

Brussels, 26 July 2012

Comments on the European Commission's Initiative on Modernisation of Trade Defence instruments (2012)

1. INTRODUCTION

Orgalime, the European Engineering Industries Association, speaks for 37 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 22 European countries. We represent a fundamentally healthy industry that is a major employer in Europe (10.2 million people), a major export sector (over a third of EU manufacturing exports), and also a significant importer thanks to its extensive supply chain. Given the above, we believe that the EU's trade strategy should focus on shaping globalisation and improving the international competitiveness of the EU's industrial base.

In Orgalime's view, trade defence instruments, applied in compliance with EU law and WTO rules, play an important role in achieving open and fair international trade, and in defending European production against trade distortions, such as subsidisation or dumping by trade partners. Trade defence instruments should only be used for their purpose, namely to counter predatory behaviour displayed by certain trading partners of the EU in specific situations and moments in time.

2. INVESTIGATIONS INITIATED ON AN EX-OFFICIO BASIS

We believe that the Commission should not establish new procedures for the purposes of *ex-officio* investigations with the aim of allowing the parties to communicate relevant information in confidence. The existing procedures are sufficient. We believe that imposing sanctions in cases of non-cooperation, or conducting on-the-spot checks at the premises of EU-based companies – should not be a way for the Commission to obtain the information necessary for carrying out an investigation. The Commission should strongly encourage companies to cooperate, but we do not believe that sanctions are the right tool or remedy in case of non-cooperation.

As far as the *ex-officio* initiation of anti-subsidy or anti-dumping investigations are concerned, we support the present approach of the Commission, and we believe that when necessary and supported by sufficient and reliable economic figures, and in accordance with the present basic regulations, the Commission should launch trade defence investigations. However, we disagree with the notion that a threat of retaliation from authorities in third countries constitutes a sufficient basis for the Commission to open an investigation *ex-officio*. Indeed in Orgalime's view, an anti-

Orgalime, the European Engineering Industries Association, speaks for 37 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 22 European countries. The industry employs some 10.2 million people in the EU and in 2011 accounted for some €1,666 billion of annual output. The industry not only represents some 28% of the output of manufactured products but also a third of the manufactured exports of the European Union.

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subsidy investigation initiated *ex officio* will not prevent any foreign partner from initiating retaliation measures.

3. THE LESSER DUTY RULE

Certain provisions in the EU anti-dumping and EU anti-subsidy legislation provide for higher standards than those required by the WTO law, and are generally known as *WTO-plus*. One of the examples is the obligatory application of the *lesser duty rule*. In Orgalime's view, the non-application of the *lesser duty rule* to the original investigation in case of fraud and subsidisation is not the correct way to proceed and is insufficient to dissuade parties from engaging in such fraudulent practices. We believe that trade defence instruments should be treated as measures of a purely remedial character, and should not be transformed into punitive instruments against practices such as fraud and circumvention.

4. REFUND PROCEDURES

Concerning the reimbursement of duties in Orgalime's view there should be no consideration given to reimbursing the duties that have been collected since the opening of the review investigation in cases where, after investigation, the measures are not prolonged. The time period of applicability of TDI measures is known, and the agenda of the review is transparent, which allows the parties to take informed business / trading decisions.

When it comes to the simplification of refund procedures, Orgalime does not support the initiative of making the refund decisions accessible to the public. We believe that these decisions should be made available to the interested parties.

5. CONCLUSIONS

Orgalime believes that the current basic regulations already provide the Commission with essential means to ensure accessibility, transparency, speed and clarity of TDI proceedings. When working on the current reform of European trade defence instruments, the Commission and the Member States should keep the balanced approach of existing solutions, and remain committed to tackling unfair trade.

While Orgalime generally supports the Commission's present approach in trade defence cases, we believe that the main acting impulse in TDI investigations should come from companies. We are against the imposition of sanctions in cases of non-cooperation by companies and we do not believe that fear of retaliation from third parties (governments) would be averted by the initiation of *ex-officio* investigations.

We urge the Commission to keep the remedial character of the TDI instruments, and to consider separate strong punitive measures against fraud or circumvention practices. Our recommendation is also to refrain from the reimbursement of duties paid, if the investigation is terminated without renewal of measures.

To conclude, we are convinced that rigour in investigations is the best way to avert unfair trade practices. While we understand that there are a number of improvements to the existing anti-dumping and anti-subsidy systems that could be implemented, Orgalime would advise against a TDI reform that would result in an increase in the technical complexity of the existing system.