GLOBAL EUROPE

Europe's Trade Defence Instruments in a changing global economy

A Green Paper for public consultation

Questionnaire

Name of organisation/individual	Government of Denmark Ministry of Economic and Business Affairs National Agency for Enterprise and Construction
Address of organisation/individual	Dahlerups Pakhus Langelinie Allé 17 DK-2100 Copenhagen
Country	Denmark
Telephone Fax e-mail	+45 35 46 60 00 +45 35 46 60 01 sml@ebst.dk
Date of submission	30 March 2007
Organisation/individual belonging to the following category	X public administration □ Community producers □ Users □ Consumers □ Importers □ Law firm □ University □ Other (please specify)
If organisation, please provide some economic key figures, e.g. turnover and employment and any other figure that you consider relevant.	

Replies to the questionnaire should reach the Commission by **31 March 2007** at: 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?

Reply:
The Danish Government acknowledges that the use of trade defence instruments is part of the EU Trade Policy. Furthermore it is legally justified on the basis of the WTO agreements

The Danish Government is concerned, however, about the general use of trade defence instruments in the EU and in third countries and especially very much concerned about the increasing politicization of the anti-dumping instrument. If TDI's are being purposed to protect and defend industrial interest from fair and normal competition, the credibility in the TDI-system will definitely fail. Furthermore, it means creating hindrancies for the existance of a natural development in free trade.

Therefore, there is an obvious need for re-drafting certain provisions in the Regulations of the trade defence instruments.They should be designed to remain modern and to ensure that they are not used to stop or postpone natural structural changes in the economy, nor to become an obstacle to the answers to the challenges arising from globalisation. Furthermore trade defence instruments measures should be applied as transparent and predictable as possible.

The globalization in trade flows between countries has changed some of the features of an increasingly global business environment. A series of new methodologies and approaches applying for the trade defence instruments need to be adopted to meet the business reality of today.

Outsourcing of production to low cost countries is a fact of life in modern business. Take the footwear case as an example. By outsourcing production to countries with a competitive cost of production our shoe producers have been able to maintain and expand their business on an economically sound basis and thereby created thousands of new jobs in the Community in the value-added area of design, innovation, logistic, sales and marketing. Future jobs in the EU in the high value-added production are at stake if the need for outsourcing is being ignored.

According to the Lisbon agenda there is a need for changes in the business structures, strategy and behaviour alongside the global economic development. From a long term economic welfare perspective an optimal allocation of resources globally is a condition for mutual growth and prosperity to the benefit of all parties.

Trade defence instruments play an important role but can become an obstacle to free trade and efficient use of resources if the instruments are used in an inappropriate and unjustified way.

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?

Reply:
The Danish Government is of the opinion that Anti-Subsidy instrument should be used only when there is clear evidence of state involvement that is not in compliance with WTO rules on Anti-subsidy. Accordingly, it should be considered to formulate a guideline that allows third country subsidies which are recognized within the Community or national State aid Regulations not necessarily covered by WTO obligation on general subsidies. This area needs to be explored in depth.

The Commission should be ready to initiate Anti-Subsidy investigations on its own initiative – also applying in cases targeting non market economies - provided that the third country concerned has been properly consulted in beforehand and that the Commission hearing officer is participating in the dialogue.

The Danish Government opposes a more frequent use of the safeguard instrument in the EU. Safeguard measures are by nature imposed on an *erga omnes* basis affecting imports of the product concerned from all third countries into the Community. The Safeguard instrument seems not sufficiently justified as long as the criteria for imposing restrictions are very low and the fact that the instrument is not designed to cope with the real source of injury but target all external suppliers of the product concerned.

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

Reply:
The Danish Government recognizes that the absence of internationally agreed competition rules in WTO leaves no alternatives for the moment at the WTO level to deal differently with unfair trade practice.

Nevertheless, it is the firm position of the Danish Government that in the long run the present use in the EU of TDI's is not an appropriate answer to or a solution to deal with the needed structural, economic and business environmental changes that the globalization causes.

Consequently, at a later stage we see no reason for not replacing at least the anti-dumping and safeguard instruments in the EU and WTO with part of the EU competition rules limiting the restriction on imports to unfair trade behaviour caused by predatory pricing of individual exporters rather than punishing an entire industry with numerous exporters in the third country concerned. In this context we are on a general basis far from being convinced that an allegation of a country-wide dumping is always justified as such allegations of country wide dumping often are based on statistical average price information or limited samples that do not reflect the whole range of varieties in prices from one exporter to another.

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?

Reply:
Bearing in mind the objectives set out in the Lisbon Agenda focusing on EU becoming the most competitive region in the world it is also of vital interest and necessity for the business environment in the Community to strike a proper balance between the various interests in the use of trade defence instruments to avoid inappropriate and unjustified use of trade defence instruments.

It is important to clarify that EU companies taking the benefit of off shoring or sourcing out production or part of it to more cost effective countries inside the EU or in third countries often retain or generate in the long run more jobs in EU than companies that maintain production in EU. Focusing on comparative advantages and costs enable EU industries to become more competitive and thereby increase production and the number of staff domestically as well. If companies do not face the reality of the globalisation including the potential benefit from off shoring or outsourcing they will run the risk of being squeezed out of the market due to lack of competitiveness causing job losses of both high and low skilled personnel in the EU.

For this reason there is indeed a need to re-balance the interests between parties eventually affected by trade defence instruments. One of the important issues to address is the recognition of an improved standard for the definition of "Community industry" to cover producers of the like product which should also include those with outsourced production and related Community producers.

Procedurally, as a general rule under the current practice EU producers of the like product are being excluded from the proceeding if they are owned by legal entities in the third countries exporting the product concerned or if they to a certain extent import the product concerned from the third countries. Also those companies not co-operating in the proceeding are excluded from the definition of "Community industry".

This interpretation penalises those globalized companies which both trade and produce, and even more so those companies which have chosen to outsource production but have kept other activities in the EU such as research and development, design, logistic and sales and marketing.

Therefore it would make sense if the burden of proof in the Community interest test was reversed making it mandatory for the Commission to demonstrate that any proposal for measures or termination tabled by the Commission is in the interest of the Community.

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?

Reply:
It is relevant to look at consumer interests especially when direct consumer goods are being targeted. It might be difficult for consumer organisations to provide information in the form of exact figures of the impact of measures that the Commission itself is not able to establish.

Therefore a specific consumer interest test could be developed in order to quantify the

expected effect of measures on consumer prices and the demand/supply situation. These estimates should be based on well defined price elasticises (single/multi cross products) and express the EU welfare effect on an aggregate level rather than demonstrating the effect of measures per unit.

In the shoe case the Commission estimated an increase in consumer prices of around 1-2 euro per pair of average shoe covered by the measures. The Danish Anti-dumping model based its partial sector analysis on Eurostat import/export data and demand, supply and price substitution elasticises and estimated the net impact of measures for the consumers, importers and retailers to around 340 million euros per year.

The Commission could after e.g. 2 years from the imposition of measures carry out a review in cases involving consumer products where not only import prices are monitored but also how the extra cost from measures has been distributed between the various interested parties and any potential affect it might have had on their business performance or purchasing power of the households.

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?

Reply:
Even though certain developing countries do not at this time face the same high standards as the EU in relation to environmental requirements for their industries, pollution policy, human rights and labour rights - the nature of the TDI is not to correct for differences in policy areas not directly related to restore claimed unfair trade practice and the legal basis in the WTO Regulations does not seem to allow for such kind of adjustments. In our opinion the EU should use the normal proper forum to deal with these issues either on a bilateral or an international basis.

According to EU practice least developed countries (LDC) are not target in trade defence cases and it is of utmost importance that this practice is continued due to the need for further economic development in these countries and the often insignificant impact of the trade with these countries. In this context the coherence with the national aid programmes to especially the LDC's but also to other developing countries needs to be addressed in order to avoid any discrepancy between the eg. the objectives of the EU and national humanitarian/aid programmes and the direct effects of the use of TDI's.

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

Reply:
Needless to say that more effort should be put into the Community interest test in trade defence investigations in order to properly reflect the interest of the user, importer, distributors and the consumers in proportion to the interest of the Community industry. The Community interest test is an important part of the evaluation but could be further developed

and strengthened. As an example Denmark has developed a partial equilibrium model – "The Copenhagen Anti-dumping model" - to calculate the economic impact for the interested parties (costs and benefits) of imposing/terminating trade defence measures. We believe this work and approach constitutes a proper starting point in the forthcoming discussion strengthen the Community interest test in order to improve the efficiency of the trade defence instruments. The macro economic approach as suggested could work as an additional contribution for further clarification of the Community interest test conducted under the heading of the informal clarification paper on Community interest test - without prejudging the final Commission conclusion and proposal.

Under the current practice the Commission reaches conclusions that lead to proposals to impose/terminate measures or proceedings e.g. seeking to demonstrate if measures are disproportionate or not and thereby comply with the Community interest criteria.

How the Commission balances the various interests against each other calls for more transparency. The various interests in the Community are often expressed in a descriptive way where the effects for the various interests or the positions of interested parties are indicated as a "yes" or a "no" to measures/termination. A well-known argument is further that the level of cooperation in the proceeding is low and on this background it is concluded that imposition of measures will only have limited impact and are therefore not being disproportionate. If such a non-countable denomination of the various interests is caused by a significant lack of cooperation among the interested parties the present test is too limited in scope and therefore does not fully comply with art. 21 paragraph in AD Basic Regulation.

If co-operation among importers and processors etc is sufficiently high in a proceeding the findings from verification visits can demonstrate the impact of measures for the operators. The effect is then normally denominated in non-comparable unit cost increases (e.g. 0.5 % increase in total cost of production or 0.01 eurocent cost increase per unit) isolated to the individual investigated party whereas effects are not calculated on an aggregated level for the sector computing total cost effects.

In order to improve transparency it is also suggested that a checklist is added in future Commission working documents clarifying all the factors that have been taken into account in the Community interest test and an explanation of how these factors have been weighted and balanced against each other. In order to ensure higher level of co-operation and to estimate real economic impact of measures/termination the Commission should act more proactive towards interested parties aiming at receiving relevant input.

The form and content of the checklist should be agreed upon in the anti-dumping Committee/Commercial Question Group and the Commission clarification paper on Community interest test should accordingly be re-drafted and made public available.

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?

Reply:

In terms of economic effect on interested parties it could often be justified to differentiate the impact of measures depending on an assessment of the cost and benefit for the interested parties concerned. In that context, two types of products are frequently more vulnerable towards imposition of measures. Measures on imports of consumer commodities and commodities for the processing industry are often burdensome as they create huge welfare losses for the Community as a whole. There is an obvious risk that the competitiveness of the EU processing industry is weakened against exporters in third countries if production of the final product is dependent e.g. on imported raw materials from third countries being subject to trade defence measures.

If the value of the imported product constitutes a significant share of the total value of the production cost of the final product it could be considered not to impose measures based on the Community interest. Likewise it could be considered to exclude certain products from trade defence proceedings if they become input in a final production of high added value products where the Community producers have a competitive advantage.

Further, it is recommended not to initiate investigations regarding products in the agriculture and food sectors where production is extremely sensitive and vulnerable towards changed weather conditions and sickness in crops etc. since such factors have significant and determing impact on supply and prices from one year to another. The salmon and strawberry cases are god examples of proceedings that should not be seen in the context of anti-dumping proceedings.

The purpose of these proposals is twofold: firstly, to avoid significant price increases for the consumers or losses for the importers/retailers and secondly, to secure that the Community user industries are competitive on the domestic and export markets and do not suffer from higher costs from import duties.

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

Reply:
The Danish Government can fully support the introduction of a public interest test in the WTO rules on anti-dumping and anti-subsidy as well as an amendment of the existing rules that allows the test to be used up front at the complaints stage and in requests for expiry reviews.

To make use of a public test/Community interest test at the complainant stage and in requests for expiry reviews is a natural course of action to increase the level of transparency in the proceedings as recommended by all interested parties and seeks as well to balance the various interests at an earlier stage.

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?

Reply: As well reply to question 18
Some cases have been opened though the market share and employment of complainant(s) is very low. The complainants do in fact have the right to have its case judged and investigated if evidence of dumping and injury can be provided but in relation to the cost and immediately effect on the market lounging a complaint it could be considered to define a set of *de minimis* rules in order to decide at a very early stage in the proceeding weather to continue or terminate the case. It could be considered to introduce *de minimis* rules e.g. in relation to market share of complainants and value of production as a pre-condition for opening a proceeding.

Especially EU-producers requesting an expiry review should demonstrate that they have taken proper action to adapt to the new competitive environment during the at least five years with measures in force. If measures have been effective the complainants have what so ever no reason to base their request for measures on the risk of recurrence of dumping since the complainants have an obligation to demonstrate the willingness to rationalize and restructure if needed in order to face competition. If measures are considered needed after expiry of the initial measures a full expiry review including new calculations for dumping margins should be conditional. In isolation the present standard in expiry reviews is very low.

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

Reply:
The Danish Government can support consultations at the various stages not only with the exporting third countries but also with other interested parties in the Community in order to clearly identify the various interest before taking any further step.

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?

Reply:
See reply to question 2.

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?

Reply:
Regarding the standing requirement that at least 25 % of the EU production has to be the active complainant is found to be a small proportion in support of an investigation. This has to be seen in light of the fact that in a number of cases it is minor parts of the EU industry (complainants) that find themselves under pressure from increasing competition from third countries whereas a larger proportion of the industry is not necessary facing the any financial pressure. The exclusion of related EU producers in the definition of the Community industry does in fact reduce the standing requirement. In the salmon case actual standing was around 5 % of total EU production since the vast majority of the EU production was excluded from the

definition of the Community industry due to close financial relationship with the exporters in the exporting country.

Further, rules should be changed so that only EU producers who actively support a complaint can be counted as part of the second requirement – the 50 % standing test. Under current practice EU production is only counted in opposition to a complaint if it is actively opposing the opening of a proceeding.

New rules on standing requirements could take into account the level of fragmentation of the industry concerned so for instance less strict requirements apply for an industry with many SMEs than for an industry with a higher market concentration and fewer producers.

EU producers/EU production should be defined as all production on EU territory irrespective of any financial link (foreign capital) or relation to producers in third countries from which EU producers import as well. To leave out certain EU producers from the definition of the EU industry because of foreign related ownership is contrary to significant increase in global foreign direct investments and seeks merely to protect national investments.

In expiry reviews the standing requirements should be replaced by one common standing requirement that takes at least 50 % active support for initiation of an expiry investigation. It must be assumed that the EU producers injured from imports from third countries after 5 years with anti-dumping/anti-subsidy measures in place have achieved financial gains and have had time to prepare for a new competitive situation. Further it is unlikely that the EU industry after a potential lapse of measures will face the same level of competition – at least from imports from third countries – as before the imposition of measures. This could speak in favour of stricter rules for expiry reviews to be initiated.

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?

Reply:
The Danish Government seeks an amendment of the EU rules focusing especially on less restrictive provisions for developing countries. The proposals could be addressed as follows:

- A higher *de minimis* dumping margin and a higher *de minimis* import share. Identical principles and levels should apply in anti-dumping and anti-subsidy Regulation with the anti-subsidy Regulation being the starting point. Higher levels should be introduced though differentiated between developing country exports and developed country exports. Basicly, it gives in principle no meaning to speak about a country *de minimis* imports since investigation of dumping is related to the individual company – at least those represented in the sample. Therefore, it could be considered to introduce a *de minimis* at the individuel company level for those in the sample and a *de minimis* level for other imports from the specific country.
- A change in the cumulation provisions. The use of cumulation in multi-country investigations means that small countries (in terms of export volume) exporting the same products as larger countries run a risk of being targets of antidumping measures even

though their export is *de minimis* and without being the cause of material injury. The cumulation provision should be deleted or the cumulation level significantly increased. It is very unlikely that insignificant imports below *de minimis* have a generel impact on the relevant floor price of the product concerned even though the price of imports is lower than the EU price. The only reason for having such a provision seems to be of protective nature to have the possibility to respond to low priced imports from many sources.

- The *de minimis* rules in its new form should apply as well in reviews since there is a direct link between the fact that small imports not being injurious and the real cause for material injury for the EU industry. If dumping margins in reviews can not be established because of no or low imports measures should not be prolonged based on an assessment of risk of recurrence of dumping or injury.

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?

Reply: As well reply to question 17
New exporters and exporters in start-up situations face several problems that need to be addressed. First, new exporters and exporters in start-up situations have high start-up costs which they are punished for in antidumping investigations reflected in an unfair comparison between normal value and export prices. It has nothing to do with unfair trade behaviour but simply an indication of costs not being allocated over a start-up period of several years which is normal practice and in accordance with standard accounting practice. The antidumping Regulation needs to be adjusted hereto. Secondly, the new comer (exporter) provision in the antidumping Regulation needs further to be amended allowing new comer review to be initiated even though the proceeding for definitive measures is based on sampling.

New exporters and exporters in start-up situations cooperating in the investigation although not having any production in the IP should automatically be given the average duty of the sample instead of the residual duty – at least until final conclusions from the Commissions ex-officio reviews are reached.

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?

Reply:
The dumping concept was established in 1947 where the level of foreign trade was low, the world economies were relatively closed and trade protected by high tariff duties. Global trade and the consequences of openness of economies call for a re-definition of the dumping calculation.

Dumping is – per definition - therefore no longer expressing unfair competition and trade practise in third countries as it is not demonstrating evidence of predatory pricing with the aim to take over the market by selling at low prices.

A product can be said to be dumped by an exporter if it is being introduced into the commerce

of another country at less than its normal value, or more particularly, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

The definition is regarded as an old fashion approach to the reality of global trade in 2007 where production and investment has become worldwide and seeks destinations where the largest rate of return on capital can be expected calling for more efficiency in allocation of resources.

According to modern business environment, strategy and practice the definition of dumping and thereby the methodology to calculate dumping margin needs to be revised.

The dumping definition does not foresee the market situation in the third countries, the level of competition among the local producers and suppliers, the business strategy of the exporting producers and their profit margins respectively in the domestic and export market. Neither does the dumping provision cover the fact that companies' strategy is to expand and grow in size, turnover and global markets with overall aim to satisfy the shareholders with the highest possible rate of return. To enter new markets it often takes to overcome certain barriers in the market and sell at prices that it lower and not directly comparable with prices at home (normal value). From a business perspective it is not dumping if export prices are just covering the cost of production or even the variable cost of production in certain transactions and markets for a given period.

Redefining the concept of dumping should therefore imply a comparison of export prices in third countries with cost of production figures for the product(s) concerned leaving out at least profits.

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?

Reply:
See reply to question 15.

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?

Reply:
See reply to question 10.

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

Reply:
For SMEs participation in trade investigations is very time consuming and financially

burdensome taken into account the relative shortage in resources. Further, SMEs are often not timely informed about the cases.

A partly solution is to establish a Commission helpdesk (already established for SME producers but not an offer for SME importers). Further, it should be considered to reduce the very comprehensive questionnaire to the minimum of information needed. For SMEs it could be considered only to provide qualitative information of key figures in the account on a sufficient detailed level.

Since many SMEs – especially the importers – are often badly organised or informed about proceedings being initiated the Commission needs to be more proactive in finding relevant companies or establishing contact with relevant national organisations in order to inform about the possibilities of cooperation and potential consequences of non-cooperation. The national organisations should be further encouraged to participate in collecting overall business data to cover the Community interest aspect.

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?

Reply:
The system is already flexible in the sense that provisional measures can be proposed/introduced before the 9 month expiry from the initiation of the investigation.

The Danish Government would like to put more weight into the investigation at the provisional stage including more involvement of all interested parties in the Community interest test. This recommendation certainly contradicts a proposal shortening of deadlines for decision whether or not to impose provisional measures. A reduction in time to conclude at the provisional stage will therefore imply less transparency, less comprehensive assessments which will create more uncertainty in the market and make it much more difficult for the companies to plan their business strategy. Further e.g. a provisional decision to impose measures after 6 months without having taken all necessary considerations into account could mislead the result and create a premature expectation among the complainants that definitive measures will be imposed all though all relevant facts at the provisional stage have not necessary been looked at in depth.

See also reply to question 31.

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

Reply:
It is proposed more frequently to use the suspension provision when the market situation allows it. Suspension could apply for a shorter period of e.g. 2-3 months if for instance market prices as a tradition in a certain period of the year rise above the injury level or at a level where dumping is not taking place.

The purpose of the proposal is to avoid measures in place that are not needed or overprotection of the Community industry above the injury elimination level.

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?

Reply:
Certain sectors e.g. textiles, wearing apparel, leather, arrange the coming collection for the new season up to 18 months before public disclosure. With a pending trade investigation initiated after a business strategy to go ahead with the development of a new product concept the company is unable to foresee the economic consequences if measures are imposed and who is going to bear any financial risk. Often contracts have been closed before initiation of the investigation or before any decision at the provisional stage leaving the full uncertainty and financial burden on the producer/importer. Furthermore, importers and producers (with outsourced production to third countries) have established a close relationship/partnership or financial relationship with the exporter which makes it difficult or very cost full to redirect the production to other producers in the country concerned or in other third countries not affected by measures.

It is therefore proposed that imports should be exempted from measures if the importer can provide evidence that the import contract was signed before the imposition of provisional measures or development of a new concept to be produced in the third country concerned was kicked off before the initiation of the investigation. The date for measures to enter into force should under certain circumstances therefore take into account products produced under especially long production cycles and/or products under a long shipment time.

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?

Reply:
The 5 years duration of anti-dumping and anti-subsidy measures is arbitrary fixed without any specific justification or logical approach. The shoe case and ammonium nitrate case (2 years duration) proved the need for a more pragmatic and flexible approach in order to balance the various interests.

The duration of measures ought to be seen in context with the industry concerned and the specific product scope under investigation. The duration of measures could be differentiated depending on various parameters and criteria such as; life time in the production cycle, depreciation of investments in machinery and technology, life time of consumer product, the content of technology input in the production etc.

The duration of measures could range from 3 to 5 years including any potential decision taken by the Council to continue with measures following an expiry review.

The overall aim to differentiate the duration of measures from case to case is mainly to ensure that measures are not kept in place one day longer than necessary. A requirement that is fully justified and takes that the individual case is assessed on its own merits calling for individual duration of measures.

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 continue

Reply:
Duties collected under the expiry review/interim review investigation beyond the 5-year duration of the measures should be reimbursed if they are collected on unjustified grounds.

See reply to question 25

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?

Reply:
The 5-year duration of measures should be limited to the named period unless there is clear evidence of the need to continue with the measures. This means that expiry reviews should be concluded before the expiry of the original measures in order not to penalize exporters or others if measures are no longer warranted.

A second best proposal is to deduct the second period with measures corresponding to the investigation period should such measures be warranted. Otherwise any collected duties should be reimbursed, see reply to question 24.

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"?

Reply:
The Danish Government believes that the present expiry review provisions provide a sort of build-in automatically expectation among users of the instrument that measures are prolonged for another 5 years. In principle evidence of "likelihood of recurrence of dumping" is sufficient to continue with measures which in fact are not based on actually facts but mostly assumptions, indications and speculations e.g. about future direction of exports from countries concerned.

On this ground and in order to strengthen the validity of the findings in expiry reviews it is welcomed to change the wording of the provisions and include requirements to re-assess subsidy/dumping, injury and causation and Community interest in all expiry investigations. In other words expiry reviews should be full reviews in compliance with article 5 in the anti-dumping Basic Regulation and article 10 in the anti-subsidy Basic Regulation.

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?

Reply:
The hearing officer should act independently from the investigating authority and take the role as an ombudsman defending the interest of all parties including the national authorities to be heard in the proceedings and ensure that the procedures are followed according to the regulations.

It is important not to establish an administrative and bureaucratic layer between the interested parties and the investigating authority that could negatively affect the efficiency of the proceeding. The role of the hearing officer is not to replace the present dialogue between the interested parties and the investigators but primarily to handle any potential conflict/disagreement in relation to procedural matters.

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

Reply:
Questions of granting MES (country-wide) is based on a set of technical criteria and are often concluded by the Commission after comprehensive judgement of the fulfilment of the relevant criteria. It is not an easy task for Member States or other interested parties to get a general overview of the fulfilment of the criteria. Therefore the Danish Government welcomes public hearings based on full transparency and access to comments and information provide by all interested parties.

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?

Reply:
The Danish Government supports full openness regarding publication of the agenda of the anti-dumping Committee meetings. Disclosure of the minutes of the meetings can be supported under the condition that Member States in beforehand have had the possibility to approve the Commission minutes. Disclosure of Member States position can as well be supported.

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?

Reply:
The Danish Government believes that full transparency in trade defence investigations demands public access to the non-confidential complainant as well as disclosure of Commission proposals at the provisional stage to interested parties. Publication of a file index could be supported.

Further, access to the informal Clarification papers on the Commission practice in anti-dumping proceedings should be made public as well e.g. in a file index.

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?

Reply:
In anti-dumping and anti-subsidy cases it is proposed to replace the current two stage system concluding on Commissions findings at the provisional and definitive stage with a simple one stage system making it mandatory for the Council to decide by a simple majority on a proposal from the Commission of the definitive findings before the 12 month expiry date from the publication of the initiation of an investigation. The Commission could for instance after 8 months disclose definitive findings for the interested parties and set a one month deadline for comments to be made before the Commission proposal is finally presented for the anti-dumping and anti-subsidy Committee.

The aim of such a proposal is to avoid unnecessary transaction of information, rumours and lobbyism based on a speculative nature mainly caused by non-disclosure of Commission documents (provisional findings). It is further preferred to focus on only one set of findings – definitive findings – where comments from interested parties have been taken into account. In our opinion transparency is also about early dialogue with interested parties. The quality and credibility of the findings will certainly improve if all interested parties have been consulted in good time.

At the same time introducing only one proceeding (definitive findings) instead of two proceedings (provisional + definitive findings) will not only save time, resources and number of meetings for all interested parties but also significantly contributes to reduce the cost for the Commission and the Member States. A more efficient case handling and meeting structure could be carried out without getting in conflict with the need for more transparency in the proceedings and findings in the individual case.

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

Reply:
It is proposed to make greater use of assessment of the competitive situation on the Community market and identify any link and impact of (unfair) competition between Community producers on the Community market. In the injury assessment the injurious behaviour of other Community producers on the EU market caused by price depression (coming from dumping or high efficiency) is not specifically isolated. The complainants and supporting producers are mostly regarded as a homogenous group of operators and not direct competitors which affect the prices on the market and any potential injury to the complaining Community producer.

In this context, if injurious dumping is actually taking place the question of definition of **material** injury is of most interest and should be further clarified.

In the investigations it is proposed to take into account the development in the market e.g. prices after the investigation period. Findings are by nature and according to the regulation based on the latest 6-12 months period (before the initiation of the investigation) information of prices, costs and injury indicators. The final decision for definitive measures taken by Member States (Council) is then based on historical data collected 1½-2 years back in time and does not necessary reflect the current market situation. The findings are not necessary supported by the recent development in market structure and market prices. The inclusion of ex post investigation period price behaviour in the over all assessment is as such not foreseen in the Regulation but should be implemented as normal practice in the injury and Community interest test in future cases.

Finally, the impact of long term cross currency changes should be taken into account as this effect for certain third country exporters' plays a significant role when dumping margins are established. Permanent currency changes should be deducted from the dumping margin when local prices, costs and export prices are converted and denominated in euros.