

EU Trade Defence Instruments: A short overview of the deadlines and timelines in the investigative process

I. Introduction

The TDI Modernisation package entering into force on 8th June 2018, introduces, among other things, significant changes to the timetable and deadlines previously applicable in anti-dumping proceedings. In particular, investigations will be conducted more expeditiously and provisional measures, if any, will be imposed up to two months earlier than before. In addition, the Commission needs now to provide information about the planned imposition of provisional measures or the non-imposition of such provisional measures three weeks before the due date for the provisional measures. The time-limits for interested parties to come forward, in particular at the early stage of investigations, are also shortened.

In view of these amendments, the Commission considers appropriate to establish a more structured timeframe for conducting investigations to ensure that the proceedings can be completed within the mandatory time-limits in full respect of the interested parties' rights of defence. The new timetable includes specific instructions for the submission of information at various stages of the investigation and the organisation of hearings. Requests for extensions to deadlines will also be subject to stricter and predictable disciplines.

The actual timeframe and process that will be followed in any given investigation will be spelled out in the relevant Notice of Initiation pertaining to the investigation at hand. The Notice of Initiation is published in the Official Journal of the European Union. It informs the economic operators concerned of their procedural rights and obligations and describes exactly the process that the Commission will follow to collect the information necessary for its findings and to reach its conclusions. The Notices of Initiation of all on-going investigations can be found here: <http://trade.ec.europa.eu/tdi>

Parties can also register to be automatically notified when the Commission opens a case that concerns a sector of interest. Registration can be done here:

http://trade.ec.europa.eu/doclib/rss/tdi_ongoing.xml

At the outset it should be noted that some deadlines start running from the date of publication of the Notice of Initiation in the Official Journal of the Union. Therefore, it is very important for companies that consider themselves affected by an anti-dumping / anti-subsidy investigation to carefully follow the instructions contained in the Notice of Initiation. For instance, companies should make themselves known to the Commission services and should provide the Commission services with the required information and comments in a timely manner.

Additional useful information can also be found on DG Trade website:

<http://ec.europa.eu/trade/policy/accessing-markets/trade-defence/>

Against this backdrop, the Commission is publishing this memorandum to illustrate by means of a typical anti-dumping investigation how the proceeding will be structured from a procedural point of view focussing on the key steps and time-limits of the investigation process.

The description of an investigation in this memorandum is purely illustrative and covers the scenarios usually encountered in investigations. As indicated above, for the actual timeframe and process that

will be followed in any given investigation, interested parties should consult the relevant Notice of Initiation pertaining to the investigation at hand.

Who can participate in the investigation?

In order to participate in the investigation (for instance by replying to questionnaires and inspecting the non-confidential file – see next point), economic operators (such as exporting producers, Union producers, importers and their representative associations, users of the allegedly dumped imports and their representative associations, representative consumer organisations and trade unions) have to demonstrate that there is an objective link between their activities and the product under investigation. They have to register as an interested party in the investigation in question.

Instructions to that effect are available in each published Notice of Initiation.

The investigation file

Interested parties can consult all information of a non-confidential nature which is made available to the Commission services in the course of an investigation. That information can be found on the "file for inspection by interested parties".

The file for inspection is accessible electronically via Tron.tdi at the following address: <https://webgate.ec.europa.eu/tron/TDI> which also provides instructions on how to get access.

II. Initiation of an anti-dumping investigation

The initiation of an anti-dumping investigation is normally decided on the basis of a written complaint by the Union industry (eventually together with a trade union) that provides sufficient evidence justifying an investigation. The initiation is the subject of a Notice published in the Official Journal of the Union (series C).

What is available at the date of initiation?

- The Notice of Initiation provides a technical description of the product under investigation. It also specifies the exporting country(ies) that are alleged to be dumping that product in the Union and thereby causing injury to the Union industry. Both elements, the product under investigation and the exporting countries, define the scope of the investigation.
- The open version of the complaint (i.e. a version of the complaint where all business sensitive or otherwise confidential information is removed and summarised in a non-confidential way) is made available to all interested parties upon initiation. If parties are named in the complaint, a copy of the complaint is sent to them. Other parties can access the complaint via the "file for inspection by interested parties".
- The complaint is accompanied by an analysis of the degree of support by Union producers for the complaint. That analysis can be found in the "file for inspection by interested parties".

Opportunity for comments:

- Interested parties may comment on the complaint (including on matters pertaining to injury and causality) or any aspect regarding the initiation of the investigation (including the degree

of support for the complaint) **within 37 days of the date of publication of the Notice of Initiation.**

- However, comments by interested parties regarding the product definition and product scope are to be made **within 10 days from the date of publication of the Notice of Initiation.**

III. Sampling of interested parties

When the number of potential interested parties is large, the Commission may decide to carry out its investigation on the basis of a sample of operators (exporting producers, Union producers, importers, users).

The Notice of Initiation will indicate whether sampling is envisaged in the investigation. If so, the sampling process is conducted as follows:

(1) Sampling of Union producers

Before initiating the investigation, the Commission will have provisionally selected a sample of Union producers. The provisional sample can be found in the "file for inspection by interested parties".

Opportunity for comments

Interested parties may submit comments regarding the provisional sample **within 7 days of the date of publication of the Notice of Initiation.**

On that basis, the Commission will notify all known Union producers and/or associations of Union producers of the companies finally selected to be in the sample.

(2) Sampling of exporting producers

Exporting producers are requested to submit basic information to the Commission by filling in a form attached to the Notice of Initiation (Annex I to the Notice).

The deadline for returning the completed Annex I is **7 days from the date of publication of the Notice of Initiation.**

Once the Commission has received the necessary information to select a sample of exporting producers, it will inform the parties concerned of its decision whether they are included in the sample. The Commission will also put a note in the "file for inspection by interested parties" reflecting this selection.

Opportunity for comments

Interested parties may comment on the sample selection **within 3 days of the date of notification of the sample decision.**

(3) Sampling of importers

Importers in the Union are requested to submit basic information to the Commission by filling in a form attached to the Notice of Initiation (Annex II to the Notice).

The deadline for returning the completed Annex II is **7 days from the date of publication of the Notice.**

Once the Commission has received the necessary information to select a sample of importers, it will inform the parties concerned whether they are included in the sample or not. The Commission will also put a note to the "file for inspection by interested parties" reflecting the sample selection.

Opportunity for comments

Interested parties may comment on the sample selection **within 3 days of the date of notification of the sample decision.**

IV. Collection of information via questionnaires and deadlines for the submission of responses

Interested parties that participate in the investigation have to submit a response to a questionnaire. The Commission uses questionnaires addressed to interested parties to collect the relevant information needed to reach its determinations. The specific instructions and deadlines for the submission of questionnaire responses are available in the Notice of Initiation of the investigation. At initiation of the investigation, a copy of the various questionnaires will be made available in the file for inspection by interested parties and on DG Trade's website. <http://trade.ec.europa.eu/tdi/>

The deadlines for submitting the responses to the questionnaires are summarised below. Note that the starting point of the deadlines depends on whether or not sampling is applied (see Point III. above on sampling):

(1) For Union producers

If there is no sampling, Union producers have to submit the completed questionnaire **within 37 days of the date of publication of the Notice of Initiation.**

In case of sampling, the sampled Union producers have to submit a completed questionnaire **within 30 days from the date of notification of their inclusion in the sample.**

(2) For exporting producers

If there is no sampling, exporting producers will have to submit a completed questionnaire response **within 37 days from the date of publication of the Notice of Initiation.**

In case of sampling, the sampled exporting producers will have to submit a completed questionnaire response **within 30 days from the date of notification of their inclusion in the sample**¹.

(3) For importers

If no sampling is done, the unrelated importers will have to submit a completed questionnaire response **within 37 days from the date of publication of the Notice of Initiation**.

In case of sampling, the sampled importers will have to submit a completed questionnaire response **within 30 days from the date of notification of their inclusion in the sample**.

(4) Assessment of Union interest

The Commission will also examine whether the adoption of anti-dumping measures would not be against the Union interest.

Union producers, importers and their representative associations, users and their representative associations, representative consumer organisations and trade unions are invited to provide the Commission with information on the Union interest **within 37 days of the date of publication of the Notice of Initiation**.

V. Deadlines for submission of other relevant information by interested parties at later stages of the investigation

In addition to completing the relevant Commission questionnaires, interested parties are also entitled to provide any other additional information to the Commission services, including commenting on submissions made by other parties participating to the investigation. On the basis of all information collected during the investigation, the Commission will make provisional and final findings. Provisional findings have to be made normally no later than 7 months of the date of initiation (maximum 8 months). Final findings are to be made normally within 13 months (and in any case within 14 months) of the date of initiation of the investigation.

The Notice of Initiation will provide interested parties with a timeframe within which their submissions can be made without impeding the timely completion of the investigation.

- Prior to the publication of provisional findings, information should be submitted **at the latest before day 70 from the date of publication of the Notice of Initiation**.
- Three weeks before the scheduled date for provisional findings, the Commission will inform all interested parties as to whether it plans to impose provisional measures. If the Commission intends to impose provisional measures, exporting producers and the Union industry will be given **3 working days** to comment in writing on the accuracy of the calculations.

¹ Non-sampled exporting producers wishing to submit a questionnaire response on their own initiative are invited to consult the Notice of Initiation for specific instructions on deadlines applicable to them.

- Upon the scheduled date for provisional findings, those findings are then communicated to interested parties ("provisional disclosure" or information document if no provisional measure is imposed). Any comments on such provisional findings have to be made **within 15 days from the date of "provisional disclosure"**. The Notice of Initiation will typically provide that **no new factual information should be submitted after that deadline**. There is one exception: interested parties may submit new factual information after the above mentioned deadline subject to the following cumulative conditions:
 - (1) the parties must demonstrate that the new factual information is necessary to rebut factual allegations made by other interested parties, and
 - (2) the new factual information can be verified by the Commission services within the time available to complete the investigation in a timely manner.
- The Commission will then proceed to the stage of final findings. The essential facts and analysis on the basis of which the final findings are made will be disclosed in writing to interested parties ("final disclosure"). Comments on such findings are to be submitted **within 10 days of the date of "final disclosure"**. In order to allow sufficient time to complete the assessment of the file within the mandatory deadlines, **the Commission will under no circumstances accept submissions after the deadline to provide comments on the final disclosure or on the additional final disclosure, if there is one.**

As indicated above, the Notice of Initiation also indicates that interested parties should have the possibility to comment on information submitted by other interested parties. Such exchanges are subject to a specific timetable linked to three key stages of an investigation:

- Any comment on information submitted by other interested parties *before the provisional stage* should be submitted at the latest **before day 75 from the date of publication of the Notice of Initiation.**
- Comments on information provided by other interested parties *in reaction to the disclosure of the provisional findings* should be submitted **within 7 days of the deadline to comment on the provisional findings** or on the information document.
- Comments on the information provided by other interested parties *in reaction to the disclosure of the definitive findings* should be submitted **within 3 days of the deadline to comment on the definitive findings.**

VI. Extension to time-limits

Any extension to the time-limits provided for in the Notice of Initiation should only be requested in exceptional circumstances and will only be granted if duly justified.

In any event, any extensions to the deadline to reply to questionnaires will be limited normally to 3 days, and as a rule will not exceed 7 days.

Regarding time-limits for the submission of other information specified in the Notice of Initiation, extensions will be limited to 3 days unless exceptional circumstances are demonstrated.

VII. Hearings with the Commission services

All interested parties may request to be heard by the Commission services. The Notice of Initiation will provide a timeframe for those events, which is also linked to three key stages of the investigation as follows.

- For any hearings to take place *before the provisional stage*, a request should be made **within 15 days from the date of publication of the Notice of Initiation** and the hearing will normally take place within 60 days of the date of publication of the Notice of Initiation.
- *After the provisional stage*, a request should be made **within 5 days from the date of the provisional disclosure**, and the hearing will normally take place within 15 days from the date of notification of the disclosure.
- *At definitive stage*, a request should be made **within 3 days from the date of the definitive disclosure**, and the hearing will normally take place within the period granted to comment on the definitive disclosure.

The request for a hearing must also state the particular reasons why the party should be heard.

VIII. Hearings with the Hearing Officer

The Hearing Officer acts, where necessary, as an interface between the interested parties and the Commission investigation services. The Hearing Officer reviews requests for access to the file, disputes regarding the confidentiality of documents, requests for extension of time limits and any other request concerning the rights of defence of interested parties and third parties as may arise during the proceeding.

Interested parties may request the intervention of the Hearing Officer in trade proceedings. Any request must be submitted in good time and expeditiously so as not to jeopardise the orderly conduct of proceedings. To that effect, interested parties should request the intervention of the Hearing Officer at the earliest possible time following the occurrence of the event justifying such intervention.

The Hearing Officer may organise hearings and mediate to ensure that the interested parties' rights of defence are being fully exercised. A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request.

In principle, the timeframes set out to request hearings with the Commission services apply *mutatis mutandis* to requests for hearings with the Hearing Officer. The Hearing Officer will examine the reasons for the requests. Those hearings should only take place if, in the meantime, the issues have not been settled with the Commission services. Where hearing requests are submitted outside the relevant timeframes, the Hearing Officer will also examine the reasons for such late requests, the nature of the issues raised and the impact of those issues on the rights of defence, having due regard to the interests of good administration and the timely completion of the investigation.

Additional Information about the Hearing Officer can be found here:

<http://ec.europa.eu/trade/trade-policy-and-you/contacts/hearing-officer/>