

**GLOBAL EUROPE**  
**Europe's Trade Defence Instruments in a changing global economy**  
**A Green Paper for public consultation**  
**Questionnaire**

Name of organisation/individual	<b>Eurofer</b>
Address of organisation/individual	<b>Avenue Ariane, 5 Building "Integrale" E3 (3rd floor) B-1200 Brussels</b>
Country	<b>Belgium</b>
Telephone	<b>Tel. +32 (2) 738 79 20</b>
Fax	<b>Fax +32 (2) 736 30 01</b>
e-mail	<b>k.tachelet@eurofer.be</b>
Date of submission	<b>19 March 2007</b>
Organisation/individual belonging to the following category	<input type="checkbox"/> public administration <input checked="" type="checkbox"/> <b>Community producers</b> <input checked="" type="checkbox"/> <b>Users</b> <input type="checkbox"/> Consumers <input type="checkbox"/> Importers <input type="checkbox"/> Law firm <input type="checkbox"/> University <input type="checkbox"/> Other (please specify)
If organisation, please provide some economic key figures, e.g. turnover and employment and any other figure that you consider relevant.	Refer to <a href="http://www.eurofer.org">www.eurofer.org</a>

Replies to the questionnaire should reach the Commission by **31 March 2007** at: [Trade-tdi-green-paper@ec.europa.eu](mailto: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.

**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?*

**Response**

The role of Trade Defence Instruments (TDI) is to address unfair practices at the international level in view of the absence of international competition rules. TDI, in accordance with WTO rules, are essential and critical to ensure that EU industries can continue to compete on fair terms with injurious imports that benefit from state subsidies and/or are practising discriminatory pricing (dumping).

Globalisation, with the increases in trade that are resulting, makes TDI even more relevant today. TDI are the only recourse that EU manufacturers have against competitors in third countries who do under-price them, not on the basis of genuine comparative advantages, but because they benefit from governmental support (e.g. subsidies, protective barriers, domestic preference regimes etc) that effectively insulates them from market competition. This is notably a feature in emerging economies.

The EU has an overall economic interest in securing the competitiveness of its basic industry on which EU “added-value” industries (user industry) rely.

In this context, TDI capable of addressing effectively and timely the above mentioned market disruptions remain essential.

It should additionally be noted that use of TDIs benefits all operators in the EU market – not just domestic producers, but also importers who are trading fairly.

**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?*

**Response**

Certain efficient EU industries, such as steel, have to operate on the EU domestic market under conditions of unfair international competition representing a serious threat for its future soundness and success. In particular, these conditions result from a combination of third country market interventions and policies including, on the one hand, the state-sponsored creation and maintenance of production capacity beyond local demand available for export and, on the other hand, restrictions on market access and foreign investment impeding the establishment of a sound, balanced domestic market structure.

In this context, greater use of Anti-subsidy actions – both in the form of EU countervailing duty measures and complaints to the WTO under the ASCM – would be welcomed.

Safeguard procedures are a useful instrument to give industries temporary protection from sudden surges in imports which may not be the result of subsidies or discriminatory pricing. However, the WTO requirements regarding the MFN nature of such actions, and the ability for affected countries to seek compensation, restrict the circumstances in which safeguard actions can be taken to just the most serious of cases.

Therefore, Eurofer would welcome the Commission, on its own initiative, making greater use of Anti-Subsidy as well as Safeguard instruments alongside its Anti-Dumping actions, in consultation with the EU industry concerned.

In addition, it is important to point out that Anti-subsidy procedures are not a viable alternative to Anti-dumping procedure. Rather, Anti-dumping is complementary to Anti-subsidy because of the following reasons:

- A lack of transparency and difficulties in identifying actionable subsidy programmes, especially for non-market economies.
- Difficulties in correlating the impact of subsidies received in domestic markets to unfairly traded sales in export markets.
- Involvement of Governments which means an even greater risk of decisions becoming politicised.
- Also, for WTO anti-subsidy action, the timescales are too long to offer any meaningful relief to EU industry for unfair trade.

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

**Response**

Eurofer does not see any meaningful alternatives to the use of trade defence instruments in the absence of internationally agreed competition rules. They offer the only meaningful tools to address persistent market distortions and promote market forces.

**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?*

## Response

- Unlike its trading partners, the EU does already take into account the interests of various economic operators other than the domestic producer. We assume that the aim of the Commission in reviewing the current balance of these interests is simply to define and analyse divergent interests. The aim is not, we assume, to shift the EU anti-dumping and anti-subsidy instruments away from their primary objective of providing domestic producing industry relief from unfair, injurious import competition. Following this path of review would put a global industry, such as steel, in the EU in a position where, at the end of the day, it can only wait for additional unfair import competition resulting from trade flow deviation triggered by the application of “unbalanced” TDI elsewhere. In this respect, across-the-board rebalancing of interests between economic operators in the Community test would be questionable EU policy supporting some consumer groups’ quests for short-term cost benefit from unfair imports while at the same time rewarding foreign companies whose comparative advantages are not “genuine”, but result from foreign market distortions.
- What has recently come up as an issue under TDI typical for one specific business model does not necessarily apply to other sectors. Unlike consumer products such as shoes and textiles, an industry such as steel is not moving production out of the EU to re-export to the EU market, but is increasingly present in the different markets worldwide to supply these markets locally, while keeping an important production base to supply the market in the EU. Intra-group trade flows do increase within companies becoming more multi-national, but these are captive aiming at optimising production flows within the group.
- As concerns the specific situation of an EU-based producer importing product from an overseas operation for further processing in the EU, that company should remain subject to the same TDI treatment and standards as any other exporter to avoid any discrimination between exporters.
- To the extent these producers derive true market benefits from producing elsewhere, they will not be affected by TDI.

**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?*

## Response

- The experience of EU steel sector is that the current antidumping rules and practices are capable of striking a reasonable balance between the interests of domestic producers and users. In several metallurgic raw material cases, this sector has been intervening successfully to obtain an outcome integrating the specific user concerns without loosening an orthodox application of the existing antidumping rules and methodology.

- Therefore, we see no need to change fundamentally the way user interests are currently taken into account in EU trade defence investigations, although there could be scope for more sophisticated assessments of the market structure of the product concerned, and of its industrial users, to be taken into account.
- Econometric monitoring and assessment of the impact of TDI measures on consumer/user interests, as proposed by some, based on a “simple” model of consumer cost-producer benefit calculation is unrealistic, technically difficult to apply and risks leading to short-term outcomes not taking fully into account negative effects of unfair trade practices on the long term. It could even deprive complaining industries, representing a smaller fraction of the EU economy compared with their EU users/consumers, of their right to obtain relief against unfair trade competition.
- Moreover, consumers opposing TDI measures are naturally seeking to serve their own short-term interests in purchasing unfairly priced imports. TDI measures, expressly authorized by WTO rules, only mean to combat dumping and subsidisation that are causing injury to a domestic EU industry. As a result, **consumer interests in opposing TDI measures so as to continue to be able to purchase unfairly priced imports should not be given any additional weight than they are currently given.** In fact, this type of behaviour is what TDI measures and the WTO rules are intended to address.
- Finally, the normal presumption in competition law is that maintaining supplier diversity is to the long term benefit of consumers. The same presumption should apply to TDI. It will not be to the long term advantage of consumers if unfairly priced imports reduce supplier diversity by causing the disappearance of EU manufacturers.

***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?*

**Response**

- A fundamental misconception of the purpose and effect of TDI seems to underlie this question, as if market-correcting TDI measures against unfair trade practices would be intrinsically illegitimate - because economically questionable and even protectionist - and therefore should be “paid for” by passing a (political) test of coherence with other EU policies. As explained above, TDI serves a critical function in preserving market competition. Nothing more – nothing less.
- On special & differential treatment of exporting developing countries in the application of TDI, it is difficult to conceive any justification for a less strict application of TDI towards these exporting economies, in as much as some of these economies are the home of the most persistent foreign market distortions as is demonstrated in the steel sector.

On the contrary, any such approach would only have counter-productive effects for the countries involved as tolerating such distortions by failing to apply fair trade disciplines would actually be harmful to its economy – preventing resources from being put to their highest-valued use and thereby undermining economic progress and efficiency – hence undermining, not helping development.

- At the very least, any change in special and differential treatment should only be introduced if it emerges as part of balanced package agreed by all WTO members as part of the Doha round, or subsequent multilateral negotiations should the Doha round fail. It would be wholly wrong for the EU to offer unilateral concessions that were not similarly implemented by its other trading partners.

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

**Response**

As indicated in response to Question 5 above, no such assessments are necessary or appropriate

**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?*

**Response**

- EU antidumping and anti-subsidy rules already allow for certain flexibility which benefits Community interests other than the Community producer by :
  - (i) Adjusting downwards the duties at the injury or dumping margin, whichever is lower.
  - (ii) Accepting price undertaking by the exporter instead of measures at the border to be absorbed by the importer.
  - (iii) Temporarily suspending antidumping measures if such action is in the Community interest and there is a temporary change in market conditions.
- Allowance for exclusion of certain product types under the overall product scope of a trade defence investigation for reasons of Community interest would discriminate between different exporting producers and countries. Moreover, it would open the door for:
  - (i) "Political" requests for product exclusions undermining the substance of the case, and
  - (ii) Foreign producers and importers' circumvention and misclassification of the products concerned.
- However, Eurofer could support product exclusion under the Community Interest test if that product is only available from (dumping) third countries.

**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?*

**Response**

- Community interest considerations at the complaint assessment stage would remove EU industry's right to have an unbiased investigation on the technical merits of the case brought forward by its complaint. It would open the door for political considerations to be introduced under the guise of "Community interest", before objective facts had become available through the investigation, with the effect of shifting the burden of proof from the Commission to the complaining industry. Therefore, the EU should not seek to have WTO rules changed to allow the Community Interest test to be used at the complaint stage of AD/AS investigations.
- It should be recalled in this context that, despite the fact that it is permitted by the WTO agreement, no other major trading partner employs a user interest test.
- For the same reasons *mutatis mutandis*, a Community interest test before the initiation of expiry reviews would be inappropriate.

**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?*

**Response**

Under current Community interest assessment practice, viability assessment is relevant in evaluating the (dis)proportionality of measures: imposition of measures that could not be expected to allow the return of viability of the complaining Community industry would be disproportionate in view of inherent disadvantage for other Community operators, hence not in the interest of the Community. This assessment is rightly a qualitative analysis of the likely impact of the imposition or non-imposition of measures on the economic operators, based on quantitative elements made available to the Commission by interested parties in the investigation.

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

**Response**

Prior consultation with exporting third countries in the frame of AD investigations would serve

no purpose in this type of TDI which has as its object trade practices by companies, except for creating additional delay in the investigation and insecurity on the market.

Root causes of investigated dumping practices related to government interventions are to be addressed Government-to-Government.

Therefore, the Commission should not consider consultations with exporting third countries after receiving complaints and prior to launching Anti-Dumping investigations.

**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?*

**Response**

Yes, the EU should more specifically use the AS instrument, notably in global industries such as steel, operating in the EU under unfair international competition conditions resulting from third country subsidisation of foreign competitors (See response to question 2). If market economy treatment has been granted, then *a priori*, the possibility that subsidies could occur must exist.

In this particular context, the Commission should also reconsider its current stance of not initiating AS investigations in cases involving economies in transition.

**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?*

**Response**

- Eurofer believes the existing standing requirements for the definition of the Community industry in AD/AS cases are a sufficiently high level to ensure that the case enjoys industry-wide support.
- Obviously, raising the current requirement from a minimum of 25% of Community production support to a new threshold of 40 or 50% would make access to the AD/AS instruments more difficult for diffusing industries scattered throughout the EU. Companies who actively oppose a case can have their objections examined as part of the Community interest test.
- Reviewing the possibility of excluding companies which themselves import or are related to exports from standing assessments is aimed at increasing the standing requirement for the Community industry, hence weakening existing disciplines against unfair trade.

In fact, such a review would lead to the possible absurd situation where the EU would give weight to one group of EU-based companies operating in third countries, gaining EU market share through unfair trade and foreign market distortions at the expense of other EU producers. Therefore, this possibility should not be reviewed.

**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?*

**Response**

- Currently, the EU adopts a *de minimis* injury threshold that is far more stringent than the WTO standard, which relates to the share of import (WTO: 3%), not the market share taken by the dumped imports (EU: 1%). To take steel as an example, if the WTO standard had been adopted by the EU, it would frequently be possible to initiate steel cases against countries with EU market share as low as 0.3%.
- Raising the *de minimis* dumping margin of 2% could have the effect of disallowing relief where it is most needed:
  - Dumping at even small margins can be disastrous to domestic industries, particularly in the context of commodity goods or industries with relatively small profit margins.
  - Raising *de minimis* levels will only provide a greater loophole for unfair practices and greater opportunity for foreign dumping and subsidies to undermine EU industries.

Therefore, we do not see a need or reason to change the *de minimis* thresholds that currently apply to dumping and injury in trade defence investigations.

Rather, EU standard should be adjusted to bring it into conformity with the WTO standard.

**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?*

**Response**

- As explained in the Green Paper description, the approach on "start-up costs" for dumping calculation would be of particular importance for situations of low volumes produced and sold at the start-up phase of a new production line. This question of "start-up costs" is indeed sector-specific and involves a fact-intensive inquiry that can only be done on a case-by-case basis.
- For steel, this methodology question directly touches on the key issue of foreign capacity building unmatched by realistic domestic demand growth forecasts supported by government intervention. In this particular situation, injurious dumping practices resulting from the need to optimise the utilisation of the new capacity are at their worst.

Therefore, the Commission should carefully assess the appropriateness of giving longer “grace period” to exporters in start-up situations in relation to the specifics of the industry concerned, avoiding a generic approach.

**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?*

**Response**

EU rules on “ordinary course of trade”, notably on sales below cost, reflect existing WTO rules. We do not see a need to change these rules.

**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?*

**Response**

EU AD/AS rules on new exporter treatment provide a balanced regime allowing for a new exporter to obtain a company-specific duty, thus not penalising new exporters who export fairly. However, in the interests of fairness, Eurofer has no objection to expeditious treatment of newcomers that start to operate during the investigation of the main case.

**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?*

**Response**

- In current causal analysis, restructuring is relevant for assessing whether injury to the Community industry is caused by other factors than dumping.
- Beyond this analysis, evidence of restructuring by an EU industry – a proposal apparently inspired by a similar concept in the context of “safeguard procedures” - is not relevant in AD/AS investigations. Rather, it would reflect a misunderstanding of the purposes and functions of TDI’s: while it makes sense to require domestic industries to show adjustment plans in the context of fair trade (safeguard procedure), this concept is out of place in the context of AD/AS where unfair trade practices are shown. It does not make sense to ask private EU companies, which must compete in an open EU market, to “adjust” to the presence of imports backed by disruptive foreign policies.

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

**Response**

SMEs who are members of trade associations suffer no particular obstacles.

**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?*

**Response**

- The current EU AD/AS procedure of pursuing both dumping and injury investigations more and less simultaneously disadvantages EU producers compared with their competitors in other countries. This means that the Commission has practically completed its entire investigation, subject only to verification, before provisional measures are introduced (up to 9 months after the initiation of the procedure). Eurofer supports a different system with an early provisional injury determination on relatively low standards of proof such as the USA uses, followed by an intensive pre-verification dumping investigation. This would enable provisional duties to be introduced earlier (Eurofer's experience is that relief against injury is obtained not earlier than 15 months starting from the preparation of complaint). Once provisional duties were in place, they would be followed by comprehensive injury determination and dumping verification. This would not necessarily need more resources – probably just re-allocation of existing staff.
- Making deadlines more flexible risks creating less predictability, hence more uncertainty for the operators. Therefore, such flexibility should not be made.

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

**Response**

EU AD/AS investigations already foresee several mechanisms allowing for more flexibility including percentage versus fixed duty, minimum import prices and price undertakings.

Increased transparency, rather than more flexibility, would support the objective of EU TDI being perceived as a legitimate trade defence tool by the stakeholders, notably in relation to price undertakings and commitment by exporters.

In this context, Eurofer reiterates its concerns that price undertakings are an extremely inadequate form of remedy. They are too easily circumvented, thereby allowing foreign producers and/or importers to continue to apply discriminatory pricing.

**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?*

**Response**

Eurofer does not favour adapting EU AD/AS measures as to take better account of products with a long order or shipment time because this would create conditions allowing for exporters/importers to circumvent potential measures and misclassification – even fraud.

Before any measure is imposed, generally 9 months have passed since the initiation of the investigation, which is sufficient time for exporters/importers to re-assess logistics if deemed necessary, and even to restructure their commercial relationships, so as not to be subject to the TDI measure or to ameliorate the effects of that measure.

Furthermore, the length of lead times is not just a function of the type of product: they frequently fluctuate according to market conditions. Thus taking account of long lead times could result in greater complexity in investigations.

Therefore, there should be no “preferential treatment” of products just because they have long order or shipment times.

**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?*

**Response**

Making the duration of definitive measures in AD/AS investigations shorter than 5 years should not be made explicitly possible because:

- In fact, this duration is already short in view of the long run-up period before any relief against injury is obtained by the Community industry (See response to question 20).
- There is plenty of scope already for exporters/importers to use other review mechanisms to seek changes to or suspension of measures where circumstances (notably market conditions) have changed.
- An earlier expiry of AD/AS measures would put the Community industry at a disadvantage compared with its competitors (increased risk of deviation), unless it was reciprocated by its trading partners.

**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?*

**Response**

Considerations to change the current EU practice of duty collection in the frame of expiry review should also include an analysis of the practices by the other EU trade partners to avoid the Community industry being put at a disadvantage compared with its competitors.

**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?*

**Response**

Eurofer is against timing expiry reviews to end on the fifth anniversary of measures because:

- (i) Such an approach would give EU industry the worst of both worlds: measures taking longer to come into force than with other major trading partners and measures potentially being ended sooner than in other countries, so effectively reducing the duration of AD/AS measures to nearer 3 years than 5 years.
- (ii) More specifically, if expiry reviews were timed to end on the fifth anniversary of the measures rather than to start on that date, the Commission would have less than 5 years of data after the imposition of the measures from which to make its determination. Thus it would have insufficient data to determine the effect of the relief and whether the relief should continue.
- (iii) Finally, this approach would lead to a situation of almost permanent investigation and possible litigation.

**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"?*

**Response**

- Eurofer is not in favour of increasing threshold for expiry review in EU AD procedure because, unlike an injury standard which typically refers to the risk of suffering imminent injury, the notion of likelihood of recurrence reflects rightly the key problem of long-term persisting market distortions which, if not properly addressed over the 5 year period of AD measures, will continue to remain the root cause of injurious dumping.
- As mentioned in the Green Paper description, the concept of "likelihood of recurrence of injurious dumping" is specified by the WTO agreement. We reiterate again that changes to current EU practices should only be made if other trading partners follow suit, to avoid the Community industry being put at a disadvantage compared with its competitors.

**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?*

**Response**

Eurofer is somewhat puzzled about the Commission's approach to decide the creation of a hearing officer for trade defence investigations and ask stakeholders *post factum* for advice on the functions such a person should carry out.

In general, Eurofer supports any approach aimed at ensuring that parties in investigations can better exercise their right to be heard and to ensure that the rights of the parties are respected.

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

**Response**

Because of the complexity and political sensitivity of decisions surrounding the award of country-wide Market economy Status for purpose of antidumping proceedings, the Commission should not conduct public hearings to avoid any further stirring up of political considerations in what should be purely a technical decision-making process.

**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?*

**Response**

(Refer to response to question 31)

**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?*

**Response**

- For reasons of transparency, Eurofer sees the interest of improved access to non-confidential files.
- Moreover, referring to the USA practice of access to the confidential file under administrative protective order enhancing transparency and improving the quality of administrative determinations, the Commission might wish to explore the feasibility of establishment of a similar system in EU TDI proceedings.

**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?*

**Response**

- Criticisms are often made about the politicisation at all levels of the EU TDI system. This consultation should address whether these criticisms are justified and whether the creation of an independent agency to handle TDI would improve objectivity. The experience of other countries where procedures are handled totally or partly by independent agencies should be evaluated.
- In addition, the possibility of judicial reviews of TDI decisions in a specialised Court Chamber should be explored.

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

**Response**

The majority of proposals put forward in the Green Paper are designed from a perspective focusing on how globalisation is challenging familiar understanding of what constitutes an EU producer, importer and consumer/user. TDI remains a legitimate, indispensable tool for preserving and promoting fair market competition, *a fortiori* in an increasingly globalising economy. Reflection on modernization of the defense instruments in view of globalisation is appropriate. However, wholesale changes would unavoidably weaken the EU's existing TDI in its vital function of correcting and deterring foreign market distortions, up to the point where unfair trade would be served up as legitimate market competition which efficient EU industries, unable to "benefit" from similar market distortions, are expected to take on the chin.

An open reflection on EU TDI should not lose sight of the reality of persisting foreign government actions encouraging dumping through the provision of preferential treatment in "haven" domestic markets, or through forms of subsidies and support, potentially destructive to competitive EU industries such as steel.

In this context, examination of EU TDI practices should explore whether they are effective in the timely elimination of the injury caused by unfair trade. Concretely, this consultation should allow the opportunity to debate:

- The retroactive imposition of measures which is provided for by the regulation but never applied by the Commission, in addition to the improving of deadlines by introducing provisional measures more rapidly (See response to question 20).
- The filing of cases on the basis of threat of injury provided for in the regulation but never applied by the Commission.

- The adoption of a more realistic injury analysis by focusing on the hypothetical state of industry without dumped imports instead of concentrating on the condition of the industry as a result of dumped imports.

In addition, the Green Paper consultation should explore the possibility of adjusting the use of EU TDI in the face of the above mentioned practices, for example, by suspending the application of the lesser duty rule and/or Community interest:

- In cases of predatory dumping (sales below cost)
- In cases where exporters do not respect basic competition/environmental/social/IPR standards.
- In cases where there is fraud.
- In cases where state intervention is so pervasive that normal commercial rules cannot apply.