public debate on globalisation is conducted on a highly irrational level. Nonetheless, the existing rules must be respected in any case. EuroCommerce has continuously been highlighting the need for respecting the rules (e.g. in the case of intellectual property and fraud) vis-à-vis its members (associations and companies) as well as foreign authorities in all parts of the world.
- Last but not least, traders need legal certainty and twelve months predictability.

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<sup>1</sup> Preparatory Paper for the Seminar on Trade "Defence" Instruments

<sup>2</sup> The issues for reflection identified by the European Commission are written in bold.

## 1. TDI in an imperfect world market

- **Are TDI needed in today's world economy? Is the existing market segregation and the absence of international competition rules a reason for having TDI? What are the economic consequences of these imperfections of the world market?**

Instruments against unfair practices can be legitimate in certain cases (e.g. when a strong actor in the market deliberately tries to "kill" a small competitor by underpricing his products); protectionist instruments are certainly not and can even be counterproductive.

Market segregation still exists to some extent, but international trade is increasingly liberalised, outsourcing has become a normal phenomenon and supply chains are nowadays globalised. Against this background, it would make more sense to strive for international competition rules than to maintain TDI instruments.

TDI nowadays imply the danger that domestic producers who have outsourced their production see themselves confronted with TDI measures against the imports from their own factories.

- **Where distortions and certain trade practices are the result of state interference, are TDI an adequate remedy? Are there alternatives?**

TDI punish consumers and importers rather than the state that has interfered. Solutions should therefore rather be found on intergovernmental level (e.g. WTO or regional trade agreements) than between state and importers/consumers. Offensive trade promoting should replace defensive TDIs.

Competition creates competitiveness. Example: Sweden protected for many years its textile industry, mainly with trade policy means. The country never protected the automotive industry in the same way although it has always been exposed to strong competitive pressure. Today Sweden has no textile industry left, but a very successful automotive industry.

- **The determination of dumping involves a number of comparisons of prices and costs of exporters – sometimes taking the data of the exporter as the point of comparison, sometimes relying on a proxy. Is the definition of dumping still relevant in a world with more and more interdependent economic operators?**

No. 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.

## 2. TDI and globalisation

- **How do multinational companies with trans-national business models fit in the use of TDI?**

As could be seen in the recent antidumping case against footwear imports from China and Vietnam, multinational companies and producers who have outsourced their production risk seeing themselves confronted with measures against their own products. We must therefore come to a new definition of the concept of Community industry.

- **How do we cater for the phenomena of outsourcing of production by European businesses, which are then in competition with EU based production and might be penalised by TDI measures?**

Take due account of this phenomenon in the framework of the Community interest test and in the prerequisites for the initiation of an antidumping investigation.

- **Do we hinder EU operators having recourse to delocalisation in their quest for efficiency?**

Yes.

- **Is the non-use TDI or to moderate their use any part of the way forward?**

A more moderate use of TDI is certainly to be recommended, depending on the respective individual case. Ideally this would happen on the basis of a stricter WTO Agreement on Antidumping. Should the latter not be achieved in the current Doha Round, the EU should unilaterally moderate its use of TDI, i.e. through stricter prerequisites

- **Country versus “company” origin: is the notion of country of origin still meaningful?**

No. Consumers are most interested in price and quality of a product, not in its origin. Production chains are nowadays globalised to the extent that e.g. a shirt can have been produced in five different countries before being sold to the consumer. Brand names remain an important tool for consumers to identify products of a certain style or quality, regardless of the origin of the product, which says nothing about quality.

- **Can we control/contain the growing recourse to TDI abroad?**

Ideally through the WTO, otherwise possibly through bilateral and regional trade agreements. Through moderate use of TDI, the EU sets an example for other users of TDI in the world.

- **Does applying TDI attract investment to Europe?**

No. To our knowledge, there is no example of a TDI measure having attracted investment to the EU.

- **The analysis of Community interest in a globalised world: Do we take into account all parameters and all interests? Is the definition too narrow or too broad?**

No. The interests of 450 million EU consumers and 5.5 million European commerce and trade companies are not sufficiently taken into account.

### **3. Balancing different interests and wider policy implications in TDI action**

- **Do we have the right balance between defensive and offensive interests of the EU?**

No. Too much use is made of safeguards (e.g. textiles & clothing) and antidumping. These instruments have not proven to help European producers; they only led to higher prices for consumers and jeopardised traders' calculations.

- **TDI and employment:**

- **Are we workers or consumers?**

Both. European commerce needs a strong and vigorous industry to ensure mass income. But the link between the use of TDI and job creation is not evident; TDI do not solve Europe's competitiveness problem.

The solution of the latter lies in the field of research, restructuring and innovation. In the textile sector, for instance, a large share of the production of fitted carpets for airports, large buildings, housing etc. is made in Europe, where highly developed and computerised production facilities are available.

We wonder whether there is any statistic evidence of TDI measures having created or saved jobs in Europe. On the other hand, the higher costs for consumers arising from e.g. antidumping duties are evident. However, there is a need to better explain the benefits of globalisation by market opening for import and export to the wider public.

- **Can we reconcile our aim to promote consumer choice and well-being and the need to create and preserve jobs?**

Yes: concentrate on Europe's strengths, export European goods and services to countries outside the EU (e.g. the 1.3 bn Chinese consumers), further liberalise the EU import policy to improve consumers' access to products of best price and quality.

- **TDI and development: Do we take with one hand what we give with the other?**

**The application of TDI can affect trade from certain countries whose development we are supporting through our development and aid programmes, sometimes support development by the very industries affected by TDI measures.**

Yes, we take with one hand what we give with the other. The EU development policy is aimed at increasing developing countries' competitiveness. We should not penalise those countries once they have developed their production to the extent that they can compete on the EU market. If we are serious about development policy, we must also live with the results it produces; otherwise we would risk holding the developing world in a perpetual situation of depending on subsidies.

- **TDI and environment: Are the polluters rewarded?**

**Environmental concerns are global (the delocalisation of manufacturing activities may have an impact, for instance, on global CO2 emissions). However, they are tackled neither under current WTO rules nor in the current framework of TDI although the competitive position depends on the regulatory framework for operators.**

Trade policy is not a panacea. It cannot solve environmental problems to the extent desirable. However, environmental standards may well be misused for protectionist purposes. The Multilateral Environmental Agreements (MEAs) provide the right platform to address environmental concerns; more work could be done on this level.

- **TDI and social aspects:**

**- Does severe "social dumping" lead to a race to the bottom for social standards?\***

The danger potential is there, but the commerce sector has been proactive in this field by setting up various ambitious and effective voluntary initiatives in the field of CSR with regard to social standards in the supply chain.

We would like to outline again that the EU consumer is the final judge in this respect and consumers are increasingly sensitive to this very important issue.

**Where is the border line between competitive wages and social dumping? Don't we destroy the basis for economic growth in developing countries if we overemphasize "social dumping"?**

**- How do we deal within our TDI analysis with competitive pressure from low and questionable labor standards?**

A clear distinction should be made between trade policy and social standards. Only in cases of blatant disregard of basic standards (like e.g. in Myanmar) trade sanctions (that's what TDI would be in this context) should be applied. In all other cases the potential of the ILO should be fully exploited.

Social and environmental aspects have nothing to do with the concept of price differentiation. The evaluation of these and other non-trade issues in antidumping proceedings would make the whole instrument highly political, intransparent and unpredictable, and thus in the end unworkable.

**4. How to technically improve the efficiency of TDI?**

- **Community interest: How can we overcome the difficulties of having to forecast the economic effects of measures on the long term?**

Ensure balanced consideration of all stakeholders' interests: EU importers, EU consumers, EU producers. Put in place stricter rules.

- **Does the EU-system provide for the right types of TDI remedies to address the effect of injurious dumping?**

European producers have all too often used the antidumping instrument as a tool against competitive imports from abroad. A recent example is the case of footwear with leather uppers from China where antidumping measures were requested as a remedy against foreign competition. Less trade-restrictive antidumping measures, e.g. tariff rate quotas or progressively decreasing tariff rates, should be envisaged to remedy the injurious effects of dumping.

In the future, the EU trade policy will need to make a clearer distinction between action against illicit dumping and protectionist action.

**- Are we sufficiently flexible? Current anti-subsidy and anti-dumping measures focus on price-corrections. Do we need to look more also at quantitative corrections?**

No. Antidumping and antisubsidy should not be used as instruments against undesired increases of imports – they should be strictly limited to cases of unfair practices. However, tariff rate quotas with an adequate duty free quota level for traditional importers could be an alternative for definitive AD and AS measures.

**- Can/should TDI be used to address market access into the markets of the dumping countries?**

The economic rationale behind TDI is already today to address closed markets of the dumping countries. However, in practice, the purpose of TDI could rarely, if ever, be fulfilled. If we still want to uphold its rationale, TDI should be closely linked to the Trade Barrier Regulation to address third country market access.

**- Does enforcement work? How do we counteract circumvention or trade diversion?**

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. T”D”I influence price calculation, product facilities, the availability of materials etc.

- **Can we be sure that the effects of trade defence instruments can be limited strictly to goods unfairly traded?**

In their present shape: no. But it is of paramount importance for the credibility of such measures taken not to be used for protectionist purposes.

- **The Community's economic strength is built also on SME's. Is TDI a sufficiently operational tool for them or are the small economic operators left out in the rain?**

It is important to distinguish between two types of SMEs: producers and importers. More than 95% of the 5.5 million companies of the commerce sector in the EU are small and medium sized. Importing SMEs have the same right to receive support from the Community than the producers. They need 12 months predictability and legal certainty in order for their calculation not to be jeopardized. The more T”D”I are made operational for manufacturing SMEs, the more harm they will cause to importing SMEs.

- **Around 60 countries have TDI legislation and most apply it in practice. What can we improve in the EU system by learning from others?**

Reduce the use of T”D”I measures. The EU is among the world's three main users of T”D”I, which sets an unfortunate precedent for its trading partners.