

**Eurometaux Draft Reply to the EU  
Public Consultation on the Modernisation of TDIs – Guidelines  
29/07/2013**

**Please provide your comments to the guidelines on Union Interest (3500 characters max)**

Eurometaux believes that the TDI modernisation measures (Guidelines and Legislative proposal) should be adopted as a **single package**. Once adopted, the Legislative proposal may have consequences on the Guidelines. Furthermore, adoption of TDI's modernisation measures as a single package will allow all stakeholders to have an overall understanding of the impact of new measures proposed. Thus, we ask the European Commission not to adopt the Guidelines before the Legislative proposal enters into force.

We are convinced, that TDIs Guidelines should only reflect the consistent practice of the Commission remaining within the scope of the EC Basic Regulation on Anti-Dumping and EC Anti-Subsidy Rules (hereinafter "Basic Regulations"). Guidelines should not introduce new elements or concepts that are not clearly covered in the Basic Regulations.

1. In the paragraph IV "*Measures are not to be imposed if they are clearly not in the Union interest test*", the guidelines introduce the condition of disproportionate negative consequences for the users' industry of the product concerned and gives some examples, like the *Union industry's market share is very small, the future perspective of the Union industry is unclear, duties amount to a multiple of the turnover of the Union industry* (para IV.14). All these effects mentioned in para. IV.14, can be consequences of injurious dumping or subsidies caused to the Union industry. Without an explanation on how these criteria can be applied, it might lead to misinterpretation of the rules laid down in the Basic Regulations. Furthermore, some of examples mentioned create new elements in the current practice. Thus, we strongly suggest removal of para IV.14.

2. Paragraph V of the Guidelines states that Union Interest considerations may influence the selection of type of AD/AS measures. This statement is inconsistent with the rationale of the Art. 21 of Basic Regulation that sets out rules for the Union Interest, therefore, this paragraph has to be deleted.

3. In para. III.8 it is stated that the existence of “*a direct economic link between the product subject of investigation and other EU policies*” should be considered. Political considerations and arguments relating to broader policy areas (for example, foreign policy, labour or environmental standards, energy policy) do not fall within the scope of the AD/AS examination, hence, this rule goes beyond EC current practice.

4. The same paragraph that describes methodology of Union Interest analysis, makes reference to “*impact of AD/AS measures on value chains*” of importers and traders. The EC’s current practise is to analyse if traders and importers can pass any cost increases, their overall profit margin and the profit margin of the product concerned. Thus, the assessment of value chains of importers and traders is a new element and goes beyond the EC consistent practice.

5. Para. II.5 mentions among economic operators that have standing under the Community test “*individual traders and importers, including those related to exporters*”. However, exporting producers do not have standing. Therefore, traders and importers related to them should be removed from the list of para. II.5.

**Please provide your comments to the guidelines on expiry reviews and the duration of measures (3500 characters max)**

1. In para. VIII *Duration of AD and AS measures* the Guidelines quote art. 11 (1) of the Basic AD Regulation, but not art. 11 (2) (similarly art. 17 and 18.1 of the Basic Anti-Subsidy Regulation). If it is essential to quote the text of Basic Regulations, both parts should be quoted, in order to give better understanding of the issue.

Instead the text provided in para.VIII.21 may lead to misinterpretation that, after its imposition, AD/AS measures can be renewed only once, which is not the EC current practice.

Para. III.22 describes situations, where measures can be imposed for shorter duration in situation of “*specific grounds or circumstances*”, “*clearly warranting such shorter duration*”. As the Guidelines should codify the consistent practice, the reference to cases of exceptional nature should be avoided. Furthermore, such vague definition can cause misinterpretation of the EC practice and rules laid down of the Basic Regulation.

2. Para. III.9 of the Guidelines states, that *if it is established that there is a continuation of dumping for significant quantities during the review investigation period, the EC will usually conclude that such dumping would continue if measures were repealed*. This wording is not in consistent with the requirements laid down in the Basic Regulation, as reference to “*significant quantities*” is not a legal requirement. Furthermore, the wording “*usually*” may create a room for uncertainty applying criteria of expiry reviews.
3. The title of para. IX *Relationship between interim and expiry reviews* might create an impression that there is an automatic link between interim and expiry reviews, which is not the case neither in a view of the Commission’s practice nor in the rules laid down in the Basic Regulation. Therefore, we suggest changing this title.

4. Providing a list of factors that should be used establishing recurrence of dumping, para. III.11 also makes a reference to *sustainability of dumping practices*. This element is not mentioned in the Basic Regulation and appears to be new in the EC practice. Thus, we suggest deletion of this reference.

**Please provide your comments to the guidelines on the determination of the profit margin used in establishing the injury margin (3500 characters max)**

1. In the “Guide on How to Draft an Anti-dumping Complaint” issued by the EC, normal profit is defined as “*the minimum amount necessary to account for reinvestment in the industry*” (p.10). Thus, para. II.4 of the Guidelines, according to which “*the profit margin for the purpose of the injury margin calculation is not necessarily identical with the one desirable to ensure the survival of the Union industry and/or adequate return on capital*” is misleading and not in compliance with the EC general practice.
2. According to the “Guide on How to Draft an Anti-dumping Complaint” issued by the EC (p.19), “*the target profit is usually calculated as a percentage on turnover. However another method may be used, if appropriate*”. However, para. IV.12 of the Guidelines gives a reference only to the method calculating target profit as a percentage on the Union industry’s turnover without providing an alternative. Thus, this sentence should be added to the text of the Guidelines.
3. Para. III.6. describes the EC practice to determine the profit margin by taking the average profit covering *a period of three to four years before the investigation*. However, in many cases the profits made just before the investigation period are already impacted by the injury, hence, it might be necessary to take more than four years period to have a more realistic profit margin.

**Please provide your comments to the guidelines on analogue country (3500 characters max)**

1. In the current practice there are several selection criteria how to make the correct choice of an analogue country. In this context para. II.6 creates a misinterpretation of the current EC practice, by making reference to the only criteria, instead of mentioning a set of objective selection criteria. Therefore, it is suggested to change the current text: *“It is for the institutions... to use its best efforts to find a third country in which the prices are determined in circumstances which are as similar as possible to those in the country of export, provided it is a market economy country”* with the following one: *“It is for the institutions... to use its best efforts to evaluate a set of selection criteria to find a third country”*.
2. Para.II.7 that describes *“the volume of domestic sales is generally considered representative if they amount to at least 5% of the exports in question”*, should clarify whether the exports in question refers to export to the EU, which is consistent with the current EC practice.