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*Le Président*  
The President

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Représentant les avocats d'Europe  
Representing Europe's lawyers

Fritz-Harald Wenig  
Director of the Trade Defence Instrument Directorate, DG  
Trade  
European Commission  
DGA2 H  
B-1049 Brussels

Brussels, 19 March 2008

Dear Mr. Wenig,

I am writing to you on behalf of the Council of Bars and Law Societies of Europe (CCBE) which represents more than 700,000 lawyers from the European Union and European Economic Area through their member Bars and Law Societies.

We understand that the Commission - following a public consultation on the future of EU's trade defence instruments launched in December 2006 - is currently working on a proposal amending Council Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community and Council Regulation (EC) No 2026/97 on protection against subsidized imports from countries not members of the European Community.

We further understand that this proposal would introduce a new provision according to which legal representatives (i.e. lawyers registered with a Bar or Law Society of a Member State) may request to have access to the confidential version of the final disclosure document. When requesting access to the confidential final disclosure documents, legal representatives will have to provide - inter alia - information on the 'nature of the relationship' between him or herself and his or her client. We also understand that the confidential final disclosure document or any information contained therein may, in no circumstances, be transmitted to or shared with any other person, including the interested parties on behalf of which the legal representative intervenes. 'Where appropriate' legal representatives will be required to provide a financial security to guarantee compliance with 'obligations' set by the Commission in its decision to grant access to the confidential disclosure document. We further understand that the Commission would suggest that access to documents may be revoked or suspended at any time if it believes that the confidential information was not protected appropriately or if it was disclosed to unauthorised persons. Legal representatives whose access has been revoked would no longer have access to confidential disclosure documents (for a certain period etc) and in some cases (when the disclosure was intentional or fraudulent) they might even be barred from intervening in any trade proceedings for a certain period of time, unless the lawyer can satisfy the Commission that appropriate measures were taken to avoid any further disclosure of the confidential information.

We are aware that there have been complaints that the rights of defence are not appropriately protected in the existing framework of anti-dumping proceedings. We support the Commission's attempt to deal with this problem by allowing legal representatives to access the final disclosure document. Rights of defence are essential within a sound administration of justice. We would however like to point the Commission to some fundamental issues relating to the structure and functioning of the lawyers' profession in Europe, which we urge the Commission to take into account in its work on the proposal.

The proposed amendments would interfere with existing rules to which lawyers are subject around Europe, and which have been recognised by national and European laws and courts. We do acknowledge that the Commission can regulate its own procedures and that the proposed amendments are intended to improve the parties' access to important confidential documents in anti-dumping proceedings. However, we would like to stress that the Commission cannot regulate and impose sanctions on the legal profession, which is regulated by Member State law and ethical rules. The lawyers' profession in Europe is based on a regulatory system which ensures the independence

of the profession in the interest of the administration of justice. This has also been recognised by international and European organisations such as the United Nations and the Council of Europe. Lawyers have to carry out their duties in a manner consistent with their professional standards and codes of conduct, and if they do not comply with these standards/rules, they will be subject to a disciplinary regime. Enforcement is carried out under applicable member state law, by the bars/law societies, disciplinary bodies or courts having jurisdiction under the law of a particular Member State and always pursuant to rules of due process and under court supervision. Besides this fundamental constitutional issue, we would also like to note that the rules proposed by the Commission would afford no procedural guarantees to a lawyer accused of wrongdoing and no right of redress.

Apart from the more general – constitutional – comments above, we have a number of specific concerns which we would like to point out to the Commission (in no particular order):

1) The proposal to require a lawyer to provide financial security to access documents would severely restrict access to justice and may be deemed unconstitutional in a number of Member States.

2) One of the core principles of the European legal profession is to observe confidentiality and professional secrecy. The Commission's proposal – as we understand it – would supplant the existing and recognised rules on confidentiality, leaving it to the Commission's discretion to adjudicate on the lawyer's behaviour, regardless of his or her professional obligations, and with the possibility of imposing a sanction for an indefinite period, without any due process (including assessment by an independent third party).

3) The proposed power of the Commission to bar lawyers from intervening in proceedings which involve the Commission would be a clear breach of the principle of the independence of the legal profession, and is contrary to natural justice. Again, Member State laws provide for appropriate disciplinary rules and procedures.

4) Requiring legal representatives to keep the confidential final disclosure document from their clients ignores the fact that in certain Member States lawyers cannot withhold any information from their clients. The Commission proposal does not deal with this problem, which needs to be carefully studied. At any rate, in order to render the enhancement of the right of defence meaningful, the proposal should address ways in which, under appropriate procedural safeguards, attorneys gaining access to confidential information may share such information with specifically identified persons, whether clients, employees or external advisors, possessing the requisite technical skills to analyse such information in order to present the client's case.

5) The procedural rules of the EU courts need to be adapted to introduce mechanisms enabling lawyers to use the confidential information in an appeal. Otherwise, the usefulness of the exercise would be rather limited.

6) The Commission's request to obtain from lawyers information on the 'nature of the relationship' between a lawyer and his/her client has raised the question as to what the Commission is aiming at. What information is the Commission seeking? The attorney-client relationship is covered by strict confidentiality rules under Member State laws.

We therefore urge the Commission to recognise the lawyers' existing obligations and duties and the regulatory framework of the legal profession in Europe. We would be very happy to discuss these issues with you, to explain them in further detail and to work with the Commission constructively in order to overcome them.

Yours sincerely,



Péter Köves  
President