



Mr. Karel De Gucht
Commissioner for Trade
European Commission
200, rue de la Loi
B - 1049 Brussels
Belgium

21 November 2012

Dear Commissioner, *Karel De Gucht,*

On 3 April 2012, the European Commission launched a public consultation on modernisation of Trade Defence Instruments (TDI) with a view to modernise the system in a context of changing economic environment. BUSINESSEUROPE will support this effort provided it maintains the current balance of interests in TDI and strengthens the effectiveness of the current rules. It is essential to stress the importance of TDIs, which are the only remedy that companies have in order to restore fair competition.

A summary of contributions to the public consultation received from stakeholders was published on 12 October. BUSINESSEUROPE would like to draw your attention to the fact that almost 70% of respondents represented EU industrial producers. This clearly shows the importance of these instruments for producers and suggests that any proposal leading to a weakening of the current system would be opposed.

To ensure that the TDI instruments serve European industrial interests, it must remain balanced and effective. The European Union has one of the most technical and far-reaching TDI systems that provides for higher standards than those required by WTO law. Notwithstanding this exceptionally high level of rules and practice, there is scope for improvements in some areas. In view of the upcoming process to draft a legislative and non-legislative proposal on TDIs, BUSINESSEUROPE would like to underline some priority issues which are described in annex and can be summarised as follows:

Shipping clause: BUSINESSEUROPE opposes the concept whereby measures would not be imposed within a period of three weeks after sending the pre-disclosure. While we understand the importers' position regarding shipments in transit, our concerns with the shipping clause would lie with the serious risk that Union industry injury would be seriously aggravated in a context where dumping has been verified although provisional measures have not yet been applied.

Interim reviews: We reject automatically combining second and subsequent expiry reviews with interim reviews. The possibility for interested parties to submit applications



for interim reviews, or for the Commission to launch *ex officio* interim reviews exists already under the current Regulation.

Lesser duty rule: The lesser duty rule should not be applied in cases of fraud, circumvention or subsidisation.

We would also like to draw your attention to the need to address price distortions affecting key raw materials. In such cases where a distorted access to raw materials is found to provide competitors with an unfair advantage, e.g. by means of export duties or dual pricing, it should be considered justified to maintain the measures in force.

BUSINESSEUROPE would also like to be consulted in the expected legislative and non-legislative process. In this context, stakeholders can provide an essential input and should be involved in the drafting of the guidelines regarding the issues identified by the Commission, i.e. calculation of the injury margin, choice of analogue country, Union interest test and expiry review investigations. Furthermore, we consider it essential that guidelines should codify existing practices, and not introduce substantial changes or changes inconsistent with the current approach. Finally, the guidelines should be presented at the same time as the legislative proposal.

We thank you for your attention and hope that you will take into account our requests in the upcoming process.

This letter has also been sent to Commissioner Tajani.

Yours sincerely,

Mindelijke groet,

Philippe

Philippe de Buck