

## **Evaluation of EC Trade Defence Instruments (TDI) Discussion Issues for Business**

### **1. EXPERIENCE OF TDI**

- Name and affiliation of respondent
- What is your experience with EC TDI (complainant, importer/user, exporter, trade/industry association official)?
- Have you been involved in TDI investigations against EC exports?
- Do you have specific experience of US TDI? In what context?

### **2. ANTI-DUMPING AND ANTI-SUBSIDY INSTRUMENTS**

#### **2.1 Trends**

- (a) Why does anti-dumping activity fluctuate?
- (b) Why has anti-subsidy activity remained at low levels in comparison to anti-dumping?

#### **2.2 Procedure**

- (a) Is the threshold for accepting complaints set at a reasonable level?
- (b) Access to instrument for EC industry attempting to prepare complaints – issues might include cost, problems achieving standing, problems collecting necessary evidence of dumping or subsidy, SMEs, problems unique to particular sectors etc.

- (c) Transparency and access to information.
- (d) Confidentiality of business sensitive information – are companies confident that confidentiality will be respected when they submit business information?
- (e) Is there sufficient opportunity to participate in the investigation (hearings, submission, disclosure etc.)?
- (f) Length of investigation and timetable for adoption of measures (i.e. 9 months for provisional measures, 13 and 15 months for definitive dumping and subsidy measures respectively)
- (g) Complexity of questionnaires – could they be simplified and, if so, in what way?
- (h) Decision-making process for adopting measures.
- (i) WTO non-discrimination requirements (i.e. MFN) and complaints/adoption of measures.
- (j) Interim-reviews
- (k) Expiry reviews
- (l) Other procedural issues affecting the needs and opportunities of economic operators.

#### **2.3 Substance**

- (a) Definition of EC industry in view of globalisation (exclusion due to relation or imports).
- (b) Dumping and Subsidy Margins
  - (i) Dumping calculation –
    - Normal Value – issues may include non-market economy methodology, related companies, SGA and rate of profit in constructed normal value calculation.
    - Export Price – issues may include related companies.
    - Comparison and Adjustments

- De minimis dumping
- (ii) Subsidy calculation -
  - Definition of subsidy
  - Calculation of benefit
  - CVD and countries in transition.
  - De-minimis subsidy
- (c) Injury and Causality
  - Determination of material injury - issues might include threshold for 'material' injury, captive production, and treatment of non-complainants.
  - Like product
  - Threat of material injury and material retardation
  - Causal link - attribution of injury between dumped/subsidised imports and other factors.
- (d) Injury margin for implementation of lesser duty rule – issues might include identification of non-injurious price, relevant costs and rate of profit to be used in calculating the NIP.
- (e) Community Interest
- (f) Post-measure substantive issues
  - Expiry review – likely continuation / recurrence of dumping/subsidy/injury.
  - Interim review – changed circumstances.
  - Circumvention
  - Absorption
  - Duty refunds
  - Suspension

- Registration and retroactivity.

## 2.4 Institutions

- (a) How do you view the role of Member States in adopting measures?
- (b) Impact of change in Council voting procedures introduced in 2004 and of Eurocoton judgement.
- (c) Internal organisation of Commission investigations, particularly with regard to the dumping/subsidy and injury investigations.
- (d) How do you perceive ex parte meetings between Member States and economic operators (lobbying)?
- (e) Any other comment on the respective roles of the Commission and Member States.

## 2.5 Effectiveness of anti-dumping and anti-subsidy instruments

- (a) Application and enforcement – issues may include circumvention, absorption, OLAF, customs.
- (b) Type of measures – duties and undertakings.
- (c) Level of measures
- (d) Threat of retaliation and disincentive to make complaints
- (e) Examples of successful measures and those that failed to achieve their objective

## 2.6 Comparison with US

- (a) Substance
  - (i) Dumping calculation methodology (e.g. adjustments, zeroing, domestic sales tests such as 5% test and % of profitable sales)

- (ii) Subsidy calculation methodology (e.g. pre-privatisation subsidies, allocation methodologies)
- (iii) Injury and causal link – may include injury factors considered, treatment of captive production, attribution of injury.
- (b) Procedure
  - (i) Complaint – sufficient evidence threshold, who can make complaints?
  - (ii) Questionnaire and verification
  - (iii) Provisional and definitive measures – speed of adopting measures, duty collection systems and efficiency of duty collection., disclosure.
  - (iv) Administrative review
  - (v) Judicial review.
  - (vi) Treatment of confidential information.
  - (vii) Cost of procedures
  - (viii) Support of SMEs
  - (ix) Byrd amendment
- (c) Institutions – split of dumping/subsidy and injury between two US agencies.

### 3. SAFEGUARDS

#### 3.1 Why have safeguards traditionally been seen as unusable in the EC?

#### 3.2 Substance

- (a) Increased imports
- (b) Serious injury
- (c) Causality

- (d) Community Interest
- (e) China and TPSSM/special textiles safeguard

#### 3.3 Procedure

- (a) Initiation of investigations
- (b) Provisional and definitive safeguard measures
- (c) Decision-making
- (d) Type and duration of measures
- (e) Compensation

#### 3.4 Institutions

#### 3.5 Effectiveness of measures

#### 3.6 Comparison with US

**Cliff Stevenson**  
**Chief Economist and Head of EU Trade Practice**  
**Mayer, Brown, Rowe and Maw LLP**  
[cstevenson@mayerbrownrowe.com](mailto:cstevenson@mayerbrownrowe.com)  
**+32 (0)2 502 5517 (Brussels office)**  
**+44 (0)207 334 2041 (London office)**

## Evaluation of EC Trade Defence Instruments (TDI) Discussion Issues for Member States

### 4. EXPERIENCE OF TDI

- Name of person and Member State represented.
- What is your role? In what way are you involved in TDI?
- Have you been involved in TDI investigations against EC exports?
- Do you have specific experience of US TDI? In what context?

### 5. ANTI-DUMPING AND ANTI-SUBSIDY INSTRUMENTS

#### 5.1 Trends

- (a) Why does anti-dumping activity fluctuate?
- (b) Why has anti-subsidy activity remained at low levels in comparison to anti-dumping?

#### 5.2 Procedure

- (a) Is the threshold for accepting complaints set at a reasonable level?
- (b) Access to instrument for EC industry attempting to prepare complaints – issues might include cost, problems achieving standing, problems collecting necessary evidence of dumping or subsidy, SMEs, problems unique to particular sectors etc.
- (c) Transparency and access to information.

- (d) Confidentiality of business sensitive information – are companies confident that confidentiality will be respected when they submit business information?
- (e) Is there sufficient opportunity to participate in the investigation (hearings, submission, disclosure etc.)?
- (f) Length of investigation and timetable for adoption of measures (i.e. 9 months for provisional measures, 13 and 15 months for definitive dumping and subsidy measures respectively)
- (g) Complexity of questionnaires – could they be simplified and, if so, in what way?
- (h) Decision-making process for adopting measures.
- (i) WTO non-discrimination requirements (i.e. MFN) and complaints/adoption of measures.
- (j) Interim-reviews
- (k) Expiry reviews
- (l) Other procedural issues affecting the needs and opportunities of economic operators.

#### 5.3 Substance

- (a) Definition of EC industry in view of globalisation (exclusion due to relation or imports).
- (b) Dumping and Subsidy Margins
  - (i) Dumping calculation –
    - Normal Value – issues may include non-market economy methodology, related companies, SGA and rate of profit in constructed normal value calculation.
    - Export Price – issues may include related companies.
    - Comparison and Adjustments
    - De minimis dumping

- (ii) Subsidy calculation -
  - Definition of subsidy
  - Calculation of benefit
  - CVD and countries in transition.
  - De-minimis subsidy
- (c) Injury and Causality
  - Determination of material injury - issues might include threshold for 'material' injury, captive production, and treatment of non-complainants.
  - Like product
  - Threat of material injury and material retardation
  - Causal link - attribution of injury between dumped/subsidised imports and other factors.
- (d) Injury margin for implementation of lesser duty rule – issues might include identification of non-injurious price, relevant costs and rate of profit to be used in calculating the NIP.
- (e) Community Interest
- (f) Post-measure substantive issues
  - Expiry review – likely continuation / recurrence of dumping/subsidy/injury.
  - Interim review – changed circumstances.
  - Circumvention
  - Absorption
  - Duty refunds
  - Suspension
  - Registration and retroactivity.

#### 5.4 **Institutions**

- (a) How do you view the role of Member States in adopting measures?
- (b) Do you feel sufficiently informed?
- (c) Are working documents adequate?
- (d) Basis for Member States to decide how they vote, their internal organisation and decision-making process.
- (e) Impact of change in Council voting procedures introduced in 2004 and of Eurocoton judgement.
- (f) Internal organisation of Commission investigations, particularly with regard to the dumping/subsidy and injury investigations.
- (g) How do you perceive ex parte meetings with economic operators (lobbying)?
- (h) Any other comment on the respective roles of the Commission and Member States.

#### 5.5 **Effectiveness of anti-dumping and anti-subsidy instruments**

- (a) Application and enforcement – issues may include circumvention, absorption, OLAF, customs.
- (b) Type of measures – duties and undertakings.
- (c) Level of measures
- (d) Threat of retaliation and disincentive to make complaints
- (e) Examples of successful measures and those that failed to achieve their objective

## 5.6 Comparison with US

- (a) Substance
  - (i) Dumping calculation methodology (e.g. adjustments, zeroing, domestic sales tests such as 5% test and % of profitable sales)
  - (ii) Subsidy calculation methodology (e.g. pre-privatisation subsidies, allocation methodologies)
  - (iii) Injury and causal link – may include injury factors considered, treatment of captive production, attribution of injury.
- (b) Procedure
  - (i) Complaint – sufficient evidence threshold, who can make complaints?
  - (ii) Questionnaire and verification
  - (iii) Provisional and definitive measures – speed of adopting measures, duty collection systems and efficiency of duty collection., disclosure.
  - (iv) Administrative review
  - (v) Judicial review.
  - (vi) Treatment of confidential information.
  - (vii) Cost of procedures
  - (viii) Support of SMEs
  - (ix) Byrd amendment
- (c) Institutions – split of dumping/subsidy and injury between two US agencies.

## 6. SAFEGUARDS

### 6.1 Why have safeguards traditionally been seen as unusable in the EC?

#### 6.2 Substance

- (a) Increased imports
- (b) Serious injury
- (c) Causality
- (d) Community Interest
- (e) China and TPSSM/special textiles safeguard

#### 6.3 Procedure

- (a) Initiation of investigations
- (b) Provisional and definitive safeguard measures
- (c) Decision-making
- (d) Type and duration of measures
- (e) Compensation

#### 6.4 Institutions

#### 6.5 Effectiveness of measures

#### 6.6 Comparison with US

**Cliff Stevenson**

**Chief Economist and Head of EU Trade Practice**

**Mayer, Brown, Rowe and Maw LLP**

[cstevenson@mayerbrownrowe.com](mailto:cstevenson@mayerbrownrowe.com)

+32 (0)2 502 5517 (Brussels office)

+44 (0)207 334 2041 (London office)