



Brussels, 16 November 2020

Operating guidelines for the Single Entry Point and complaints mechanism for the enforcement of EU trade agreements and arrangements

The present notice is a guide on how DG Trade's new Single Entry Point ('SEP') for enforcement, market access and SMEs operates.

The Single Entry Point is the centralised contact point for all EU-based stakeholders who want to lodge a complaint on market access issues or non-compliance with Trade and Sustainable Development ('TSD') or Generalised System of Preferences ('GSP') system¹ commitments.² The objective of the new complaint system is to streamline internal processes to tackle market access issues and non-compliance with TSD/GSP commitments and to be able to better prioritise our enforcement action. Please note that the SEP does not deal with trade defence complaints (anti-dumping, anti-subsidy or safeguards). For such matters, please refer to the [trade defence complaints office](#).

The present notice is designed to help interested stakeholders understand the operation of the system and accompanies the complaint forms available on the Commission's [Access to Markets](#) portal on DG TRADE's website.

Eligibility to submit a complaint

Under the new complaint system, the following entities may submit a complaint to the Single Entry Point:

- i. For market access complaints:
 - a. EU Member States;
 - b. Entities having their registered office, central administration or principal place of business within the Union;
 - c. Industry associations of EU companies;
 - d. Associations of EU employers, or;
 - e. Trade unions or trade union associations formed in accordance to the laws of any EU Member State.

Complaints concerning market access issues will be receivable only if the complainants can demonstrate that the barrier directly concerns them. This means, for example, that

¹ Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008, OJ L 303, 31.10.2012, p. 1–82.

² This route is not intended for trade defence complaints.

companies can only complain about barriers affecting the products they produce or services they render.

- ii. For TSD or GSP complaints:
 - a. Citizens of any EU Member State;
 - b. EU Member States;
 - c. Entities having their registered office, central administration or principal place of business within the Union;
 - d. Industry associations of EU companies;
 - e. Associations of EU employers;
 - f. Trade unions or trade union associations formed in accordance with the laws of any EU Member State, or;
 - g. NGOs formed in accordance with the laws of any EU Member State.

Potential complainants must fully disclose if they are acting exclusively on their own behalf or if they are representing other interests as well. In the latter case, they shall fully disclose the identity of that other person/company/association/entity.

The complaint forms

The new system has two complaint forms – [one for market access barriers](#) and [one for non-compliance with TSD/GSP commitments](#).

Both complaint forms can be filled in directly online and consist of several sections that help the Commission services to assess whether there is in fact evidence of a trade barrier or a violation of TSD/GSP commitments. The complainant must provide a legal basis and a detailed factual description of the issue. The complainant is also asked to list actions already taken to address the issue.

The complainant will also be required to specify the main factual and legal elements that will allow the Commission services to evaluate the soundness of the complaint as well as its factual and legal premises. Particularly:

- i. the goods or services subject to the measure.

In this respect, the complaint form asks the complainant to use either HS codes or EBOPS code.

- ii. The law, regulation, guideline or practice that constitutes the barrier.

If a trade barrier stems directly from legislation or from a document formally issued by a third-country government, such as regulations or guidelines, the complainant shall precisely identify that law/document and also submit a translation thereof. In case of a formalised act, the complainant shall also indicate the date of entry into force of that act.

The Commission services will also act to seek to prevent trade barriers from being put in place by third countries. Therefore, complaints concerning laws and regulations not yet in force, but in the process of being discussed or adopted can also be submitted. In these cases, the complaint must include the draft legislation and, where possible, the expected entry into force and an indication of how these draft legislative changes are likely affecting them.

Trade barriers may stem directly from a piece of legislation, but also from the application of legislation. In this case, the complainant must provide a description of that practice and give details as to how that practice negatively affects trade.

- iii. Information concerning the domestic treatment of the same products and/or services.

The complainant will be required to explain precisely how the same domestic products are treated in that country.

- iv. Preliminary assessment of the international law provision violated (FTA or WTO or principles).

The complaint form asks the complainant to assess the violation of international law and provide a summary of that conclusion.

The TSD/GSP complaint form requires very similar information concerning the factual and legal description of the alleged violation. Particularly, the TSD/GSP maintains the distinction between a violation deriving from a law and from a practice, recognising that the latter is just as serious as the former. The TSD/GSP form asks the complainant to provide a description of that practice and how it constitutes a violation.

In this regard, the Commission notes that infringements of EU provisions may normally originate from (i) failure to comply with obligations/transpose international conventions, (ii) adoption of domestic legislation that infringes the principles enshrined in the international conventions, or (iii) failure to properly implement the domestic measures in place. The complainant shall set out the facts that substantiate the complaint especially in light of this.

The complainant shall also provide detailed information on how the relevant monitoring bodies of international conventions – International Labour Organization, United Nations, Multilateral Environmental Agreements – deal with and classify the alleged infringements.

Additionally, for market access, the complainant needs to provide information about the economic/systemic impact of the potential barrier. For this purpose, the complaint form requires the complainant to provide the following key information:

- i. Description of the EU market and of the third country market for the specific products/services mentioned above.

The complainant is required to provide information concerning the structure of the market, including share of domestic producers and the share of imported products. Also, the complainant will be required to provide information concerning any applicable regulations (not constituting a market access barrier).

- ii. the economic damage caused to the sector, including the quantification of the main indicators such as production, capacity, sales, and additional costs.

The Commission seeks information concerning the impact of the alleged barrier on macroeconomic indicators of the industry

- iii. Quantification of the material impact in absolute and relative terms (i.e.: % of the trade affected by the barrier compared to total exports of the sector to that country; % of the exports to this country to total exports of the sector).

The Commission seeks to quantify the impact on trade of the alleged barrier for the EU industry in terms of loss of sales directly generated by the measure. The complainant must also provide an explanation of how it calculated the impact.

For TSD/GSP issues, the complainant is required to provide substantiated information on the impact and seriousness/gravity of the potential violation as well as the economic impact for EU operators located in the territory of the trading partner. In this respect, the Commission services expect a sufficient level of detail from the complaint, as well as an assessment of whether the partner country has taken any action resulting in either positive or negative developments on the issue at hand.

Both the market access and the TSD/GSP complaint forms also require the complainant to submit information on whether any company/industry association/other body has sought redress from the measure through the national authorities (including domestic courts) of the country imposing the measure.

In this regard, the complaint forms require the complainant to explain in detail the following:

- i. The type of action taken;
- ii. The authority with which the action was taken, and;
- iii. If the action is concluded, its outcome.

The complaint form on trade barriers further asks the complainant to explain why it considers the outcome of the action insufficient to remove the barrier; or why it considers that the implementation (or failure to implement) of an outcome that could have removed the barrier failed to do so. In the latter case, the complainant must provide a description of that incorrect implementation and give details as to how that negatively affects trade.

The TSD/GSP form requires the complainant to submit similar information. In addition to that, it also requires the complainant to indicate whether any action has been taken by the appropriate international organisation. If this is the case, the complainant should explain the analysis carried out as well as summarise and provide the conclusions reached.

With respect to action in front of authorities in the partner country/third country, the complainant shall explain why it considers that the implementation of (or failure to implement) an outcome that could have cured the violation failed to do so. In the latter case, the complainant must provide a description of that incorrect implementation.

Pre-notification

The Commission will provide some support, notably for SMEs and other stakeholders, encountering difficulties in navigating the trade agreements with third countries and in submitting complaints. In order to ensure that SMEs are able to avail themselves of this new tool, the Commission will work to ensure that the new SEP system is accessible for all types of stakeholder and company, regardless of size and structure. The SEP therefore offers the possibility for stakeholders to engage in pre-notification contacts on a voluntary basis in order to prepare the formal submission of a complaint. Pre-notification contacts, while not mandatory, can be very valuable to both the complainant and the Commission services in determining, amongst other things, the precise amount of information required and, in the majority of cases, may result in a significant reduction of the information required.

Follow-up on complaints

The Commission services will provide stakeholders with an acknowledgement of receipt of their complaint form. The Commission will assess in particular the completeness of the complaint and evidence provided in support of the complaint.

After a preliminary analysis, depending on the case at hand and the degree of completeness of the complaint, the Commission services may, if necessary, engage with the complainant in a deficiency process and communicate potentially outstanding information and evidence. This flexibility will require sufficient time in the early assessment stage to create a good basis for robust action, considering as well that the assessment of the complaint will require wide-ranging interdepartmental consultations within the Commission.

After receiving a complaint, the Single Entry Point will pull together the most appropriate resources within DG TRADE and the Commission.

The complainant will be informed as to whether the complaint leads to an enforcement action accompanied by an enforcement action plan to tackle the barrier/issue raised. The Commission services will inform the complainant about the content of the action plan, which may identify the steps suitable for tackling the issues complained of but also indicate to the extent possible timelines for specific actions. The Commission services might provide periodic updates on specific actions undertaken to tackle the issue, depending on the sensitivity and confidentiality of each of the steps undertaken with due consideration to the protection of decision-making processes and international relations.

In these interactions with complainants, the Commission services will be bound by the Code of Administrative Conduct.

The Commission services will use all tools at their disposal: from diplomatic means to dispute settlement (at the WTO or bilaterally). While the Commission will seek to address and remove all trade barriers and issues on TSD/GSP compliance, it will be necessary to prioritise in order to obtain swift results and ensure the most efficient use of resources.

Prioritisation will be based on three criteria: the likelihood of resolving the issue, the legal basis, and the economic/systemic impact for market access barriers and the seriousness of the violation for TSD/GSP issues. The system of prioritisation of enforcement action will be dynamic. The focusing of efforts and resources has to happen at an appropriate or opportune moment in time. Indeed, this flexibility will allow the Commission services to focus resources on the most relevant cases that have more chance of being positively resolved and to quickly and efficiently respond to the changes in circumstances.

Complaints will not be the only source of the Commission's implementation work.

The Commission services will continuously monitor the implementation of commitments by third countries both to prevent trade barriers arising and to ensure compliance with GSP/TSD commitments. In this, the Commission relies on its network of delegations and on contacts with Member States. Any barriers or concerns identified in this manner will also be fed into the system created under the Single Entry Point to ensure that these are taken into consideration and then subject to effective work plans.