

Mr David O'Sullivan
Director-General
Directorate General Trade
European Commission
200 rue de la Loi
B-1040 Bruxelles

3 May 2006

THE SECRETARY GENERAL

Dear Mr O'Sullivan, *Dear David,*

UNICE has reviewed the evaluation of European Union trade defence instruments (TDI) prepared by Mayer, Brown, Rowe & Maw LLP and concluded in December 2005.

UNICE appreciates the substantive positive aspects of the evaluation of current EU TDI policy and implementation and trusts that the high standards and balanced approach described in the report will be maintained in the future. UNICE would therefore like to submit some comments at annex which provide initial views on the main recommendations of the study. Considering the very constructive dialogue that UNICE and the Commission have developed over the years on TDI regulatory developments, UNICE hopes that you will give your full attention to these comments.

The global competitiveness of European industry is dependent on maintaining open, yet fair, competition with international competitors. European industry has therefore consistently called for operational and effective trade defence instruments to overcome the injurious impact that unfair trade practices or seriously disruptive market behaviour may have on the EU market.

In that light, UNICE calls on the EU to secure such a balanced approach from other major trading partners in the Rules negotiations in the DDA by ensuring the harmonised implementation of the WTO Anti-dumping Agreement. At the same time, European industry is confronted with considerable trade distortions and market disruption that could threaten the viability of a growing number of manufacturing sectors. Therefore, UNICE is convinced that the firm but balanced approach taken to date in trade defence policy is the right one and it trusts that the Commission will maintain this strategy in the future.

Yours sincerely,

Best regards
Philippe

Philippe de Buck

3 May 2006

Annex: UNICE Remarks on the Evaluation Study
of EU Trade Policy Instruments

- **Access to confidential information**

UNICE does not believe that it is desirable to set up an Administrative Protective Order or “APO” system. In the current context of intense competition with emerging economies, which are often involved in dumping and subsidisation practices, the risk of leaking confidential information would be very high and therefore unacceptable for European companies. In addition, an “APO” system increases the cost burden associated with TDI proceedings by imposing *de facto* recourse to law firms, which is not necessarily the practice of European business involved in proceedings.

However, the Commission should raise its standards regarding the substantive content of third party non confidential submissions. Indeed, there is an imbalance in the requirements for complainant submissions compared to third party submissions. This does not properly balance the rights of the different parties involved and this could affect the complainants' capacity to exercise their right of defence.

- **Creation of a hearing/overseeing officer**

UNICE is not in principle opposed to the establishment of procedures to improve the perceived transparency of the TDI process. However, the Evaluation Study does not provide a clear justification for the creation of a hearing/overseeing officer in TDI cases. Therefore, the role of this officer should be clarified notably in relation to the similar role played by hearing officers in competition cases.

To avoid overburdening the Commission's limited human resources devoted to TDI, an alternative solution would be to ensure that Commission case handlers remain open to requests for hearing and clarifications on proceedings. To date, it appears that most Commission case handlers do remain open to such requests, which could make the creation of a new administrative officer position superfluous.

- **Identification and assessment of the causes of dumping**

This recommendation raises serious concerns for UNICE. To address the structural causes of dumping, particularly in economies in transition such as China or Russia, is an extremely complex process, and to properly identify them would require special expertise on the ground in these countries, considerable resources and time. EU TDI complainants do not have the time or resources to address these issues which fall outside the scope and objectives of TDI proceedings.

UNICE is also concerned that requests for information on the causes of dumping might provide a justification for refusing valid anti-dumping complaints. This would clearly undermine the legal rights of European industry under EU trade law.

Over time, this approach would undermine AD/AS proceedings by introducing macro-economic and industrial policy considerations in the assessment of individual cases and would likely jeopardize the enforcement of measures. UNICE also questions the logic behind this proposal because it would politicise AD/AS cases by encouraging the “horse-trading” of TDI cases against bilateral trade concessions. Therefore, UNICE firmly rejects this proposal.

To address the causes of dumping and subsidisation, UNICE suggests that AD/AS cases trigger further EU trade policy initiatives when dumping or subsidy practices demonstrate serious market operating failures or distortions in exporting countries. Real synergies should be created in this respect between the EU Trade Defence, Market Access and Trade Negotiation units.

- **Recourse to the AS instrument**

Recourse to the AS instrument would probably make sense vis-à-vis economies in transition, in particular when they claim to function as market economies. However, it is very difficult to provide evidence of subsidisation. Consequently, UNICE would like to encourage EU delegations and Member State embassies to play a much bigger role in the identification and demonstration of alleged subsidisation schemes in the countries concerned. Of course, this would require both the EU and Member States to equip their delegations/embassies with qualified trade policy experts.

- **Recourse to Safeguards**

While the safeguard instrument is a legitimate option for industries facing sudden and injurious import surges, it is difficult to employ because it does not target unfair trade practices. In addition, the injury threshold is high and the initial support of a Member State is indispensable. However, UNICE does not preclude that economic circumstances may make recourse to the safeguard instrument more relevant in the future.

- **Specialisation of officers in the Trade Defence Service**

Some degree of staff specialisation in the functioning of transition economies and transition economy languages would be desirable. Investigations in China and Russia, for instance, would benefit from officers with experience and language skills from those countries. As regards the educational background, industrial experience would reinforce the professionalism of case handlers in dealing with the companies involved in cases and would facilitate a better understanding of industrial realities. In addition, it would be recommendable that reviews and anti-circumvention proceedings be handled by the same investigation team as for the original case in order to build on the knowledge acquired in original proceedings.

- **Member State Advisory Committees**

There should be full transparency of the composition of the Advisory Committees, of their meeting agendas and of the positions taken by the members on the proposals submitted by the Commission. A more transparent approach would establish a sounder context for the advocacy towards the Member States that inevitably surrounds TDI cases.
